



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 153

August 11, 2026

Pages 51549–51996

OFFICE OF THE FEDERAL REGISTER



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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 252

[CBP Dec. 26–08]

RIN 1651–AB62

Regulatory Changes Required by the Energy Security and Lightering Independence Act of 2022

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Energy Security and Lightering Independence Act of 2022 amended the nonimmigrant classifications for aliens in transit (C) and for aliens serving as crewmen (D) to include individuals who perform ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade (lightering). The statute authorizes qualifying aliens to seek admission to the United States or request temporary landing permits for a period not to exceed 180 days. This rule amends Department of Homeland Security (DHS) regulations to conform to these statutory changes and make related technical amendments.

DATES: This rule is effective August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Stephen Dearborn, Office of Field Operations, U.S. Customs and Border Protection, by telephone at 443–756–9751 or by email at STEPHEN.M.DEARBORN@cbp.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

The Secretary of Homeland Security (Secretary) has broad authority to administer and enforce the immigration and naturalization laws of the United States. *See* section 103(a)(1) of the Immigration and Nationality Act (INA)

(8 U.S.C. 1103(a)(1)).¹ The Secretary is authorized to establish such regulations as the Secretary deems necessary to carry out this authority under the immigration laws of the United States. *See* INA sec. 103(a)(3) (8 U.S.C. 1103(a)(3)).² In addition, section 252(a) of the INA (8 U.S.C. 1282(a)) authorizes the Secretary to prescribe regulations regarding the grant of permission to crewmen to land temporarily in the United States. The Secretary has delegated authority to administer and enforce the immigration laws relating to alien crewmen to the Commissioner of U.S. Customs and Border Protection (CBP). *See* DHS, Delegation No. 07010.3, Delegation of Authority to the Commissioner of U.S. Customs and Border Protection, II.B.11. (Rev. No. 03.2, Incorporating Change 2) (Dec. 11, 2024).

The Energy Security and Lightering Independence Act of 2022 (ESLIA) amended two nonimmigrant classifications under the INA to authorize aliens who perform ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade (commonly referred to as lightering) to seek admission to, or request temporary landing privileges in, the United States for a period not to exceed 180 days. *See* Public Law 117–360, sec. 2–3, 136 Stat. 6292–93 (INA sec. 101(a)(15)(C)(iii), 8 U.S.C. 1101(a)(15)(C)(iii); INA sec. 101(a)(15)(D)(iii), 8 U.S.C. 1101(a)(15)(D)(iii)). Lightering is the transfer of cargo between vessels, typically involving the transfer of cargo from a larger vessel to a smaller vessel when port facilities cannot accommodate the larger vessel or for other operational reasons. Liquid cargo lightering involves the transfer of liquid cargo, such as natural gas or crude oil. This preamble describes the treatment of alien crewmen prior to the enactment of ESLIA, the statutory amendments enacted by ESLIA, and the corresponding conforming regulatory amendments.

¹ Public Law 82–414, 66 Stat. 163, 173 (1952), as amended.

² *See also* sections 402, 1512, and 1517 of the Homeland Security Act of 2002 (Pub. L. 107–296, 116 Stat. 2178, 2310, 2311), as amended (6 U.S.C. 202, 552, and 557) (regarding transfer of authority to enforce immigration laws and prescribe regulations necessary to carry out that authority from the Attorney General to the Secretary).

A. Nonimmigrant Classifications for Alien Crewmen

Alien crewmen intending to work on board a commercial conveyance in the United States generally have two options for entering the United States: (1) admission as a C–1 transit nonimmigrant or (2) the grant of temporary landing privileges as a D crewman nonimmigrant. Each option is described below.

1. The C–1 Transit Nonimmigrant Classification

The C–1 transit nonimmigrant classification applies to aliens in immediate and continuous transit through the United States for a period not to exceed 29 days. *See* INA sec. 101(a)(15)(C)(i) (8 U.S.C. 1101(a)(15)(C)(i)). To be admitted into the United States as a C–1 transit nonimmigrant, an alien must obtain a C–1 visa (or C–1/D combination visa) from the U.S. Department of State prior to traveling to the United States, unless exempt from the visa requirement. *See, e.g.,* INA sec. 212(a)(7)(B)(i) (8 U.S.C. 1182(a)(7)(B)(i)); 8 CFR 212.1. Upon arrival at a U.S. port of entry, U.S. Customs and Border Protection (CBP) will inspect the alien as an applicant for admission and, if CBP determines that the alien qualifies for the C–1 transit nonimmigrant classification and is otherwise admissible, will admit the alien to the United States. *See* INA sec. 101(a)(15)(C)(i) (8 U.S.C. 1101(a)(15)(C)(i)); 8 CFR 214.2(c)(3); 8 CFR 235.1(a). Once admitted in transit, the alien must depart the United States prior to the expiration of the authorized period of admission and is not eligible for an extension of stay or a change of status. *See* INA sec. 248(a)(1) (8 U.S.C. 1258(a)(1)); 8 CFR 214.1(c)(3)(ii); 8 CFR 248.2(a)(2). Prior to the enactment of ESLIA, CBP could not admit an alien in C–1 status for a period exceeding 29 days. *See* 8 CFR 214.2(c)(3).³ However, as noted above and discussed further below, ESLIA extended this authorized period to up to 180 days for certain qualifying crewmen.

³ Note that ESLIA codified the 29-day period of admission that was previously only in regulation for aliens admitted in transit under INA 101(a)(15)(C), 8 U.S.C. 1101(a)(15)(C).

2. The D Crewman Nonimmigrant Classification

The D crewman nonimmigrant classification applies to alien crewmen intending to temporarily land in the United States. *See* INA sec. 101(a)(15)(D) (8 U.S.C. 1101(a)(15)(D)). To qualify for this nonimmigrant classification, the alien crewman must be serving in good faith as such in a capacity required for normal operation and service on board a vessel as defined in section 258(a) of the INA (other than a fishing vessel having its homeport or an operating base in the United States), or aircraft, and intend to land temporarily and solely in pursuit of their calling as a crewman and depart from the United States with the vessel or aircraft on which they arrived or some other vessel or aircraft. *See* INA sec. 101(a)(15)(D)(i) (8 U.S.C. 1101(a)(15)(D)(i)).

To obtain temporary landing privileges under this classification, an alien must obtain a D visa (or a C–1/D combination visa) from the U.S. Department of State prior to traveling to the United States, unless exempt from the visa requirement. *See, e.g.,* INA sec. 212(a)(7)(B)(i) (8 U.S.C. 1182(a)(7)(B)(i)); 8 CFR 212.1. Upon arrival at a U.S. port of entry, CBP will inspect the alien, and if CBP determines the alien qualifies for temporary landing privileges, may permit the alien to land temporarily in the United States. Prior to the enactment of ESLIA, CBP could not grant temporary landing for a period exceeding 29 days. *See* INA sec. 252(a) (8 U.S.C. 1282(a)); 8 CFR 252.1(c), (d). However, as noted above and explained further below, ESLIA extended this authorized period to up to 180 days for certain qualifying crewmen. *See* Public Law 117–360, sec. 3, 136 Stat. 6293 (adding INA sec. 252(a)(3)(B); 8 U.S.C. 1282(a)(3)(B)). *See also*, Public Law 117–360, sec. 2, 136 Stat. 6292 (adding INA sec. 101(a)(15)(D)(iii), 8 U.S.C. 1101(a)(15)(D)(iii)).

Prior to ESLIA, CBP granted temporary landing privileges under two categories, depending on how the crewman intended to depart the United States. Under the first category, CBP could, in its discretion, grant an alien crewman authorization to land temporarily for shore leave purposes, provided that the crewman intended to depart on the vessel of arrival or another aircraft of the same transportation line, and certain other conditions in 8 CFR 252.1(c) and (d)(1), including passport control and the applicable 29-day time limitation, are met. Under the second category, CBP, in its discretion, could grant temporary landing privileges for

purposes of departing the United States as a crewman on a different vessel, or as a passenger by other means of transportation, subject to the conditions set forth in 8 CFR 252.1(c) and (d)(2), including requirements relating to departure arrangements and timing. A crewman granted temporary landing privileges under 8 CFR 252.1(d)(1) may, if still maintaining status, apply for a conditional landing permit under 8 CFR 252.1(d)(2) to depart from the United States (also known as authorization for pay-off or discharge). *See* 8 CFR 252.1(f). The procedures and requirements governing such authorization are set forth in 8 CFR 252.1(f) and (h).

An alien granted temporary landing privileges must depart the United States prior to the expiration of those privileges and is not eligible for an extension of stay or a change of status. *See* INA sec. 252(c) (8 U.S.C. 1282(c)); INA sec. 248(a)(1) (8 U.S.C. 1258(a)(1)); INA sec. 245(c)(1) (8 U.S.C. 1255(c)(1)); 8 CFR 214.1(c)(3)(iii); 8 CFR 252.1(f).

B. Treatment of Lightering Crewmen Prior to ESLIA

Prior to the enactment of ESLIA, alien crewmen performing ship-to-ship liquid cargo transfer operations (lightering) generally were not eligible for admission as C–1 transit nonimmigrants or for temporary landing privileges as the D nonimmigrant crewman. Both classifications were limited to periods not exceeding 29 days, while lightering operations and associated employment contracts typically exceeded that duration. In addition, unlike other commercial conveyances that regularly depart the United States for foreign ports, lightering vessels often operate between vessels without departing the United States. Because lightering is considered foreign trade and lightering operations generally require periods of stay exceeding 29 days, such crewmen did not qualify for admission or temporary landing privileges. In light of the significant public benefit associated with lightering activities, particularly those involving the movement of liquid petroleum and natural gas, CBP historically exercised its discretionary parole authority on a case-by-case basis to permit certain lightering crewmen to enter the United States.

C. The Energy Security and Lightering Independence Act of 2022 (ESLIA)

ESLIA amended the C transit and D crewman nonimmigrant classifications, as defined in the INA, to authorize aliens performing ship-to-ship liquid cargo operations to or from another vessel engaged in foreign trade to seek

admission or temporary landing privileges in the United States.⁴ *See* ESLIA sec. 2–3, 136 Stat. at 6292–93 (adding INA secs. 101(a)(15)(C)(iii) and (D)(iii), 8 U.S.C. 1101(a)(15)(C)(iii) & (D)(iii)). Accordingly, qualifying lightering crewmen are no longer required to rely on discretionary parole to enter the United States. Instead, such crewmen, after obtaining the appropriate visa from the Department of State (or qualifying for a visa exemption), may seek admission or temporary landing privileges for a period of up to 180 days under the amended classifications.

The first nonimmigrant classification amended by ESLIA is the C transit nonimmigrant classification. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)). DHS is designating this new category as a C–4 nonimmigrant. *See* new 8 CFR 214.1(a)(2). To qualify under this classification, an alien must be transiting through the United States to join or depart a vessel on which the alien will perform, or has performed, ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)).

The second nonimmigrant class amended by ESLIA to include those performing lightering is the D crewman nonimmigrant classification. *See* INA sec. 101(a)(15)(D)(iii) (8 U.S.C. 1101(a)(15)(D)(iii)). DHS is designating this new category as a D–3 nonimmigrant. *See* new 8 CFR 214.1(a)(2). To qualify for temporary landing privileges under this classification, the alien must be performing ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade, intend to land temporarily solely in pursuit of the alien's duties as a crewman, and depart the United States on the vessel of arrival or another vessel or aircraft, as required by statute. *See* INA sec. 101(a)(15)(D)(iii) (8 U.S.C. 1101(a)(15)(D)(iii)); INA sec. 252(a)(3) (8 U.S.C. 1282(a)(3)).

ESLIA further authorizes a period of stay not to exceed 180 days for qualifying lightering crewmen admitted under the C–4 classification or granted temporary landing privileges under the D–3 classification. *See* ESLIA, sec. 2, 136 Stat. at 6292–93 (codified at INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)); INA sec.

⁴ Pursuant to ESLIA, non-lightering alien crewmen may continue to seek admission as a C–1 transit nonimmigrant or temporary landing privileges as a D crewman nonimmigrant, as described above in section I.A.

101(a)(15)(D)(iii) (8 U.S.C. 1101(a)(15)(D)(iii)); INA sec. 252(a)(3) (8 U.S.C. 1282(a)(3))). Additionally, ESLIA clarifies that a crewman's performance of ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade is not considered services, work, labor, or employment in the United States for immigration purposes. *See* ESLIA, sec. 4, 136 Stat. at 6293 (8 U.S.C. 1101 note).

II. Discussion of Amendments

DHS is amending parts 214 and 252 of title 8 of the Code of Federal Regulations (CFR), as set forth below, to conform the regulations to the statutory changes made by ESLIA. In addition, DHS is making conforming and technical amendments to correct inaccurate or outdated regulatory references. Each amendment is discussed below.

A. Regulatory Amendments Conforming to ESLIA

1. Amendments to 8 CFR 214.1 To Include New Subclassifications

Section 214.1 of title 8 of the CFR sets forth general requirements applicable to nonimmigrants, including provisions governing extensions of stay and employment. DHS is amending several paragraphs of this section to incorporate two nonimmigrant classifications established by ESLIA for alien crew engaged in ship-ship liquid cargo transfer operations.

Paragraph (a)(1) of 8 CFR 214.1 establishes administrative subclassifications of nonimmigrant categories. DHS is amending section 214.1(a)(1)(ii) to add a fourth subclassification under the C transit nonimmigrant classification for alien crewmen performing ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade, as defined by ESLIA. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)), as amended by ESLIA, sec. 2(a), 136 Stat. at 6292.

Paragraph (a)(2) of 8 CFR 214.1 contains a table designating abbreviations for nonimmigrant classifications and subclassifications. DHS is revising this table to incorporate the amended classifications established by ESLIA. A nonimmigrant described in section 101(a)(15)(C)(iii) of the INA is designated as a C-4 nonimmigrant, and a nonimmigrant described in section 101(a)(15)(D)(iii) of the INA is designated as a D-3 nonimmigrant.

Paragraph (c)(3) of 8 CFR 214.1 lists nonimmigrant classes ineligible for extension of stay. DHS is amending this provision to include C-4 and D-3

nonimmigrants. Consistent with the INA, the period of admission for these classifications is limited to the maximum of 180 days, and aliens in these classifications are not eligible for extension of stay. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 101(a)(15)(C)(iii)); INA sec. 101(a)(15)(D)(iii) (8 U.S.C. 1101(a)(15)(D)(iii)); *see also* INA sec. 252(c) (8 U.S.C. 1282(c)) (imposing penalties on any crewman who willfully remains in the United States in excess of the number of days allowed). In addition, nonimmigrants in the D-3 classification, like other D nonimmigrants, are not admitted and remain applicants for admission for purposes of the INA. *See, e.g.,* INA sec. 101(a)(13)(B) (8 U.S.C. 1101(a)(13)(B)); INA sec. 252 (8 U.S.C. 1282); INA sec. 235(a)(1) (8 U.S.C. 1225(a)(1)).

Paragraph (e) of 8 CFR 214.1 sets forth general provisions regarding employment. DHS is amending 8 CFR 214.1(e) to clarify that a crewman, admitted in transit in C-4 status or granted temporary landing privileges in D-3 status who performs ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade does not constitute for immigration purposes, performance of services, work, labor, or employment within the United States, in accordance with ESLIA, sec. 4, 136 Stat. at 6293 (8 U.S.C. 1101 note).

2. Amendments to the Transit Classification in 8 CFR 214.2(c)

Section 214.2 of title 8 of the CFR sets forth special requirements applicable to certain transit nonimmigrant classifications. DHS is amending 8 CFR 214.2(c) to incorporate the new C-4 classification for lightering crew and to specify the corresponding period of admission of up to 180 days. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)), as amended by ESLIA, sec. 2(a), 136 Stat. at 6292.

Currently, 8 CFR 214.2(c) specifies a maximum period of admission of 29 days for all aliens admitted under the C transit nonimmigrant classification specified in INA section 101(a)(15)(C), except for aliens whose visa is limited to transit to and from the U.N. Headquarters District. Prior to enactment of ESLIA, sec. 214.2(c) provided for a maximum period of admission of 29 days for most C nonimmigrants, except for certain aliens whose visa is limited to transit to and from the United Nations Headquarters District. ESLIA established a distinct period of admission of up to 180 days for crew engaged in lightering operations. Accordingly, the existing 29-

day limitation for "other" transit nonimmigrants no longer accurately reflects the statutory framework as amended. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)), as amended by ESLIA, sec. 2(a), 136 Stat. at 6292.

To align the regulations with the amended statute, DHS is revising section 214.2(c) to reflect the four transit classifications and their respective periods of admission as defined in sections 101(a)(15)(C) and 212(d)(8) of the INA (8 U.S.C. 1101(a)(15)(C) and 1182(d)(8)). New paragraph 8 CFR 214.2(c)(1) specifies a period of admission not to exceed 29 days for an alien admitted in transit under section 101(a)(15)(C)(i) of the INA. *See* INA sec. 101(a)(15)(C)(i) (8 U.S.C. 1101(a)(15)(C)(i)). The existing 8 CFR 214.2(c)(2) remains the same, except for a change in the citation from "INA 101(a)(15)(C)" to "INA 101(a)(15)(C)(ii)" to provide greater specificity. New paragraph 8 CFR 214.2(c)(3) specifies a period of admission not to exceed 29 days for foreign government officials transiting through the United States as defined in section 212(d)(8) of the INA (8 U.S.C. 1182(d)(8)). Finally, new paragraph 8 CFR 214.2(c)(4) specifies a period of admission not to exceed 180 days for lightering crew. *See* INA sec. 101(a)(15)(C)(iii) (8 U.S.C. 1101(a)(15)(C)(iii)), as amended by ESLIA, sec. 2(a), 136 Stat. at 6292.

3. Amendments to the Crewmen Classification in 8 CFR 214.2(d)

Paragraph (d)(1) of 8 CFR 214.2 specifies requirements relating to the landing of crewmen as nonimmigrants as defined section 101(a)(15)(D) of the INA. Consistent with ESLIA section 4, DHS is amending this section to clarify that the performance of ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade does not constitute services, work, labor, or employment connected to a domestic movement of a vessel for immigration purposes. *See* ESLIA, sec. 4, 136 Stat. at 6293 (8 U.S.C. 1101 note). DHS is also amending the numbering of paragraph (d)(1) to improve readability.

4. Amendments to 8 CFR 252.1, Examination of Crewmen

DHS is amending 8 CFR 252.1(d) to incorporate the new D-3 nonimmigrant classification for crewmen granted temporary landing privileges in connection with lightering operations. Specifically, new paragraph 252.1(d)(3) provides that CBP may, in its discretion, grant an alien crewman authorization to land temporarily in the United States for a period not to exceed 180 days if the

crewman intends to depart, within the authorized period, on the same vessel or on another vessel or aircraft and will perform ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade during that period. *See* INA sec. 101(a)(15)(D)(iii) (8 U.S.C. 11101(a)(15)(D)(iii)), as amended by ESLIA, sec. 2(b), 136 Stat. at 6292.

In addition, DHS is amending 8 CFR 252.1(f) to clarify that the obligation to request discharge and payoff does not apply to lightering crew under newly added 8 CFR 252.1(d)(3), consistent with ESLIA, which authorizes liquid cargo lightering crewmen to depart either on the vessel of arrival or on a vessel or aircraft other than the vessel on which the crewman arrived. *See* INA sec. 101(a)(15)(D)(iii) (8 U.S.C. 1101(a)(15)(D)(iii)); INA sec. 252(a)(3) (8 U.S.C. 1282(a)(3)).

B. Technical Amendments

This rule also makes three technical amendments to DHS's regulations relating to crewmen to correct inaccurate cross-references. First, in 8 CFR 252.1(c), DHS replaces "8 CFR 235.1(d)(1)(ii) and (iii)" with "8 CFR 235.1(f)(1)(ii) and (iii)." Second, in 8 CFR 252.2(b), DHS replaces "208.2(b)(1) of this chapter" with "208.2(c)(1) of this chapter." Lastly, in the table at 8 CFR 214.1(a)(2), DHS replaces "101(a)(15)(C)(iii)" corresponding to the C-3 designation with "212(d)(8)."

III. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA) governs agency rulemaking procedures. Section 553(b) of the APA generally requires agencies to provide notice and an opportunity for public comment before issuing a final rule, subject to certain exceptions. Section 553(d) of the APA generally requires that a final rule have a 30-day delayed effective date, subject to certain exceptions.

The APA provides an exception to the requirement of prior notice and comment when an agency, for good cause, finds that such procedures are "impracticable, unnecessary, or contrary to the public interest." *See* 5 U.S.C. 553(b)(B). The APA separately authorizes an agency to waive the 30-day delayed effective date for good cause. *See* 5 U.S.C. 553(d)(3). Prior notice and comment are "unnecessary" where the regulatory changes are minor, technical, or otherwise non-

substantive.⁵ In addition, notice and comment are unnecessary where an agency is implementing a statutory mandate and lacks discretion such that public comment could not alter the agency's obligations.⁶ For example, when regulations merely restate the statute they implement (*i.e.*, when the rule does not change the established legal order), the APA does not require the agency to use notice and comment procedures.⁷ So long as the agency does not expand the substantive reach of the statute to impose new obligations, penalties, or substantive eligibility requirements, that is, so long as the agency "merely restate[s]" the statute, notice and comment are unnecessary.⁸

In this case, DHS finds that good cause exists to dispense with prior notice and comment because the amendments in this rule are either required by ESLIA or are non-substantive technical corrections. The rule conforms the regulations with the changes mandated by ESLIA, including the addition of the C-4 and D-3 nonimmigrant classifications. DHS lacks discretion in establishing these classifications, and public comment could not alter DHS's statutory obligations under ESLIA. In addition, the remaining amendments are technical in nature and correct inaccurate regulatory cross-references. These changes do not impose new obligations, penalties, or substantive eligibility requirements, but instead conform the regulations to the governing statute. Accordingly, DHS finds that prior notice and comment are unnecessary under 5 U.S.C. 553(b)(B).

For the same reasons discussed above, and because these amendments impose no new substantive obligations and do not require advance preparation by the public, DHS finds good cause to waive the 30-day delayed effective date requirement under 5 U.S.C. 553(d)(3).

⁵ *See Northern Arapahoe Tribe v. Hodel*, 808 F.2d 741, 751 (10th Cir. 1987) (citing S. Rep. No. 752, 79th Cong., 1st Sess. 14 (1945)).

⁶ *See McChesney v. Peterson*, 275 F. Supp. 3d 1123, 1136 (D. Neb. 2016), *aff'd* 900 F.3d 578 (8th Cir. 2018) (citing *Metzenbaum v. FERC*, 675 F.2d 1282, 1291 (D.C. Cir. 1982)).

⁷ *See Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991) (citing *Komjathy v. National Transportation Safety Bd.*, 832 F.2d 1294, 1296–97 (D.C. Cir. 1987)), *cert. denied*, 486 U.S. 1057 (1988) ("The fact that the regulation merely reiterates the statutory language precludes any serious argument that the regulation affects the agency or [regulated individuals] in such a way as to require notice-and-comment procedures pursuant to 5 U.S.C. 553.").

⁸ *See World Duty Free Americas, Inc. v. Summers*, 94 F. Supp. 2d 61, 65 (D.D.C. 2000).

B. 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 both costs and benefits, of reducing costs, of harmonizing rules, and of 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 rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Furthermore, this rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M-25-20, "Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation'" (Mar. 26, 2025).

ESLIA amended the C transit and D crewman nonimmigrant classifications to apply to nonimmigrants in transit to, and crewmen temporarily landing in, the United States to engage in ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade.⁹ The act of ship-to-ship liquid cargo transfer is commonly referred to as lightering. The amendments to these nonimmigrant classifications provided a clear legal pathway for alien crewmen to participate in a vital industry activity. Movement of petroleum and liquid natural gas has been deemed a significant public benefit and a critical national security activity. The next

⁹ *See* Public Law 117-360, 136 Stat. 6292 (Jan. 5, 2023) (INA sec. 101(a)(15)(C)(iii), 8 U.S.C. 1101(a)(15)(C)(iii)); INA sec. 101(a)(15)(D)(iii), 8 U.S.C. 1101(a)(15)(D)(iii)).

sections will explain the history of admitting, paroling, or granting temporary landing privileges to lightering crew in the United States. It will also explain the costs and benefits associated with adding C-4 and D-3 nonimmigrant classifications.

Until ESLIA was enacted, lightering crew generally did not qualify for admission into the United States as a C transit nonimmigrant or for temporary landing privileges as a D crewman nonimmigrant. Prior to ESLIA, alien crewmen admitted in transit or granted temporary landing privileges were authorized to stay in the United States for up to 29 days.¹⁰ However, as lightering is a vital industry and relies on foreign workers, CBP would historically parole lightering crew on a case-by-case basis into the United States for up to 180 days.¹¹ CBP estimates that 6,500 alien crewmen (performing all

types of duties) were paroled each year.¹² However, the use of the parole process prevented CBP from determining how many of the 6,500 alien crewmen entered the country to work on lightering vessels.

When the statute entered into effect, CBP amended its policy and now admits lightering crew into a C-4 class (or grants temporary landing in the D-3 class) when applicable.¹³ This rule amends the regulations to add two nonimmigrant classifications (C-4 and D-3) and makes additional changes. All amendments are outlined in Table 1 below. Adding nonimmigrant classifications aids CBP in tracking lightering crewmen compared to the pre-ESLIA process where they received parole. These amendments will have no time savings or costs to the public.

These amendments conform to the statute and primarily restate the statutory framework, with any

additional revisions limited to non-substantive technical updates. The main benefit compared to the pre-ESLIA world will be that of enhanced data. CBP will be able to identify and track the exact number of lightering personnel admitted in transit or granted temporary landing privileges under the amended classifications. By codifying the statutory pathway established by ESLIA, this rule reduces reliance on discretionary parole and reinforces the limited and case-by-case use of parole authority consistent with Executive Order 14159, *Protecting the American People Against Invasion*, 90 FR 8443, 8446 (Jan. 29, 2026). CBP will know the exact number of lightering crew admitted in transit or granted temporary landing privileges and will no longer use the process of parole to allow lightering crew to enter the United States.

TABLE 1—CHANGES

Regulation Title 8 CFR	Change	Cost	Cost savings/ benefit
214.1(a)(1)(ii)	This section will add a C-4 class for lightering crew	No cost associated	This is required by ESLIA and will allow CBP to track the number of lightering crew admissions.
214.1(a)(2)	This section provides a table with nonimmigrant classes. DHS will add D-3 and C-4. Additional technical change to correct an inaccurate reference.	No cost associated	This is required by ESLIA and will have no benefits.
214.1(c)(3)	This section maintains the prohibition on extension of stay for D/C nonimmigrants. CBP will add the two new classes (D-3 and C-4).	No cost associated	This is required by ESLIA and will have no benefits.
214.1(e)	This section will specify that C-4 crew engaged in lightering activities are not, for immigration purposes, performing services, work, labor or employment within the United States.	No cost associated	This is required by ESLIA and will have no benefits.
214.2(c)	This section will add the C-4 class and clarify that lightering crew will have up to a 180-day admission period. All other crew will retain the 29-day period. Define the C-classes in order.	No cost associated	This is required by ESLIA and will have no benefits.
214.2(d)(1)	This section will specify that the performance of ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade does not constitute services, work, labor, or employment connected to a domestic movement of a vessel for immigration purposes.	No cost associated	This is required by ESLIA and will have no benefits.
252.1(c), (d), (f)	This section will add the D-3 lightering crew classification, and the up to 180-day landing period. Clarify that D-3 crew do not require CBP permission to depart by means other than the vessel of arrival. Additional technical change to correct an inaccurate reference.	No cost associated	This is required by ESLIA and will allow CBP to track the number of lightering crew granted landing privileges.
252.2(b)	This section makes a technical change to correct an inaccurate reference.	No cost associated	No benefit associated.

¹⁰ See INA sec. 252(a) (8 U.S.C. 1282(a)); 8 CFR 214.2(c)(3).

¹¹ Internal guidance about crew member processing given by a subject matter expert in the

Office of Field Operations Admissibility and Passenger Programs Directorate on June 4, 2024.

¹² Estimate by CBP subject matter expert from the Office of Field Operations Admissibility and

Passenger Programs Directorate, based on informal input from the trade community.

¹³ Interim guidance from OFO Executive Director of Admissibility and Passenger Programs on October 23, 2024.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires agencies to assess the impact of regulations on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking. As a general notice of proposed rulemaking was unnecessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule but has prepared one nonetheless. 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 rule adopts the changes required by the Energy Security and Lightering Independence Act of 2022. The primary change is that alien crewmen performing ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade will be admitted in transit or granted temporary landing privileges instead of being paroled, which will help CBP tracking of nonimmigrants. This change will have no costs or benefits to aliens. In addition, the rule directly regulates individuals rather than small entities. Accordingly, CBP certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) (PRA), an agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB. There is no information collection associated with this final rule, so the provisions of the PRA do not apply.

E. Unfunded Mandates Reform Act of 1995

Under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) (UMRA), agencies must assess whether a rule will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. This rule will not result in such expenditures and will not significantly or uniquely affect small

governments. Accordingly, no actions were deemed necessary under the UMRA.

List of Subjects**8 CFR Part 214**

Aliens, Employment, Foreign officials.

8 CFR Part 252

Aliens, Maritime carriers, Seamen.

For the reasons stated in the preamble, DHS amends parts 214 and 252 of title 8 of the Code of Federal Regulations as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1188, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Amend § 214.1 as follows:

■ a. Revise paragraph (a)(1)(ii);

■ b. In paragraph (a)(2), in the table:

■ i. Remove entry “101(a)(15)(C)(iii)” and add in its place entry “212(d)(8)”; and

■ ii. Add entries for “101(a)(15)(C)(iii)” and “101(a)(15)(D)(iii)” in alphanumeric order by designation; and

■ c. Revise paragraphs (c)(3)(ii) and (iii) and (e).

The revisions and additions read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(1) * * *

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are in transit through the United States and not covered by (C)(ii)–(iv); (C)(ii) for aliens in transit to and from the United Nations Headquarters District; (C)(iii) for alien diplomats in transit through the United States; and (C)(iv) for aliens in transit to board or to return from a vessel on which the alien will perform or performed, respectively, ship-to-ship liquid cargo transfer operations to or from another vessel engaged in foreign trade;

* * * * *

(2) * * *

Section	Designation
* * * * *	
212(d)(8)	C–3.
101(a)(15)(C)(iii)	C–4.
* * * * *	
101(a)(15)(D)(iii)	D–3.
* * * * *	

* * * * *

(c) * * *

(3) * * *

(ii) C–1, C–2, C–3, C–4;

(iii) D–1, D–2, D–3;

(e) *Employment.* (1) A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment, except as provided in paragraph (e)(3) of this section. Any other nonimmigrant in the United States may not engage in any employment unless the nonimmigrant has been accorded a nonimmigrant classification which authorizes employment or the nonimmigrant has been granted permission to engage in employment in accordance with the provisions of this chapter.

(2) A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(3) A crewman, admitted in transit in the C–4 class or granted temporary landing in the D–3 class, who is performing ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade is not, for immigration purposes, performing services, work, labor, or employment within the United States.

* * * * *

■ 3. Amend § 214.2 by revising paragraphs (c) and (d)(1) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(c) *Transits*—(1) *Immediate and continuous transit through the United States.* An alien of the class defined in section 101(a)(15)(C)(i) of the Act may be admitted for a period not to exceed 29 days.

(2) *United Nations Headquarters District.* An alien of the class defined in section 101(a)(15)(C)(ii) of the Act, whose visa is limited to transit to and from the United Nations Headquarters District, if otherwise admissible, shall be admitted on the additional conditions that the alien proceed directly to the immediate vicinity of the United Nations Headquarters District, and remain there continuously, departing therefrom only if required in connection with the alien's departure from the United States, and that the alien have a document establishing the ability to enter some country other than the United States following the alien's sojourn in the United Nations Headquarters District. The immediate vicinity of the United Nations Headquarters District is that area lying within a twenty-five-mile radius of Columbus Circle, New York, NY.

(3) *Foreign government officials transiting through the United States.* An alien of the class defined in section 212(d)(8) of the Act may be admitted for a period not to exceed 29 days.

(4) *Lightering crew.* An alien of the class defined in section 101(a)(15)(C)(iii) of the Act may be admitted for a period not to exceed 180 days.

(d) * * *

(1) *General provisions.* (i) The provisions of parts 251, 252, 253, and 258 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act.

(ii) An alien crewman of the class defined in section 101(a)(15)(D) of the Act may be employed only in a crewman capacity on the vessel or aircraft of arrival, or on a vessel or aircraft of the same transportation company.

(iii) An alien crewman of the class defined in section 101(a)(15)(D) of the Act may not be employed in connection with domestic flights or movements of a vessel or aircraft but see paragraph (d)(1)(iv) of this section. However, nonimmigrant crewmen may perform crewmember duties through stopovers on an international flight for any United States carrier where such flight uses a single aircraft and has an origination or destination point outside the United States.

(iv) The performance of ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade does not constitute services, work, labor, or employment connected to a domestic movement of a vessel for immigration purposes.

* * * * *

PART 252—LANDING OF ALIEN CREWMEN

■ 4. The authority citation for part 252 continues to read as follows:

Authority: 8 U.S.C. 1103, 1184, 1185 (pursuant to E.O. 13323 published on January 2, 2004), 1258, 1281, 1282; 8 CFR part 2.

■ 5. Amend § 252.1 as follows:

■ a. In paragraph (c), remove the reference to “8 CFR 235.1(d)(1)(ii) and (iii)” and add in its place “8 CFR 235.1(f)(1)(ii) and (iii)”;

■ b. Revise and republish (d); and

■ c. Add a sentence at the end of paragraph (f).

The revision and addition read as follows:

§ 252.1 Examination of crewmen.

* * * * *

(d) *Authorization to land.* The immigration officer in his discretion may grant an alien crewman authorization to land temporarily in the United States for:

(1) Shore leave purposes during the period of time the vessel or aircraft is in the port of arrival or other ports in the United States to which it proceeds directly without touching at a foreign port or place, not exceeding 29 days in the aggregate, if the immigration officer is satisfied that the crewman intends to depart on the vessel on which he arrived or on another aircraft of the same transportation line, and the crewman's passport is surrendered for safe keeping to the master of the arriving vessel;

(2) The purpose of departing from the United States as a crewman on a vessel other than the one on which he arrived, or departing as a passenger by means of other transportation, within a period of 29 days, if the immigration officer is satisfied that the crewman intends to depart in that manner, that definite arrangements for such departure have been made, and the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived. A crewman granted a conditional permit to land under section 252(a)(1) of the Act and paragraph (d)(1) of this section is required to depart with his vessel from its port of arrival and from each other port in the United States to which it thereafter proceeds coastwise without touching at a foreign port or place; however, he may rejoin his vessel at another port in the United States before it touches at a foreign port or place if he has advance written permission from the master or agent to do so; or

(3) A period of up to 180 days if the crewman intends to depart, within the

period for which the crewman is permitted to land, on the same vessel or on a vessel or aircraft other than the vessel on which the crewman arrived and will perform ship-to-ship liquid cargo transfer operations to or from any other vessel engaged in foreign trade during such period.

* * * * *

(f) * * * A crewman granted temporary landing privileges under paragraph (d)(3) of this section is authorized to depart on the same vessel on which the crewman arrived or on a vessel or aircraft other than the vessel on which the crewman arrived and does not require an application on Form I-408 to do so.

* * * * *

§ 252.2 [Amended]

■ 6. Amend § 252.2(b) by removing the reference to “§ 208.2(b)(1)” and adding in its place “§ 208.2(c)(1)”.

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–16319 Filed 8–10–26; 8:45 am]

BILLING CODE 9111–14–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 7, and 10

[NRC–2025–1139]

RIN 3150–AL46

NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations by streamlining procedural provisions related to information withholding and post-promulgation comment periods; aligning the NRC's regulations with Committee Management Secretariat (CMS) Federal Advisory Committee Act (FACA) standards; and updating national security eligibility criteria. The goal is to modernize and clarify the NRC's regulatory framework to ensure consistency with government-wide standards and improve administrative efficiency. The scope includes updates to outdated provisions and revisions to ensure compliance with current federal policies. This action is being taken in response to Executive Order 14300,

“Ordering the Reform of the Nuclear Regulatory Commission.”

DATES: The final rule is effective October 26, 2026, unless significant adverse comments are received. Comments must be submitted electronically using <https://www.regulations.gov> by 11:59 p.m. Eastern Time on September 10, 2026. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received on this direct final rule will also be considered to be comments on a companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2025–1139, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

Follow the search instructions on <https://www.regulations.gov> to view public comments.

You can read a plain language description of this direct final rule at <https://www.regulations.gov/docket/NRC-2025-1139>. For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise Edwards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7204, email: denise.edwards@nrc.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Obtaining Information and Submitting Comments
- II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission
- III. Rulemaking Procedure
- IV. Background
- V. Discussion
- VI. Regulatory Flexibility Certification
- VII. Regulatory Analysis
- VIII. Backfitting and Issue Finality
- IX. Plain Writing
- X. National Environmental Policy Act

- XI. Paperwork Reduction Act
- XII. Executive Orders
- XIII. Congressional Review Act
- XIV. Availability of Documents

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–1139 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2025–1139.
- *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, 301–415–4737, or by email to pdr.resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the “Availability of Documents” section of this document.

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

B. Submitting Comments

Comments must be submitted electronically using <https://www.regulations.gov> by 11:59 p.m. Eastern Time on September 10, 2026. Please include Docket ID NRC–2025–1139 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that

they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, “Ordering the Reform of the Nuclear Regulatory Commission.” This rulemaking addresses Section 5, “Reforming and Modernizing the NRC’s Regulations,” which requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents, consistent with the policies set forth in section 2 of the E.O.

III. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is using the “direct final rule procedure” for this rule. This amendment is effective on October 26, 2026. However, if the NRC receives significant adverse comments on this direct final rule by September 10, 2026, then the NRC will publish a document that withdraws this action and will address the comments received in a subsequent final rule as a response to the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is one in which the commenter explains why the rule would be inappropriate, challenges the rule’s underlying premise or approach, or argues that the rule would be ineffective or unacceptable without a change. A comment is adverse and significant if:

- (1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:
 - (a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;
 - (b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

- (c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

- (2) The comment proposes a change or an addition to the rule, and it is

apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule. For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

IV. Background

The U.S. Nuclear Regulatory Commission (NRC) is undertaking a series of regulatory updates to modernize its administrative framework, align with government-wide requirements, and ensure continued compliance with evolving federal standards related to transparency, advisory committee governance, information management, and personnel security. These are consistent with the directive in E.O. 14300 which requires the NRC to conduct a comprehensive review of its regulations.

First, the NRC is updating its information withholding provisions in 10 CFR 2.390 to clarify the Commission's procedures for evaluating requests for withholding proprietary and sensitive information from public disclosure. The revisions to 10 CFR 2.390 align with a recent revision to that regulation to alleviate the need for licensees or applicants filing a withholding request to include information regarding competitive harm (90 FR 54225; November 26, 2025). The revisions in this rule maintain the NRC's longstanding policy balance between protecting sensitive commercial or financial information and ensuring transparency in agency decision making. The changes are administrative in nature and are intended to improve clarity and consistency in how information is reviewed and processed.

Second, the NRC is revising a provision in 10 CFR 2.804 that established procedural requirements related to post-promulgation comment periods. This provision is not statutorily required and thus imposes unnecessary administrative burdens. Revision of this provision provides additional flexibility to rulemaking processes.

Third, the NRC is revising 10 CFR part 7 to align its advisory committee regulations with the government-wide Federal Advisory Committee Act (FACA) requirements administered by the General Services Administration (GSA). On December 16, 2025, GSA issued a final rule (90 FR 58408) revising FACA regulations to improve Federal advisory committee management policies and processes, remove unnecessary language and information, and increase accountability

for Federal advisory committee operation. To ensure consistency with these standards and continued compliance with FACA, the NRC is making conforming amendments throughout 10 CFR part 7. These revisions update terminology, clarify procedural expectations, and consolidate administrative requirements to reflect GSA's current regulatory framework. The amendments do not impose substantive requirements on NRC licensees or external stakeholders; instead, they improve the efficiency, transparency, and accountability of NRC advisory committee management.

Finally, the NRC is revising its personnel security regulations in 10 CFR part 10 to reflect Federal adjudicative standards established in the Office of the Director of National Intelligence's Security Executive Agent Directive 4 (SEAD 4). SEAD 4 sets forth uniform adjudicative guidelines for determining eligibility for access to classified information and sensitive national security positions across the executive branch. The NRC previously incorporated SEAD 4 into Management Directive (MD) 12.3, "Personnel Security," and is now codifying these requirements to ensure alignment between internal policy and regulatory text. This codification enhances transparency and promotes consistent expectations for individuals requiring an access authorization or employment clearance.

Collectively, the actions in this rulemaking modernize NRC regulations, improve alignment with federal policies, and enhance administrative efficiency while maintaining transparency, public participation, and national security protections consistent with the NRC's statutory responsibilities.

V. Discussion

This direct final rule makes targeted revisions to 10 CFR parts 2, 7, and 10 to modernize the NRC's administrative and personnel security regulations, align with government-wide requirements, and implement the directives of E.O. 14300. The amendments are primarily administrative and procedural in nature and do not establish new substantive obligations for NRC licensees or other external stakeholders.

Information Withholding

The NRC is revising portions of 10 CFR 2.390 to clarify the procedures governing requests for withholding commercial, financial, and proprietary information from public disclosure. The revisions modify existing criteria to

eliminate the requirement to provide unnecessary information regarding potential harm, competitive or otherwise, and clarify what information is required. Specifically, the NRC is eliminating the requirement currently imposed on individuals seeking withholding to include a statement of harm that would result if that information were not to be withheld. Additionally, the NRC is replacing the phrases, "competitive position" and "competitive positions" in portions of 10 CFR 2.390, with the more general term "identified information." These changes are consistent with a recent revision made to 10 CFR 2.390(b)(4)(v) in (90 FR 54225; November 26, 2025), where the NRC recognized that the "substantial competitive harm" test, reflected in that provision, has been rejected by the Supreme Court, and the test is not statutorily required. *Food Marketing Institute v. Argus Leader Media*, 588 U.S. 427, 430 (2019). These changes also align with the Commission's policy to balance the protection of sensitive information with the public's right to be fully informed regarding the basis for NRC licensing and regulatory actions.

Requirements for Requesting Public Comments

The NRC is revising paragraph (e) of 10 CFR 2.804, "Notice of proposed rulemaking," which contains a self-imposed requirement to provide a post-promulgation comment period in specific instances, and detail the procedures the agency is to follow during such comment period. The NRC elected to provide this post-promulgation comment period in a 1985 amendment to 10 CFR part 2 for instances where exceptions to notice and comment are already provided by the Administrative Procedure Act (APA), 5 U.S.C. 553(b), *i.e.*, when a rulemaking involves an interpretative rule (which includes guidance documents), general statement of policy, or rule of agency organization, procedure, or practice, or where the Commission for good cause finds that notice and comment is impracticable, unnecessary, or contrary to the public interest (50 FR 13006; April 2, 1985). The agency established the provisions in 10 CFR 2.804(e) and (f), as recommended by the Administrative Conference of the United States, to "give interested persons a chance to expose any errors or oversights that occurred in the formulation of the rule and to present policy arguments for changing the rule."

A post-promulgation comment period, however, is not required by the APA

where an exception to notice and comment applies. Making this provision voluntary instead of mandatory will reduce agency burden and allow the NRC to utilize the process, as appropriate, and otherwise more efficiently finalize rulemakings where notice and comment is not required by the APA. Moreover, as the 1985 final rule notes, “The Commission normally provides for notice and opportunity for comment on policy statements and interpretative rules, and will continue to do so in the future.” (50 FR 13007; April 2, 1985). Accordingly, there are limited circumstances where a post-promulgation comment period would be necessary.

Federal Advisory Committee Act

The NRC is amending 10 CFR part 7 to align its advisory committee regulations with GSA’s final rule published on December 16, 2025 (90 FR 58408). The GSA rule streamlines and consolidates government-wide requirements under the FACA to improve Federal advisory committee management policies and processes, remove unnecessary language and information, and increase accountability for Federal advisory committee operation. These changes are administrative and procedural in nature and do not introduce new substantive obligations for NRC licensees or other stakeholders.

The scope of this rulemaking is limited to conforming amendments that ensure consistency with GSA’s updated standards, which, in turn, ensures continued compliance with FACA. The revisions affect terminology, chartering requirements, membership appointment processes, and reporting obligations for NRC advisory committees.

Eligibility for Access to Classified Information

This rulemaking proposes targeted revisions to 10 CFR part 10 to modernize the NRC’s personnel security regulations. The proposed rule updates 10 CFR part 10 by replacing the current detailed adjudicatory criteria with a high-level description of the whole-person concept and a direct reference to the national standards in SEAD 4, without altering existing adjudicative processes. These changes improve the clarity of the agency’s adjudicative process by aligning the eligibility-criteria descriptions in 10 CFR part 10 with current NRC practice, already reflected in MD 12.3, that implements the governing Federal standards established in SEAD 4.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule may affect a number of “small entities” as defined by the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810). However, as indicated in the regulatory analysis available under the “Availability of Documents” section, these amendments will not have a significant economic impact on any affected small entities.

VII. Regulatory Analysis

The NRC has completed a regulatory analysis for this direct final rule. The amendments contained in this action are administrative, procedural, or conforming in nature and do not impose new substantive requirements on NRC licensees, applicants, or other external stakeholders. As such, this rulemaking is expected to have minimal economic impact.

The revisions to 10 CFR part 2 to remove or revise provisions that extend beyond the requirements of the Atomic Energy Act of 1954, as amended (AEA) and the APA. Removing or revising these provisions restores procedural flexibility for the Commission without affecting the ability of the public to submit comments or seek withholding of documents. Because these amendments eliminate internal administrative steps rather than create new obligations, they are expected to reduce the NRC’s administrative workload and have no cost effect on licensees or the public.

The amendments to 10 CFR part 7 are limited to conforming changes necessary to align NRC regulations with the government-wide FACA regulations issued by the GSA. These changes update terminology, modernize administrative procedures, and clarify the structure and management of NRC advisory committees. The amendments do not alter the scope, duties, or responsibilities of NRC licensees and do not impose any new recordkeeping, reporting, or operational requirements on external stakeholders. Therefore, no incremental cost impacts are expected.

The revisions to 10 CFR part 10 codify the use of SEAD 4 as the controlling national security adjudicative standard. These requirements are already in widespread use across the executive branch and have previously been incorporated into NRC practice through MD 12.3. This rulemaking therefore reflects current practice and ensures

regulatory consistency without imposing new obligations on licensees or individuals seeking access authorization or employment clearance.

Because this direct final rule does not impose new substantive burdens and is expected to reduce administrative costs for the NRC, the Commission has determined that a more detailed quantification of costs and benefits is not warranted. The NRC concludes that the regulatory approach selected is the least burdensome, most efficient means of aligning NRC regulations with current federal requirements and implementing E.O. 14300. This regulatory analysis supports the Commission’s determination that this rule is appropriate and necessary to improve clarity, consistency, and administrative efficiency in the NRC’s regulatory framework.

VIII. Backfitting and Issue Finality

The NRC has determined that the backfitting provisions in 10 CFR 50.109, 53.1390, 70.76, 72.62, and 76.76, as well as the issue finality provisions in 10 CFR parts 52 and 53, do not apply to this direct final rule. The regulations amended by this rule are administrative and procedural in nature, and the amendments do not impose on current licensees, applicants, or certificate holders new or changed requirements that are required to design, construct, or operate a facility. Therefore, this direct final rule does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and the comparable provisions in 10 CFR parts 53, 70, 72, and 76. For the same reasons, the amendments do not affect the issue finality of any approvals issued under 10 CFR part 52 or 53.

IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, “Plain Language in Government Writing,” published June 10, 1998 (63 FR 31885).

X. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, as amended (NEPA) and NRC’s NEPA implementing regulations in 10 CFR part 51, “Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,” the NRC has determined that this direct final rule is the type of action eligible for categorical exclusion because it meets criterion described in 10 CFR 51.22(a)(3), which categorically

excludes amendments to 10 CFR parts 2, 7, and 10, among other parts, from environmental review. The agency action, therefore, belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the actions within the category do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this direct final rule.

XI. Paperwork Reduction Act

This final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

XII. Executive Orders

The following are Executive Orders that are related to this direct final rule:

A. Executive Order 12866: Regulatory Planning and Review (as Amended by E.O. 14215, Ensuring Accountability for All Agencies)

The Office of Information and Regulatory Affairs (OIRA) has

determined that this direct final rule is not a significant regulatory action.

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this direct final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is determined to be a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this direct final rule can be found in Section VI, "Regulatory Analysis," of this document.

D. Executive Order 14270: Zero-Based Regulatory Budgeting To Unleash American Energy

E.O. 14270 requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the AEA, the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPAA); (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes proposed in this rule are for processes that are

required by statute and are part of the NRC's regulatory permitting scheme authorized by the AEA, ERA, or NWPAA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this direct final rule.

E. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

The NRC has examined this direct final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14300.

XIII. Congressional Review Act

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has found that it does not meet the criteria at 5 U.S.C. 804(2).

XIV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./web link/ Federal Register citation
NRC Management Directive (MD) 12.3, "Personnel Security," July 18, 2022.	ML22136A179.
DNI Security Executive Agent Directive 4, "National Security Adjudicative Guidelines," June 8, 2017.	https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-4-Adjudicative-Guidelines-U.pdf .
GSA Final Rule, "Federal Management Regulation; Aligning the Federal Management Regulation (FMR) With the Administration's Deregulatory Priorities," December 16, 2025.	90 FR 58408.
NRC Final Rule, "Streamlining Select Rules of Practice and Procedure," November 26, 2025.	90 FR 54225.
NRC Final Rule, "Exceptions to Notice and Comment Rulemaking Procedures," April 2, 1985.	50 FR 13006.
Executive Order 12866, "Regulatory Planning and Review," October 4, 1993.	58 FR 51735.
Executive Order 14154, "Unleashing American Energy," January 29, 2025.	90 FR 8353.
Executive Order 14192, "Unleashing Prosperity Through Deregulation," February 6, 2025.	90 FR 9065.
Executive Order 14215, "Ensuring Accountability for All Agencies," February 24, 2025.	90 FR 10447.
Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission," May 29, 2025.	90 FR 22587.
Presidential Memorandum, "Plain Language in Government Writing," June 10, 1998.	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2025–1139.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental

protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 10

Administrative practice and procedure, Classified information, Government employees, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 7, and 10.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

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

Authority: Atomic Energy Act of 1954, secs. 29, 53, 62, 63, 81, 102, 103, 104, 105, 161, 181, 182, 183, 184, 186, 189, 191, 234 (42 U.S.C. 2039, 2073, 2092, 2093, 2111, 2132, 2133, 2134, 2135, 2201, 2231, 2232, 2233, 2234, 2236, 2239, 2241, 2282); Energy Reorganization Act of 1974, secs. 201, 206 (42 U.S.C. 5841, 5846); Nuclear Waste Policy Act of 1982, secs. 114(f), 134, 135, 141 (42 U.S.C. 10134(f), 10154, 10155, 10161); Administrative Procedure Act (5 U.S.C. 552, 553, 554, 557, 558); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note. Section 2.205(j) also issued under Sec. 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note).

■ 2. In § 2.390, revise paragraph (b)(1)(ii) and (b)(2) and (5) to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

* * * * *

(b) * * *

(1) * * *

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is not subject to the affidavit requirement, the request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in paragraph (a) of this section; and

(D) Indicates the location(s) in the document of all information sought to be withheld.

* * * * *

(2) A person who submits commercial or financial information believed to be

privileged or confidential or a trade secret shall be on notice that it is the policy of the Commission to achieve an effective balance between legitimate concerns for protection of the identified information and the right of the public to be fully apprised as to the basis for and effects of licensing or rulemaking actions, and that it is within the discretion of the Commission to withhold such information from public disclosure.

* * * * *

(5) If the Commission determines, under paragraph (b)(4) of this section, that the record or document contains trade secrets or privileged or confidential commercial or financial information, the Commission will then determine whether the right of the public to be fully apprised as to the bases for and effects of the proposed action outweighs the demonstrated concern for protection of the identified information, and whether the information should be withheld from public disclosure under this paragraph (b). If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it will be returned to the applicant.

* * * * *

§ 2.804 [Amended]

■ 3. In § 2.804, amend paragraph (e) introductory text by removing the word “shall” and adding in its place the word “may”.

■ 4. Revise and republish part 7 to read as follows:

PART 7—ADVISORY COMMITTEES

Sec.

7.1 Policy.

7.2 Definitions.

7.3 Interpretations.

7.4 Establishment of advisory committees.

7.5 Consultation with Committee Management Secretariat on establishment of advisory committees; advisory committee charters.

7.6 Amendments to advisory committee charters.

7.7 Termination, renewal, and rechartering of advisory committees.

7.8 Charter filing requirements.

7.9 Public notification requirements for discretionary advisory committees.

7.10 The Committee Management Officer.

7.11 The Designated Federal Officer.

7.12 Public participation in and public notice of advisory committee meetings.

7.13 Minutes of advisory committee meetings.

7.14 Public information on advisory committees.

7.15 Procedures for closing an NRC advisory committee meeting.

7.16 Annual review.

7.17 Reports required for advisory committees.

7.18 Appointment, compensation, and expense reimbursement of advisory committee members, staffs, and consultants.

7.19 Advisory committee members with disabilities.

7.20 Conflict of interest reviews of advisory committee members' outside interests.

7.21 [Reserved]

7.22 Fiscal and administrative responsibilities.

Authority: Atomic Energy Act of 1954, sec. 161 (42 U.S.C. 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); 5 U.S.C. Chapter 10 (Federal Advisory Committee Act).

§ 7.1 Policy.

The regulations in this part define the policies and procedures to be used by the Nuclear Regulatory Commission (NRC) in applying the Federal Advisory Committee Act, as amended (FACA or “the Act”), 5 U.S.C. chapter 10, to advisory committees established and operated by the NRC. FACA governs the establishment, operation, administration, and termination of advisory committees within the executive branch of the Federal Government. The Act defines what constitutes a Federal advisory committee, provides general procedures for the executive branch to follow for operating an advisory committee, and is designed to assure that the Congress and the public are kept informed with respect to the number, purpose, membership, activities, recommendations, outcomes, and cost of advisory committees through reporting requirements. In general, it is the policy of the Commission that—

(a) Except where there is express legal authority to the contrary, the function of NRC advisory committees shall be advisory only.

(b) Each NRC advisory committee shall function in compliance with the Federal Advisory Committee Act and this part.

(c) The number of NRC advisory committees shall be kept to the minimum necessary, and the number of members of each NRC advisory committee shall be limited to the fewest necessary to accomplish committee objectives.

(d)(1) An NRC advisory committee shall be established only:

(i) When establishment of the committee is required by law;

(ii) When the Commission determines that the committee is essential to the conduct of NRC business; or

(iii) When the information to be obtained is not available through an

existing advisory committee or a source within the Federal Government.

(2) Before establishing an advisory committee, the Commission shall consider whether:

(i) Committee deliberations will result in a significant contribution to the creation, amendment, or elimination of regulations, guidelines, or rules affecting NRC business;

(ii) The information to be obtained is available through another source within the Federal Government;

(iii) The committee will make recommendations resulting in significant improvements in service or reductions in cost; or

(iv) The committee's recommendations will provide an important additional perspective or viewpoint relating to NRC's mission. The advice or recommendations of an advisory committee should be the result of the advisory committee's independent judgment.

(e) Except where otherwise required by law, an NRC advisory committee shall be terminated whenever the stated objectives of the committee have been accomplished, the subject matter or work of the committee has become obsolete, the committee's main functions have been assumed by another entity within the Federal Government, or the cost of operating the committee has become excessive in relation to the benefits accruing to the Federal Government from its activities.

(1) An advisory committee not required to be established by statute terminates no later than two years after its establishment or last renewal, unless renewed.

(2) An advisory committee required to be established by statute terminates upon the expiration of the time explicitly specified in the statute or implied by operation of the statute.

(f) NRC advisory committees shall be balanced in their membership in terms of the points of view represented and the functions to be performed.

(g) The Congress shall be kept informed of the number, purpose, membership, activities, and cost of NRC advisory committees.

(h) NRC advisory committee meetings shall be open to the public, except where closure is determined to be justified under § 7.15.

(i) The Commission may periodically invite feedback from the public regarding the effectiveness of NRC advisory committees.

(j) If the regulations in this part conflict with those promulgated by the General Services Administration (GSA) found at 41 CFR part 102-3, the GSA regulations control.

§ 7.2 Definitions.

The following definitions apply to this part:

Act means the Federal Advisory Committee Act, as amended, 5 U.S.C. chapter 10.

Administrator means the Administrator of General Services.

Advisory committee means any committee, board, commission, council, conference, panel, task force, or other similar group, which is established by statute, or established or utilized by the President or any agency official to obtain advice or recommendations for the President or on issues or policies that fall within the scope of agency responsibilities (codified at 5 U.S.C. 1001). Advisory committees are subject to the Act unless specifically exempted by the Act, or by other statutes, or not covered by this part. The following are examples of meetings or groups that the term "advisory committee" does not include:

(1) Any group composed wholly of full-time or permanent part-time officers or employees of the Federal Government;

(2) Any group specifically exempted from the Act by statute;

(3) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any groups established to advise State or local officials;

(4) Any committee established to perform primarily operational as opposed to primarily advisory functions specifically. Operational functions are those specifically authorized by statute or Presidential directive, such as making or implementing Government decisions or policy, as long as the group does not become primarily advisory in nature;

(5) Groups assembled where attendees provide individual advice to a Federal official(s);

(6) Meetings where individual rather than consensus advice is sought, such as roundtable discussions, workshops, townhall meetings, listening sessions, fact-finding meetings, meetings with an individual, or meetings with small groups of experts that do not involve regular meetings and collective recommendations;

(7) Committees or groups created by a non-Federal entity that is not managed or controlled by the executive branch;

(8) Any meeting of two or more advisory committee members convened solely to:

(i) Discuss administrative matters relating to the operation of their advisory committee;

(ii) Receive administrative information from a Federal employee;

(iii) Gather information or conduct research for a chartered advisory committee to analyze relevant issues and facts for their advisory committee; or

(iv) Draft proposed position papers for deliberation by their advisory committee;

(9) Any committee composed wholly of full-time or permanent part-time officers or employees of the Federal Government and elected officers of State, local, and Tribal governments (or their designated employees with authority to act on their behalf), acting in their official capacities, and exclusively discussing matters relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration (sec. 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), and Office of Management and Budget (OMB) Memorandum M-95-20, dated September 21, 1995);

(10) Any meeting of an NRC contractor, applicant, or licensee with an NRC employee to discuss specific matters involving the solicitation, issuance, or implementation of a contract or the Commission's effort to ensure compliance with its regulations;

(11) Any meeting of a subcommittee or other subgroup of an advisory committee where the subgroup's recommendations will be reviewed by its parent advisory committee, rather than provided directly to a Federal officer or agency or adopted without further deliberations by the parent advisory committee;

(12) Groups assembled to exchange facts or information with a Federal official(s);

(13) Public engagement that is required by statutes, including but not limited to: notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 551-559), public meetings required under the National Environmental Policy Act (42 U.S.C. 4321), or public participation under the Resource Conservation and Recovery Act (42 U.S.C. 6974(b)), the Clean Water Act (33 U.S.C. 1251(e)), or the Safe Drinking Water Act (42 U.S.C. 300j-9) and the National Historic Preservation Act section 106 (54 U.S.C. 306108);

(14) Meetings with pre-existing non-governmental groups such as trade associations, advocacy groups, veterans organizations, environmental groups, or religious organizations where each group already has formulated views that it seeks to share with the Government; and,

(15) Meetings where the NRC is either providing its views to the private sector, or is assisting the private sector in developing guidance for itself.

Agency means an agency of the Government of the United States as defined in 5 U.S.C. 551(1).

Agency head means the head of an executive branch agency, department, or commission, or their designated delegate.

Chairperson means the advisory committee or subcommittee member who serves in this role on an advisory committee by statutory requirement or invitation by Presidential authority or by the NRC's authority.

Commission means the Nuclear Regulatory Commission of five members, or a quorum thereof, sitting as a body, as provided by section 201 of the Energy Reorganization Act of 1974, 42 U.S.C. 5841 (88 Stat. 1242).

Committee Management Officer (CMO) means the individual designated by the Chairman, pursuant to § 7.10(a), to supervise and control the establishment and management of NRC advisory committees, and to implement the provisions of section 8(b) of the Act (codified at 5 U.S.C. 1007(b)), and any delegated responsibilities of the Commission under the Act.

Committee Management Secretariat (*Secretariat*) means the organization established pursuant to section 7(a) of the Act (codified at 5 U.S.C. 1006(a)), which is responsible for all matters relating to advisory committees and carries out the responsibilities of the Administrator under the Act and Executive Order 12024.

Committee meeting means any gathering of advisory committee members (whether in person or electronically, such as using telecommunications or through a virtual platform), held with the approval of an agency, and with a Designated Federal Officer in attendance, for the purpose of deliberating on the matters upon which the advisory committee provides advice or recommendations.

Committee member means an individual who serves by appointment or invitation by the appointing authority on an advisory committee or subcommittee.

Committee staff means any Federal employee, private individual, or other party (whether under contract or not) who is not a committee member, and who serves in a support capacity to an advisory committee or subcommittee.

Designated Federal Officer (DFO) means an individual designated by the Chairman, pursuant to § 7.11(a), for which the Commission is responsible, to implement the provisions of sections

10(e) and (f) of the Act (codified at 5 U.S.C. 1009(e) and (f)) and any advisory committee procedures of the agency under the control and supervision of the CMO.

Discretionary advisory committee means any advisory committee that is established under the authority of an agency head or authorized by statute, and its establishment or termination is within the legal discretion of an agency head.

Non-discretionary advisory committee means any advisory committee either required by statute or Presidential directive, and its establishment or termination is beyond the legal discretion of an agency head.

NRC means the agency established by title II of the Energy Reorganization Act of 1974, 42 U.S.C. 5801 (88 Stat. 1233), and known as the Nuclear Regulatory Commission.

NRC Public Document Room means the Public Document Room maintained by the NRC at 11555 Rockville Pike, Rockville, Maryland 20852-2738.

Presidential advisory committee means an advisory committee authorized by the Congress or directed by the President to advise the President.

Subcommittee means a group that reports to an advisory committee, and not directly to a Federal officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee.

Utilized by means a committee over which the President or a Federal officer or agency exercises actual management or control of its operation, whether or not it was established by the Federal Government.

§ 7.3 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by an NRC officer or employee, other than a written interpretation by the General Counsel, shall be binding upon the Commission.

§ 7.4 Establishment of advisory committees.

(a) FACA identifies four sources of authority for establishing an advisory committee. An NRC advisory committee may be established under this part only if its establishment—

- (1) Is required by statute where Congress establishes an advisory committee, or specifically directs the President or the NRC to establish it (non-discretionary);
- (2) Is by Presidential directive (non-discretionary);
- (3) Is authorized by statute where Congress authorizes, but does not direct

the President or the NRC to establish it (discretionary); or

(4) Is by the NRC under general authority in title 5 of the United States Code or under other agency-authorizing statutes (discretionary).

(b) The public interest determination required by paragraph § 7.5(a) shall be a matter of formal record.

§ 7.5 Consultation with Committee Management Secretariat on establishment of advisory committees; advisory committee charters.

(a) *Consultation with the Secretariat.* To establish, renew, reestablish, or merge a discretionary advisory committee, the Commission shall first consult with the Secretariat and, as part of the consultation, provide a written public interest determination approved by the Commission to the Secretariat documenting that the establishment, renewal, reestablishment, or merger of the committee is essential to the conduct of NRC business and that the information to be obtained is not already available through another advisory committee or source within the Federal Government. At a minimum, the following factors should be addressed in the written public interest determination provided to the Secretariat (with a copy to OMB) to demonstrate that establishing the committee is in the public interest:

(1) Annual budget and expected costs broken into:

- (i) Federal personnel (based on full-time equivalent (FTE) usage basis) and other Federal internal costs;
- (ii) Proposed payments to members and number of members; and
- (iii) Reimbursable costs;

(2) If applicable, the total dollar value of grants expected to be recommended during the fiscal year;

(3) Criteria for selecting members to ensure the committee has the necessary expertise and fairly balanced membership;

(4) List of all other Federal advisory committees of the NRC;

(5) Justification that the information or advice provided by the Federal advisory committee is not available from another Federal advisory committee, another Federal Government source or any other more cost-effective and less burdensome source; and

(6) If the justification relates to a renewal, a summary of the previous accomplishments of the committee and the reasons it needs to continue.

(b) *Considerations for fairly balanced membership.* To comply with the Act's requirement for fairly balanced membership, during the Federal advisory committee member

recruitment process the NRC should consider the following:

(1) *The points of view required.*

During the formation of the advisory committee membership and as membership vacancies occur, the NRC should ensure that it fully considers and understands the potential implications or anticipated impacts of the advisory committee's potential recommendations. This includes consideration of the groups and entities potentially affected or interested in such recommendations, as appropriate based on the nature and functions of the advisory committee, so that the NRC can make informed decisions on the areas of expertise or perspectives that would advance the work of the advisory committee. Advisory committees requiring technical expertise should include persons with demonstrated professional or personal qualifications and experience relevant to the functions and tasks to be performed by the committee.

(2) *Outreach.* Having identified the points of view that would promote a fairly balanced advisory committee membership, the NRC should conduct broad outreach.

(c) *Advisory committee charters.* An advisory committee charter is intended to provide a description of an advisory committee's mission, goals, and objectives. The Commission approves advisory committee charters for establishments, renewals, re-establishments, or mergers. The charter must contain the following information:

(1) The advisory committee's official designation (official name);

(2) The legal authority that permits the advisory committee to be established;

(3) The objectives and the scope of the advisory committee's activities;

(4) A description of the duties for which the advisory committee is responsible and specification of the authority for any non-advisory functions;

(5) The NRC official(s) to whom the advisory committee submits its recommendations;

(6) The NRC office responsible for providing the necessary support to the advisory committee;

(7) The estimated annual costs to operate the advisory committee in dollars and person years (FTE). The estimated costs should break down all costs into the three categories described in paragraph (a)(1) of this section;

(8) The estimated number and frequency of the advisory committee's meetings;

(9) The period of time necessary for the committee to carry out its purposes;

(10) The planned termination date, if less than two years from the date of establishment of the advisory committee;

(11) The estimated number of advisory committee members, the expertise or experience required, and the anticipated committee member designations;

(12) Whether subcommittees may be created and by whom; and

(13) The date the charter is filed in accordance with § 7.8.

(d) *Subcommittees.* In general, the requirements of the Act and the policies of this part do not apply to subcommittees of advisory committees as long as the subcommittee reports only to that parent advisory committee and not directly to a Federal officer or the NRC. However, before establishing a subcommittee under a discretionary committee that is not made up entirely of members of a parent advisory committee, the Commission shall follow the same consultation process and document in writing the same determination of need for the subcommittee as is required under paragraph (a) of this section.

§ 7.6 Amendments to advisory committee charters.

The Commission is responsible for amending the charter of an advisory committee. Final authority for amending the charter of an NRC advisory committee established or utilized by the NRC is vested in the Commission. Amending any existing advisory committee charter does not constitute renewal of the advisory committee under § 7.7. A committee charter that has been amended pursuant to this introductory text is subject to the filing requirements set forth in § 7.8. The procedures for making changes and filing amended charters will depend upon the authority basis for the advisory committee:

(a) *Non-discretionary advisory committees.* When Congress by law, or the President by Presidential directive (e.g., Executive order), changes the authorizing language that has been the basis for establishing an NRC advisory committee, the Commission shall amend those sections of the current charter affected by the new statute or Presidential directive and file the amended charter as specified in § 7.8.

(b) *Discretionary advisory committees.* The Commission shall amend the charter of a discretionary advisory committee when the Commission determines that provisions of a filed charter are inaccurate or obsolete, specific provisions have changed, such as the name of the advisory committee,

number of members, estimated number or frequency of meetings, objectives, or estimated costs, or when advisory committees need to be merged. When a statute or Executive order that authorized the establishment of a discretionary advisory committee is amended, those sections of the advisory committee's charter affected by the amendments shall also be amended. The NRC shall then file the amended charter as specified in § 7.8.

(c) *General Counsel coordination.* Any proposed changes made to a current charter for an NRC advisory committee shall be coordinated with the General Counsel to ensure that they are consistent with applicable legal requirements.

(d) *Public notification of charter amendments.* The NRC shall post an announcement and a copy of the charter amendment on the advisory committee website. If an advisory committee website is not available, the NRC shall publish a notice of amendment in the **Federal Register**. The **Federal Register** notice publishing or website posting of charter amendments may be performed concurrently with the filing of the charter. The publishing requirement in the **Federal Register** does not apply to a non-discretionary advisory committee if the amendment was the result of a legislative change or Presidential directive.

§ 7.7 Termination, renewal, and rechartering of advisory committees.

(a) Except as provided in paragraph (b)(1) of this section, each NRC advisory committee shall terminate two years after it is established, reestablished, or renewed, unless—

(1) The President or the Commission, as applicable, determines that the advisory committee has fulfilled the purpose for which it was established and terminates the advisory committee sooner;

(2) The President or the Commission, as applicable, determines that the advisory committee is no longer carrying out the purpose for which it was established and terminates the advisory committee sooner;

(3) The statutory authority used to establish the advisory committee provides a different duration or termination, either stated in or implied by operation of the statute; or

(4) The President or the Commission, as applicable, renews the advisory committee not later than two years after its date of establishment, renewal, or reestablishment in accordance with § 7.4.

(b)(1) An NRC advisory committee that is established by statute shall

require rechartering by the filing of a new charter every two years after the date of enactment of the statute establishing the committee. If the committee's charter lapses before a new charter is filed, the committee is not terminated, but it may not meet or take any actions until a new charter is filed.

(2) Any other NRC advisory committee may be renewed, provided that such renewal is carried out in compliance with the procedures set forth in § 7.5, except that an advisory committee established by the President may be renewed by appropriate action of the President and the filing of a new charter. Renewal of an NRC advisory committee shall not be deemed to terminate the appointment of any committee member who was previously appointed to serve on the committee.

(c) The NRC Committee Management Officer shall notify the Committee Management Secretariat of the effective date of termination of any NRC advisory committee.

(d) If the Commission needs an advisory committee that was terminated and there is still adequate authority, as described in § 7.4, for establishing the advisory committee, the committee can be reestablished in accordance with § 7.5.

§ 7.8 Charter filing requirements.

No advisory committee may meet or take any action until a charter has been filed by the Committee Management Officer designated in accordance with § 7.10 or by another agency official designated by the Commission.

(a) To amend a charter for, or establish (including due to a merger), renew, or reestablish a discretionary advisory committee, a charter must be filed with:

- (1) The Commission;
- (2) The Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives. The date of filing with these congressional committees constitutes the official date of establishment for the advisory committee;
- (3) The Library of Congress;
- (4) The Committee Management Secretariat, indicating the date the charter was filed with the congressional committees; and
- (5) The Office of Management and Budget (OMB).

(b) Charter filing requirements for non-discretionary advisory committees are the same as those in paragraph (a) of this section, except the date of establishment, renewal, merger, or reestablishment for a Presidential

advisory committee is the date the charter is filed with the Secretariat.

§ 7.9 Public notification requirements for discretionary advisory committees.

(a) After submitting to the Secretariat the written public interest determination containing the information required under § 7.5(a), and following receipt of an assessment by the Secretariat providing its views on whether establishment of the advisory committee is in the public interest or notification from the Secretariat that no such assessment will be produced, the NRC shall publish a notice in the **Federal Register** announcing that the advisory committee is being established, renewed, reestablished, or merged. The notice must include the written public interest statement approved by the Commission described in § 7.5(a) and any assessment provided by the Secretariat.

(b) The required notices for establishment, renewal, reestablishment, or merger must appear at least seven calendar days before the charter is filed, unless the Secretariat approves less than seven calendar days when requested by the NRC in exceptional circumstances.

§ 7.10 The Committee Management Officer.

(a) The Chairman of the Commission or designee shall designate a Committee Management Officer (CMO) to carry out the functions specified in paragraph (b) of this section.

(b) The CMO shall—

- (1) Carry out all responsibilities delegated to such officer by the Commission and manage the NRC's FACA program;
- (2) Ensure that administrative guidelines and management controls are issued that apply to all NRC advisory committees and issue guidelines specifying the content of committee bylaws;
- (3) Exercise control and supervision over the establishment, procedures, and accomplishments of NRC advisory committees;
- (4) Assemble and maintain the reports, records, and other papers of any such committee during the committee's existence;
- (5) Carry out, on behalf of the NRC, the provisions of the Freedom of Information Act (5 U.S.C. 552) and implementing NRC regulations (10 CFR part 9, subpart A) with respect to such reports, records, and other papers;
- (6) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations at 10 CFR part 9, subpart A, copies of the

records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public inspection and copying at the NRC website, <https://www.nrc.gov>, at the NRC Public Document Room, or both, until the advisory committee ceases to exist;

(7) Ensure that, subject to the Freedom of Information Act and implementing NRC regulations, at least eight copies of each report made by each NRC advisory committee and, where appropriate, background papers prepared by consultants, shall be filed with the Library of Congress;

(8) Ensure that NRC keeps such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees and the nature and extent of their activities;

(9) Ensure that NRC keeps such other records and provides such support services as are required by § 7.22; and

(10) Ensure that sections 10(b), 12(a), and 13 of the Act (codified at 5 U.S.C. 1009(b), 1011(a), and 1012, respectively) are implemented by the NRC to provide for appropriate recordkeeping. Records to be kept by the CMO include, but are not limited to:

(i) A set of filed charters for each advisory committee and membership lists for each advisory committee and subcommittee;

(ii) Copies of the information provided as the NRC's portion of the annual comprehensive review of Federal advisory committees, prepared according to § 7.16;

(iii) NRC administrative guidelines maintained and updated on committee management operations and procedures; and

(iv) NRC determinations to close or partially close advisory committee meetings required by § 7.15.

§ 7.11 The Designated Federal Officer.

(a) The Chairman of the Commission or designee shall designate a Designated Federal Officer (DFO) or alternate DFO for each NRC advisory committee and its subcommittees. The individual(s) holding such positions must be employed by the Federal Government on either a full-time or a permanent part-time basis.

(b) The DFO or alternate DFO must:

(1) Ensure that their committee activities comply with the Act, this part, and any other applicable laws, regulations, or NRC administrative procedures;

(2) Approve or convene all meetings of the NRC advisory committee or subcommittee;

(3) Approve the agenda for each committee meeting (except a meeting of a Presidential advisory committee);

(4) Attend all meetings of the committee and subcommittees for their duration;

(5) Adjourn any meetings of the committee or subcommittees when the DFO determines such adjournment is in the public interest;

(6) Chair any meetings of the committee or subcommittees when so directed by the Commission;

(7) Maintain information on advisory committee activities and provide such information to the public, as applicable;

(8) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) and ensure their availability at the NRC website, <https://www.nrc.gov>, at the NRC Public Document Room, or both.

(9) Ensure compliance with the requirements of § 7.13 regarding minutes of meetings of the committee; and

(10) Ensure advisory committee members and subcommittee members, as applicable, receive the appropriate training (e.g., FACA overview, ethics training) for compliance with the Act and this part.

(c) An NRC advisory committee may not hold a meeting in the absence of its DFO or alternate DFO.

§ 7.12 Public participation in and public notice of advisory committee meetings.

(a) Each meeting of an NRC advisory committee shall be held at a reasonable time and in a place reasonably accessible to the public, including persons with disabilities. Any advisory committee meeting conducted, in whole or part by teleconference, video conference, the internet, or other electronic medium, must comply with this part. The size of the meeting room must be sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public, except that the provisions of this paragraph (a) relating to the room size shall not apply to any part of an NRC advisory committee meeting that has been closed pursuant to § 7.15. The **Federal Register** notices, agendas, and supporting materials related to each meeting should be posted on the agency advisory committee website as soon as they are available or at the time they are provided to the advisory committee members.

(b) Any member of the public who wishes to do so shall be permitted to file a written statement with an NRC advisory committee whether or not the statement is related to a specific meeting. The committee chairperson may also permit members of the public to speak at meetings of the committee in accordance with procedures established by the committee.

(c)(1) At least seven calendar days prior to an NRC advisory committee meeting, a notice that includes the following information shall be published in the **Federal Register**:

(i) The exact name of the advisory committee (or subcommittee, if applicable);

(ii) The time, date, physical place (and/or instructions to connect electronically), and purpose of the meeting;

(iii) Whether meeting registration is required;

(iv) A summary of the agenda of the meeting, and/or topics to be discussed and instructions on how to access meeting materials;

(v) A statement whether all or part of the meeting is open to the public or closed; if the meeting is closed in whole or in part, state the reasons why under § 7.15, citing the specific exemption(s) of the Government in the Sunshine Act, 5 U.S.C. 552b(c);

(vi) Instructions for submitting written comments, and oral comments, if permitted;

(vii) Instructions on how to submit a request for physical meeting or electronic meeting accommodations consistent with the relevant sections of the Rehabilitation Act, as amended, 29 U.S.C. 794; and

(viii) The contact information for the DFO, alternate DFO, or other responsible agency official, or agency electronic mailbox for the committee, to contact for additional information concerning the meeting.

(2) In exceptional circumstances, or when the President determines in writing that it is necessary for reasons of national security, less than seven calendar days' notice of an advisory committee meeting may be given, provided that there is as much prior notice as possible and the reasons for the shorter time are included in the committee meeting notice published in the **Federal Register**.

(3) The Commission may publish a single notice announcing multiple meetings; however, a meeting may not be announced so far in advance as to prevent the public from being adequately informed of an NRC advisory committee's schedule.

(d) In addition to notice required by paragraph (c) of this section, the NRC may also use other forms of notice, such as press releases, posting the information on the NRC website, <https://www.nrc.gov>, notice by mail, social media, etc., to inform the public of advisory committee meetings and provide as much advance notice as possible. To that end, the DFO or alternate for each NRC advisory committee will, to the extent practicable, maintain lists of people and organizations interested in that advisory committee and notify them of meetings by mail.

(e) Meetings of a subcommittee whose recommendations will not be reviewed by its parent advisory committee shall be conducted in accordance with all notice and openness requirements contained in this section and in §§ 7.13, 7.14, and 7.15.

§ 7.13 Minutes of advisory committee meetings.

(a) Detailed minutes shall be kept of each NRC advisory committee meeting, including one that is closed or partially closed to the public. The minutes shall include the following information:

(1) The time, date, and place (or electronic format) of the advisory committee meeting;

(2) A list of the persons who were present at the meeting, including advisory committee members and staff, agency employees, or members of the public who presented oral or written statements;

(3) An estimate of the number of other members of the public who were present;

(4) The extent of public participation; and

(5) An accurate description of each matter discussed during the meeting and its resolution, if any, made by the advisory committee at the meeting.

(b) The minutes of an NRC advisory committee meeting shall include a copy of each report or other document received, issued, or approved by the advisory committee in connection with the meeting. If it is impracticable to attach a document to the minutes, the minutes shall describe the document in sufficient detail to permit it to be identified readily.

(c) The chairperson of an NRC advisory committee shall certify to the accuracy of the minutes of each of the committee's meetings. In the case of a subgroup of an advisory committee, the chairperson of the subgroup shall certify to the accuracy of the minutes.

(d) A verbatim transcript of an advisory committee meeting may be substituted for minutes required by this

section, providing that the use of such a transcript is in accordance with the requirements of paragraphs (a), (b), and (c) of this section.

(e) The DFO must ensure that minutes are certified for accuracy by the chairperson within 90 calendar days of the meeting to which they relate. The advisory committee should post the meeting minutes on the agency website for that advisory committee.

§ 7.14 Public information on advisory committees.

The NRC seeks to be as transparent and timely as possible when providing public access to advisory committee activities and materials. The NRC, as appropriate, shall establish public-facing websites to help the public understand the NRC's advisory committee program and use additional notification methods to reach advisory committee stakeholders pursuant to section 10 of the Act (codified at 5 U.S.C. 1009).

(a) The NRC shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC website, <https://www.nrc.gov>, at the NRC Public Document Room, or both.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC website, <https://www.nrc.gov>, at the NRC Public Document Room, or both. To provide the public a meaningful opportunity to comprehend fully the work undertaken by an NRC advisory committee, advisory committee records should be available to the public as soon as practicable. Members of the public or other interested parties may review non-exempt advisory committee records without filing a request for these records under the Freedom of Information Act.

(c) Official records generated by or for an advisory committee must be retained for the duration of the advisory committee. Upon termination of the advisory committee, the records must be processed in accordance with the Federal Records Act (44 U.S.C. chapters 21, 29–33) and regulations issued by the National Archives and Records Administration (see 36 CFR parts 1220, 1222, 1228, and 1234), or in accordance

with the Presidential Records Act (44 U.S.C. chapter 22).

§ 7.15 Procedures for closing an NRC advisory committee meeting.

(a) To close all or part of a meeting of an NRC advisory committee, the DFO shall submit a written request for closure to the General Counsel, citing specific exemptions listed in the Government in the Sunshine Act (5 U.S.C. 552b(c)), as implemented by 10 CFR 9.104, that justifies the closure. The request shall provide the General Counsel sufficient time to review the matter in order to make a determination prior to publication of the meeting notice pursuant to § 7.12.

(b) If the General Counsel finds that the request for closure is consistent with the provisions of the Government in the Sunshine Act, FACA, and this part, a determination shall be issued in writing that all or part of the meeting will be closed. The determination shall include a statement of the reasons for the closing, citing the applicable exemptions in the Government in the Sunshine Act (as implemented by 10 CFR 9.104).

(c) The Secretary of the Commission shall make a copy of the determination to close all or part of an NRC advisory committee meeting available to the public upon request. If such a determination has been issued, the meeting notice published in the **Federal Register** must comply with the provisions of § 7.12 applicable to closed meetings.

(d) The following activities of an advisory committee are excluded from the procedural requirements contained in this part pertaining to notice and open meetings:

(1) *Preparatory work.* Meetings of two or more advisory committee or subcommittee members convened solely to gather information, conduct research, or analyze relevant issues and facts in preparation for deliberation by advisory committee members in a public meeting of the advisory committee, or deliberation by subcommittee members in a public meeting of the subcommittee (where applicable). These meetings to conduct preparatory work do not include deliberation among advisory committee or subcommittee members; and

(2) *Administrative work.* Meetings of two or more advisory committee or subcommittee members convened solely to discuss administrative matters of the advisory committee or subcommittee (such as meeting logistics) or to receive administrative information from a Federal officer or agency (such as a

briefing on ethics or FACA procedural requirements).

§ 7.16 Annual review.

(a) The Commission shall conduct an annual review of the activities and responsibilities of each NRC advisory committee to determine whether the committee—

(1) Is carrying out its purposes or, consistent with the public interest and, as applicable, provisions of applicable statutes, its responsibilities should be revised or renewed;

(2) Should be merged with another advisory committee; or

(3) Should be terminated.

(b) The review required by paragraph (a) of this section shall include consideration of such information regarding the committee as is required for the Commission's annual report to the Secretariat pursuant to § 7.17(a), including consideration of the criteria listed in § 7.5(a), and such other information as may be requested from the Committee by the CMO. The results of such review shall be included in the annual report to the Secretariat.

(c) If, as a result of the review required by this section, the Commission determines that an advisory committee is no longer needed, the committee shall be terminated; except that in the case of an advisory committee established by an Act of Congress or the President, the committee's termination shall be recommended to the President or the Congress, as the case may be.

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees consistent with instructions provided by the Secretariat. The information provided by the Commission regarding its advisory committees is contained in the Secretariat's report as part of the annual comprehensive review which is available on the GSA FACA database.

(b) Any NRC advisory committee holding closed or partially closed meetings shall issue a report, at least annually, setting forth a summary of its activities as would be informative to the public consistent with the policy of the Freedom of Information Act reflected at 5 U.S.C. 552(b). A copy of the report shall be made available at the NRC website, <https://www.nrc.gov>, at the NRC Public Document Room, or both.

(c) Subject to the Freedom of Information Act (5 U.S.C. 552) and

implementing NRC regulations (10 CFR part 9, subpart A), eight copies of each report made by an advisory committee, including any report on closed meetings pursuant to paragraph (b) of this section, and, where appropriate, background papers prepared by experts or consultants, shall be filed for public inspection and use with the Library of Congress.

§ 7.18 Appointment, compensation, and expense reimbursement of advisory committee members, staffs, and consultants.

(a) The Commission appoints or invites individuals to serve on committees, unless otherwise provided for by a specific statute or Presidential directive. Advisory committee members serve at the pleasure of the Commission and their terms are at the sole discretion of the Commission.

(b) Except where otherwise provided by law, the Commission may accept the gratuitous services of an NRC advisory committee member, staff member, or consultant who agrees in advance to serve without compensation.

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if the Commission determines that compensation of a member of an NRC advisory committee is appropriate, the amount that will be paid shall be fixed by the Chairman of the Commission at a rate that is the daily equivalent of a rate in NRC's General Grade Salary Schedule, unless the member is appointed as a consultant and compensated at a rate applicable to NRC consultants.

(2) In determining an appropriate rate of pay for a member of an NRC advisory committee, the Chairman of the Commission shall give consideration to the significance, scope, and technical complexity of the matters with which the advisory committee is concerned and the qualifications required for the work involved; provided that the Chairman may not set the rate of pay for an NRC advisory committee member higher than the daily equivalent rate for level III of the Executive Schedule under 5 U.S.C. 5314, unless a higher rate is expressly allowed by another statute. The Commission may not provide additional compensation in any form, such as bonuses or premium pay.

(d)(1) Federal employees serving as either an advisory committee member or as a staff person remain covered during the assignment by the compensation system of their employing agency.

(2) A staff member who is not otherwise a Federal employee shall be appointed in accordance with applicable agency procedures, following

consultation with the advisory committee.

(e) Advisory committee members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed reimbursement for travel expenses, including per diem, per the rates established for employees by the GSA Administrator at 5 U.S.C. 5702. In order to minimize travel expenses, virtual meetings should be held or virtual attendance should be provided for committee members who would otherwise need to travel.

Reimbursement of travel expenses should only be done when the Presidential directive, authorizing statute, or committee charter allows for it, funds are available, and expenditure of funds will not exceed budgeted amounts.

(f) Nothing in this section shall affect a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under the NRC's General Salary Schedule and evaluation system.

§ 7.19 Advisory committee members with disabilities.

While performing advisory committee duties, an advisory committee member with disabilities may be provided the same services by a personal assistant as those that may be provided to employees per 5 U.S.C. 3102.

§ 7.20 Conflict of interest reviews of advisory committee members' outside interests.

The DFO or alternate DFO for each NRC advisory committee and the General Counsel or designee shall review the interests and affiliations of each member of the DFO's advisory committee annually, and upon the commencement of the member's appointment to the committee, for the purpose of ensuring that such appointment is consistent with conflict of interest laws and Federal ethics requirements applicable to that member and that the advice or recommendations of the committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment.

§ 7.21 [Reserved]

§ 7.22 Fiscal and administrative responsibilities.

Committees should actively seek to minimize costs associated with their activities and should be transparent about all expenditures. The NRC shall keep records fully disclosing the

amount budgeted to each committee, a detailed account of all committee expenditures and NRC expenditures on behalf of the committees, and the nature and extent of their activities. This information shall be reported to the Secretariat as part of the Secretariat's annual comprehensive review, and NRC websites for individual committees shall include this information or a link to where this information may be accessed in GSA's FACA database.

(a) The Office of the Chief Financial Officer shall keep such records as will fully disclose the disposition of any funds that may be at the disposal of NRC advisory committees.

(b) Before establishing an advisory committee, the NRC shall identify requirements and ensure that adequate resources are available to support anticipated activities, such as work and meeting space, necessary technology, supplies and equipment (e.g., adequate virtual meeting capabilities), Federal staff support, access to key decisionmakers, and member access to meetings.

PART 10—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO RESTRICTED DATA OR NATIONAL SECURITY INFORMATION OR AN EMPLOYMENT CLEARANCE

■ 5. The authority citation for part 10 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 145, 161 (42 U.S.C. 2165, 2201); Energy Reorganization Act of 1974, sec. 201 (42 U.S.C. 5841); E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936, as amended; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398, as amended; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391.

■ 6. In § 10.1, revise paragraph (b) to read as follows:

§ 10.1 Purpose.

* * * * *

(b) This part is published to implement the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; Executive Order 10865; Executive Order 10450; Executive Order 12968; and Security Executive Agent Directive 4, National Security Adjudicative Guidelines (Effective June 8, 2017), as issued by the Director of National Intelligence, or any successor directive.

■ 7. Revise § 10.11 to read as follows:

§ 10.11 Criteria.

(a) Eligibility for access authorization and/or employment clearance shall be determined in accordance with Security

Executive Agent Directive 4, National Security Adjudicative Guidelines (SEAD 4) (Effective June 8, 2017), as issued by the Director of National Intelligence, or any successor directive.

(b) In applying the guidelines in paragraph (a), the NRC shall consider the whole person concept, evaluating the individual's conduct in context, including, but not limited to, the nature, extent, and seriousness of the behavior; the circumstances surrounding the conduct; the frequency and recency of the behavior; the individual's age and maturity at the time of the conduct; and evidence of rehabilitation or positive change.

Dated: August 7, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

[FR Doc. 2026-16374 Filed 8-10-26; 8:45 am]

BILLING CODE 7590-01-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

[SBA-2026-0133]

RIN 3245-A175

Reforms to 13 CFR 124.103 To Remove SBA's 8(a) Program's Rebuttable Presumption of Social Disadvantage for Individually Owned Firms Only. Reforms Do Not Impact Entity-Owned Firms

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration ("SBA" or "Agency") amends its regulations to align the Section 8(a) Business Development Program (8(a) BD program) with constitutional requirements and the law. The rule applies *only* to the 8(a) BD eligibility of small businesses owned and controlled by individuals. It does not in any way amend or affect the eligibility of entity-owned small businesses (*i.e.*, those owned by tribes, Alaska Native Corporations, Native Hawaiian Organizations, or Community Development Corporations). Specifically, the rule amends SBA's regulations to remove the rebuttable presumption that individuals belonging to certain designated groups are socially disadvantaged and sets forth revised standards for individuals establishing social disadvantage.

DATES: This rule is effective on September 10, 2026. It applies to all pending applications of individually-owned applicants as of that date.

FOR FURTHER INFORMATION CONTACT: Ryan Lambert, Associate Administrator of Government Contracting and Business Development, GCBDregs@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Small Business Act, 15 U.S.C. 631 *et seq.* (the "Act") in 1953 to "aid, counsel, assist, and protect" small businesses, to ensure a "fair proportion" of government contracts go to small businesses, 15 U.S.C. 631a(a)–(b), and to "preserv[e] . . . the competitive free enterprise system." *Id.* 631a(b). Among other provisions, the Act established the 8(a) Business Development (BD) program, which creates contracting preferences for small businesses owned and controlled by one or more "socially and economically disadvantaged" individuals. 15 U.S.C. 637. In implementing the 8(a) BD program, SBA created a rebuttable presumption finding that members of certain groups were socially disadvantaged individuals. Specifically, 13 CFR 124.103(b)(1) provided that Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asians are presumed to be socially disadvantaged individuals. A small business not entitled to the rebuttable presumption challenged the use of the presumption in the United States District Court for the Eastern District of Tennessee, contending that the presumption violated its right to equal protection because it does not further a compelling governmental interest and is not narrowly tailored to achieve that interest. In response to the constitutional challenge, the Court issued an Order finding that the regulatory rebuttable presumption violated the right to equal protection under the United States Constitution and enjoined the SBA from continuing to use the rebuttable presumption in administering the program. *Ultima Servs. Corp. v. United States Dep't of Agric.*, 683 F. Supp. 3d 745, 774 (E.D.Tenn. 2023) ("*Ultima*"). On November 25, 2025, the Department of Justice advised the Speaker of the House, pursuant to 28 U.S.C. 530D, that the rebuttable presumption violates the Constitution and that the Department of Justice would no longer defend it in court. SBA fully agrees that the rebuttable presumption is unconstitutional.

On June 11, 2026, SBA published in the **Federal Register** a proposed rule amending its 8(a) BD regulations to

remove the unconstitutional rebuttable presumption that individuals belonging to certain designated groups are socially disadvantaged individuals. 91 FR 35433. SBA also proposed a test by which any individual American citizen can establish social disadvantage by showing that within his or her lifetime, the federal or a state or local government or a university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the citizen is not a member, and that the discrimination, bias, or harm materially harmed the citizen.

During the proposed rule's 30-day comment period, SBA timely received 114 comments. A plurality of comments expressed opposition to the proposed rule. However, many of these comments addressed issues outside the scope of this rulemaking, sought to extend unconstitutional race-based presumptions, or could be reasonably interpreted as objecting to the inclusion of certain races, namely White Americans, into the 8(a) program. Accordingly, SBA has determined that a substantial portion of the commenters opposed to the proposed rule reflect issues not directly relevant to the subject of this rulemaking or in conflict with the *Ultima* ruling and inconsistent with a race-neutral 8(a) BD program.

Specifically, a number of comments cited concerns related to entity-owned firms' access to the program and disparities between the requirements relating to entity-owned firms and those owned by disadvantaged individuals. The proposed rule specifically stated that the rule did not apply to entity-owned firms. Several commenters questioned why that was the case. Conversely, several other commenters supported SBA for limiting the proposed changes to only individually owned small businesses, citing political classifications of tribes, Alaska Native Corporation (ANCs), and Native Hawaiian Organization (NHOs). SBA continues to note that this rule applies only to individually owned applicants to the 8(a) BD program. The Court in *Ultima* enjoined SBA from using the rebuttable presumption of social disadvantage in administering the 8(a) BD program. Statutorily, social disadvantage is not an element of eligibility for any firm owned by a tribe, ANC, NHO, or CDC. As such, no firm owned by an entity must establish social disadvantage and any rule changes

detailing what is social disadvantage and how it can be demonstrated do not apply to entity-owned firms.

An additional 20 comments advocated for a return to the racially presumptive framework, while 17 expressed strong support for the proposed rule, citing its constitutional grounding and alignment with the Fifth Amendment. The SBA disagrees with returning to the race-based rebuttable presumption as that would continue the unconstitutional practice of preventing all Americans regardless of race from equal access to the 8(a) BD program. Administering the 8(a) BD program in a race-neutral manner is required by law and will provide equal opportunity for all Americans, including those who previously were unjustly excluded from or subject to undue barriers to access the program.

A limited number of comments discussed SBA personnel staffing. An indirect benefit of removing the previous racially biased social disadvantaged narrative is that the new, objective test will lead to a consistent, non-arbitrary determination, thus reducing the resource burden of the 8(a) program.

Thirty-nine comments did not clearly state support for or opposition to the proposed rule. Instead, these comments primarily requested additional examples, definitions, and guidance regarding application standards. The substance of these comments and SBA's response to them are discussed in the Analysis section of this final rule. These comments supported the inclusion of cultural group within the proposed framework.

II. Severability

SBA anticipates that any provision of this final rule held to be invalid or unenforceable shall be construed so as to continue to give the maximum effect to such provision as permitted by law, unless such holding is that the provision of this final rule is invalid and unenforceable in all circumstances, in which event the provision shall be severable from the remainder of this part and shall not affect the remainder thereof.

III. Analysis

Section 124.103

Although SBA has not recognized the rebuttable presumption in processing 8(a) applications for the past three years due to the Court Order in *Ultima*, SBA's regulations still contain that unconstitutional race-based rebuttable presumption. In order to eliminate any confusion and to align SBA's

regulations with the Court Order, this final rule eliminates the rebuttable presumption of social disadvantage and makes a number of changes to the social disadvantage regulatory framework for individuals. These changes are intended to remedy the previous unconstitutional implementation of the program as it relates to socially disadvantaged individuals, to align the program's implementation with statutory requirements, and to address concerns about the constitutionality of the remaining program. The proposed rule amended 13 CFR 124.103 through four targeted changes.

First, SBA proposed to align the regulatory text with the statutory text in 15 U.S.C. 637(a)(5). Specifically, proposed § 124.103(a) repeated the statutory language that socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. It also provided that the social disadvantage must stem from circumstances beyond their control. Both of those provisions are contained in and would not be a change from current § 124.103(a). SBA received no comments on this provision and adopts it as final in this rule.

Second, SBA proposed to replace the current regulatory tests for social disadvantage with a new test. Specifically, SBA proposed a test by which any individual American citizen can establish social disadvantage by showing that within his or her lifetime, the federal or a state or local government or a university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the citizen is not a member, and that the discrimination or bias materially harmed the citizen. An individual must first demonstrate that an identifiable group suffered discrimination or bias. Then, the individual must certify that he or she is a member of that group and that he or she suffered material harm because of the discrimination or bias.

A significant number of commenters questioned whether the new test will apply to current 8(a) BD Participants, specifically wondering if current individually-owned Participants would be required to meet this new test as part of a continuing eligibility analysis at their next annual review or otherwise.

That is not SBA's intent. The determination of social disadvantage has historically been a one-time determination. If SBA has determined an individual to be "socially disadvantaged," that individual need not again establish his or her social disadvantage status. That continues to be SBA's position. SBA notes, however, that all individually-owned firms that have not yet been admitted to the program must meet this new test. This includes individually-owned firms that have already applied to, but have not yet been certified to participate in, the 8(a) BD program.

SBA also received a significant number of comments regarding the proposed test to determine social disadvantage itself. Commenters noted that the language used and the examples given in the proposed rule seemed to indicate that only those who were subjected to diversity, equity, and inclusion (DEI) policies would now qualify for the 8(a) BD program. A few commenters also questioned whether SBA intended to eliminate the ability to qualify for 8(a) based on sex. That was not SBA's intent. Specifically, the proposed rule gave examples of discriminatory conduct that could support a claim of social disadvantage, including, but not limited to: unlawful DEI programs or policies; unlawful affirmative action programs or policies; race-based quotas, set-asides, or hiring targets; or, any government or private entity policies or programs that favored some groups over others on the basis of race. The proposed rule went on to provide two specific examples of how an individual American citizen could establish that his or her group experienced discrimination, bias, or harm: by showing evidence that his or her group experienced a barrier to accessing a federal program or contract that other designated groups did not; or that that the citizen's racial or ethnic group was disadvantaged in college or university admissions decisions or otherwise discriminated against by a private entity in an unlawful manner as contemplated in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), *Ames v. Ohio Department of Youth Services*, 605 U.S. 303 (2025) or similar cases. Commenters recommended that the final rule clarify that "racial prejudice" or "cultural bias" of any kind can qualify an individual as socially disadvantaged. It was never SBA's intent to exclude any evidence-based cases of individual racial prejudice or cultural bias from those that could establish a claim of social

disadvantage. As noted in the comments, sec. 8(a)(5) of the Small Business Act, 15 U.S.C 637(a)(5), defines socially disadvantaged individuals as “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” Anyone who can establish that a specific identifiable group suffered racial prejudice or cultural bias could establish social disadvantage provided the other requirements are met. This certainly could include discrimination or bias based on sex. For example, prior to the enactment of the Equal Credit Opportunity Act of 1974, it was the official policy of many banks to prohibit women from applying for and obtaining credit cards in their own name. This discriminatory conduct against women adversely affected their ability to participate in the free enterprise system. Being unable to obtain credit in one’s own name is clearly a material harm, as having no credit history is a significant hurdle that an individual must overcome to fully participate in the economy. Accordingly, any woman who can certify that she was materially harmed by this limitation on her ability to apply for and obtain credit would be considered a socially disadvantaged individual under this revised test. An additional example would be the passage of the Americans with Disabilities Act 1990 (ADA). In passing the ADA, Congress recognized that discrimination against people with disabilities was a serious and pervasive social problem that had to be redressed through statute. This Congressional finding would be sufficient evidence to demonstrate that people with disabilities were subject to discrimination in a manner that diminished their opportunity for economic advancement. Therefore, any individual that can properly certify that he or she has a disability covered under the ADA, was alive prior to the passage of the ADA, and experienced material harm as a result of discrimination against people with disabilities would be considered a socially disadvantaged individual.

In addition, many commenters questioned the requirement to demonstrate that an identifiable racial, ethnic, or cultural group suffered discrimination or bias instead of focusing on an individual’s personal experiences of discrimination. Commenters believed that documenting group discrimination would be a real burden on applicants and that legitimate cases of discriminatory conduct might

not be identified in any specific “action, policy, rule, regulation, or other practice” of a governmental or private entity. A few commenters disagreed that narrative tests are flawed and others believed that the proposed test is inconsistent with the statutory definition of socially disadvantaged individuals, which equates social disadvantage to those individuals who have “been subject to racial prejudice or cultural bias.” They argued that this statutory language requires an individual to identify personal instances of discrimination or bias. Other commenters questioned what types of evidence will be sufficient to establish group discrimination or bias. SBA first notes that it does not believe that the “burden” associated with demonstrating an identifiable group that has suffered racial discrimination or cultural bias is significant. Such evidence should generally be publicly available and easily accessible and more objective than the current system. SBA also believes that the proposed regulatory text adequately detailed how an applicant can demonstrate group discrimination or bias. To establish group discrimination or bias, an individual can point to materials on government, university and corporate websites; government, university, and corporate policies, regulations, guidance, procedures or documents; statements by government, university or corporate officials; government, university, and corporate reports, audits or findings; court decisions; or administrative rulings. The final rule also identifies that specific Congressional findings may also be sufficient. In addition, the final rule also clarifies that where evidence of group discrimination or bias by the specific government, university or private entity is not readily available, an individual may present other adequate evidence demonstrating such discrimination or bias. SBA believes its new test is consistent with the statute.

SBA also received a significant number of comments regarding the language requiring an individual to certify that he or she suffered “material harm.” In order for an individual to establish that he or she was harmed by identified discrimination, prejudice, or bias, the proposed rule allowed the individual to self-certify that he or she was a member of the relevant group at the time of the governmental or private entity’s action or during the effective period of the relevant action, policy, rule, regulation, or other practice, and that such action, policy, rule, regulation, or other practice materially harmed the

citizen. Several commenters sought clarification as to what material harm means, others objected to a self-certification, and others believed that the material harm test is not as clear as the current test requiring that an individual personally suffer discriminatory conduct that adversely affects his/her entry into or advancement in the business world. The proposed rule defined the term “material harm” to mean the loss of access to or diminished opportunities related to economic advancement. It is intended to include all situations covered by the current regulatory language, that is all situations where discrimination or bias adversely affected an individual’s entry into or advancement in the business world. It is, however, even broader than the current regulatory language while still requiring a showing of individual harm via an objective self-certification subject to restrictions on making false statements to the federal government. The broader intent can be shown more clearly in the following example. Under the current test requiring that an individual personally suffer discriminatory conduct that adversely affects his/her entry into or advancement in the business world, an individual who applied for participation in a federal, state or local program and was denied due to the inherent barriers to participation experienced by his or her group could qualify as socially disadvantaged under the revised 8(a) BD program. However, an individual who was dissuaded from applying to such a program because of the inherent barriers experienced by members of his or her group may not be able to show that he or she personally suffered discriminatory conduct that adversely affected his or her entry into or advancement in the business world. Conversely, such an individual would be able to certify that he or she suffered material harm under the revised regulatory requirements.

Third, SBA proposed revising 13 CFR 124.103(c) by removing the current non-presumptive test for social disadvantage, rendering the new test in 13 CFR 124.103(c) the sole test for social disadvantage. SBA received several comments recommending that the Agency keep the current narrative-based test for establishing individual social disadvantage. SBA believes that the test in this rule is superior to the existing test requiring the submission of a social disadvantage narrative because the new test reduces the potential for subjectivity involved in the certification process.

Fourth, SBA proposed removing the process for group inclusion on the rebuttable presumption list under 13 CFR 124.103(d) because SBA proposed removing the rebuttable presumption altogether. SBA received no comments on these deletions and adopts them as final in this rule.

Compliance With Executive Orders 12866, 12988, 13132, 13563, and 14192, the Paperwork Reduction Act (44 U.S.C. Ch. 35), the Congressional Review Act, and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. OMB has determined that this rule is a significant regulatory action and, therefore, is subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993, though it is not an “economically significant” action under section 3(f)(1). Accordingly, this rule has been submitted to OMB for review. SBA has prepared the below Cost-Benefit Analysis.

Cost-Benefit Analysis

1. Is there a need for the regulatory action?

This rulemaking is necessary to comply with the Court Order in *Ultima* enjoining SBA from using the rebuttable presumption of social disadvantage in administering the 8(a) BD program for socially disadvantaged individuals. SBA recognizes that from the time the regulatory rebuttable presumption was established in 1986 until its demise in 2023, the 8(a) BD program unconstitutionally categorized and favored individuals from certain groups solely on the basis of race and ethnicity. This regulation is necessary to align the program with constitutional and statutory requirements and goals.

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

There are no quantifiable costs or benefits associated with this regulatory change. This rule amends the 8(a) BD regulations to clarify the manner in which individuals may establish their

social disadvantage. This rulemaking does not affect participants currently admitted to the 8(a) BD program. Further, the rule has no effect on the amount or dollar value of any federal contract requirements or of any financial assistance provided through SBA. Therefore, the rule is not likely to have an effect on the economy, result in an increase in costs or prices, or have a significant adverse effect on competition.

This rule impacts only individually owned applicants to the 8(a) BD program. Based on FY25 data, SBA estimates that approximately 4,190 applicants to the 8(a) BD program will be affected by this rule change annually. This rule will have a *de minimis* impact on these applicants. Absent this rule, individual applicants would continue to be required to submit a narrative to demonstrate they are socially disadvantaged. Under the revisions, an individual claiming social disadvantage will instead demonstrate that an identifiable group suffered discrimination or bias and then self-certify that he or she (a) was a member of such a group at the time of the governmental or private entity’s action or during the effective period of the relevant action, policy, rule, regulation, or other practice; and (b) suffered material harm because of that action, policy, rule, regulation, or other practice. Given that the individual applicant had to previously provide a narrative to show social disadvantage, any change in the burden to comply with this regulation is expected to be *de minimis*. There are no additional costs, sunk costs, or transition costs for new applicants.

SBA received a significant number of comments regarding the burden to comply with the updated application process to establish social disadvantage for individuals. Several commenters stated that finding evidence would result in an increased burden on applicants. SBA disagrees. Because, in most cases, evidence will be publicly available and easily accessible through the internet, SBA anticipates it will take less time for individual applicants to find evidence of social disadvantage over writing a narrative. Where evidence of group discrimination or bias by the specific governmental entity or private entity is not readily available and the individual applicant needs to provide other adequate evidence, SBA estimates it will be no additional burden than it would be to write a narrative.

Commenters also raised the cost that this rule would have on individual applicants who have already applied to the program but have not been admitted.

While individual applicants who have not been admitted to the 8(a) BD program will need to meet the new test for social disadvantage, this will allow SBA to approve applications more rapidly. Further, many of the pending individual applicants would need to provide updated information regardless of the rule because their applications were not sufficient for certification or because of the age of their application. As a result, any costs on individual applicants who have previously applied to the 8(a) BD program is also expected to be *de minimis*.

There are two chief benefits to this rule that cannot be quantified. First, this rule brings SBA’s regulations in line with the Constitution and the court’s decision in *Ultima*, removing any legal uncertainty surrounding how to establish social disadvantage for individuals. Second, by updating the regulations, SBA is providing clarity to potential applicants that the Rebuttable Presumption is no longer a means for establishing social disadvantage for individuals.

3. What are the alternatives to this rulemaking?

One alternative is to make no changes to SBA’s current regulations. As a court order has ruled the presumption of social disadvantage for individuals unconstitutional, it is necessary for SBA to revise the test for social disadvantage for individuals under its regulations. Therefore, leaving the regulation in its current form is not a reasonable alternative to this rulemaking.

SBA considered removing the unconstitutional language from its regulations while leaving in place the current test for individuals to establish their social disadvantage. However, SBA feels that the test in this rule is superior to the existing test requiring the submission of a social disadvantage narrative because the new test reduces the potential for subjectivity involved in the certification process.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in Executive Order 13132. It will not have a 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, as specified in the Executive Order. As such, it does not warrant the preparation of a Federalism Assessment.

Executive Order 14192

This rule is not an Executive Order 14192 regulatory action, because it does not impose any more than de minimis regulatory costs. SBA is revising one section of the Code of Federal Regulations to comply with the Constitution. There are no budgetary impacts as a result of the revision, and pursuant to the above cost-benefit analysis, the annualized costs attributable to this rule for purposes of E.O. 14192 accounting are \$0. SBA notes that the principal benefits from this action are qualitative—the removal of unconstitutional regulatory provisions reduces legal uncertainty and improves regulatory clarity.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

The SBA has determined that this rule will alter the currently approved reporting and recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35. This rule will revise what applicants to the 8(a) BD program must submit in order to be considered socially disadvantaged individuals. This rule will not impact the annual burden of the collection. The collection has been modified from the version submitted to OMB at the proposed rule stage to remove questions on race and ethnicity.

Summary of Information Collection

SBA requests OMB's approval to revise the information collection identified below:

OMB Control No.: 3245–0374.

Title: Unified Certification System.

Description of Respondents: Small business concerns applying for SBA certification.

Form Number: SBA Form 2413.

Total Estimated Annual Responses: 29,329.

Total Estimated Annual Hour Burden: 39,330.

Congressional Review Act, 5 U.S.C. 801–808

This rule has been determined not to meet the criteria set forth in 5 U.S.C. 804(2). SBA will submit the rule to Congress and the Government Accountability Office consistent with the Congressional Review Act's requirements.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule impacts only individually owned applicants to the 8(a) BD program. In FY25, SBA received approximately 4,190 applicants to the 8(a) BD program and estimates a similar number will be affected by this rule change annually. While this rule impacts a substantial number of applicants in the 8(a) BD program, it makes up a small proportion of the approximately 21,000 applications SBA received in FY25 for all of its small business certification programs. As discussed in the cost-benefit analysis, SBA has determined that any economic impact on small entities will be de minimis. Individual applicants are currently required to provide a narrative showing that they are socially disadvantaged. This new test replaces the existing test without increasing the burden on participants. This rule does not change the total dollar amount available to contractors through the 8(a) BD program.

SBA received comments requesting it provide a full Regulatory Flexibility Analysis, because commenters stated that the rule will have a significant economic impact. SBA disagrees with this contention. As explained in the Cost-Benefit Analysis, this rule is anticipated to have only a de minimis impact on applicants and no impact on current participants in the 8(a) program. The new test for social disadvantage is no more burdensome than the current requirement that applicants prepare a narrative. In addition, this rule does not impact a substantial number of small entities. Applicants to the 8(a) BD program make up a small proportion of applicants to SBA's small business certification programs and an even smaller proportion of the 56,725 small business prime contractors in FY25.

For the reasons discussed, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 124

Administrative practice and procedure, Government procurement, Government property, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 124 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644, 42 U.S.C. 9815; and Pub. L. 99–661, 100 Stat. 3816; Sec. 1207, Pub. L. 100–656, 102 Stat. 3853; Pub. L. 101–37, 103 Stat. 70; Pub. L. 101–574, 104 Stat. 2814; Sec. 8021, Pub. L. 108–87, 117 Stat. 1054; and Sec. 330, Pub. L. 116–260.

■ 2. Revise § 124.103 to read as follows:

§ 124.103 Who is socially disadvantaged?

(a) *General.* Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control.

(b) *Victims of government and private entity discrimination or bias.* (1) For purposes of this section,

(i) “Citizen” means citizen of the United States.

(ii) “Material harm” means loss of access to or diminished opportunities related to economic advancement.

(2) A Citizen may establish social disadvantage by first showing that during the Citizen's lifetime, a governmental or private entity in the United States, including but not limited to any federal, state or local government, university or corporation, through any action, policy, rule, regulation, or other practice of any of its agencies, subsidiaries, or authorized agents, discriminated or was biased against a clearly definable racial, ethnic, or cultural group of which the Citizen is a member, or favored in any way a racial, ethnic, or cultural group of which the Citizen is not a member. In addition, the Citizen must establish that such discrimination, bias, or favoritism conferred material harm on the Citizen.

(c) *Establishing social disadvantage.*

In order to establish his or her social disadvantage, a Citizen must meet the requirements set forth in both paragraphs (c)(1) and (2) of this section.

(1) A Citizen must show evidence that a governmental or private entity's action, policy, rule, regulation or other practice favored other groups, excluding

the Citizen's group, or disadvantaged the Citizen's group or that the governmental or private entity took adverse actions against or otherwise disfavored the Citizen's group.

(i) The Citizen may demonstrate such group discrimination or bias by providing documentation of specific actions, policies, rules, regulations, or other practices of the governmental or private entity favoring or disfavoring an identifiable group, including but not limited to: unlawful diversity, equity, and inclusion programs or policies; unlawful affirmative action programs or policies; race-based quotas, set-asides, or hiring targets; or any policies or programs that favored some groups over others on the basis of race.

(A) Examples of actions, policies, rules, regulations, or other practices showing group discrimination or bias include, but are not limited to, prior iterations of § 124.103 of this part that excluded the Citizen's racial or ethnic group as a group entitled to a rebuttable presumption of social disadvantage; and such actions, policies, rules, regulations, or other practices also include situations where the Citizen's group was disadvantaged in college or university admissions decisions or otherwise discriminated against by a private entity in an unlawful manner.

(B) Sufficient evidence under paragraph (c)(1)(i) of this section may include, but is not limited to: materials on government, university and corporate websites; government, university, and corporate policies, regulations, guidance, procedures or documents; statements by government, university or corporate officials; government, university, and corporate reports, audits or findings; court decisions; administrative rulings; or, specific Congressional findings.

(ii) Where evidence of group discrimination or bias by the specific governmental entity or private entity is not readily available, a Citizen may present other adequate evidence demonstrating such discrimination or bias,

(2) A Citizen must self-certify that he or she:

(i) Was a member of a particular group at the time of the governmental or private entity's action or during the effective period of the relevant action, policy, rule, regulation, or other practice; and

(ii) Suffered material harm because of the action, policy, rule, regulation, or

other practice evidenced in paragraph (c)(1) of this section.

Kelly Loeffler,
Administrator.

[FR Doc. 2026-16370 Filed 8-10-26; 8:45 am]

BILLING CODE 8026-09-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2026-6970; Airspace
Docket No. 26-AGL-12]

RIN 2120-AA66

Amendment of Class E Airspace; Bedford, IN

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace at Bedford, IN. This action is due to an airspace review conducted due to the decommissioning of the Hoosier very high frequency omnidirectional range (VOR) as part of the VOR Minimum Operational Network (MON) Program. The name of IU Health Bedford Hospital Heliport, Bedford, IN, is also being updated to coincide with the FAA's aeronautical database. This action brings the airspace into compliance with FAA orders and supports instrument flight rule (IFR) procedures and operations.

DATES: Effective 0901 UTC, October 29, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA-2026-6970 in the **Federal Register** (91 FR 35909; June 15, 2026) proposing to amend the Class E airspace at Bedford, IN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Differences From the NRPM

Subsequent to publication of the NPRM, the FAA discovered that it had accidentally included a proposed revocation of Class E airspace extending upward from 700 feet above the surface at Alexandria, IN. This action was proposed in a separate NPRM under Docket No. FAA-2026-6967 (91 FR 35912; June 15, 2026) and is not related to this airspace action. This was a typographical error that does not have any substantive impact on the remainder of this airspace action. Moreover, the proposed revocation of the Alexandria Class E airspace is proceeding in the separate docket. Accordingly, the FAA finds good cause that recirculating this action for public comment is unnecessary, and the reference has been removed.

Incorporation by Reference

Class E airspace designations are published in paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This

document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

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

For the Virgil I. Grissom Municipal Airport, Bedford, IN, Class E airspace extending upward from 700 ft. above the surface, this action: (1) increases the radius from 6.5 to 7 miles; and (2) removes the city associated with the airports from the header of the airspace legal description to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters.

And for the IU Health Bedford Hospital Heliport, Bedford, IN, Class E airspace extending upward from 700 ft. above the surface, this action: (1) updates the name of the heliport (previously Bedford Medical Center Heliport) to coincide with the FAA's aeronautical database; and (2) removes the city associated with the airports from the header of the airspace legal description to comply with changes to FAA Order JO 7400.2R.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Order 2100.6B, "Policies and Procedures for Rulemakings" (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL IN E5 Bedford, IN [Amended]

Virgil I. Grissom Municipal Airport, IN
(Lat. 38°50'24" N, long 086°26'43" W)
IU Health Bedford Hospital Heliport, IN
Point In Space
(Lat. 38°51'51" N, long 086°31'27" W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Virgil I. Grissom Municipal Airport; and within a 6-mile radius of the IU Health Bedford Hospital Heliport point in space.

* * * * *

Issued in Fort Worth, Texas, on August 6, 2026.

Courtney E. Johns,

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

[FR Doc. 2026–16292 Filed 8–10–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–6967; Airspace
Docket No. 26–AGL–11]

RIN 2120–AA66

Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Muncie and Alexandria, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: Effective 0901 UTC, October 29, 2026. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA-2026-6967 in the **Federal Register** (91 FR 35912; June 15, 2026) proposing to amend the Class D and Class E airspace at Muncie, IN, and revoke Class E airspace at Muncie, IN, and Alexandria, IN. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

Class D and E airspace designations are published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These amendments will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the **ADDRESSES** section of this document.

The Rule

This action amends 14 CFR part 71 by: modifying the Class D airspace and the Class E airspace extending upward from 700 ft. above the surface and removes the Class E airspace area designated as an extension to Class D airspace at Muncie, Indiana due to an airspace review conducted as part of the

decommissioning of the Muncie VOR as part of the VOR MON Program. This action also removes the Class E airspace extending upward from 700 ft. above the surface at Alexandria, Indiana due to the cancellation of the instrument procedures and the airspace no longer being required.

For the Delaware County Regional Airport, Muncie, IN, Class D airspace, this action: (1) increases the radius from 4.4 to 4.7 miles; (2) removes the city associated with the airport in the header of the airspace legal description to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters; (3) updates the geographic coordinates and name of Delaware County Regional Airport (previously Delaware County-Johnson Field) to coincide with the FAA's aeronautical database; and (4) updates the outdated term "Airport/Facility Directory" to "Chart Supplement."

This action removes the Class E airspace designated as an extension to Class D airspace at Delaware County Regional Airport as it is no longer required.

This action removes Class E airspace extending upward from 700 ft. above the surface at Alexandria, IN, as the instrument procedures have been cancelled and the airspace is no longer required.

And for the Delaware County Regional Airport Class E airspace extending upward from 700 ft. above the surface, this action: (1) increases the radius from 7 to 7.2 miles; and (2) removes the city associated with the airports from the header of the airspace legal description to comply with changes to FAA Order JO 7400.2R.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Order 2100.6B, "Policies and Procedures for Rulemakings" (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

Lists of Subjects in 14 CFR 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

AGL IN D Muncie, IN [Amended]

Delaware County Regional Airport, IN
(Lat. 40°14'33" N, long 085°23'45" W)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 4.7-mile radius of Delaware County Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AGL IN E4 Muncie, IN [Removed]

* * * * *

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

* * * * *

AGL IN E5 Alexandria, IN [Remove]

* * * * *

AGL IN E5 Muncie, IN [Amended]

Delaware County Regional Airport, IN
(Lat. 40°14'33" N, long 085°23'45" W)
Ball Memorial Hospital Heliport, IN, Point In
Space
(Lat. 40°11'50" N, long 085°25'52" W)
That airspace extending upward from 700
feet above the surface within a 7.2-mile
radius of Delaware County Regional Airport;
and within a 6-mile radius of the Ball
Memorial Hospital Heliport point in space.

* * * * *

Issued in Fort Worth, Texas, on August 6,
2026.

Courtney E. Johns,

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

[FR Doc. 2026-16289 Filed 8-10-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[Docket No. EOIR-26-AA45; Dir. Order No.
08-2026]

RIN 1125-AA45

Adjudication of Civil Penalties Against International Marriage Brokers

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

ACTION: Interim final rule; request for
comments.

SUMMARY: This interim final rule ("IFR")
amends Department of Justice
("Department") regulations to specify
the procedures for adjudicating alleged
violations of the International Marriage
Broker Regulation Act of 2005
("IMBRA") by international marriage
brokers ("IMBs") doing business in the
United States that fail to provide
required information to persons
recruited for matchmaking services or
that improperly disclose prohibited
information. This IFR is necessary to
deter fraudulent marriages and the
exploitation of immigrants recruited by
IMBs.

DATES:

Effective date: This interim final rule
is effective September 10, 2026.

Comments due date: Electronic
comments must be submitted on or
before September 10, 2026. The
electronic Federal Docket Management
System will accept electronic comments

until 11:59 p.m. Eastern Time on that
date.

ADDRESSES: You may submit comments,
identified by RIN 1125-AA45 or EOIR
Docket No. EOIR-26-AA45, via the
Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the
website instructions for submitting
comments. Comments must be
submitted in English, or an English
translation must be provided.

Comments submitted in a manner
other than via <https://www.regulations.gov> will not be
considered comments on the IFR and
may not receive a response from EOIR.
EOIR is not accepting mailed comments
at this time.

If you cannot submit your comment
by using <https://www.regulations.gov>,
please contact Jamee E. Comans,
Assistant Director for Policy, Office of
Policy, Executive Office for Immigration
Review, by telephone at (703) 305-0289
(not a toll-free call) for alternate
instructions.

FOR FURTHER INFORMATION CONTACT:

Jamee E. Comans, Assistant Director,
Office of Policy, Executive Office for
Immigration Review, 5107 Leesburg
Pike, Suite 2500, Falls Church, VA
22041; telephone (703) 305-0289 (not a
toll free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to
participate in this rulemaking by
submitting written data, views, or
arguments on all aspects of this IFR. The
Department also invites comments that
relate to the economic, environmental,
or federalism effects that might result
from this rule. To provide the most
assistance to the Department, comments
should reference a specific portion of
the IFR; explain the reason for any
recommended change; and include data,
information, or authority that supports
the recommended change.

All comments submitted for this
rulemaking should include the agency
name and reference RIN 1125-AA45 or
EOIR Docket No. EOIR-26-AA45.
Please note that all comments received
are considered part of the public record
and made available for public
inspection at <https://www.regulations.gov>. Such information
includes personally identifying
information (such as a person's name,
address, or any other data that might
personally identify that individual) that
the commenter voluntarily submits.

If you want to submit personally
identifying information as part of your
comment, but do not want it to be
posted online, you must include the

phrase "PERSONALLY IDENTIFYING
INFORMATION" in the first paragraph
of your comment and identify what
information you want redacted.

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

Personally identifying information
and confidential business information
provided as set forth above will be
placed in the agency's public docket file
but not posted online. The Department
may withhold from public viewing
information provided in comments that
it determines may impact the privacy of
an individual or is offensive. For
additional information, please read the
Privacy Act notice that is available via
the link in the footer of <https://www.regulations.gov>. To inspect the
agency's public docket file in person,
you must make an appointment with the
agency. Please see the **FOR FURTHER
INFORMATION CONTACT** paragraph above
for agency contact information.

II. Legal Authority

The Department is issuing this IFR
pursuant to section 103(g) of the
Immigration and Nationality Act ("INA"
or "Act"), 8 U.S.C. 1103(g), as amended
by the Homeland Security Act of 2002
("HSA"), Public Law 107-296, 116 Stat.
2135 (as amended). Under the HSA, the
Attorney General retains the authority to
"establish such regulations, . . . issue
such instructions, review such
administrative determinations in
immigration proceedings, delegate such
authority, and perform such other acts
as the Attorney General determines to
be necessary for carrying out" the
Attorney General's authorities under the
INA. HSA 1102, 116 Stat. at 2273-74;
INA 103(g)(2), 8 U.S.C. 1103(g)(2). In
Attorney General Order Number 7081-
2026 and Attorney General Order
Number 6918-2026, the Attorney
General has exercised authority under
28 U.S.C. 509 and 510 to delegate
authority to issue regulations related to
procedures for imposing penalties under
8 U.S.C. 1375a(d)(5)(A) and to amend
the regulations at 28 CFR part 68,
respectively, to EOIR's Director.

III. Background

A. Regulation of International Marriage Brokers Before IMBRA

In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Public Law 104–208, Div. C., Sept. 30, 1996, 110 Stat. 3009, 3009–546. Section 652 of IIRIRA, previously codified at 8 U.S.C. 1375, addressed the “mail-order bride business.”¹ Congress found that, in “many . . . cases, anecdotal evidence suggests that mail-order brides find themselves in abusive relationships” in the United States and that there was “evidence to suggest that a substantial number” of marriages arranged by IMBs were fraudulent. IIRIRA 652(a)(3), (a)(5).

Section 652(b)(1) of IIRIRA required all international matchmaking organizations conducting business in the United States to provide certain information to each potential recruit² at the time of recruitment and in the recruit’s native language. The same provision required the information provided to detail certain immigration and naturalization information and explain the immigration benefits available to individual spouses and fiancé(e)s of U.S. citizens or lawful permanent residents (“LPRs”) and the penalties for marriage fraud. IIRIRA 652(b)(1). Section 652(b)(2) of IIRIRA established a civil money penalty of up to \$20,000 for international matchmaking organizations that failed to comply with the information dissemination requirements.

B. Enactment of IMBRA

Despite IIRIRA’s provisions related to international matchmaking organizations, following a 2004 Senate hearing on the IMB industry,³ Congress decided further regulation was necessary. At the time, an estimated 8,000 to 12,000 individuals in the United States found foreign spouses through IMBs each year.⁴ In 2006, IMBRA repealed the “mail-order bride”

provisions at section 652 of IIRIRA and implemented new provisions regulating IMBs. See Violence Against Women and Department of Justice Reauthorization Act of 2005 (“VAWA Reauthorization Act of 2005”), Public Law 109–162, Title VIII, Subtitle D, Jan. 5, 2006, 119 Stat. 2960, 3066–77.

C. IMBRA Requirements

1. Obligations of the Government

Unlike the obligations prescribed by the “mail-order bride” provisions at section 652 of IIRIRA, IMBRA requires the Department of Homeland Security (“DHS”) and the Department of State (“DOS”) to disseminate an information pamphlet to applicants for a K nonimmigrant visa under section 101(a)(15)(K) of the INA, 8 U.S.C. 1101(a)(15)(K). 8 U.S.C. 1375a(a)(1). The pamphlet must contain information about the visa application process and the marriage-based immigration process; the illegality of domestic violence, sexual assault, and child abuse; the availability of services for victims of domestic violence and sexual assault; the legal rights of immigrant victims of abuse and other crimes in immigration, criminal justice, family law, and other matters; the obligations of parents to provide child support; marriage fraud and related penalties; the potential use of the K nonimmigrant visa process by individuals with a history of abuse; and the requirement for IMBs to provide foreign national clients with background information on U.S. clients, with a notification that such information may be incomplete or inaccurate.⁵ 8 U.S.C. 1375a(a)(2)(A)–(H).

IMBRA requires the information pamphlet to be developed by the Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State (and with nongovernmental organizations with expertise on the legal rights of immigrant victims of battery, extreme cruelty, sexual assault, and other crimes). 8 U.S.C. 1375a(a)(1).⁶ Consular

officers are required to provide this pamphlet to foreign fiancé(e)s and provide an oral summary, in the alien’s primary language, of that pamphlet at the time of visa or adjustment interviews.⁷ 8 U.S.C. 1375a(b)(1)(B).

2. Definition of “International Marriage Brokers”

IMBRA defines “international marriage broker” as an individual or other legal entity (including a corporation, partnership, or business, whether or not organized under any law of the United States) that charges fees for providing dating, matrimonial, or matchmaking services, or social referrals between U.S. citizens, nationals, or LPRs and foreign national clients by providing personal contact information or otherwise facilitating communication between individuals. 8 U.S.C. 1375a(e)(4)(A). This definition includes both IMBs that are based in the United States and those that are based abroad. *Id.* However, the definition of an IMB excludes traditional nonprofit matchmaking organizations of a cultural or religious nature and dating services that do not match U.S. citizens or U.S. residents with aliens as their principal business and that charge all participants comparable rates and offer comparable services regardless of a client’s sex or country of citizenship. 8 U.S.C. 1375a(e)(4)(B).

3. Other Protections

IMBRA also creates additional safeguards. For example, 8 U.S.C. 1375a(d)(1) prohibits IMBs from providing any person or entity with the contact information for, a photograph of, or general information about the background or interests of anyone under the age of 18. A related provision, section 832(a)(1)(D) of IMBRA, codified at section 214(d)(2) of the INA, 8 U.S.C. 1184(d)(2), specifies that DHS will not generally approve a petition for a K visa before verifying that the petitioner has not, prior to the pending petition, petitioned on behalf of two or more applying aliens and, if the petitioner has had such a petition previously

¹ Because the citations to the relevant provisions in IIRIRA (8 U.S.C. 1375) and IMBRA (8 U.S.C. 1375a) are similar, this document, for clarity, refers to the IIRIRA provisions by their citations therein, rather than as previously codified in the United States Code.

² IIRIRA defined “recruit” as a “noncitizen, nonresident person, recruited by the international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services to [U.S.] citizens or aliens lawfully admitted for permanent residence.” IIRIRA 652(e)(2).

³ *Human Trafficking: Mail Order Bride Abuses: Hearing Before the Subcomm. on East Asian and Pacific Affairs of the S. Comm. on Foreign Relations*, 108th Cong. 695 (2004).

⁴ See H.R. 3657, 109th Cong., sec. 1, (b)(1) (2005) (International Marriage Broker Regulation Act of 2005, as introduced).

⁵ Under IMBRA, “foreign national client” is defined as “a person who is not a United States citizen or national or an alien lawfully admitted to the United States for permanent residence and who utilizes the services of an international marriage broker. Such term includes an alien residing in the United States who is in the United States as a result of utilizing the services of an international marriage broker and any alien recruited by an international marriage broker or representative of such broker.” 8 U.S.C. 1375a(e)(3).

⁶ See DHS, *Information on the Legal Rights Available to Immigrant Victims of Domestic Violence in the United States and Facts about Immigrating on a Marriage-Based Visa* (Jan. 7, 2011), <https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20>

[Web%20Posting.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Battered%20Spouse%2C%20Children%20%26%20Parents/IMBRA%20Pamphlet%20Final%2001-07-2011%20for%20Web%20Posting.pdf) [https://perma.cc/D3SE-NQ55]; see also Posting of Pamphlet Provided for in the International Marriage Broker Regulation Act, 77 FR 74546 (Dec. 14, 2012); Domestic Violence Guidance Pamphlet for K Nonimmigrants, 73 FR 42586 (July 22, 2008).

⁷ The Secretary of State is allowed but not required to translate the pamphlet into other languages that are not listed in 8 U.S.C. 1375a(a)(4)(A) or required to be translated under 8 U.S.C. 1375a(a)(4)(B). See 8 U.S.C. 1375a(a)(4)(A)–(B). Separately, the consular officer must provide a copy of the pamphlet “in English or another appropriate language and provide an oral summary, in the primary language of the visa applicant, of that pamphlet.” 8 U.S.C. 1375a(b)(1)(B).

approved, that two years have elapsed since the filing of such previously approved petition. Relatedly, section 214(r)(4) of the INA, 8 U.S.C. 1184(r)(4), requires the creation of a government database to record multiple petitions filed by the same U.S. petitioner.

IMBRA also ensures that, as part of the K nonimmigrant visa process, DOS will provide to foreign fiancé(e)s any criminal and other relevant background information obtained through DHS's background check of the visa petitioner. 8 U.S.C. 1375a(b)(1)(A). Additionally, before an IMB may provide contact information of any foreign national client to a U.S. client or representative, an IMB must: (1) perform a search of the National Sex Offender Public website for information regarding the U.S. client; (2) obtain from the U.S. client information about any criminal history (restraining or protective orders, arrests or convictions for violent crimes, child abuse or neglect, prostitution, or substance abuse), marital history, and related information; (3) provide this information to the foreign national client in the client's primary language; (4) provide to the foreign national client the DHS IMBRA pamphlet about the legal rights and resources available in the United States to immigrant victims of domestic violence and other crimes; and (5) obtain the foreign national client's written consent to release his or her information to the U.S. client. 8 U.S.C. 1375a(d)(3).

D. Penalties for Failure To Comply With IMBRA

IMBs that fail to comply with IMBRA's requirements in 8 U.S.C. 1375a(d)(1)–(4) are subject to civil penalties.⁸ 8 U.S.C. 1375a(d)(5)(A). IMBRA authorizes a range of civil penalties, from a minimum of \$5,000 to a maximum of \$25,000, 8 U.S.C. 1375a(d)(5)(A)(i), which is a higher maximum penalty than the maximum \$20,000 penalty previously prescribed by section 652(b)(2) of IIRIRA. These penalties are in addition to those available under any other existing laws. 8 U.S.C. 1375a(d)(5)(C).

Under 8 U.S.C. 1375a(d)(5)(A)(ii), a civil penalty may be imposed either by

a Federal judge, or by the Attorney General after notice and an opportunity for an agency hearing on the record in accordance with the Administrative Procedure Act ("APA"), 5 U.S.C. 551–59.⁹ In other words, the Attorney General may impose a civil penalty after the IMB has had an opportunity for a formal hearing on the record before an Administrative Law Judge ("ALJ"). However, IMBRA does not contain specific procedures, beyond the general requirements of the APA, for the conduct of such hearings. *See generally* 8 U.S.C. 1375a.

IV. Provisions of the IFR

This IFR implements procedures for the adjudication of IMBRA civil penalty cases through hearings conducted by ALJs in EOIR's Office of the Chief Administrative Hearing Officer ("OCAHO").¹⁰ OCAHO's ALJs currently adjudicate immigration-related civil penalty cases pertaining to unlawful employment, employment eligibility verification, immigration-related employment discrimination, and document fraud, under sections 274A, 274B, and 274C of the INA, 8 U.S.C. 1324a, 1324b, and 1324c, respectively. OCAHO ALJs adjudicate these cases according to APA statutory guidelines and OCAHO's rules of practice and procedure for administrative hearings before its ALJs as set forth at 28 CFR part 68. This IFR applies OCAHO's existing hearing procedures for employment- and document fraud-related proceedings in 28 CFR part 68 to IMBRA cases.

Because IMBRA requires APA-compliant notice and an opportunity for a hearing prior to the imposition of a civil penalty and because OCAHO ALJs have significant experience conducting proceedings that are consistent with the APA's requirements, authorizing OCAHO ALJs to adjudicate IMBRA cases under existing OCAHO

procedures is the most logical way to implement IMBRA. *See* 8 U.S.C. 1375a(d)(5)(A)(ii). The existing processes for OCAHO ALJ hearings were explicitly designed to comply with the APA. *See* 28 CFR 68.28(a); *see also* Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-related Employment Practices, 56 FR 50049, 50051 (Oct. 3, 1991) (explaining that, when making revisions, 28 CFR 68.28 was "changed to emphasize the importance of the [APA]"). For example, existing OCAHO regulations explicitly state that, in any proceeding under 28 CFR part 68, "the [ALJ] shall have all appropriate powers necessary to conduct fair and impartial hearings," including conducting "formal hearings in accordance with the provisions of the [APA]" and taking "any action authorized by the [APA]." 28 CFR 68.28(a). Following OCAHO's existing procedures will ensure that respondents are afforded notice and an opportunity for a hearing as required by statute. 8 U.S.C. 1375a(d)(5)(A)(ii); *see also* 5 U.S.C. 551–59.

In addition, applying OCAHO's existing hearing procedures to IMBRA cases will allow the Department to capitalize on OCAHO's extensive institutional experience administering APA-compliant adjudicatory proceedings in immigration-related civil penalty cases. These procedures have the benefit of having been tested for more than 30 years. *Cf.* 56 FR 50050 (explaining, in issuing revisions to 28 CFR 68, that the Department was "amend[ing] several sections which have proven particularly troublesome or add[ing] new sections to increase administrative efficiency"). Further, authorizing OCAHO ALJs to adjudicate IMBRA cases is consistent with the statutory authorization for imposition of civil penalties by the Attorney General, since the OCAHO ALJs who are imposing the penalties are acting pursuant to the authority of the Attorney General. 8 U.S.C. 1375a(d)(5)(A)(ii). Accordingly, this IFR makes OCAHO's general procedures applicable to IMBRA cases, *see* 28 CFR 68.1, while also implementing specific changes to certain procedures to better suit the adjudication of IMBRA cases.¹¹

⁸ For civil enforcement cases, the Department will rely generally on referrals from DHS or DOS or upon information provided from other sources, since the Department has no direct involvement in the immigration visa or adjustment matters that are subject to IMBRA's requirements. Additionally, IMBs that fail to comply with IMBRA's requirements set forth in 8 U.S.C. 1375a(d)(1)–(4) may also be subject to criminal penalties. 8 U.S.C. 1375a(d)(5)(B). The Department may prosecute criminal violations of IMBRA, as it does for criminal violations generally, based on referrals from another Federal agency or upon information provided from other sources.

⁹ While the statute tasks the Attorney General with enforcement of IMBRA's provisions, it also directs the Attorney General to consult with the Department's Office on Violence Against Women to develop policies and education to promote enforcement of IMBRA. 8 U.S.C. 1375a(d)(6)(B).

¹⁰ The Department previously announced, in October 2009, that OCAHO would hear cases arising under IMBRA. *See* EOIR Updates Fact Sheet Discussing Office of the Chief Administrative Hearing Officer, 40 Interpreter Releases 2585 n.13 (Oct. 19, 2009) ("[IMBRA] requires [IMBs] to disseminate certain information to their recruits and clients regarding the legal rights of and resources available to prospective immigrant spouses to protect them from possible human trafficking and domestic violence. When the OCAHO begins to receive cases regarding international marriage brokers who are charged with violating this requirement, OCAHO ALJs will adjudicate those cases."). This IFR provides the procedures for OCAHO to do so.

¹¹ Procedures for cases arising under sections 274A, 274B, and 274C of the INA, 8 U.S.C. 1324a, 1324b, and 1324c, remain unchanged by this IFR. Nevertheless, the regulatory amendments involve non-substantive changes to the existing regulations governing section 274A and 274C cases. These non-substantive changes facilitate incorporation of IMBRA cases into the existing regulations, such as

Under this rule, in an IMBRA case, the administrative adjudication process will begin when the IMBRA enforcement official¹² files a complaint pursuant to 8 U.S.C. 1375a(d) with OCAHO. 8 U.S.C. 1375a(d)(6)(A) (“The Attorney General shall be responsible for the enforcement of the provisions of this section, including the prosecution of civil and criminal penalties provided for by this section.”). Proceedings before an OCAHO ALJ would commence when OCAHO serves that complaint upon the respondent as provided in 28 CFR 68.3. This IFR specifies the information that a complaint filed in an IMBRA case must contain and requires such complaints to be signed by the IMBRA enforcement official. 28 CFR 68.7(b)–(c). Further, the IFR outlines where service of the complaint and notice of hearing may be made in IMBRA cases, which satisfies IMBRA’s notice requirements. 28 CFR 68.3(d); *see also* 8 U.S.C. 1375a(d)(5)(A)(ii). Additionally, there is no requirement to affirmatively request a hearing in an IMBRA case,¹³ *see* 28 CFR 68.7(c), and when scheduling a hearing in an IMBRA case, “due regard will be given to the convenience of the parties and the witnesses in selecting a place for a hearing within the United States,” 28 CFR 68.5(b). If a respondent fails to respond to the complaint, the

accounting for slightly different timelines for IMBRA cases. For example, in 28 CFR 68.55(a) and (b) relating to Attorney General review, the IFR replaces the “sixty (60) days of the entry of an ALJ’s final order” timing language with “thirty (30) days after the deadline for review under § 68.54(d)(1).” This change does not affect the 60-day referral timeframe in 68.55(a)–(b) for section 274A or 274C cases, because 30 days subsequent to the 30-day timeframe in 28 CFR 68.54(d)(1) continues to equal a total of 60 days, while concurrently providing an extended timeframe for IMBRA cases, which are not subject to such statutorily established timeframes.

¹² This IFR does not designate an IMBRA enforcement official. OCAHO, an adjudicatory body, will not serve as the investigative or prosecutorial authority in these matters, as doing so would violate the basic separation-of-function principles of administrative law. 5 U.S.C. 554(d); *see also* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (Feb. 28, 2003) (describing how the administrative structure that was established through the creation of EOIR separated EOIR’s administrative adjudication functions from the enforcement and service functions of DHS’s predecessor, the Immigration and Naturalization Service). Instead, IMBRA vests the enforcement authority in the Attorney General, and the Attorney General will separately designate the specific official or office responsible for initiating and prosecuting IMBRA cases. *See* 8 U.S.C. 1375a(d)(6)(A). Accordingly, this IFR uses the term “IMBRA enforcement official” to mean the specific official or office that will be designated by the Attorney General to be responsible for initiating and prosecuting IMBRA cases.

¹³ The existing requirement to request a hearing in cases under sections 274A and 274C of the INA, 8 U.S.C. 1324a and 1324c, derives from the INA. *See* INA 274A(e)(3)(A), 8 U.S.C. 1324a(e)(3)(A); INA 274C(d)(2)(A), 8 U.S.C. 1324c(d)(2)(A).

ALJ may deem such failure to be a waiver of the right to a hearing and acceptance of the civil penalty that the IMBRA enforcement official sought to impose in the complaint. *See* 28 CFR 68.9(b) (“Failure of the respondent to file an answer within the time provided may be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint.”).

Once an IMBRA case commences, OCAHO’s general procedures apply, *see* 28 CFR 68 *et seq.*, except that this IFR alters certain procedural time limits in IMBRA cases. For example, subsequent to the initial 30-day period to file a responsive pleading in proceedings before OCAHO, the IFR provides the respondent in an IMBRA case with an additional 30 days to file a responsive pleading, thus amounting to a 60-day timeframe to file a responsive pleading. *See* 28 CFR 68.9(a). Similarly, this IFR provides a respondent in an IMBRA case with 20 days—compared to the 10 days provided in other proceedings—to respond after a written motion is served. *See* 28 CFR 68.11(b). Because the IMBRA statute does not mandate certain time requirements for these responsive filings, and because IMBs may have their principal operations located abroad, the Department believes that it is appropriate to provide longer periods of time for IMBs covered by IMBRA.

This IFR also reflects the statutory language establishing a civil money penalty range for IMBRA violations. *See* 28 CFR 68.52(f); *accord* 8 U.S.C. 1375a(d)(5)(A)(i). The IFR states that if an ALJ determines by a preponderance of the evidence that the respondent named in the complaint violated or attempted to violate IMBRA’s requirements, the final order “will require the respondent or respondents to pay a civil money penalty in an amount of not less than \$5,000 and not more than \$25,000 for each violation.”¹⁴ 28 CFR 68.52(f).

Further, the IFR clarifies when an ALJ’s order in an IMBRA case becomes the final agency order. 28 CFR 68.52(h) (explaining that an ALJ’s final order in an IMBRA case becomes the final agency order 60 days after entry unless the Chief Administrative Hearing Officer modifies, vacates, or remands the final order or the final order is referred to the Attorney General).

Once an ALJ has issued a final order in an IMBRA case, the IFR provides specific procedures for administrative review of such orders, including review

to correct clerical or typographical errors and review of interlocutory orders. *See* 28 CFR 68.52(g) (correction of clerical and typographical errors), 68.53(a), (c) (review of interlocutory orders in IMBRA cases). Final orders in IMBRA cases will be subject to review by the Chief Administrative Hearing Officer pursuant to the specific time limits and procedural requirements outlined in 28 CFR 68.54. The Department notes that the time period during which a party may request review by the Chief Administrative Hearing Officer, the deadline to submit briefs, and the amount of time afforded to the Chief Administrative Hearing Officer to enter an order are longer than in cases arising under sections 274A and 274C of the INA, 8 U.S.C. 1324a and 1324c, because IMBRA cases are not subject to the same statutory timeframes as those cases. Accordingly, the Department is allowing additional time for the Chief Administrative Hearing Officer to review decisions by an ALJ in IMBRA cases. In addition to review by the Chief Administrative Hearing Officer, IMBRA cases are also subject to referral to the Attorney General upon the Attorney General’s request¹⁵ and may be subject to Attorney General review upon request by the IMBRA enforcement official. 28 CFR 68.55(a)–(b), (d)(2).

Finally, this IFR makes several changes to update the regulatory text to include IMBRA cases in relevant existing procedures. Procedurally, the IFR clarifies that a government attorney filing a complaint in an IMBRA case is not required to file a notice of appearance. 28 CFR 68.33(f). This IFR also adds definitions of the terms “IMB”, “IMBRA case”, and “IMBRA enforcement official” to OCAHO’s regulations. 28 CFR 68.2. Additionally, to account for IMBRA cases, this IFR revises the current definitions of “Complainant”, “Final agency order”, and “Issued”. *Id.* This IFR also makes minor, non-substantive changes to the regulations for clarity, such as changing some instances of “shall” to “will” or “must” and adding the term “final” before “order” where relevant.

V. Regulatory Requirements

A. Administrative Procedure Act

Under the APA, agencies must generally provide notice of a proposed rulemaking in the **Federal Register** and,

¹⁴ The IFR also clarifies that the amount of the civil money penalties “are subject to adjustment for inflation as provided in 28 CFR 85.5.” 28 CFR 68.52(f).

¹⁵ This Attorney General review also satisfies the concerns raised in the Supreme Court’s decision in *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021). *See also* Office of the Chief Administrative Hearing Officer, Review Procedures, 88 FR 70586 (Oct. 12, 2023) (IFR addressing *Arthrex* in 274B cases).

after such notice, “give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments.” 5 U.S.C. 553(b)–(c). However, the APA provides exceptions to this requirement, as explained in more detail below. Consistent with the APA and for the reasons explained below, this IFR is exempt from notice-and-comment procedures because: (1) it is a rule of agency procedure and practice, *id.* 553(b)(A), and (2) it involves a foreign affairs function of the United States, *id.* 553(a)(1). At the same time, the Department seeks and welcomes post-promulgation comments on this IFR.

1. Rule of Agency Organization, Procedure, or Practice

As an initial matter, this IFR is exempt from notice-and-comment procedures because it is a rule of agency procedure and practice. 5 U.S.C. 553(b)(A). The purpose of the “rules of agency organization, procedure, or practice” exception is “to ensure that agencies retain latitude in organizing their internal operations.” *Batterton v. Marshall*, 648 F.2d 694, 707 (D.C. Cir. 1980). However, this exception does not apply in matters where “agency action trenches on substantial private rights and interests.” *Id.* at 708. “[T]he critical feature of a rule that satisfies the . . . procedural exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *AFL–CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (quoting *James V. Hurson Assocs., Inc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000) (cleaned up)).

As discussed in Section IV of this preamble, the IMBRA statute provides the substantive bases for violations of the law, while this IFR merely applies OCAHO’s existing hearing procedures to adjudicating such cases. This IFR is also consistent with prior OCAHO procedural rulemakings pertaining solely to agency procedures and practices regarding the processing of cases before OCAHO. *See, e.g.*, 56 FR 50052; Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Employment Practices, and Document Fraud, 64 FR 7066, 7072 (Feb. 12, 1999).

2. Foreign Affairs

Additionally, this IFR is excepted from the APA’s notice-and-comment requirements because it involves a

“foreign affairs function of the United States.” 5 U.S.C. 553(a)(1). Notably, the Secretary of State has determined “that all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States, constitute a foreign affairs function of the United States under the Administrative Procedure Act.” Determination: Foreign Affairs Functions of the United States, 90 FR 12200 (Mar. 14, 2025). The Department agrees with and adopts the Secretary of State’s determination as it relates to IMBRA violations, and as such, finds that the Department’s efforts through this IFR constitute a foreign affairs function of the United States.

By their nature, IMBRA cases relate to the “status, entry, and exit” of aliens from the United States under the Secretary of State’s determination. 90 FR 12200. Moreover, most IMBs are located outside the United States, and IMB-related issues covered by IMBRA often, if not exclusively, arise prior to an alien’s arrival in the United States. Therefore, because this IFR provides procedures for the adjudication of IMBRA violations, it implicates the United States’ foreign affairs with the countries of origin of IMBs that violate IMBRA, and foreign nationals recruited by IMBs for matchmaking services. *See E. Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 775–76 (9th Cir. 2018) (holding that the foreign affairs exception applies in the immigration context when “ordinary application of ‘the public rulemaking provisions [will] provoke definitely undesirable international consequences[.]’”).

This IFR is intended to specify the procedures for adjudicating violations of an important statute aimed at reducing exploitation of aliens and marriage fraud, both of which undermine the United States’ ability to effectively manage the alien population and reduce unlawful immigration. Implementing these procedures will, in turn, disincentivize efforts to bring aliens unlawfully to the United States through fraudulent marriages.

Consequently, as this IFR clearly and directly involves a foreign affairs function of the United States and following notice-and-comment requirements would result in undesirable international consequences, this IFR is exempt from these rulemaking procedures. *See* 5 U.S.C. 553(a)(1); *see also E. Bay Sanctuary Covenant*, 932 F.3d at 775–76.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (“RFA”), a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b) or other law. 5 U.S.C. 603(a), 604(a). Because this IFR involves a foreign affairs function of the United States, *id.* 553(a)(1), and is a rule of agency procedure and practice, *id.* 553(b)(A), it is exempt from notice-and-comment rulemaking, and no RFA analysis is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This IFR will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, codified at 2 U.S.C. 1501 *et seq.*

D. Congressional Review Act

This IFR is not a major rule as defined by section 804 of the Congressional Review Act, 5 U.S.C. 804. This IFR will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets.

E. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

The Department has determined that this rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and, therefore, it has not been reviewed by the Office of Management and Budget. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Department has determined that the benefits of this IFR justify the costs.

Implementation of this IFR will incur both monetary (e.g., additional staff resources) and non-monetary (e.g., additional work for existing staff resources) costs to the Department associated with adjudicating claims of IMBRA violations. Such costs are justified by the significant benefits of deterring future infractions, as well as protecting against fraudulent marriages and exploitation of foreign nationals who are recruited by IMBs. Congress clearly recognized that any costs associated with the implementation of the procedures set forth in this IFR are outweighed by the benefits, as evidenced by Congress's explicit authorization for the Attorney General to impose civil penalties for IMBRA violations "after notice and an opportunity for an agency hearing on the record." 8 U.S.C. 1375a(d)(5)(A)(ii). Additionally, this IFR will not impose any cost on the public. Rather, this IFR only implements the imposition of statutory penalties on persons for violations, or attempted violations, of 8 U.S.C. 1375a(d)(1)–(4), provisions with which affected parties are already obligated to comply. Therefore, the Department has assessed the costs and benefits of this IFR and believes that the regulatory approach selected maximizes net benefits.

F. Executive Order 13132 (Federalism)

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

G. Executive Order 12988 (Civil Justice Reform)

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

H. Paperwork Reduction Act of 1995

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521, and its implementing regulations, 5 CFR part 1320, do not apply to this IFR because the Department has not imposed new or revised recordkeeping or reporting requirements.

I. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This IFR is a "regulation[]" issued with respect to a[n] . . . immigration-related

function of the United States" and is therefore exempt from the requirements of Executive Order 14192 under section 5(a) of that Order.

J. Executive Order 14219 (Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative)

This IFR is "an[] action related to a[n] . . . immigration-related function of the United States" and is therefore exempt from the requirements of Executive Order 14219 under section 7(a) of that Order.

K. Executive Order 14294 (Overcriminalization of Federal Regulations)

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

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and Naturalization, Civil Rights, Employment, Equal employment opportunity, Immigration.

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Acting Director, Executive Office for Immigration Review, by the Attorney General Order Number 6918–2026 and Attorney General Order Number 7081–2026, the Department amends part 68 of chapter I of title 28 of the Code of Federal Regulations as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR IMMIGRATION-RELATED ADMINISTRATIVE HEARINGS BEFORE OCAHO ADMINISTRATIVE LAW JUDGES

■ 1. The authority citation for part 68 is revised to read as follows:

Authority: 5 U.S.C. 301, 554, 557(b); 8 U.S.C. 1103, 1324a, 1324b, 1324c, and 1375a; 28 U.S.C. 509, 510, and 2461 note; and Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), as amended by Pub. L. 104–134, 110 Stat. 1321–373.

■ 2. The heading to part 68 is revised to read as set forth above.

■ 3. Section 68.1 is amended by revising the first sentence to read as follows:

§ 68.1 Scope of rules.

The rules of practice in this part are applicable to adjudicatory proceedings before Administrative Law Judges of the Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review, United States Department of Justice, with regard to unlawful employment cases under section 274A of the INA (8 U.S.C. 1324a), unfair immigration-related employment practice cases under section 274B of the INA (8 U.S.C. 1324b), document fraud cases under section 274C of the INA (8 U.S.C. 1324c), and International Marriage Broker Regulation Act (IMBRA) cases pursuant to 8 U.S.C. 1375a. * * *

■ 4. Section 68.2 is amended by:

- a. Revising the first sentence of the definition of "Complainant";
- b. Revising the first sentence of the definition of "Final agency order";
- c. Adding, in alphabetical order, definitions of "IMB", "IMBRA case", and "IMBRA enforcement official"; and
- d. Revising the definition of "Issued".

The revisions and additions read as follows:

§ 68.2 Definitions.

* * * * *

Complainant means the Department of Homeland Security in cases arising under sections 274A and 274C of the INA, and the IMBRA enforcement official in IMBRA cases. * * *

* * * * *

Final agency order is an Administrative Law Judge's final order, in cases arising under sections 274A, 274B, and 274C of the INA or an IMBRA case, that has not been modified, vacated, or remanded by the Chief Administrative Hearing Officer pursuant to § 68.54, referred to the Attorney General for review pursuant to § 68.55(a), or accepted by the Attorney General for review pursuant to § 68.55(b)(3). * * *

* * * * *

IMB means an International Marriage Broker, as defined in 8 U.S.C. 1375a(e)(4);

IMBRA case means a proceeding under this part for the imposition of civil money penalties against an IMB for violation or attempted violation of the requirements of 8 U.S.C. 1375a(d)(1)–(4);

IMBRA enforcement official means the specific official or office, as designated by the Attorney General, responsible for initiating and prosecuting IMBRA cases;

* * * * *

Issued as used in sections 274A(e)(8) and 274C(d)(5) of the INA, or with

respect to an IMBRA case, means the date on which an Administrative Law Judge's final order, the Chief Administrative Hearing Officer's order, or an adoption, modification, or vacatur of one of those orders by the Attorney General becomes a final agency order;

* * * * *

■ 5. Section 68.3 is amended by adding paragraph (d) to read as follows:

§ 68.3 Service of complaint, notices, written orders, and decisions.

* * * * *

(d) In IMBRA cases, for mail service, service of the complaint and notice of hearing may be made at an address provided by the IMB or its representative or agent to the Department of Homeland Security, the Department of Justice, the State Department, or a State or local government for contacting the IMB, or at any other address (domestic or foreign) where the IMB is doing business.

■ 6. Section 68.5 is amended by revising paragraph (b) to read as follows:

§ 68.5 Notice of date, time, and place of hearing.

* * * * *

(b) *Place of hearing.* In cases under sections 274A and 274C of the INA, pursuant to sections 274A(e)(3)(B) and 274C(d)(2)(B) of the INA, hearings shall be held at the nearest practicable place to the place where the person or entity resides or to the place where the alleged violation occurred. In section 274B cases and in IMBRA cases, pursuant to 5 U.S.C. 554, due regard will be given to the convenience of the parties and the witnesses in selecting a place for a hearing within the United States. Hearings under sections 274A, 274B, and 274C of the INA, and in IMBRA cases, may be conducted by video teleconference.

■ 7. Section 68.7 is amended by:

■ a. Removing the heading from paragraph (a);

■ b. Revising paragraph (b) introductory text; and

■ c. Adding a sentence to the end of paragraph (c).

The revision and addition read as follows:

§ 68.7 Form of pleadings.

* * * * *

(b) A complaint filed pursuant to section 274A, 274B, or 274C of the INA, or in an IMBRA case, must contain the following:

* * * * *

(c) * * * Complaints filed in IMBRA cases must be signed by the IMBRA

enforcement official, but do not require a request for hearing.

* * * * *

■ 8. Section 68.9 is amended by revising paragraph (a) to read as follows:

§ 68.9 Responsive pleadings—answer.

(a) *Time for answer.* Within thirty (30) days after the service of a complaint, each respondent shall file an answer. In an IMBRA case only, the respondent will have an additional thirty (30) days to file an answer. In every IMBRA case, the respondent must provide in its first responsive pleading an address within the United States at which the respondent will accept service of all pleadings, documents, written orders, and decisions relating to the case.

* * * * *

■ 9. Section 68.11 is amended by revising paragraph (b) to read as follows:

§ 68.11 Motions and requests.

* * * * *

(b) *Responses to motions.* Within ten (10) days (or twenty (20) days for the respondent in an IMBRA case) after a written motion is served, or within such other period as the Administrative Law Judge may fix, any party to the proceeding may file a response in support of, or in opposition to, the motion, accompanied by such affidavits or other evidence upon which the party desires to rely. Unless the Administrative Law Judge provides otherwise, no reply to a response, counter-response to a reply, or any further responsive document shall be filed.

* * * * *

■ 10. Section 68.33 is amended by revising the first sentence of paragraph (f) to read as follows:

§ 68.33 Participation of parties and representation.

* * * * *

(f) * * * Except for a government attorney filing a complaint in a case before OCHAO, each attorney must file a notice of appearance. * * *

* * * * *

■ 11. Section 68.52 is amended by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

§ 68.52 Final order of the Administrative Law Judge.

* * * * *

(f) *Contents of final order with respect to IMBRA cases.* If, upon the preponderance of the evidence, the Administrative Law Judge determines the respondent or respondents named in the complaint to have violated or attempted to violate the requirements of

8 U.S.C. 1375a(d)(1)–(4), the final order will require the respondent or respondents to pay a civil money penalty in an amount of not less than \$5,000 and not more than \$25,000 for each violation. These amounts are subject to adjustment for inflation as provided in 28 CFR 85.5.

(g) *Corrections to final orders.* An Administrative Law Judge may, in the interest of justice, correct any clerical mistakes or typographical errors contained in a final order in a case arising under sections 274A or 274C of the INA within thirty (30) days after the entry of the final order. Clerical mistakes and typographical errors contained in a final order in an IMBRA case may be corrected within sixty (60) days after the entry of the final order. Changes other than clerical mistakes or typographical errors will be considered in cases arising under sections 274A or 274C of the INA or IMBRA cases by filing a request for review to the Chief Administrative Hearing Officer by a party under § 68.54, or the Chief Administrative Hearing Officer may exercise discretionary review to make such changes pursuant to § 68.54. In cases arising under section 274B of the INA, an Administrative Law Judge may correct any substantive, clerical, or typographical errors or mistakes in a final order at any time within sixty (60) days after the entry of the final order.

(h) *Final agency order.* In a case arising under section 274A, 274B, or 274C of the INA, or in an IMBRA case, the Administrative Law Judge's final order becomes the final agency order sixty (60) days after the entry of the Administrative Law Judge's order unless:

(1) In a case arising under section 274A or 274C of the INA, or in an IMBRA case, the Chief Administrative Hearing Officer modifies, vacates, or remands the Administrative Law Judge's final order pursuant to § 68.54; or

(2) In a case arising under section 274A, 274B, or 274C of the INA, or in an IMBRA case, the final order is referred to the Attorney General pursuant to § 68.55.

■ 12. Section 68.53 is amended by:

■ a. Revising the section heading;

■ b. Revising paragraph (a) introductory text; and

■ c. Revising the last sentence of paragraph (c).

The revisions read as follows:

§ 68.53 Review of an interlocutory order of an Administrative Law Judge in cases arising under section 274A or 274C of the INA or an IMBRA case.

(a) *Authority.* The Chief Administrative Hearing Officer may,

within thirty (30) days of the entry of the Administrative Law Judge's interlocutory order in a case arising under section 274A or 274C of the INA, or within sixty (60) days after the entry of an interlocutory order in an IMBRA case, issue an order that modifies or vacates the interlocutory order. The Chief Administrative Hearing Officer may review an Administrative Law Judge's interlocutory order if:

* * * * *

(c) * * * If the Chief Administrative Hearing Officer does not modify, vacate, or remand an interlocutory order reviewed pursuant to paragraph (a) within thirty (30) days of the entry of the order in a case arising under section 274A or 274C of the INA (or sixty (60) days in an IMBRA case), the Administrative Law Judge's interlocutory order is deemed adopted.

* * * * *

■ 13. Section 68.54 is amended by revising the section heading and paragraphs (a), (b)(1), and (d)(1) to read as follows:

§ 68.54 Administrative review of a final order of an Administrative Law Judge in cases arising under section 274A or 274C of the INA or an IMBRA case.

(a) *Authority of the Chief Administrative Hearing Officer.* In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer has discretionary authority, pursuant to sections 274A(e)(7) and 274C(d)(4) of the INA and 5 U.S.C. 557, to review any final order of an Administrative Law Judge in accordance with the provisions of this section. Additionally, the Chief Administrative Hearing Officer has discretionary authority, pursuant to 5 U.S.C. 557, to review any final order of an Administrative Law Judge issued in an IMBRA case, as provided in this section.

(1) A party may file with the Chief Administrative Hearing Officer a written request for administrative review within ten (10) days in a case arising under section 274A or 274C of the INA (or within twenty (20) days in an IMBRA case) of the entry of the Administrative Law Judge's final order, stating the reasons for or basis upon which it seeks review.

(2) The Chief Administrative Hearing Officer may review an Administrative Law Judge's final order on his or her own initiative by issuing a notification of administrative review within the time period specified in paragraph (a)(1) of this section. This notification must state the issues to be reviewed.

(b) * * *

(1) In any case in which administrative review has been requested or ordered pursuant to paragraph (a) of this section, the parties may file briefs or other written statements within twenty-one (21) days in a case arising under section 274A or 274C of the INA (or within forty (40) days in an IMBRA case) of the entry of the Administrative Law Judge's order.

* * * * *

(d) * * *

(1) The Chief Administrative Hearing Officer may enter an order that modifies or vacates the Administrative Law Judge's final order, or remands the case to the Administrative Law Judge for further proceedings consistent with the Chief Administrative Hearing Officer's order. The order by the Chief Administrative Hearing Officer must be entered on or before thirty (30) days subsequent to the entry of the Administrative Law Judge's final order in a case under section 274A or 274C of the INA (or sixty (60) days in an IMBRA case), but not before the time for filing briefs has expired. However, the Chief Administrative Hearing Officer is not obligated to enter an order unless the Administrative Law Judge's order is modified, vacated, or remanded.

* * * * *

■ 14. Section 68.55 is amended by revising the section heading, the first two sentences of paragraph (a), and paragraphs (b) and (d)(2) to read as follows:

§ 68.55 Referral of a case arising under section 274A, 274B, or 274C of the INA or an IMBRA case to the Attorney General for review.

(a) * * * The Chief Administrative Hearing Officer must promptly refer to the Attorney General for review any final order in a case arising under section 274A, 274B, or 274C of the INA, or in an IMBRA case, if the Attorney General so directs the Chief Administrative Hearing Officer. For cases arising under section 274A and 274C of the INA, or in an IMBRA case, the Attorney General may so direct the Chief Administrative Hearing Officer within no more than thirty (30) days of the entry of a final order by the Chief Administrative Hearing Officer modifying or vacating an Administrative Law Judge's final order, or within thirty (30) days after the deadline for review under § 68.54(d)(1) if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order. * * *

(b) *Request by Secretary of Homeland Security or IMBRA enforcement official for review by the Attorney General.* The Chief Administrative Hearing Officer

must promptly refer to the Attorney General for review any final order in a case arising under section 274A or 274C of the INA, at the request of the Secretary of Homeland Security, or in an IMBRA case, at the request of the IMBRA enforcement official, if the request is made within thirty (30) days of the entry of an order modifying or vacating the Administrative Law Judge's final order, or within thirty (30) days after the deadline for review under § 68.54(d)(1) if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order.

(1) The Department of Homeland Security or the IMBRA enforcement official must first seek review of an Administrative Law Judge's final order by the Chief Administrative Hearing Officer, in accordance with § 68.54, before the Secretary of Homeland Security or the IMBRA enforcement official may request that an Administrative Law Judge's final order be referred to the Attorney General for review.

(2) To request referral of a final order to the Attorney General, the Secretary of Homeland Security or the IMBRA enforcement official must submit a written request to the Chief Administrative Hearing Officer and transmit copies of the request to all other parties to the case and to the Administrative Law Judge at the time the request is made. The written statement shall contain a succinct statement of the reasons the case should be reviewed by the Attorney General and the grounds for appeal.

(3) The Attorney General, in the exercise of the Attorney General's discretion, may accept the Secretary of Homeland Security's or the IMBRA enforcement official's request for referral of the case for review by issuing a written notice of acceptance within sixty (60) days of the date of the request. Copies of such written notice shall be transmitted to all parties in the case and to the Chief Administrative Hearing Officer.

* * * * *

(d) * * *

(2) If the Attorney General declines the Secretary of Homeland Security's or the IMBRA enforcement official's request for referral of a case pursuant to paragraph (b) of this section, or does not issue a written notice of acceptance within sixty (60) days of the date of the Secretary of Homeland Security's or the IMBRA enforcement official's request, then the final order of the Administrative Law Judge or the Chief Administrative Hearing Officer that was

the subject of a referral pursuant to paragraph (b) shall become the final agency order on the day after that sixty (60) day period has expired.

Sirce E. Owen,

Acting Director, Executive Office for Immigration Review, Department of Justice.

[FR Doc. 2026–16290 Filed 8–10–26; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SATS No. ND–057–FOR; Docket ID: OSM–2022–0011; S1D1S SS08011000 SX064A000 234S180110; S2D2S SS08011000 SX064A000 23XS501520]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining (OSM), are approving an amendment to the North Dakota regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). North Dakota has made changes to the North Dakota Century Code and North Dakota Administrative Code resulting from actions initiated during both the 2017 and 2021 Legislative Sessions. Changes include altering the time required for scheduling and applying for select permit related actions, creation of the North Dakota Department of Environmental Quality and a transfer of select responsibilities from the Department of Health, establishment of the Department of Water Resources, and the powers and duties of that agency and the state engineer.

DATES: The effective date is September 10, 2026.

FOR FURTHER INFORMATION CONTACT:

Jeffrey Fleischman, Denver Field Division Chief, Office of Surface Mining, Casper Area Office, P.O. Box 11018, 100 East B Street, Room 4100, Casper, Wyoming 82601–1018. Telephone: (307) 204–4397. Email: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

- I. Background on the North Dakota Program
- II. Submission of the Amendment
- III. OSMRE's Findings
- IV. Summary and Disposition of Comments
- V. OSMRE's Decision
- VI. Statutory and Executive Order Reviews

I. Background on the North Dakota Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

On the basis of these criteria, the Secretary of the Interior approved the North Dakota program on December 15, 1980. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980, **Federal Register** (45 FR 82214). You can also find later actions concerning the North Dakota program and program amendments at 30 CFR 934.15 and 934.30.

II. Submission of the Amendment

By letter dated November 30, 2022 (Administrative Record No. ND–057–01), North Dakota sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment at its own initiative to include changes made to both the North Dakota Century Code (NDCC) and the North Dakota Administrative Code (NDAC). House Bill No. 1061, from the 2021 Legislative Session, increased the time for scheduling an informal conference on a permit, significant permit revision, or permit renewal application from 30 days to 45 days. It also changed the time a mining company is required to apply for a permit renewal from 120 days to 180 days prior to permit expiration. Senate Bill No. 2327, from the 2017 Legislative Session, created the North Dakota Department of Environmental Quality and transferred duties from the North Dakota Department of Health related to environmental quality. House Bill No. 1353, from the 2021 Legislative Session, established the North Dakota Department of Water Resources and identified the powers and responsibilities of the agency and the state engineer. Modifications to North Dakota's approved coal regulatory program are made to North Dakota Century Code Chapter 38–14.1 and North Dakota Administrative Code Article 69–5.2 to conform to the realigned responsibilities.

We announced receipt of the proposed amendment in the May 19, 2023, **Federal Register** (88 FR 32163). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because none was requested. Two comments were received on the amendment. The public comment period ended on June 20, 2023.

III. OSMRE's Findings

We made the following findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

1. North Dakota House Bill No. 1061

The following amendments to North Dakota Century Code 38–14.1 were enacted by House Bill No. 1061 as part of the Sixty-Seventh Legislative Assembly of North Dakota, in session January 5, 2021.

A. NDCC 38–14.1–19 (1)

This amendment changes the time allowed for the commission to schedule an informal conference from within thirty days of receipt of the request to within forty-five days of receipt of the request. Comparable Federal regulations are found at 30 CFR 773.6(c)(2), which state that the regulatory authority must hold an informal conference within a reasonable time following receipt of the request. This proposed change allows 15 additional days to prepare for informal conference procedures, which is a reasonable addition of time. Thus, North Dakota's proposed changes to NDCC 38–14.1–19 are consistent with and no less effective than the Federal regulations.

B. NDCC 38–14.1–22 (3)

This amendment changes the time allowed for an applicant to submit a permit renewal from at least one hundred twenty days before the expiration of the valid permit to at least one hundred eighty days before the expiration of the valid permit. Comparable Federal regulations are found at 30 CFR 774.15(a)(b)(1), which state that a permit renewal must be filed with the regulatory authority at least 120 days prior to expiration of the existing permit. By increasing this time to 180 days, this proposed change requires that applications for permit renewal be submitted earlier, giving more time for review and processing. This proposed change, thus updates State rules to make them more stringent

than their Federal counterpart. Thus, North Dakota's proposed changes to NDCC 38–14.1–22 are consistent with and no less effective than the Federal regulations.

2. North Dakota Senate Bill No. 2327

Senate Bill No. 2327 created the North Dakota Department of Environmental Quality and transferred the duties and responsibilities of the North Dakota Department of Health relating to environmental quality to the Department of Environmental Quality. The following amendments to North Dakota Century Code 38–14.1 and North Dakota Administrative Code 69–05.2 were enacted by Senate Bill No 2327 as part of the Sixty-Fifth Legislative Assembly of North Dakota, in session January 3, 2017.

A. NDCC 38–14.1–03(12)

This amendment removes the words “promulgate regulations” and replaces them with “adopt rules”. This amendment also removes the words “state department of health” and replaces them with “department of environmental quality”. These changes update grammar and address the transfer of duties and responsibilities to the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–03 are in accordance with SMCRA and consistent with the Federal regulations.

B. NDCC 38–14.1–21(2)

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. This amendment also removes the word “state” when referencing the state soil conservation committee and the state game and fish department. These changes clarify titles and address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–21 are in accordance with SMCRA and consistent with the Federal regulations.

C. NDAC 69–05.2–09–02(8)

This amendment removes the words “state department of health” and replaces them with “department of

environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–09–02 are in accordance with SMCRA and consistent with the Federal regulations.

D. NDAC 69–05.2–09–05

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–09–05 are in accordance with SMCRA and consistent with the Federal regulations.

E. NDAC 69–05.2–13–07

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–13–07 are in accordance with SMCRA and consistent with the Federal regulations.

F. NDAC 69–05.2–16–02

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–16–02 are in accordance with SMCRA and consistent with the Federal regulations.

G. NDAC 69–05.2–16–04(1)(c) and (g)

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. This occurs once in subsection (c) and again in subsection (g) of NDAC 69–05.2–16–04. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–16–04 are in accordance with SMCRA and consistent with the Federal regulations.

H. NDAC 69–05.2–16–05(1)(b)(1)

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–16–05(1)(b)(1) are in accordance with SMCRA and consistent with the Federal regulations.

I. NDAC 69–05.2–16–20(1)

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–16–20(1) are in accordance with SMCRA and consistent with the Federal regulations.

J. NDAC 69–05.2–19–02(1)

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. This occurs once in subsection (1), again in subsection (1)(a), and a third time is subsection (1)(b) of NDAC 69–05.2–19–02. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes

does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–19–02(1) are in accordance with SMCRA and no less effective than the Federal regulations.

K. NDAC 69–05.2–19–04

This amendment removes the words “state department of health” and replaces them with “department of environmental quality”. This occurs once in subsection (1) and occurs twice in subsection (2) of NDAC 69–05.2–19–04. These changes address the transfer of duties and responsibilities of the newly created North Dakota Department of Environmental Quality. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDAC 69–05.2–16–04 are in accordance with SMCRA and consistent with the Federal regulations.

3. North Dakota House Bill No. 1353

House Bill No. 1353 established the North Dakota Department of Water Resources, and the powers and duties of the Department of Water Resources and the state engineer. The following amendments to North Dakota Century Code 38–14.1 and North Dakota Administrative Code 69–05.2 were enacted by House Bill No. 1353 as part of the Sixty-Seventh Legislative Assembly of North Dakota, in session January 5, 2021.

A. NDCC 38–14.1–03(12)

This amendment removes the words “the state engineer” and replaces them with “department of water resources”. These changes address the transfer of duties and responsibilities of the newly established North Dakota Department of Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–03 (12) are in accordance with SMCRA and consistent with the Federal regulations.

B. NDCC 38–14.1–14(1)(n)

This amendment removes the words “state engineer” and replaces them with “department of water resources”. This amendment also removes the words, “pursuant to other applicable state law”. These changes streamline grammar and address the transfer of duties and responsibilities of the newly established North Dakota Department of

Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–03 (12) are in accordance with SMCRA and consistent with the Federal regulations.

C. NDCC 38–14.1–21(2)

This amendment removes the words “state engineer” and replaces them with “department of water resources”. The word “also” is also removed. These changes streamline grammar and address the transfer of duties and responsibilities of the newly established North Dakota Department of Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–03 (12) are in accordance with SMCRA and consistent with the Federal regulations.

D. NDCC 38–14.1–24(7)

This amendment removes the words “state engineer pursuant to other applicable state law” and replaces them with “department of water resources”. In subsection (f) this amendment also replaces the word “Such” with the word “The”. These changes streamline grammar and address the transfer of duties and responsibilities of the newly established North Dakota Department of Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–24 (7) are in accordance with SMCRA and consistent with the Federal regulations.

E. NDCC 38–14.1–25(1)

This amendment removes the words “state engineer” and replaces them with “department of water resources”. These changes address the transfer of duties and responsibilities of the newly established North Dakota Department of Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to NDCC 38–14.1–25 (1) are in accordance with SMCRA and consistent with the Federal regulations.

F. NDAC 69–05.2–05–06(1)(d)

This amendment removes the words “State engineer, state water commission” and replaces them with “Department of Water Resources”. These changes address the transfer of duties and responsibilities of the newly established North Dakota Department of Water Resources and the state engineer. The administrative nature of these changes does not affect their substance and, thus, are not inconsistent with the Federal regulations. Thus, North Dakota's proposed changes to 69–05.2–05–06 (1)(d) are in accordance with SMCRA and consistent with the Federal regulations.

G. Conclusion

We are approving North Dakota's proposed changes to its coal regulatory program. As discussed above, North Dakota's proposed changes resulting from House Bill No. 1061 are more stringent than their corresponding Federal regulations. The changes resulting from Senate Bill No. 2327 create the North Dakota Department of Environmental Quality and transfer the duties and responsibility of the North Dakota Department of Health relating to environmental quality. The changes resulting from House Bill 1353 establish the North Dakota Department of Water Resources, its powers and those of the state engineer. Resulting changes to North Dakota's Surface Mining and Reclamation laws and rules occur in North Dakota Century Code 38–14.1 and North Dakota Administrative Code 69–5.2. These changes are of an administrative nature. Thus, North Dakota's proposed changes to NDAC 69–05.2 and NDCC 38.14 are in accordance with SMCRA and consistent with the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment and received two anonymous comments that were not about the specifics of this proposal but were about the political climate and energy policy. These comments are outside the scope of this amendment, and we are not required to respond to them.

Federal Agency Comments

On December 12, 2022, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the North Dakota program (Administrative Record No. ND–057–03,

and ND-057-04). We did not receive any comments from Federal agencies.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that North Dakota proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, on December 12, 2022, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. ND-057-03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 12, 2022, we requested comments on North Dakota amendment (Administrative Record No. ND-057-03). We did not receive comments from the SHPO or ACHP.

V. OSMRE's Decision

Based on the above findings, we are approving North Dakota's proposed amendment ND-057-FOR sent to us on November 30, 2022 (Administrative Record No. ND-057-01).

To implement this decision, we are amending the Federal regulations, at 30 CFR part 934, that codify decisions concerning the North Dakota program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Since OSM granted the North Dakota Program primacy on December 15, 1980, OSM has found the North Dakota Program to be in accordance with SMCRA and consistent with the Federal regulations. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule would not result in a taking of private property or otherwise have taking implications that would result in public property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program and/or plan to the program and/or amendment that North Dakota drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to "grant the States the maximum

administrative discretion possible" with respect to Federal statutes and regulations administered by the States. North Dakota, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the North Dakota program submitted and drafted by the State and thus is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the North Dakota State program that does not include the regulation of Indian lands or regulation of activities on Indian lands as that term is defined in 30 U.S.C. 1291(9). Indian lands are regulated independently under the applicable, approved Federal Indian lands program. 512 Departmental Manual 4 (Department of the Interior Policy on Consultation with Indian Tribes) also acknowledges that our rules may have Tribal implications where the State proposing the amendment encompasses ancestral lands in areas with mineable coal. North Dakota's proposed changes to its program are administrative in nature and will not have Tribal implications under section 4.3B of 512 Departmental Manual 4.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not

significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

National Environmental Policy Act

Consistent with sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon corresponding Federal regulations for

which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than \$100 million per year. The

rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Marcelo Calle,

Acting Regional Director, Unified Interior Regions 5, 7–11.

For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

PART 934—NORTH DAKOTA

■ 1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 934.15, amend the table by adding a new entry for “November 30, 2022” at the end of the table to read as follows:

§ 934.15 Approval of North Dakota regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* November 30, 2022	* August 11, 2026	* NDCC 38–14.1–19(1)/ Changes the time allowed to schedule an informal conference from 30 to 45 days. NDCC 38–14.1–22(3)/ Changes the time allowed for an application for permit renewal from 120 to 180 days. NDCC 38–14.1–03(12), NDCC 38–14.1–21(2), NDAC 69–05.2–09–02(8), NDAC 69–05.2–09–05, NDAC 69–05.2–13–07, NDAC 69–05.2–16–02, NDAC 69–05.2–16–04(c and g), NDAC 69–05.2–16–05(1)(b)(1), NDAC 69–05.2–16–20(1), NDAC 69–05.2–19–02(1), NDAC 69–05.2–19–04/ Updates grammar and transfer of duties to the newly created North Dakota Department of Environmental Quality. NDCC 38–14.1–03(12), NDCC 38–14.1–14(1)(n), NDCC 38–14.1–21(2), NDCC 38–14.1–24(7), NDCC 38–14.1–25(1), NDAC 69–05.2–05–06(1)(d)/ Updates grammar and transfer of duties to the newly established North Dakota Department of Water Resources and the state engineer.

DEPARTMENT OF THE TREASURY
Financial Crimes Enforcement Network
31 CFR Part 1010
Geographic Targeting Order Imposing Recordkeeping and Reporting Requirements on Certain Financial Institutions in Minnesota
AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Order.
SUMMARY: FinCEN is issuing this Geographic Targeting Order, requiring banks and money transmitters located in the Counties of Hennepin and Ramsey, Minnesota to retain and report records of certain payments of \$3,000 or more.
DATES: Effective date: This action is effective on August 11, 2026.
FOR FURTHER INFORMATION CONTACT: FinCEN’s Regulatory Support Section by

submitting an inquiry at www.fincen.gov/contact.

SUPPLEMENTARY INFORMATION:

I. Background

If the Secretary of the Treasury (Secretary) finds, upon his own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of the Bank Secrecy Act (BSA)¹ or to prevent evasions thereof, the Secretary may issue a Geographic Targeting Order (GTO) requiring any domestic financial institution or group of domestic financial institutions, or any domestic nonfinancial trade or business or group of domestic nonfinancial trades or businesses, in a geographic area to obtain such information as the Secretary may describe in such GTO concerning any transaction in which such financial institution or nonfinancial trade or business is involved for the payment, receipt, or transfer of funds (as the Secretary may describe in such GTO), and concerning any other person participating in such transaction.² For any such transaction, the Secretary may require the financial institution or nonfinancial trade or business to maintain a record and/or file a report in the manner and to the extent specified.³ The maximum effective period for a GTO is 180 days unless renewed.⁴ The authority of the Secretary to issue a GTO has been delegated to the Director of FinCEN (Director).⁵

The Director finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements set forth in the GTO contained in this document (the "Order") are necessary to carry out the purposes of the BSA or to prevent evasions thereof. This action is being taken in furtherance of Treasury's efforts to combat international money laundering relating to government benefits fraud in Minnesota. The Order does not alter any existing BSA obligation of a Covered Business (as

defined in the Order), except as otherwise set out in the Order itself.

II. Geographic Targeting Order

A. Businesses and Transactions Covered by This Order

1. For purposes of this Order, a "Covered Business" means any bank, as defined in 31 CFR 1010.100(d), or a money transmitter, as defined in 31 CFR 1010.100(ff)(5), with a branch, subsidiary, or office located in the Covered Geographic Area.

2. For purposes of this Order, a "Covered Transaction" means each funds transfer for which records are required to be retained under either 31 CFR 1020.410(a) or 31 CFR 1010.410(e), and for which a corresponding payment order or transmittal order is accepted by the Covered Business as an originator's bank or transmitter's financial institution:

a. Where the originator or transmitter provides an address in the Covered Geographic Area;

b. Where the originator or transmitter is not a company publicly traded on an exchange regulated by the Securities and Exchange Commission;

c. Where the originator or transmitter is not a financial institution subject to anti-money laundering program requirements under the BSA;

d. Where the Covered Business is a bank, the originator is not described in 31 CFR 1010.230(e)(2)(i)-(xvi); and

e. Either the beneficiary or recipient is located outside of the United States or the financial institution used by the beneficiary or recipient to receive the funds is located outside of the United States.

3. For purposes of this Order, the "Covered Geographic Area" means Hennepin County and Ramsey County, Minnesota.

4. All terms used but not otherwise defined herein shall have the same meaning set forth in part 1010 of chapter X of subtitle B of title 31 of the Code of Federal Regulations.

B. Reports Required to be Filed by the Covered Business

5. The Covered Business shall report Covered Transactions to FinCEN through the Financial Industry (FI) Portal, available at fincen.gov/resources/financial-institutions. Covered Businesses may access the FI Portal using their Login.gov account and requesting "Financial Industry Access" at ois.fincen.gov/accessrequest. When submitting, select "Special Measures" as the file type and enter "FIN-65547-X3M6T." For any technical questions or issues regarding FinCEN's FI Portal,

please visit fiportal.fincen.gov/contact-us or contact fincenappshd@fincen.gov.

6. All submissions shall be saved as a Comma-Separated Value (CSV) file prior to submission and adhere to the *Minnesota Fraud GTO Submission Template*, available at <https://www.fincen.gov/system/files/2026-01/minnesota-fraud-gto-submission.csv>, for which additional information may be found in the *Minnesota Fraud GTO Template Dictionary*, available at <https://www.fincen.gov/system/files/2026-01/minnesota-fraud-gto-template-dictionary.pdf>. Data file names should use the format *FilerName TransactionYearMonth_File#ofTotal#_MNGTO2026.csv*.

7. If the Covered Business is a bank, the Covered Business shall report all information required to be retained under 31 CFR 1020.410(a)(1) and (2), along with the following (regardless of whether the information is provided with the payment order), for which the Covered Business may rely upon information provided by the originator, absent knowledge of facts that would reasonably call into question the reliability of the information provided, by the end of the month following the month in which the Covered Transaction took place:

a. The name and employer identification number of the Covered Business;

b. The account number of the originator;

c. The name of the beneficiary;

d. The address of the beneficiary;

e. The date of birth of the beneficiary;

f. A phone number of the beneficiary;

g. An email address of the beneficiary;

h. The account number of the beneficiary;

i. Whether the source of funds for the transfer includes payments that are from any federal, state, or local government contract or benefit program; and

j. If the answer to question (i) is yes, whether those payments are from government agencies to entities in which the originator has any ownership interest.

8. If the Covered Business is a money transmitter, the Covered Business shall report all information required to be retained under 31 CFR 1010.410(e)(1) and (2), along with the following (regardless of whether the information is provided with the transmittal order), for which the Covered Business may rely upon information provided by the transmitter, absent knowledge of facts that would reasonably call into question the reliability of the information provided, by the end of the month following the month in which the Covered Transaction took place:

¹ The BSA is codified at 12 U.S.C. 1829b and 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and includes notes thereto, with implementing regulations at 31 CFR chapter X.

² 31 U.S.C. 5326(a); *see also* 31 CFR 1010.370.

³ *Id.*

⁴ 31 U.S.C. 5326(d); *see also* 31 CFR 1010.370(d)(1).

⁵ Treasury Order 180–01 (Jan. 14, 2020); *see also* 31 U.S.C. 310(b)(2)(I) (providing that the Director of FinCEN shall "[a]dminister the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary").

a. The name and employer identification number of the Covered Business;

b. The name of the recipient;

c. The address of the recipient;

d. The date of birth of the recipient;

e. A phone number of the recipient;

f. An email address of the recipient;

g. Whether the transmittal was sourced from currency, check, credit or debit card, or other;

h. Whether the source of funds for the transfer includes payments that are from any federal, state, or local government contract or benefit program;

i. If the answer to question (h) is yes, whether those payments are from government agencies to entities in which the transmitter has any ownership interest;

j. The form of transmittal (wire, convertible virtual currency transmission, ledger entry, or other); and

k. If the transmittal is a ledger entry that tracks credits and debits with hawaladars located internationally, whether the money transmitter uses cash couriers to settle those debits.

C. Order Period

The terms of this Order are effective on August 11, 2026, and end on February 6, 2027.

D. Retention of Records

The Covered Business must: (1) retain all reports filed to comply with this Order and any other records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store all such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN, or any other appropriate law enforcement or regulatory agency, upon request, in accordance with applicable law.

E. No Effect on Other Provision of the BSA or Its Implementing Regulations

Nothing in this Order otherwise modifies or affects any provision of the BSA or the regulations implementing the BSA to the extent not expressly stated herein.

F. Confidentiality

This Order is being publicly issued, and its terms are not confidential.

G. Compliance

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit

this Order to each of its agents located in the Covered Geographic Area. The Covered Business must also transmit this Order to its Chief Executive Officer or other similarly acting manager.

H. Penalties for Noncompliance

The Covered Business, and any of its officers, directors, employees, and agents, may be liable, without limitation, for civil or criminal penalties for willfully violating any of the terms of this Order.

I. Validity of Order

Any judicial determination that any provision of this Order is invalid shall not affect the validity of any other provision of this Order, and each other provision shall thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

J. Paperwork Reduction Act

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 1506–0056. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

K. Questions

All questions about the Order should be directed to FinCEN at <https://www.fincen.gov/contact>.

(Authority: 31 U.S.C. 5326)

Jimmy L. Kirby,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2026–16365 Filed 8–10–26; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2026–0666]

RIN 1625–AA08

Special Local Regulation; Great Lakes Annual Marine Events—Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a recurring Special Local Regulation (SLR) for certain navigable

waters of the Cuyahoga River. The SLR is necessary to provide for the safety of life on these waters during the Cleveland Dragon Boat Festival, which occurs annually on or around the 4th weekend in August. This rulemaking prohibits persons and vessels from entering the regulated area during enforcement periods unless specifically authorized by the Captain of the Port, Sector Eastern Great Lakes or their designated representative.

DATES: This rule is effective August 11, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–0666.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact MST1 Andrew Nevenner, Marine Safety Unit Cleveland, U.S. Coast Guard; telephone 216–701–5989, or email Andrew.J.Nevenner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background and Authority

On January 7, 2026, an organization notified the Coast Guard that they will be hosting the Cleveland Dragon Boat Festival on the Cuyahoga River near the Cleveland Rowing Foundation in Cleveland, OH on August 29, 2026. The Coast Guard lists annual marine events in the CFR. For USCG Sector Eastern Great Lakes, SLRs are listed in 33 CFR 100.901. The Cleveland Dragon Boat Festival is held annually one day on or around the 4th weekend in August on the Cuyahoga River near the Cleveland Rowing Foundation in Cleveland, OH. The Cleveland Dragon Boat Festival is a recreational and competitive paddling event featuring organized dragon boat races conducted in team-based paddle craft. Hazards from the event include increased vessel congestion due to the number of participants, and racing in the pathway of commercial traffic. On June 25, 2026, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Special Local Regulation; Great Lakes annual marine events—Cuyahoga River, Cleveland, OH (91 FR 38352). In that NPRM, we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this dragon boat festival.

Under the authority in 46 U.S.C. 70041, the COTP has determined that this rule is necessary to ensure the safety of vessels and participants in the navigable waters within the regulated area. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or their designated representative.

Because of the hazards associated with this event, the Coast Guard finds that under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because it is impracticable. We must establish this special local regulation by August 29, 2026, to protect personnel, vessels, and the marine environment.

III. Discussion of Comments and the Rule

During the comment period that ended on July 27, 2026, we received no comments. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a special regulated area for one event in August. The regulated area covers all navigable waters of the Cuyahoga River near the Cleveland Rowing Foundation dock at approximately 41°29'27.2" N 081°42'13.1" W to the Columbus Road Bridge. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or their designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions

with populations of less than 50,000. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies that, although some small entities may intend to transit the regulated area above, this rule will not have a significant economic impact on a substantial number of small entities. This regulation will only impact a small area for a few hours. The enforcement period is during a time when vessel traffic is normally low. In addition, the Coast Guard will issue a Broadcast Notice to Mariners via VHF FM marine channel 16, which will allow small entities to adjust their transit plans, and the rule allows vessels to request permission to enter the regulated area from the COTP or their designated representative.

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

Small businesses may send comments to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards by calling 1–888–REG–FAIR (1–888–734–3247).

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

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

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

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

D. Unfunded Mandates Reform Act

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

E. Environment

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

This rule is a special regulated area. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Amend Table 1 to § 100.901 by adding an entry for item (5) as follows:

* * * * *

TABLE 1 TO § 100.901

Event	Location ¹	Date ²
Sector Eastern Great Lakes, NY		
(5) Cleveland Dragon Boat Festival.	The special local regulation would cover all navigable waters of the Cuyahoga River from the Cleveland Rowing Foundation dock at 41°29'27.2" N, 081°42'13.1" W to the Columbus Rd. Bridge..	On or around the 4th week-end of August.

¹ All coordinates listed in this table 1 reference North American Datum of 1983 (NAD 1983).
² As noted in the introductory text of this section, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the **Federal Register**, as well as issuing a Broadcast Notice to Mariners.

Matthew J. Walter,
CAPTAIN, U.S. Coast Guard, Captain of the Port Sector Eastern Great Lakes.
[FR Doc. 2026–16354 Filed 8–10–26; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 151, 152, and 159

46 CFR Part 162

[Docket No. USCG–2026–0378]

Cancellation of Obsolete Navigation and Vessel Inspection Circular

AGENCY: Coast Guard, DHS.
ACTION: Cancellation of guidance document.

SUMMARY: The Coast Guard announces the cancellation of an obsolete Navigation and Vessel Inspection Circular (NVIC). NVICs are guidance documents issued by the Coast Guard. While they do not have the force of law, NVICs help ensure Coast Guard inspections and other regulatory actions conducted by field personnel are complete and consistent. Similarly, the marine industry and the general public rely on NVICs to assess how the Coast Guard will enforce certain regulations or conduct various marine safety programs. Thus, to avoid confusion, it is important that the public be notified when NVICs are cancelled.

DATES: NVIC 01–04 was cancelled on December 2, 2025.

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email CDR Brad Peifer, Coast Guard; telephone 571–608–7869, email Bradley.C.Peifer@uscg.mil.

SUPPLEMENTARY INFORMATION:

Background and Purpose

NVICs provide detailed guidance about compliance with certain Coast

Guard marine safety programs and the enforcement of marine safety regulations governing those programs. While NVICs are non-directive, meaning that they do not have the force of law, they are important tools for helping the public comply with the law. To best serve the public and maritime industry, the Coast Guard is reviewing and actively managing its policies to ensure that all published NVICs are consistent with current practices.

The Coast Guard is issuing this document under 5 U.S.C. 552. This document serves to inform the public about the cancellation and removal of an obsolete and outdated Coast Guard NVIC that does not reflect current practices and that potentially conflicts with more recent guidance.

NVIC Being Cancelled

NVIC 01–04, SHIPBOARD TECHNOLOGY EVALUATION PROGRAM (STEP): EXPERIMENTAL BALLAST WATER TREATMENT SYSTEMS, sets out the procedures for vessel owners/operators to apply for acceptance into the Shipboard Technology Evaluation Program. The STEP is a Coast Guard research program intended to facilitate research, development, and shipboard testing of effective ballast water management systems. 33 CFR 151.2005. STEP participation is available to all foreign and domestic vessels subject to the Coast Guard’s Ballast Water Management regulations.

Experience gained since the STEP was initiated has shown that the application process can be significantly streamlined. The procedures outlined in the NVIC are outdated and no longer needed.

Dated: August 7, 2026.

S.A. Koch,
Captain, U. S. Coast Guard, Chief, Office of Operating and Environmental Standards.
[FR Doc. 2026–16337 Filed 8–10–26; 8:45 am]
BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–1004]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, Department of Homeland Security.
ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a small area of Monroe Harbor in Lake Michigan in Chicago, IL. This action is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the Chicago Triathlon swim event. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Lake Michigan or their designated representative.

DATES: This rule is effective from 6 a.m. through 10:30 a.m. on August 23, 2026.

ADDRESSES: To view available documents go to <https://www.regulations.gov> and search for USCG–2026–1004.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant Kyle Goetz, Marine Safety Unit Chicago, U.S. Coast Guard; telephone 630–986–2155, email D09-SMB-MSUChicago-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background and Authority

The Coast Guard received notification that the Chicago Triathlon will be taking place within a small area of Monroe Harbor on Lake Michigan in Chicago, IL. The Captain of the Port (COTP) Lake Michigan has determined that a safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters of Lake Michigan while this event is taking place. Therefore, the COTP Lake Michigan is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard only recently received final details for the Chicago Triathlon swim event on July 23, 2026. It is impracticable to publish an NPRM because we must establish this safety zone by August 23, 2026.

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

III. Discussion of the Rule

This rule establishes a temporary safety zone from 6 a.m. through 10:30 a.m. on August 23, 2026. The area will be bounded by the following points in Monroe Harbor in Lake Michigan in Chicago, IL, beginning at 41°52.787' N, 087°36.988' W, then east to 41°52.786' N, 087°36.962' W, then southeast to 41°52.594' N, 087°36.815' W, then south to 41°52.515' N, 087°36.816' W, then south to 41°52.135' N, 087°36.896' W, then west to 41°52.134' N, 087°36.974' W returning to the point of origin. No vessels or person will be permitted to enter the safety zone without obtaining permission from the COTP Lake Michigan or a designated representative.

IV. Regulatory Analyses

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

A. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to rules that are not subject to

notice and comment. Because the Coast Guard has, for good cause, waived the notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's flexibility analysis provisions do not apply here.

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

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

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

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

E. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–1004 to read as follows:

§ 165.T09–1004 Safety Zones; Lake Michigan, Chicago, IL.

(a) *Location.* The following area is a safety zone: All waters in Lake Michigan within a rectangle-shaped course in Monroe Harbor in Chicago, IL, bounded by the following points: beginning 41°52.787' N, 087°36.988' W, then east to 41°52.786' N, 087°36.962' W, then southeast to 41°52.594' N, 087°36.815' W, then south to 41°52.515' N, 087°36.816' W, then south to 41°52.135' N, 087°36.896' W, then west to 41°52.134' N, 087°36.974' W returning to the point of origin.

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

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port

(COTP) Lake Michigan or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP Lake Michigan or a designated representative.

(d) *Enforcement Period.* The safety zone will be enforced from 6 a.m. to 10:30 a.m. on August 23, 2026.

R.N. Macon,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2026–16341 Filed 8–10–26; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE–2023–0010]

Danger Zone: Pacific Ocean at Marine Corps Base Hawaii, Kaneohe Bay, Island of Oahu, Hawaii

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Final rule.

SUMMARY: The United States Army Corps of Engineers (Corps) is amending its regulations for an existing danger zone at the U.S. Marine Corps Ulupau Crater Weapons Training Range in the vicinity of Kaneohe Bay, Hawaii. The Marine Corps requested a change to the current hours that weapons firing may be conducted. This amendment is necessary in order to ensure public safety.

DATES: Effective September 10, 2026.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Speerstra, Headquarters, Operations and Regulatory Division, at linda.speerstra@usace.army.mil or 202–945–2101.

SUPPLEMENTARY INFORMATION: In response to a request by the United States Marine Corps and pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps is amending the danger zone regulations at 33 CFR 334.1380 to change the hours that weapons firing may be conducted at the Ulupau Crater Weapons Training Range, on the Island of Oahu, Hawaii. The amendment to the danger zone is needed for the Department of Defense to meet its mission under 10 U.S.C. 5062, which is to maintain, train, and equip combat-ready military forces, deterring aggression, and maintaining freedom of the seas. The danger zone is necessary

to protect the public from hazards associated with small arms training.

The proposed rule was published in the 88 FR 85155 edition of the **Federal Register** on December 07, 2023. The *regulations.gov* docket number was COE–2023–0010. Concurrently, a local public notice for the proposed danger zone amendment was sent out from the Honolulu District. In response to the proposed rule, three comments were received. Substantive comments are summarized below.

The State of Hawaii Office of Planning and Sustainable Development (OPSD) stated that the proposed amendment to the existing danger zone is subject to the Coastal Zone Management Act (CZMA) federal consistency review by the Hawaii CZM Program. This comment was resolved as the MCBH assessed the amendment at a CATEx level. OPSD concurred.

One person provided several comments regarding boundaries, expansion, net impact, locations of the warning beacons, frequency of firing events, Section 106, ESA, and EFH. Some of the comments were the result of errors in the text of the public notice and self-resolved. Regarding net impact of the proposed amendment to the hours of operation of the danger zone, tactical weapons training has been conducted within the Ulupau Crater since 1942 and the proposed hours of operation are similar to the hours of operation that have been in place since 2009; therefore, the proposed amendment would be consistent with onsite conditions that have been present for over 80 years. Regarding location of warning beacons, the red light beacons/flagpoles are located at 21.458833°, –157.724557° for the north-facing beacon and 21.450469°, –157.727293° for the east-facing beacon. The beacons are visible throughout the danger zone and thereby conform to safety standards. Regarding a comment about the frequency or duration of firing events, compliance with the MCBH training mission requires flexibility in the frequency and duration of firing events; therefore, frequency and duration of firing events is not specified. Regarding Section 106, ESA and EFH, the MCBH, is the lead federal agency responsible for compliance with applicable federal laws.

Procedural Requirements

a. Review Under Executive Orders 12866 and 13563. This rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 and 13563 do not apply.

b. Regulatory Flexibility Act, as Amended by the Small Business

Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.* This rule has been reviewed under the Regulatory Flexibility Act (Public Law 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps determined that the amendment of existing danger zones will not have a significant economic impact on a substantial number of small entities. For an analysis of potential economic impacts of this rule, please see the regulatory analysis in the environmental assessment.

c. Review under the National Environmental Policy Act. An environmental assessment (EA) has been prepared for the amendment of the hours of operation of this danger zone. The Corps has concluded that the amendment of the hours of operation of the danger zone will not have a significant impact to the quality of the human environment and, therefore, preparation of an EIS is not required. The final EA and Finding of No Significant Impact may be reviewed at the District Office listed at the contact section listed above. Alternatively, electronic copies of the final EA and Finding of No Significant Impact may be acquired via the Freedom of Information Act request process as described at poh.usace.army.mil/Media/FOIA/.

d. Unfunded Mandates Reform Act of 1995. This rule does not impose an enforceable duty among the private sector nor state, local, and tribal governments and, therefore, it is not a Federal private sector mandate, nor a state, local, or tribal government mandate, and it is not subject to the requirements of either Section 202 or Section 205 of Public Law 104–4 (Unfunded Mandates Reform Act of 1995). We have also found that under Section 203 of the Act, small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Corps is submitting a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States. The rule will take effect 30 days after it is published in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons stated in the preamble, the United States Army Corps of Engineers amends 33 CFR part 334 as set forth below:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

- 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

- 2. Amend § 334.1380 by revising the first sentence of paragraph (b)(1) to read as follows:

§ 334.1380 Marine Corps Base Hawaii (MCBH), Kaneohe Bay, Island of Oahu, Hawaii—Ulupau Crater Weapons Training Range; danger zone.

* * * * *

(b) *The regulations.* (1) Weapons firing at the Ulupau Crater Weapons Training Range may occur at any time between 6:00 a.m. and 2:00 a.m., Monday through Sunday.

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Stephen L. Hill,

Chief, Operations and Regulatory Division,
Directorate of Civil Works.

[FR Doc. 2026–16359 Filed 8–10–26; 8:45 am]

BILLING CODE 3720–58–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2026–5743; FRL–13518–01–R9]

Determination To Defer Sanctions; Arizona; Maricopa County Air Quality Department; Gasoline Loading

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is making an interim final determination that the Arizona Department of Environmental Quality (ADEQ) has submitted rules on behalf of the Maricopa County Air Quality Department (MCAQD or “County”) that addresses deficiencies in

its Clean Air Act (CAA or “Act”) State Implementation Plan (SIP) concerning emissions of volatile organic compounds (VOC) from loading of organic liquids and gasoline. This determination is based on a proposed approval of MCAQD Rule 352 and conditional approval of MCAQD Rule 353, published elsewhere in this issue of the **Federal Register**, that regulate this category of sources. The effect of this interim final determination is that the application of offset and highway sanctions that was triggered by a previous limited disapproval by the EPA in 2025 is now deferred. If the EPA finalizes its approval and conditional approval of MCAQD’s submission, relief from these sanctions will become permanent.

DATES: This interim final determination is effective August 11, 2026. However, comments will be accepted on or before September 10, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2026–5743 at <https://www.regulations.gov>. For comments submitted at [regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by telephone at: (415) 947–4129;

by email at: sherman.donnique@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and for reference purposes, the EPA defines the following terms and acronyms here:

ADEQ—Arizona Department of Environmental Quality
APA—Administrative Procedures Act
CAA—Clean Air Act
CBI—confidential business information
CTG—Control Techniques Guidelines
EPA—U.S. Environmental Protection Agency
GDF—gasoline dispensing facility
MCAQD—Maricopa County Air Quality Department
NO_x—oxides of nitrogen
RACT—Reasonably Available Control Technology
SIP—State Implementation Plan
VOC—volatile organic compounds

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II. Background
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I. Executive Summary

A. What action is the EPA taking?

The EPA is making an interim final determination to defer the application of sanctions for the Phoenix-Mesa ozone nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS). This determination is based on a proposed rule published elsewhere in this issue of the **Federal Register**. On January 10, 2025, the EPA finalized a limited approval and limited disapproval of a SIP submittal from the ADEQ related to MCAQD rules that establish requirements to limit VOC emissions from gasoline loading operations.¹ These rules were submitted to satisfy the CAA section 182(b)(2) reasonably available control technology (RACT) requirement for these sources. The limited disapproval identified deficiencies in these rules that prevented a finding that the rules established RACT and required us to disapprove the RACT demonstration for these sources. As a result of this disapproval, the CAA requires offset sanctions under the CAA’s nonattainment New Source Review program to be triggered 18 months after the action’s effective date of February 10, 2025, and highway sanctions six

¹ 90 FR 1903, Jan. 10, 2025

months later, unless the State submits rule revisions that establish RACT for the applicable sources. Because we are proposing to find that the rule deficiencies have been corrected, and the RACT requirement has been met, we are deferring sanctions.

B. What is the legal authority and what are the requirements?

The basis for allowing such an interim final action is section 553(b)(B) of the Administrative Procedures Act (APA) which provides that the notice and opportunity for comment requirements do not apply when the Agency finds

that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Because the EPA has preliminarily determined that the deficiencies identified in the limited disapproval have been corrected under part D of title I of the CAA relief from sanctions should be provided as quickly as possible. The EPA believes it would be unfair to the State and its residents, and thus not in the public interest, for sanctions to remain in effect following the proposed approval, since the EPA has completed a thorough evaluation of the State’s SIP revision and publicly

stated its belief that the submittal is approvable. Therefore, the EPA is invoking the good cause exception under the APA in not providing an opportunity for comment before this action takes effect.²

II. Background

On January 10, 2025, the EPA issued a final rule promulgating a limited approval and limited disapproval for the MCAQD rules listed in Table 1 that were submitted by ADEQ to the EPA for inclusion into the Arizona SIP (“2025 final rule”).³

TABLE 1—DISTRICT RULES WITH PREVIOUS EPA ACTION

Rule No.	Rule title	Revised	Submitted	EPA action in 2025
352	Gasoline Cargo Tank Testing and Use.	11/18/2020	12/03/2020	Limited approval and limited disapproval.
353	Storage and Loading of Gasoline at a Gasoline Dispensing Facility (GDF).	11/18/2020	12/03/2020	Limited approval and limited disapproval.

Sections 182(b)(2) and 182(f) of the CAA require that SIPs for ozone nonattainment areas classified as “Moderate” or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOC or oxides of nitrogen. The MCAQD must implement RACT-level controls because part of the area regulated by MCAQD is included in the Phoenix-Mesa area designated as nonattainment for ozone and classified as Moderate for the 2008 8-hour ozone NAAQS.⁴

In our 2025 final rule, we determined that although the MCAQD rules strengthened the SIP and were largely consistent with the requirements of the CAA, the submitted rules contained deficiencies that precluded our full approval of the rules into the SIP. The 2025 final rule stated that MCAQD’s previously submitted Rule 352 had the following provisions that did not satisfy the requirements of section 110 and part D of title I of the Act and therefore prevented full approval of the SIP revision:

1. Rule 352 outlined leak detection tests to be performed beyond the annual certification test, but the rule did not require those tests to be conducted periodically, nor did it establish any requirements for maintaining records or reporting the results.⁵ The 2025 final

rule stated that this undermined the enforceability of the rule.

2. The rule allowed gasoline cargo tank owners and operators to be exempt from the annual testing if they demonstrated compliance through a test method “at least as stringent as” the tests specified in the rule. This language was not enforceable because it did not specify which alternative test methods are acceptable to qualify for the exemption or who would determine whether the alternative test methods met the required level of stringency. This ambiguity could allow changes to testing requirements without following the CAA’s required SIP revision process.

The 2025 final rule also found that the following provisions in Rule 353 did not satisfy the requirements of section 110 and part D of title I of the Act and prevented full approval of the SIP revision:

1. Rule 353 did not require all sources subject to the rule’s vapor tight standard to conduct periodic testing to demonstrate compliance. The rule included a weekly monitoring requirement, but that requirement did not ensure the use of a replicable test method for demonstrating vapor tightness. Rule 353 required a facility to first determine if there is a “potential vapor leak” prior to being required to determine the vapor tight status using

applicable test methods. The rule allows owners and operators to choose from a menu of monitoring options with one option being “sight, sound, or smell.”⁶ Although using sight, sound, or smell can play a role in identifying potential vapor leaks, allowing for that to potentially be the only method used could functionally allow for potential leak identification to be left solely to the operator’s discretion and sensory inputs. Therefore, without a provision to periodically utilize methods beyond sight, sound, or smell, the 2025 final rule found that this provision undermined the enforceability of the rule’s requirement for vapor tight compliance.

2. Rule 353 contained reporting requirements that applied to some but not all sources subject to Rule 353. While Rule 353 requires reporting of some compliance information for most sources, it did not include such a requirement for aviation gasoline.⁷ Given this framework, the EPA found that Rule 353 had a reporting gap, because there is no periodic compliance reporting required for loading of aviation gasoline at airports. As a result, the 2025 final rule found that this provision undermined the enforceability of the rule’s requirement for vapor tight compliance.

² 5 U.S.C. 553(b)(3).

³ 90 FR 1903 (Jan 10, 2025).

⁴ See, 40 CFR 81.303; 81 FR 26699, May 4, 2016.

⁵ See, Sections 502 and 503 of the November 18, 2020 version of Rule 352.

⁶ See, Section 501 of the November 18, 2020 version of Rule 353.

⁷ The reporting requirements in Rule 353 are incorporated by reference through 40 CFR part 63 subpart CCCCCC. See, Rule 353, Section 301. Aviation gasoline is subject to Rule 353 but is

exempt from 40 CFR part 63, subpart CCCCCC. As a result, aviation gasoline storage tanks were previously not subject to the same reporting requirements as all other sources subject to Rule 353.

Pursuant to section 179 of the CAA and our regulations at 40 CFR part 52, the limited disapproval action on Rule 352 and Rule 353 under title I, part D of the Act started a sanctions clock for imposition of offset sanctions under the

nonattainment new source review program 18 months after the action's effective date of February 10, 2025, and highway sanctions 6 months later than offset sanctions.

On October 1, 2025, the MCAQD revised Rule 352 and Rule 353, and on October 8, 2025, ADEQ submitted the rules to the EPA for approval into the Arizona SIP as shown in Table 2 below.

TABLE 2—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
MCAQD	352	Gasoline Cargo Tank Testing and Use	10/1/2025	10/8/2025
MCAQD	353	Storage and Loading of Gasoline at a Gasoline Dispensing Facility (GDF).	10/1/2025	10/8/2025

The revised MCAQD Rule 352 and Rule 353 in Table 2 are intended to address the deficiencies identified in our 2025 final rule. In the Proposed Rules section of this **Federal Register**, we have proposed approval of the revised MCAQD Rule 352 and conditional approval of the revised MCAQD Rule 353. Based on this proposed action, we believe that it is more likely than not that the State's submittal meets the applicable CAA requirements. Therefore, the EPA is making this interim final determination based on our concurrent proposal to approve the State's October 8, 2025 SIP submission to correct the deficiencies identified in the January 10, 2025, limited disapproval of Rule 352 and Rule 353. This interim final determination, effective on publication, defers the application of the offset and highway sanctions that were triggered by our January 10, 2025, final limited disapproval of Rule 352 and Rule 353 because we believe that the submittal corrects the deficiencies that triggered such sanctions.

While the EPA is not providing an opportunity for public comment before the deferral of CAA section 179 sanctions is effective, the EPA is providing the public with an opportunity to comment on this deferral of sanctions after the fact. In the event the EPA reverses its preliminary determination that the State has corrected the deficiencies (as explained in the proposed action), sanctions would become effective pursuant to 40 CFR 52.31(d)(2)(i). Additionally, the EPA is providing an opportunity to comment on the concurrent proposed action that is the basis for this interim final determination, so the public has an opportunity to comment on that action before any sanctions clock could be permanently stopped or any already-applied sanctions are permanently terminated. If the EPA finalizes the approval as proposed, then all sanctions and any sanction clocks triggered by our January 10, 2025, final limited approval

and limited disapproval would be permanently terminated on the effective date of our final approval of Rule 352 and final conditional approval of Rule 353.

III. The EPA's Evaluation and Action

We are making an interim final determination to stay and defer CAA section 179 sanctions associated with our limited disapproval action on January 10, 2025, of MCAQD Rule 352 and MCAQD Rule 353. This determination is based on our concurrent proposal to fully approve MCAQD Rule 352 and conditionally approve MCAQD Rule 353, which, if finalized, would resolve the deficiencies identified in our limited disapproval that triggered sanctions under section 179 of the CAA.

The basis for allowing such an interim final action stems from section 553(b)(B) of the Administrative Procedures Act (APA), which provides that the notice and opportunity for comment requirements do not apply when the Agency finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Because the EPA has preliminarily determined that MCAQD Rule 352 and Rule 353, revised on October 1, 2025, addresses the deficiencies identified in the limited disapproval under part D of title I of the CAA, and we are proposing to determine that the revised Rule 352 is now fully approvable and revised Rule 353 is conditionally approvable, relief from sanctions should be provided as quickly as possible. In the case of sanctions, the EPA believes it would be both impracticable and contrary to the public interest to have to propose and provide an opportunity to comment before any relief is provided from the effect of sanctions. The EPA believes it would be unfair to the State and its residents, and thus not in the public interest, for sanctions to remain in effect following the proposed approval, since the EPA has completed a thorough evaluation of the State's SIP revision

and publicly stated its belief that the submittal is approvable. Therefore, the EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect.⁸ However, the EPA is still providing the public with a chance to comment on the EPA's determination after the effective date, and the EPA will consider any comments received in determining whether to reverse such action.

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to, "give affected parties a reasonable time to adjust their behavior before the final rule takes effect."⁹ However, when the Agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. Because this rule relieves a restriction, the EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

This action defers sanctions and imposes no additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;

⁸ 5 U.S.C. 553(b)(3).

⁹ *Omnipoint Corp. v. Fed. Comm'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

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

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and comment rulemaking procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 808(2)). The EPA has made a good cause finding for this action as discussed in section II of this preamble, including the basis for that finding.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 2026. Filing a petition for reconsideration by the EPA

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

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

Dated: July 31, 2026.

Michael Martucci,

Acting Regional Administrator, Region IX.

[FR Doc. 2026–16334 Filed 8–10–26; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 260305–0066; RTID 0648–XF950]

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of the Aleut Corporation pollock directed fishing allowance (DFA) from the Aleutian Islands subarea (AI) to the Bering Sea subarea (BS). This action is necessary to provide the opportunity for the harvest of the 2026 total allowable catch (TAC) of pollock, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective 1200 hours, Alaska local time (A.l.t.), August 11, 2026, through 2400 hours, A.l.t., December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the BSAI Management Area (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.

In the AI, the portion of the 2026 pollock TAC allocated to the Aleut Corporation is 6,300 metric tons (mt) as established by the final 2026 and 2027 harvest specifications for groundfish in the BSAI (91 FR 11750, March 10, 2026) and reallocation (91 FR 16840, April 3, 2026).

As of July 29, 2026, the Regional Administrator, Alaska Region, NMFS (Regional Administrator) has determined that 6,300 mt of the Aleut Corporation's DFA in the AI will not be harvested and that there is harvesting capacity by sectors in the BS. The Regional Administrator made this determination based on harvest to date in the AI, the future harvest needs in the AI reported by the Aleut Corporation, and the current harvesting capacity of sectors in the BS. Therefore, in accordance with § 679.20(a)(5)(iii)(B)(4), NMFS reallocates 6,300 mt of the Aleut Corporation's DFA from the AI to the BS. The 6,300 mt of pollock reallocated from the Aleut Corporation's DFA is apportioned to the American Fisheries Act (AFA) inshore catcher vessel (CV) sector (50 percent), AFA catcher/processor (C/P) sector (40 percent), and the AFA mothership sector (10 percent). The 2026 BS pollock incidental catch allowance (ICA) remains at 46,000 mt. As a result, the 2026 harvest specifications for pollock are revised as follows: 0 mt to the Aleut Corporation's DFA, and the 2026 pollock allocations in table 4 of the final 2026 and 2027 harvest specifications for groundfish in the BSAI (91 FR 11750, March 10, 2026, and 91 FR 16840, April 3, 2026) are revised consistent with this reallocation. This reallocation results in an adjustment to the 2026 Aleutian Islands Aleut Corporation DFA and Bering Sea AFA sector allocations as established at § 679.20(a)(5).

TABLE 4—FINAL 2026 ALLOCATIONS OF POLLOCK TACs TO THE DIRECTED POLLOCK FISHERIES AND TO THE COMMUNITY DEVELOPMENT QUOTA (CDQ) DFA ¹

[Amounts are in metric tons]

Area and sector	2026 allocations	A season DFA	Sea lion conservation area (SCA) harvest limit ²	B season DFA
Bering Sea subarea TAC ¹	1,389,500	n/a	n/a	n/a
CDQ DFA	139,400	62,730	39,032	76,670
ICA ¹	46,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,204,100	541,845	337,148	662,255
AFA Inshore	602,050	270,923	168,574	331,128
AFA Catcher/Processors:	481,640	216,738	134,859	264,902
Catch by CPs	440,701	198,315	n/a	242,385
Catch by CVs ³	40,939	18,423	n/a	22,517
Unlisted CP Limit ⁴	2,408	1,084	n/a	1,325
AFA Motherships	120,410	54,185	33,715	66,226
Excessive Harvesting Limit ⁵	210,718	n/a	n/a	n/a
Excessive Processing Limit ⁶	361,230	n/a	n/a	n/a
Aleutian Islands subarea ABC	46,437	n/a	n/a	n/a
Aleutian Islands subarea TAC ¹	4,500	n/a	n/a	n/a
CDQ DFA			n/a	
ICA ¹	4,500	2,250	n/a	2,250
Aleut Corporation ⁷			n/a	
Area harvest limit ⁸ :	n/a	n/a	n/a	n/a
541	13,931	n/a	n/a	n/a
542	6,966	n/a	n/a	n/a
543	2,322	n/a	n/a	n/a
Bogoslof District ICA ⁹	250	n/a	n/a	n/a

Note: Seasonal or sector apportionments may not total precisely due to rounding. The 2026 harvest specifications for pollock are effective from 1200 hours, A.L.T., March 18, 2026, through 2400 hours, A.L.T., December 31, 2026.

¹ Pursuant to § 679.20(a)(5)(i)(A), the annual BS subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (46,000 mt), is allocated as a DFA as follows: inshore sector-50 percent, C/P sector-40 percent, and mothership sector-10 percent. In the BS subarea, 45 percent of the DFA and CDQ DFA are allocated to the A season (January 20–June 10) and 55 percent of the DFA and CDQ DFA are allocated to the B season (June 10–November 1). When the AI subarea pollock ABC equals or exceeds 19,000 mt, the annual TAC for the AI subarea is equal to 19,000 mt (§ 679.20(a)(5)(iii)(B)(1)). Pursuant to § 679.20(a)(5)(iii)(B)(2), the annual AI subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (4,500 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated up to 40 percent of the AI subarea pollock ABC.

² In the BS subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1. The SCA is defined at § 679.22(a)(7)(vii).

³ Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by eligible catcher vessels with a C/P endorsement delivering to listed C/Ps, unless there is a cooperative contract for the year.

⁴ Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted C/Ps are limited to harvesting not more than 0.5 percent of the C/P sector's allocation of pollock.

⁵ Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

⁶ Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30 percent of the sum of the non-CDQ pollock DFAs.

⁷ Pursuant to § 679.4(m), prior to harvesting or processing pollock in the AI directed pollock fishery, a participant must be selected by the Aleut Corporation and approved by the Regional Administrator. Annual allocation for vessels 60 feet (18.3 m) LOA or less participating in the AI directed pollock fishery is 50 percent of the AI directed pollock fishery allocation (§ 679.20(a)(5)(iii)(B)(5)).

⁸ Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the AI subarea pollock ABC.

⁹ Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are therefore for incidental catch only and are not apportioned by season or sector (§ 679.20(a)(5)(ii)).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is authorized 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 on pollock catch in a timely fashion, and would delay the reallocation of unharvested Aleutian Islands pollock to the Bering Sea, where sectors have the current capacity to harvest this reallocated pollock. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data on pollock catch only became available as of July 29, 2026.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in

the effective date of this action. 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: August 7, 2026.

Shannon Bettridge,

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

[FR Doc. 2026–16336 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 91, No. 153

Tuesday, August 11, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 7, and 10

[NRC–2025–1139]

RIN 3150–AL46

NRC Modernization: Rulemaking Procedure, Federal Advisory Committee Act Alignment, Access, and Security

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations by streamlining procedural provisions related to information withholding and post-promulgation comment periods; aligning the NRC's regulations with Committee Management Secretariat (CMS) Federal Advisory Committee Act (FACA) standards; and updating national security eligibility criteria. The goal is to modernize and clarify the NRC's regulatory framework to ensure consistency with government-wide standards and improve administrative efficiency. The scope includes updates to outdated provisions and revisions to ensure compliance with current federal policies. This action is being undertaken in response to Executive Order 14300, "Ordering the Reform of the Nuclear Regulatory Commission."

DATES: Comments must be submitted electronically using <https://www.regulations.gov> by 11:59 p.m. Eastern Time on September 10, 2026.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2025–1139, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that

you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

Follow the search instructions on <https://www.regulations.gov> to view public comments.

You can read a plain language description of this proposed rule at <https://www.regulations.gov/docket/NRC-2025-1139>. For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Denise Edwards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7204, email: denise.edwards@nrc.gov.

SUPPLEMENTARY INFORMATION:

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- III. Rulemaking Procedure
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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–1139 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC–2025–1139.

- **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, 301–415–4737, or by email to pdr.resource@nrc.gov. For the convenience of the

reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section of this document.

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

B. Submitting Comments

Comments must be submitted electronically using <https://www.regulations.gov> by 11:59 p.m. Eastern Time on September 10, 2026. Please include Docket ID NRC–2025–1139 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, "Ordering the Reform of the Nuclear Regulatory Commission." This rulemaking addresses Section 5, "Reforming and Modernizing the NRC's Regulations," which requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents, consistent with the policies set forth in section 2 of the E.O.

III. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on October 26, 2026. However, if the NRC receives significant adverse comments by September 10, 2026, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is one in which the commenter explains why the rule would be inappropriate, challenges the rule's underlying premise or approach, or argues that the rule would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

IV. Background

The U.S. Nuclear Regulatory Commission (NRC) is undertaking a series of regulatory updates to modernize its administrative framework, align with government-wide requirements, and ensure continued compliance with evolving federal standards related to transparency, advisory committee governance,

information management, and personnel security. These are consistent with the directive in E.O. 14300, "Ordering the Reform of the Nuclear Regulatory Commission," which requires the NRC to conduct a comprehensive review of its regulations.

First, the NRC is updating its information withholding provisions in 10 CFR 2.390 to clarify the Commission's procedures for evaluating requests for withholding proprietary and sensitive information from public disclosure. The revisions to 10 CFR 2.390 align with a recent modification made to that regulation to alleviate the need for licensees or applicants filing a withholding request to include information regarding competitive harm (90 FR 54225; November 26, 2025). The revisions in this rule maintain the NRC's longstanding policy balance between protecting sensitive commercial or financial information and ensuring transparency in agency decision making. The changes are administrative in nature and are intended to improve clarity and consistency in how information is reviewed and processed.

Second, the NRC is revising a provision in 10 CFR 2.804 that established procedural requirements related to post-promulgation comment periods. This provision is not statutorily required and thus imposes unnecessary administrative burdens. Revision of this provision provides additional flexibility to rulemaking processes.

Third, the NRC is revising 10 CFR part 7 to align its advisory committee regulations with the government-wide Federal Advisory Committee Act (FACA) requirements administered by the General Services Administration (GSA). On December 16, 2026, GSA issued a final rule (90 FR 58408) modernizing FACA regulations by updating definitions, improving reporting requirements, and incorporating contemporary practices for advisory committee operations and technology. To ensure consistency with these standards and continued compliance with FACA, the NRC is making conforming amendments throughout 10 CFR part 7. These revisions update terminology, clarify procedural expectations, and consolidate administrative requirements to reflect GSA's current regulatory framework. The amendments do not impose substantive requirements on NRC licensees or external stakeholders; instead, they improve the efficiency, transparency, and accountability of NRC advisory committee management.

Finally, the NRC is revising its personnel security regulations in 10

CFR part 10 to reflect Federal adjudicative standards established in the Office of the Director of National Intelligence's Security Executive Agent Directive 4 (SEAD 4). SEAD 4 sets forth uniform adjudicative guidelines for determining eligibility for access to classified information and sensitive national security positions across the executive branch. The NRC previously incorporated SEAD 4 into Management Directive 12.3, "Personnel Security," and is now codifying these requirements to ensure alignment between internal policy and regulatory text. This codification enhances transparency and promotes consistent expectations for individuals requiring an access authorization or employment clearance.

Collectively, the actions in this rulemaking modernize NRC regulations, improve alignment with federal policies, and enhance administrative efficiency while maintaining transparency, public participation, and national security protections consistent with the NRC's statutory responsibilities.

V. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on this proposed rule with respect to clarity and effectiveness of the language used.

VI. Paperwork Reduction Act

This proposed rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

VII. Executive Orders

The following are Executive orders that are related to this proposed rule:

A. Executive Order 12866: Regulatory Planning and Review (as Amended by Executive Order 14215, Ensuring Accountability for All Agencies)

The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is not a significant regulatory action.

B. Executive Order 14154: Unleashing American Energy

The NRC has examined this proposed rule and has determined that it is

consistent with the policies and directives outlined in E.O. 14154.

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is determined to be a deregulatory action as defined by E.O. 14192. Details on the estimated costs of this proposed rule can be found in Section VI, “Regulatory Analysis,” of the direct final rule document.

D. Executive Order 14270: Zero-Based Regulatory Budgeting To Unleash American Energy

E.O. 14270 requires the NRC to insert a conditional sunset date into all new or

amended NRC regulations provided the regulations are (1) promulgated under the Atomic Energy Act of 1954, as amended (AEA), the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPAA); (2) not statutorily required; and (3) not part of the NRC’s permitting regime. The NRC determined that the regulatory changes proposed in this rule are for processes that are required by statute and are part of the NRC’s regulatory permitting scheme authorized by the AEA, ERA, or NWPAA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert

conditional sunset dates for the regulatory changes in this proposed rule.

E. Executive Order 14300: Ordering the Reform of the Nuclear Regulatory Commission

The NRC has examined this direct final rule and has determined that it is consistent with the policies and directives outlined in E.O. 14300.

VIII. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document	ADAMS Accession No./Federal Register Citation
NRC Management Directive 12.3, “Personnel Security,” July 18, 2022	ML22136A179.
DNI Security Executive Agent Directive 4, “National Security Adjudicative Guidelines,” June 8, 2017.	https://www.dni.gov/files/NCSC/documents/Regulations/SEAD-4-Adjudicative-Guidelines-U.pdf .
GSA Final Rule, “Federal Management Regulation; Aligning the Federal Management Regulation (FMR) With the Administration’s Deregulatory Priorities,” December 16, 2025.	90 FR 58408.
NRC Final Rule, “Streamlining Select Rules of Practice and Procedure,” November 26, 2025.	90 FR 54225.
NRC Final Rule, “Exceptions to Notice and Comment Rulemaking Procedures,” April 2, 1985.	50 FR 13006.
Executive Order 12866, “Regulatory Planning and Review,” October 4, 1993.	58 FR 51735.
Executive Order 14154, “Unleashing American Energy,” January 29, 2025.	90 FR 8353.
Executive Order 14192, “Unleashing Prosperity Through Deregulation,” February 6, 2025.	90 FR 9065.
Executive Order 14215, “Ensuring Accountability for All Agencies,” February 24, 2025.	90 FR 10447.
Executive Order 14300, “Ordering the Reform of the Nuclear Regulatory Commission,” May 29, 2025.	90 FR 22587.
Presidential Memorandum, “Plain Language in Government Writing,” June 10, 1998.	63 FR 31885.

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at <https://www.regulations.gov> under Docket ID NRC–2025–1139.

Dated: August 7, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

[FR Doc. 2026–16373 Filed 8–10–26; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–9505; Airspace Docket No. 26–AGL–18]

RIN 2120–AA66

Establishment of Class E Airspace; Canton, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Graham Hospital Heliport, Canton, IL. The FAA is proposing this action to support new instrument procedures and instrument flight rule (IFR) operations.

DATES: Comments must be received on or before September 25, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–9505 and Airspace Docket No. 26–AGL–18 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulations.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulations.gov at any time. Follow the online instructions for

accessing the docket or go to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FAA Order JO 7400.11K, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Raul Garza, Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Graham Hospital Heliport, Canton, IL, to support IFR operations at this airport.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report

summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice (DOT/ALL–14FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operation). An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would establish Class E airspace extending upward from

700 feet above the surface within a 6.3-mile radius of Graham Hospital Heliport, Canton, IL.

This action is the result of instrument procedures being developed for this airport to support IFR operations.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Policies and Procedures for Rulemakings” (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these proposed amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, “FAA National Environmental Policy Act Implementing Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting Points, dated August 4, 2025, and

effective September 15, 2025, is amended as follows:

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

* * * * *

AGL IL E5 Canton, IL [Establish]

Graham Hospital Heliport, IL
(Lat. 40°33'11" N, long. 90°02'23" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Graham Hospital Heliport.

* * * * *

Issued in Fort Worth, Texas, on August 7, 2026.

Jerry J. Creecy,

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

[FR Doc. 2026–16350 Filed 8–10–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2026–8449; Airspace
Docket No. 26–ASO–15]

RIN 2120–AA66

Amendment of Class D Airspace and Class E Airspace Over Tri-Cities, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace over Tri-Cities, TN. This action would modify the dimensions of the Tri-Cities, TN Class D and Class E2 airspace to appropriately contain Instrument Flight Rules (IFR) operations at the Tri-Cities Airport. This action would also remove the Tri-Cities, TN Class E4 airspace, as it is no longer necessary. This action would also modify the Tri-Cities, TN Class E5 airspace to appropriately contain IFR operations at the airport. This action would also update verbiage in the Class D and Class E2 airspace legal descriptions to comply with current FAA guidance. This action would also update the airport name for Tri-Cities Airport in the Class D, Class E2, and Class E5 airspace legal descriptions.

DATES: Comments must be received on or before September 25, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–8449 and Airspace Docket No. 26–ASO–15 using any of the following methods:

* *Federal eRulemaking Portal:* Go to www.regulation.gov and follow the online instructions for sending your comments electronically.

* *Mail:* Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W58–213, West Building, 5th Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at www.regulation.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W58–213 of the West Building, 5th Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11K Airspace Designations and Reporting Points and subsequent amendments can be viewed online at www.faa.gov/air_traffic/publications/. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20597; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Marc Ellerbee, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–5589.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edits, including any personal information the commenter provides, to www.regulation.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at www.dot.gov/privacy.

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at www.regulations.gov. Recently published rulemaking documents can also be accessed through the FAA's web page at www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

Incorporation by Reference

Class D and Class E airspace designations are published in paragraphs 5000, 6002, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11K, dated August 4, 2025, and effective September 15, 2025. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11K, which lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points, is publicly available as listed in the ADDRESSES section of this document.

The Proposal

This action proposes to amend 14 CFR part 71 by modifying Class D and Class E airspace over Tri-Cities, TN. A review of the Tri-Cities, TN Class D and Class E airspace revealed a need for an increase to the lateral dimensions of the Class D, Class E2, and Class E5 airspace due to current IFR operations not being sufficiently contained, specifically for departures and the following instrument approach procedures (IAP): ILS/LOC RWY 5, RNAV (GPS) RWY 5, and RNAV (GPS) RWY 9. This action would increase the lateral dimensions of both the Tri-Cities, TN Class D and Class E2 airspace to within a 4.7-mile radius of Tri-Cities Airport, and within 1 mile each side of the 042° bearing from the airport, extending from the 4.7-mile radius to 5.3 miles northeast of the airport.

This action would also remove the Tri-Cities, TN Class E4 airspace, as it will no longer be necessary to contain IFR operations after the modification to the Class D airspace. This action would also increase the lateral dimensions of the Tri-Cities, TN Class E5 airspace to within a 9.3-mile radius of Tri-Cities Airport and within 4 miles west and 8 miles east of the 223° bearing from the airport extending from the 9.3-mile radius to 23 miles southwest of the airport, and within 2.1 miles each side of the 270° bearing from the airport extending from the 9.3-mile radius to 11 miles west of the airport, and within 2 miles either side of the 043° bearing from the airport extending from the 9.3-mile radius to 14.5 miles northeast of the airport.

This action would also update the superseded term “Airport/Facility Directory” to “Chart Supplement” in the associated airspace legal descriptions. This action would also change the verbiage in the Class D and

Class E2 airspace legal descriptions from effective day(s) and time(s) to effective date(s) and time(s) to comply with current FAA guidance. This action would also update the reference to the Tri-Cities Airport in the associated airspace legal descriptions from “Tri-Cities Regional Airport, TN/VA” to “Tri-Cities Airport, TN.”

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Order 2100.6B, “Rulemaking and Guidance Procedure” (March 10, 2025); and (3) is expected to result in, at most, de minimis costs from compliance with applicable operating requirements or minor flight rerouting for operators choosing to navigate around the controlled airspace. Since these proposed amendments are routine and the expected impact to operators is de minimis, the FAA certifies that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1G, “FAA National Environmental Policy Act Implementing Procedures” prior to any FAA final regulatory action.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11K, Airspace Designations and Reporting

Points, dated August 4, 2025, and effective September 15, 2025, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO TN D Tri-Cities, TN [Amended]

Tri-Cities Airport, TN
(Lat. 36°28′31″ N long. 82°24′27″ W)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 4.7-mile radius of Tri-Cities Airport, and within 1 mile each side of the 042° bearing from the airport, extending from the 4.7-mile radius to 5.3 miles northeast of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ASO TN E2 Tri-Cities, TN [Amended]

Tri-Cities Airport, TN
(Lat. 36°28′31″ N, long. 82°24′27″ W)

That airspace extending upward from the surface within a 4.7-mile radius of Tri-Cities Airport, and within 1 mile each side of the 042° bearing from the airport, extending from the 4.7-mile radius to 5.3 miles northeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASO TN E4 Tri-Cities, TN [Remove]

* * * * *

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

* * * * *

ASO TN E5 Tri-Cities, TN [Amended]

Tri-Cities Airport, TN
(Lat. 36°28′31″ N, long. 82°24′27″ W)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Tri-Cities Airport and within 4 miles west and 8 miles east of the 223° bearing from the airport extending from the 9.3-mile radius to 23 miles southwest of the airport, and within 2.1 miles each side of the 270° bearing from the airport extending from the 9.3-mile radius to 11 miles west of the airport, and within 2 miles each side of the 043° bearing from the airport extending from the 9.3-mile radius to 14.5 miles northeast of the airport.

* * * * *

Issued in College Park, Georgia, on August 7, 2026.

Kristen Leake,

Acting Manager, Airspace and Procedures South Team, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2026–16333 Filed 8–10–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1645]

Schedules of Controlled Substances: Rescheduling of Suvorexant, Lemborexant, and Daridorexant From Schedule IV Into Schedule V

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Drug Enforcement Administration proposes to transfer suvorexant ([[(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl]-[5-methyl-2-(triazol-2-yl)phenyl]methanone), lemborexant ((1R,2S)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)-N-(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide), and daridorexant ([[(2S)-2-(5-chloro-4-methyl-1H-benzimidazol-2-yl)-2-methylpyrrolidin-1-yl]-[5-methoxy-2-(triazol-2-yl)phenyl]methanone) from schedule IV to schedule V of the Controlled Substances Act. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule V controlled substances on persons who handle (manufacture, distribute, reverse distribute, import, export, engage in research, conduct instructional activities or chemical analysis with, or possess) or propose to handle suvorexant, lemborexant, and daridorexant.

DATES: Comments must be submitted electronically or postmarked on or before September 10, 2026. The electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons may file a request for a hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.47 and/or 1316.49, as applicable. Requests for a hearing and waivers of an opportunity for a hearing or to participate in a hearing, together with a written

statement of position on the matters of fact and law asserted in the hearing, must be received or postmarked on or before September 10, 2026.

ADDRESSES: Interested persons may file written comments on this proposal in accordance with 21 CFR 1308.43(g). To ensure proper handling of comments, please reference “Docket No. DEA–1645” on all electronic and written correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration (DEA) encourages commenters to submit comments electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to / www.regulations.gov and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number. Submitted comments are not instantaneously available for public view on www.regulations.gov. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

- *Paper comments:* Paper comments that duplicate the electronic submissions are not necessary and are discouraged. Should you wish to mail a paper comment in lieu of an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

- *Hearing requests:* All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law asserted in the hearing, must be filed with the DEA Administrator, who will make the determination of whether a hearing will be needed to address such matters of fact and law in the rulemaking. Such requests must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152. For informational purposes, a courtesy copy of requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and

(2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Dr. Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: (571) 362–3249.

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.

SUPPLEMENTARY INFORMATION: The Drug Enforcement Administration (DEA) proposes to transfer suvorexant ([[(7R)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl]-[5-methyl-2-(triazol-2-yl)phenyl]methanone), lemborexant ((1R,2S)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)-N-(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide), and daridorexant ([[(2S)-2-(5-chloro-4-methyl-1H-benzimidazol-2-yl)-2-methylpyrrolidin-1-yl]-[5-methoxy-2-(triazol-2-yl)phenyl]methanone) from schedule IV to schedule V of the Controlled Substances Act (CSA).

Posting of Public Comments

All comments received in response to this docket are considered part of the public record. DEA will make comments available for public inspection online at <https://www.regulations.gov>, unless reasonable cause is given. Such information includes personal or business identifying information (such as name, address, State or Federal identifiers, etc.) voluntarily submitted by the commenter.

Commenters submitting comments which include personal identifying information (PII), confidential, or proprietary business information that the commenter does not want made publicly available should submit two copies of the comment. One copy must be marked “CONTAINS CONFIDENTIAL INFORMATION” and should clearly identify all PII or business information the commenter does not want to be made publicly available, including any supplemental materials. DEA will review this copy, including the claimed PII and confidential business information, in its consideration of comments. The second copy should be marked “TO BE PUBLICLY POSTED” and must have all claimed confidential or proprietary business information redacted. DEA will post only the redacted comment on <https://www.regulations.gov> for public inspection. DEA generally will not redact additional information contained

in the comment marked “TO BE PUBLICLY POSTED.” The Freedom of Information Act applies to all comments received.

For easy reference, an electronic copy of this document and supplemental information to this proposed rule are available at <https://www.regulations.gov> for easy reference.

Request for Hearing or Appearance; Waiver

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking “on the record after opportunity for a hearing.” Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA).¹ Interested persons, as defined in 21 CFR 1300.01(b), may file requests for a hearing in conformity with the requirements of 21 CFR 1308.44(a) and 1316.47(a), and such requests must:

- (1) state with particularity the interest of the person in the proceeding;
- (2) state with particularity the objections or issues concerning which the person desires to be heard; and
- (3) state briefly the position of the person regarding the objections or issues.

Any interested person may file a waiver of an opportunity for a hearing or to participate in a hearing in conformity with the requirements of 21 CFR 1308.44(c), together with a written statement of position on the matters of fact and law involved in any hearing.²

All requests for a hearing and waivers of participation, together with a written statement of position on the matters of fact and law involved in such hearing, must be sent to DEA using the address information provided above. The decision whether a hearing will be needed to address such matters of fact and law in the rulemaking will be made by the Administrator. If a hearing is needed, DEA will publish a notice of hearing on the proposed rulemaking in the **Federal Register**.³ Further, once the Administrator determines a hearing is needed to address such matters of fact and law in rulemaking, he will then designate an Administrative Law Judge (ALJ) to preside over the hearing. The ALJ’s functions shall commence upon designation, as provided in 21 CFR 1316.52.

In accordance with 21 U.S.C. 811 and 812, the purpose of a hearing would be to determine whether suvorexant, lemborexant, and daridorexant meet the statutory criteria in 21 U.S.C. 812(b)(5)

to transfer these substances from schedule IV to schedule V, as proposed in this rule.

Legal Authority

The CSA provides that proceedings for the issuance, amendment, or repeal of the scheduling of any drug or other substance may be initiated by the Attorney General (delegated to the Administrator of DEA pursuant to 28 CFR 0.100) on his own motion, at the request of the Secretary of the Department of Health and Human Services (HHS), or on the petition of an interested party.⁴ This proposed action was initiated by DEA,⁵ and it is supported by, *inter alia*, a recommendation from the Assistant Secretary for Health (Assistant Secretary) of HHS and an evaluation of all relevant data by DEA. If finalized, this action would impose the regulatory controls and administrative, civil, and criminal sanctions applicable to schedule V controlled substances on any person who handles or proposes to handle suvorexant, lemborexant, or daridorexant.

Pursuant to 21 U.S.C. 811(a)(1) and (2), the Attorney General (as delegated to the Administrator of DEA) may, by rule, and upon the recommendation of the Secretary, add to such a schedule or transfer between such schedules any drug or other substance, if he finds that such drug or other substance has a potential for abuse, and makes with respect to such drug or other substance the findings prescribed by 21 U.S.C. 812(b) for the schedule in which such drug or other substance is to be placed.

Background

Suvorexant, lemborexant, and daridorexant are active ingredients in drug products approved by the U.S. Food and Drug Administration (FDA) for the treatment of insomnia (Belsomra, Dayvigo, and Quviviq, respectively). Suvorexant, lemborexant, and daridorexant are orally active and belong to the dual orexin receptor antagonists (DORA) class of substances. All three substances inhibit orexin 1 (OX1) and orexin 2 (OX2) receptors. DEA placed these substances in schedule IV of the CSA based on HHS’ evaluation and recommendations and concurrence by the National Institute of

Drug Abuse (NIDA) asserting that the abuse liability studies in humans showed the DORAs produce reinforcing effects and have a potential for abuse that is similar to that of schedule IV substances, such as zolpidem.⁶

Proposed Determination To Transfer Suvorexant, Lemborexant, and Daridorexant From Schedule IV to Schedule V

In accordance with 21 U.S.C. 811(b), DEA gathered the necessary data and, on February 14, 2024, submitted it to the then-Assistant Secretary for Health of HHS with a request for scientific and medical evaluation and scheduling determination for the three DORAs.

On December 31, 2025, HHS provided DEA a scientific and medical evaluation entitled, “Basis for the recommendation that suvorexant, lemborexant, and daridorexant be controlled in schedule V under the Controlled Substances Act,” and a scheduling recommendation. Following consideration of the eight factors and findings related to the substances’ abuse potential, legitimate medical use, and dependence liability, HHS recommended that suvorexant, lemborexant, and daridorexant be transferred from schedule IV to schedule V of the CSA under 21 U.S.C. 812(b).

In response, DEA reviewed the scientific and medical evaluation and scheduling recommendation provided by HHS, and all other relevant data, and completed its own eight-factor review document on suvorexant, lemborexant, and daridorexant pursuant to 21 U.S.C. 811(c). Included below is a brief summary of each factor as analyzed by HHS and DEA, and as considered by DEA in this proposal to transfer suvorexant, lemborexant, and daridorexant from schedule IV to schedule V of the CSA. Both DEA and HHS analyses are available in their entirety under “Supporting and Related Material” of the public docket for this rule at <https://www.regulations.gov> under docket number DEA–1645.

1. Its Actual or Relative Potential for Abuse

In addition to considering the information HHS provided in its scientific and medical evaluation document for suvorexant, lemborexant, and daridorexant, DEA also considered

⁴ 21 U.S.C. 811(a).

⁵ On April 3, 2023, Idorsia Pharmaceutical Limited submitted a petition requesting DEA to amend 21 CFR 1308.14(c)(16), (31), and (53) to remove suvorexant, lemborexant, and daridorexant from control under the CSA. DEA received a letter of intent dated May 19, 2023, from Eisai Inc., the manufacturer of lemborexant, in favor of the petition. DEA denied the petition in a letter dated [DATE TO BE ADDED].

¹ 5 U.S.C. 551–559; 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D.

² 21 CFR 1316.49.

³ 21 CFR 1308.44(b), 1316.53.

⁶ *Schedules of Controlled Substances; Placement of Daridorexant into Schedule IV*, 87 FR 59296 (Sept. 30, 2022); *Schedules of Controlled Substances; Placement of Lemborexant into Schedule IV*, 86 FR 12257 (Mar. 3, 2021); *Schedules of Controlled Substances; Placement of Suvorexant into Schedule IV*, 79 FR 51243 (Aug. 28, 2014).

all other relevant data regarding actual or relative potential for abuse of suvorexant, lemborexant, and daridorexant. The term “abuse” is not defined in the CSA; however, the legislative history of the CSA suggests the following four prongs in determining whether a particular drug or substances has a potential for abuse:⁷

- a. *There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or*
- b. *There is a significant diversion of the drug or substance from legitimate drug channels; or*
- c. *Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or*
- d. *The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community.*

As HHS noted in their scientific and medical evaluation, there have been reports of adverse effects associated with the use of suvorexant, lemborexant, and daridorexant since their respective approvals in various databases, such as America’s Poison Centers National Poison Data System (NPDS), the FDA Adverse Event Reporting System (FAERS), and National Electronic Injury Surveillance System—Cooperative Adverse Drug Event Surveillance. Based on the available data, suvorexant had the most cases reported into NPDS and FAERS, 674 and 154, respectively. There were 217 cases that included lemborexant in NPDS and 15 in FAERS. As for daridorexant, the DORA with the least amount of marketed time, there have been 66 reports in NPDS and 35 in FAERS. Further, HHS identified 17 emergency department visits involving either suvorexant, lemborexant, or daridorexant.

FDA is not aware of any significant diversion from legitimate drug channels, including research activities or manufacturing facilities, for suvorexant, lemborexant, and daridorexant.

National Forensic Laboratory Information System (NFLIS-Drug) data reflects that suvorexant, lemborexant, and daridorexant are present on the United States drug market. From 2015 to December 2025, NFLIS-Drug registered 53, 1, and 1 report from 22 states pertaining to the trafficking, distribution, and potential abuse of suvorexant, lemborexant, and daridorexant, respectively.⁸ These encounters of suvorexant, lemborexant, and daridorexant by law enforcement indicate that these substances are being trafficked and distributed in the United States. HHS also noted instances of individuals using their prescribed drug in ways not prescribed by their healthcare provider or using diverted prescription drugs on their own initiative.

As noted in the respective Final Rules for suvorexant, lemborexant, and daridorexant,⁹ these substances are selective DORAs that are currently controlled in schedule IV of the CSA and are the only three substances with this exact mechanism of action. However, they do share characteristics with other controlled substances, such as zolpidem (schedule IV), a sedative-hypnotic drug. HHS noted that the traditional non-clinical abuse potential assessments showed limited or no signs of abuse potential of the DORAs as discussed further in Factors 2 and 7. However, data from human abuse potential (HAP) studies indicated similar subjective effects (e.g., “Overall Drug Liking,” “Take Drug Again,” and “in the moment” ratings of “High and Good” and “Drug Liking”) to substances currently in schedule IV of the CSA, such as zolpidem, and other positive controls in clinical trials.

In HHS’s scientific and medical evaluation, it was noted that the DORAs have low market penetration for medical use. This makes the available evidence on scope, duration, and abuse limited, and limits the availability for diversion, abuse, or misuse by prescribed patients. As such, HHS also compared the abuse potential of the DORAs to triazolam (schedule IV), a substance that is used

to treat insomnia and has similar medical utilization. Triazolam had similar abuse and misuse cases compared to the DORAs.

Overall, these data demonstrate there are instances of abuse, misuse, overdose, and potential diversion of suvorexant, lemborexant, and daridorexant that is contrary to medical advice. These substances are capable of creating hazards to the health of the user or to the safety of the community (see Factors 5 and 6). Taken together these factors suggest that abuse potential for the DORAs is more similar to other substances in schedule V.

2. Scientific Evidence of Its Pharmacological Effect, if Known

The Notice of Proposed Rulemaking (NPRM) for suvorexant noted that the orexin signaling pathway was discovered in 1998 and has been associated with sleep and wakefulness, appetite, metabolism, stress response, reward/addiction, and analgesia.¹⁰ Data regarding the pharmacological effects of the DORAs can be found in further detail in the NPRM or Interim Final Rule (IFR) for each of these substances and the scientific and medical evaluation conducted by HHS.¹¹ In brief, the drug sponsors submitted *in vitro* binding study reports for suvorexant and lemborexant and functional study reports for all three substances for review as part of the New Drug Application (NDA) process. All three substances bind to and are antagonists at the OX1 and OX2 receptors, as previously reported. Non-clinical *in vivo* studies of suvorexant, lemborexant, and daridorexant showed limited indication of abuse potential. However, in HAP studies conducted by the respective sponsors during drug development, suvorexant, lemborexant, and daridorexant produced positive subjective effects that are indicative of abuse potential and similar to schedule IV substances, such as zolpidem. As for adverse events (AEs), somnolence was the most frequent AE, which is consistent with their mechanism for treating insomnia. During the drug development clinical trials, abuse-related AEs were infrequent for these substances at therapeutic levels.

¹⁰ *Schedules of Controlled Substances: Placement of Suvorexant into Schedule IV*, 79 FR 8639 (Feb. 13, 2014).

¹¹ See *id.*; *Schedules of Controlled Substances: Placement of Lemborexant in Schedule IV*, 85 FR 19387 (Apr. 7, 2020); *Schedules of Controlled Substances: Placement of Daridorexant in Schedule IV*, 87 FR 20313 (Apr. 7, 2022).

⁷ Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. Rep. No. 91-1444, 91st Cong., Sess. 1 (1970); reprinted in 1970 U.S.C.A.N. 4566, 4603.

⁸ NFLIS-Drug represents an important resource in monitoring illicit drug trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS-Drug is a national forensic laboratory reporting system that systematically collects results from drug chemistry analyses conducted by Federal, state and local forensic laboratories in the United States. While NFLIS-Drug data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. See *Schedules of Controlled Substances: Placement of Carisoprodol Into Schedule IV*, 76 FR 77330, 77332 (Dec. 12, 2011). NFLIS-Drug data was queried on January 5, 2026; 2025 data is still reporting.

⁹ See *supra* note 6.

3. *The State of Current Scientific Knowledge Regarding the Drug or Other Substance*

As previously described in the previously published NPRM and IFRs, suvorexant, lemborexant, and daridorexant are primarily metabolized by the cytochrome P450 enzyme, CYP3A4. Suvorexant is metabolized into numerous metabolites, with one identified as the major circulating metabolite. Lemborexant and daridorexant are metabolized into three major metabolites. Forensic testing for the DORAs may be limited. Methods to detect and validate suvorexant using whole blood liquid chromatography-tandem mass spectrometry were published in April 2025. Method development and validation have not been published for lemborexant and daridorexant.

Suvorexant, lemborexant, and daridorexant have currently accepted medical use in treatment in the United States because they are FDA-approved for the treatment of insomnia. No additional assessments for determining whether a drug has a currently accepted medical use in treatment in the United States were conducted.

4. *Its History and Current Pattern of Abuse*

The DORAs, as a class, have low market penetration for medical use as prescription drugs. This limits the availability of drug supply that could lead to diversion for abuse purposes or abuse and misuse by patients prescribed these drug products. However, HHS provided new analyses of epidemiology data that are useful in assessing the historical and current patterns of abuse for suvorexant, lemborexant, and daridorexant compared to schedule IV drug comparators, such as temazepam, triazolam, and zolpidem. Temazepam, triazolam, and zolpidem are all approved by FDA for the treatment of insomnia and have depressive effects on the central nervous system (CNS), but through a different mechanism of action. According to HHS, the total number of prescriptions for the DORAs, as a class, increased 75 percent from 559,000 to 977,000, with fluctuation of each substance year over year. DORAs were utilized at a lower estimated rate at of the total prescriptions, relative to schedule IV substances that have FDA-approval for the treatment of insomnia, including zolpidem and temazepam, but comparatively to triazolam.

NFLIS-Drug was queried on January 5, 2026, for the DORAs. From 2015 to 2025, the DORAs were encountered 55 times, with 53 reports including

suvorexant, and 1 report of both lemborexant and daridorexant. Encounters of the DORAs were generally encountered alone and not in conjunction with other controlled substances. The DORAs have been encountered in 22 states. DEA notes that the encounter data of the DORAs may be underreported, due to limited availability of reference material and recency of detection methods.

5. *The Scope, Duration and Significance of Abuse*

As noted in Factor 4, the DORAs have low market penetration for medical use as prescription products, which limits both the data available to assess the full scope, duration, and significance of abuse as well as to the overall amount of substance that can be diverted. Additionally, as DEA noted in Factor 3, the validated detection method for suvorexant is a more recent development and likely contributes to underreporting data related to abuse.

Compared to zolpidem (schedule IV) and temazepam (schedule IV), the DORAs were associated with fewer numbers of abuse or misuse cases, but the number of cases was comparable as a class to those of triazolam (schedule IV). HHS stated the lower number of abuse or misuse cases relative to zolpidem and temazepam may be attributable, at least in part, to the lower medical utilization of these DORAs.

6. *What, if Any, Risk There is to the Public Health*

Across multiple data sources, single-substances cases suggest suvorexant, lemborexant, and daridorexant were primarily misused to achieve a therapeutic hypnotic effect, with mostly minor adverse effects. Of note, the number of abuse or misuse cases captured in these surveillance databases involving the DORAs is low; lower than those of zolpidem (schedule IV) and temazepam (schedule IV), but similar to triazolam (schedule IV). This may be due to the overall lower utilization of any of the DORAs relative to zolpidem and temazepam. The risks associated with abuse and misuse to the individual or others are likely underreported, including those relating to driving impairment, due to the recency of the publication of validated testing methods.

7. *Its Psychic or Physiological Dependence Liability*

HHS reviewed available physical and psychic dependence liability data in rodents and humans for suvorexant, lemborexant, and daridorexant from the respective study drug NDAs. The

currently available nonclinical and clinical data suggest suvorexant, lemborexant, and daridorexant do not produce physical or psychological dependence. FDA noted this is in contrast with many drugs currently in schedule IV and V of the CSA.

8. *Whether the Substance Is An Immediate Precursor of a Substance Already Controlled Under the CSA*

Suvorexant, lemborexant, and daridorexant are not known to be immediate precursors to any controlled substance of the CSA as defined by 21 U.S.C. 802(23).

Conclusion

After considering the scientific and medical evaluation conducted by HHS, HHS's accompanying scheduling recommendation, and DEA's own eight-factor analysis, DEA finds that the facts and all relevant data constitute substantial evidence that the potential for abuse of suvorexant, lemborexant, and daridorexant is similar to that of schedule IV substances; however, they do not produce physical or psychological dependence. As such, DEA hereby proposes to transfer these three substances from schedule IV to schedule V of the CSA.

Proposed Determination of Appropriate Schedule

The CSA establishes five schedules of controlled substances known as schedules I, II, III, IV, and V. The CSA also outlines the findings required to place a drug or other substance in any particular schedule.¹² After consideration of the analysis and recommendation of the Assistant Secretary for Health of HHS and review of all other available data, the Administrator of DEA, pursuant to 21 U.S.C. 811(a) and 812(b)(1), finds that:

1. *Suvorexant, Lemborexant, and Daridorexant Have a Low Potential for Abuse Relative to the Drugs or Other Substances in Schedule IV*

The dual orexin antagonists suvorexant, lemborexant, and daridorexant have prior FDA approval for treatment of insomnia and were placed in schedule IV. The preclinical abuse potential studies on these substances did not demonstrate a signal of abuse potential. However, data from HAP studies indicated similar subjective effects to substances currently in schedule IV of the CSA, such as zolpidem. Abuse cases involving suvorexant, lemborexant, and daridorexant were assessed based on the

¹² 21 U.S.C. 812(b).

limited available epidemiological data compared to substances in schedule IV. The number of abuse cases are low, lower than those of zolpidem and temazepam (which have higher rates of prescriptions), yet relatively similar to abuse of triazolam.

2. Suvorexant, Lemborexant, and Daridorexant Have Currently Accepted Medical Use in Treatment in the United States

Suvorexant, lemborexant, and daridorexant are legally marketed in the United States as active ingredients of Belsomra, Dayvigo, and Quviviq, respectively for the treatment of insomnia. Thus, suvorexant, lemborexant, and daridorexant have a currently accepted medical use in treatment in the United States.

3. Abuse of Suvorexant, Lemborexant, and Daridorexant May Lead to Limited Physical Dependence or Psychological Dependence Relative to the Drugs or Other Substances in Schedule IV

The currently available nonclinical and clinical data suggest suvorexant, lemborexant, and daridorexant do not produce physical or psychological dependence. FDA noted this is in contrast with many drugs currently in schedule IV and V of the CSA.

Requirements for Handling Suvorexant, Lemborexant, and Daridorexant

Under the CSA, schedule IV and V controlled substances are subject to identical regulatory controls and administrative sanctions. If this rule is finalized as proposed, suvorexant, lemborexant, and daridorexant would be subject to the CSA's schedule V regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importation, exportation, engagement in research, and conduct of instructional activities or chemical analysis with, and possession of schedule V controlled substances. Because suvorexant, lemborexant, and daridorexant, are currently schedule IV substances, transferring these substances from schedule IV to schedule V would impose the same controls and sanctions as those that currently exist, including the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) suvorexant, lemborexant, and daridorexant, or who desires to handle suvorexant, lemborexant, and

daridorexant, would need to be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (ultimate users) who possess suvorexant, lemborexant, and daridorexant, pursuant to a lawful prescription.

2. *Disposal of stocks.* Any person unwilling or unable to maintain a DEA registration as of the effective date of a final scheduling action for suvorexant, lemborexant, and daridorexant would be required to be disposed of in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Suvorexant, lemborexant, and daridorexant would be subject to schedule V security requirements for DEA registrants and would need to be handled and stored pursuant to 21 U.S.C. 821, 823, and 871(b), and in accordance with 21 CFR 1301.71–1301.76. Non-practitioners handling suvorexant, lemborexant, and daridorexant would also need to comply with the employee screening requirements of 21 CFR 1301.90–1301.93. These requirements, however, are not applicable to patients (ultimate users) who possess suvorexant, lemborexant, and daridorexant, pursuant to a lawful prescription.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of suvorexant, lemborexant, and daridorexant would need to comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Every DEA registrant who possesses any quantity of suvorexant, lemborexant, and daridorexant on the effective date of a final scheduling action must still need to take inventories of suvorexant, lemborexant, and daridorexant pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11. These requirements, however, are not applicable to patients (ultimate users) who possess suvorexant, lemborexant, and daridorexant, pursuant to a lawful prescription.

6. *Records and Reports.* Every DEA registrant would need to maintain records and submit reports with respect to suvorexant, lemborexant, and daridorexant pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1307, and 1312.

7. *Prescriptions.* All prescriptions for suvorexant, lemborexant, and daridorexant, or products containing suvorexant, lemborexant, and daridorexant, must comply with 21

U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule V controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of suvorexant, lemborexant, and daridorexant may only be for the legitimate purposes authorized by the Federal Food, Drug, and Cosmetic Act, as applicable, and the CSA.

9. *Importation and Exportation.* All importation and exportation of suvorexant, lemborexant, and daridorexant would need to comply with 21 U.S.C. 952, 953, 957, and 958, and be in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving suvorexant, lemborexant, and daridorexant not authorized by, or in violation of, the CSA or its implementing regulations, would be unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Executive Orders 12866, 13563, 14192, and 14294

In accordance with 21 U.S.C. 811(a), this proposed scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563. DEA scheduling actions are not subject to either E.O. 14192, Unleashing Prosperity Through Deregulation, or E.O. 14294, Fighting Overcriminalization in Federal Regulations.

Executive Order 12988, Civil Justice Reform

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This proposed rulemaking does not have federalism implications warranting the application of E.O. 13132. The proposed rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Administrator, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, has reviewed this proposed rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. As stated above, rescheduling these substances from schedule IV to schedule V will not change regulatory controls and administrative, civil, and criminal sanctions applicable to controlled

substances for handlers and proposed handlers of suvorexant, lemborexant, and daridorexant because the controls and sanctions are the same under both schedules. Accordingly, there would be no economic impact on any entity that handles these substances, including small entities. Because there is no economic impact, DEA projects that this rule will not result in a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined and certifies that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This proposed rule would not impose a new collection of information under the Paperwork Reduction Act of 1995.¹³ Also, this proposed rule would not impose new or modify existing recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. However, this proposed

rule would require compliance with the following existing OMB collections: 1117–0003, 1117–0004, 1117–0006, 1117–0008, 1117–0009, 1117–0010, 1117–0012, 1117–0014, 1117–0021, and 1117–0056. 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.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, DEA proposes to amend 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), 956(b), unless otherwise noted.

■ 2. In § 1308.14:

■ a. Remove and reserve paragraphs (c)(16), (c)(31), and (c)(53).

■ 3. In § 1308.15:

■ a. Add new paragraphs (e)(8–10); The additions to read as follows:

§ 1308.15 Schedule V.

* * * * *
(e) * * *

	*	*	*	*	*	*	*
(8) Daridorexant ((2 <i>S</i>)-2-(5-chloro-4-methyl-1 <i>H</i> -benzimidazol-2-yl)-2-methylpyrrolidin-1-yl)-[5-methoxy-2-(triazol-2-yl)phenyl]methanone)							2410
(9) Lemborexant ((1 <i>R</i> ,2 <i>S</i>)-2-[(2,4-dimethylpyrimidin-5-yl)oxymethyl]-2-(3-fluorophenyl)- <i>N</i> -(5-fluoropyridin-2-yl)cyclopropane-1-carboxamide)							2245
(10) Suvorexant (((7 <i>R</i>)-4-(5-chloro-1,3-benzoxazol-2-yl)-7-methyl-1,4-diazepan-1-yl)-[5-methyl-2-(triazol-2-yl)phenyl]methanone)							2223
	*	*	*	*	*	*	*

Signing Authority

This document of the Drug Enforcement Administration was signed on August 6, 2026, by DEA Administrator Terrance C. Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an

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

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2026–16375 Filed 8–10–26; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 1**

[REG–101355–26]

RIN 1545–BS19

Employer Contributions to Trump Accounts and Nondiscrimination Rules for Dependent Care Assistance Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

¹³ 44 U.S.C. 3501–3521.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance with respect to employer contributions to Trump accounts, including applicable nondiscrimination rules, and the nondiscrimination rules for dependent care assistance programs. This document also provides a notice of a public hearing on the proposed regulations. The proposed regulations would affect employers maintaining a Trump account contribution program or a dependent care assistance program and employees participating in those programs.

DATES: Comments: Electronic or written comments must be received by September 25, 2026 Public Hearing: The public hearing is scheduled to be held on October 15, 2026 at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 25, 2026. If no requests to speak or outlines are received by September 25, 2026, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on October 13, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-101355-26) by following the online instructions for submitting comments. Requests for the public hearing must be submitted as prescribed in Comments and Public Hearing in Part V of this preamble. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-101355-26), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Jennifer Friedman at (202) 317-5500; concerning submissions of comments and the public hearing, the Publications and Regulations Section at (202) 317-6901 (not toll-free numbers) or by email at publichearings@irs.gov (preferred).

SUPPLEMENTARY INFORMATION:

I. Authority

This document contains proposed additions to the Income Tax Regulations (26 CFR part 1) to implement sections 128 and 129 of the Internal Revenue Code (Code).

These proposed regulations are promulgated under section 7805(a) of the Code, which provides that “the Secretary¹ shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.”

II. Background

A. In General

1. Section 128 Contributions to Trump Accounts

Section 70204 of Public Law 119-21, 139 Stat. 72 (July 4, 2025), commonly known as the One, Big, Beautiful Bill Act (OBBBA), added section 530A regarding Trump accounts to the Code. Section 70204 of the OBBBA also added section 128 to the Code providing an exclusion from gross income for employer contributions to the Trump account of an employee or of any dependent of an employee pursuant to a Trump account contribution program. The provisions apply to taxable years beginning after December 31, 2025.

A Trump account is a type of traditional individual retirement account (IRA) that is established for the exclusive benefit of an eligible individual and that is designated at its establishment as a Trump account. When a Trump account is opened, the eligible individual is the owner of the Trump account and is referred to as the account beneficiary.

A Trump account is subject to certain special rules inapplicable to other individual retirement arrangements under section 408.² The special rules apply only during the period that begins when the account beneficiary's initial Trump account is established and ends on December 31 of the calendar year in which the account beneficiary attains age 17 (growth period). The special rules that apply only during the growth period include rules regarding

contributions, investments, distributions, and reporting. After the growth period, most of these special rules cease to apply and the rules under section 408(a) governing traditional IRAs generally apply.

Section 128(a) provides that an amount paid by an employer as a contribution to the Trump account of an employee or of any dependent of an employee pursuant to a Trump account contribution program is excludable from gross income of the employee. Section 128(b) provides that the amount excludable under section 128(a) with respect to any employee shall not exceed \$2,500 (subject to inflation adjustments after 2027).

Section 128(c) provides that the term “Trump account contribution program” means a separate written plan of an employer for the exclusive benefit of its employees to provide contributions to the Trump accounts of such employees or dependents of such employees that meets requirements similar to the requirements of section 129(d)(2), (3), (6), (7), and (8).

2. Section 129 Dependent Care Assistance Programs

Section 129³ provides that amounts paid or incurred by an employer for dependent care assistance provided to an employee are excludable from the employee's gross income if the amounts are furnished pursuant to a dependent care assistance program. A dependent care assistance program is a separate written plan of an employer for the exclusive benefit of its employees that provides dependent care assistance and meets certain other requirements under the Code, including requirements relating to nondiscriminatory benefits, limits on principal shareholders' benefits, and information to be provided to eligible employees.

Dependent care assistance means the payment or provision of services that would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment) if paid for by the employee. Such employment-related expenses include expenses for the care of a qualifying individual. The term “qualifying individual” is defined as (i) a dependent of the taxpayer who has not attained age 13 or (ii) a dependent or spouse of the taxpayer who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer

¹ Section 7701(a)(11)(B) provides that the term “Secretary” means the Secretary of the Treasury or his delegate. Section 7701(a)(12)(A)(i) defines delegate to include any agency of the Treasury Department, which includes the IRS.

² Individual retirement arrangements are individual retirement accounts under section 408(a) or individual retirement annuities under section 408(b). The term “individual retirement arrangements” refers to both individual retirement accounts and individual retirement annuities, while the term “IRAs” refers only to individual retirement accounts under section 408(a).

³ Section 129 was originally added to the Code by the Economic Recovery Tax Act of 1981 (Pub. L. 97-34) and has been amended several times.

for more than one-half of the taxable year. The amount that may be excluded annually from an employee's gross income under a dependent care assistance program is limited to \$7,500 (\$3,750 in the case of a married individual filing a separate return).

A dependent care assistance program must satisfy four nondiscrimination rules: (1) the contributions and benefits rule in section 129(d)(2), (2) the eligibility rule in section 129(d)(3), (3) the owner concentration rule in section 129(d)(4), and (4) the average benefits rule in section 129(d)(8). The contributions and benefits rule is satisfied if the contributions and benefits provided under the plan do not discriminate in favor of highly compensated employees (HCEs) within the meaning of section 414(q). The eligibility rule is satisfied if a plan must benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of HCEs or their dependents. The owner concentration rule is satisfied if no more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year are provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer. The requirements of the average benefits rule are satisfied if the average benefits provided to employees who are not HCEs under all plans of the employer is at least 55 percent of the average benefits provided to the HCEs under all plans of the employer. A special rule applies with respect to benefits provided through a salary reduction agreement that allows the plan to disregard employees whose compensation is less than \$25,000.

In applying the eligibility test and the average benefits test, employees are excluded if they have not attained age 21 and completed one year of service; or if they were not included in a dependent care assistance program and were included in a unit of employees covered by a collective bargaining agreement under which dependent care benefits were the subject of good faith bargaining.

If a dependent care assistance program fails the nondiscrimination rules, the benefits are not excludable from income by HCEs, but the benefits are excludable from income by employees who are not HCEs.

B. Published Guidance

Notice 2025–68, 2025–52 IRB 856, informed taxpayers that the Treasury Department and the IRS intend to propose regulations providing guidance with respect to Trump accounts. The notice described guidance expected to be included in the proposed regulations in the form of answers to specific questions, including questions about employer contributions under a Trump account contribution program.

Notice 2025–68, Q&A I–1 states that section 128 permits an employee to exclude up to \$2,500 per calendar year, indexed for inflation after 2027, for employer contributions made under a Trump account contribution program. This limit is applied per employee rather than per dependent, so an employee with multiple children still has only one aggregate \$2,500 exclusion. Q&A I–2 of Notice 2025–68 states that when an employer makes a section 128 contribution to a Trump account, it must affirmatively identify the payment to the trustee of the Trump account as a section 128 contribution that is excludable from the employee's income, and the trustee may rely on that employer-provided information unless it has contrary knowledge.⁴ Finally, Q&A I–3 of Notice 2025–68 states that a Trump account contribution program may be offered through salary reduction under a section 125 cafeteria plan only when the contribution is made to the Trump account of the employee's dependent, not to the employee's own Trump account.

Notice 2025–68 included a request for comments. These proposed regulations under sections 128 and 129 are informed by the comments received in response to the notice. The issues raised in the comments are discussed in the Explanation of Provisions in Part III of this preamble.

III. Explanation of Provisions

A. Section 128 Contributions to Trump Accounts

Proposed § 1.128–1(h) would define a section 128 contribution as an amount paid by an employer to a Trump account under a Trump account contribution program.

1. Trump Account Contribution Program

Proposed § 1.128–1(j) would define the term Trump account contribution program to mean a program governed by

a separate written plan of an employer for the exclusive benefit of its employees to provide contributions to the Trump accounts of the employees or their dependents that meets the requirements of proposed § 1.128–2(b) through (h), including following the terms of the written plan, satisfying the nondiscrimination requirements (see Part III.B. of this preamble), and providing various notices and certifications. For these purposes, the term Trump account has the meaning set forth in section 530A(b)(1). Generally, an arrangement that fails to satisfy a requirement for a Trump account contribution program would not be a Trump account contribution program and, for this reason, contributions to Trump accounts under such an arrangement would not be excludable from employee income under section 128. However, with respect to the nondiscrimination requirements at proposed § 1.128–3, a failure to satisfy the rules would cause the arrangement to fail to be a Trump account contribution program only with respect to HCEs.

a. Written Plan

Proposed § 1.128–2(b) would provide that a Trump account contribution program must be set forth in a separate written plan. The written plan must specify—(i) the classes of employees eligible to participate; (ii) the rules governing employer contributions, including the amount of contributions and whether contributions may be made via a section 125 cafeteria plan salary reduction arrangement; (iii) the procedures under which an employee must designate the Trump account of the employee or of a dependent of the employee to receive contributions; (iv) the certification, notice, and reporting procedures required under proposed § 1.128–2(d), (f) and (g); (v) the plan year; and (vi) the procedures for correcting administrative failures and for furnishing notices to employees and trustees when amounts previously designated as section 128 contributions are subsequently determined not to be excludable from an employee's gross income under section 128(a). Proposed § 1.128–2(c) would provide that an arrangement is a Trump account contribution program only if the employer follows the terms of the written plan.

b. Reasonable Notification

Under section 128(c), a Trump account contribution program must meet requirements similar to the requirements of section 129(d)(6), which requires reasonable notification of the

⁴ Note that section 408(h) provides, “For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.”

availability and terms of the program to be provided to eligible employees. Accordingly, proposed § 1.128–2(f) would provide that all eligible employees must be given reasonable notification of the availability and terms of the Trump account contribution program. This rule is intended to ensure that employees who are eligible to participate are adequately informed by the employer about the existence of the program and the terms governing participation. Providing reasonable notification is also relevant to the operation of the eligibility rules, because employees cannot have a meaningful opportunity to receive benefits under the program unless they are informed by the employer that the program is available and understand its basic terms. Proposed § 1.128–2(f) does not prescribe content requirements or a particular method of furnishing the notice.

c. Written Statement

Under section 128(c), a Trump account contribution program must meet requirements similar to the requirements of section 129(d)(7), which requires a plan to furnish to an employee, on or before January 31, a written statement showing the amounts paid or expenses incurred by the employer in providing dependent care assistance to the employee during the previous calendar year. Accordingly, proposed § 1.128–2(g) would provide that a written statement showing the amount of section 128 contributions made for an employee during the previous calendar year under the employer's Trump account contribution program must be furnished to that employee. This requirement may be satisfied by including the amount of Trump account contributions on the employee's Form W–2, *Wage and Tax Statement*, in the manner specified in the form's instructions for reporting section 128 contributions. The 2026 General Instructions for Forms W–2 and W–3 provide that the employer must report the amount of section 128 contributions made to the Trump account of an employee or dependent of an employee in box 12 of the Form W–2 with code TA.

d. Certification

Proposed § 1.128–2(d)(1) would provide that a Trump account contribution program may make contributions only to a Trump account whose account beneficiary is in his or her growth period, and is an employee or an employee's dependent. Proposed § 1.128–2(d)(2) would provide that the aggregate amount contributed with

respect to any employee under a Trump account contribution program may not exceed the permitted annual limit specified in proposed § 1.128–2(d)(5). Proposed § 1.128–2(d)(3) would provide that contributions that are not permitted under proposed § 1.128–2(d)(1) or (d)(2) are not made pursuant to a Trump account contribution program and thus are not excludable from income under proposed § 1.128–2(a).

Proposed § 1.128–2(d)(4) would allow, but not require, an employer to rely on certain employee certifications. The employee certification must be in writing, in paper or electronic form, and must include the following representations: (i) the account beneficiary is the employee or anticipated to be the dependent of the employee for that employee's taxable year during which the contribution is made; (ii) the beneficiary's date of birth, which would allow the employer to determine whether the beneficiary is in his or her growth period for the calendar year in which the contribution is made; and (iii) no facts are known to the employee that would make the account beneficiary ineligible to receive a contribution to his or her Trump account for that calendar year. The employer may rely on this certification unless the employer has actual knowledge that the certification is incorrect.

Proposed § 1.128–2(d)(4) would further provide that an employer may not rely solely on an employee certification to establish that the recipient account is a valid Trump account. The employer must use a method reasonably designed to verify, through information provided by the trustee, payroll processor, or other service provider, that the contribution is made to a valid Trump account. For example, the method may be that the employee provides the employer with a unique identifying number that corresponds to a particular Trump account, which the employer (or service provider) could then use to verify that the account to which the contribution will be transferred is a valid Trump account. The Treasury Department and the IRS are exploring ways in which this information can be validated in a secure, electronic way.

e. Employer Communication

Proposed § 1.128–2(h) would prescribe rules regarding employer communications with a Trump account trustee to which the employer is making contributions. Proposed § 1.128–2(h)(1) would require an employer at the time it makes a contribution to a trustee to

advise the trustee that the amount is a section 128 contribution.

If the employer subsequently determines a section 128 contribution not to be a section 128 contribution, in whole or in part, proposed § 1.128–2(h)(4) would require an employer to so notify the trustee and provide the trustee with the affected Trump account information, the calendar year in which the contribution was made, and the amount determined not to be a section 128 contribution. The employer must provide this notice within a reasonable period of time following the date the employer determines that an amount is not a section 128 contribution. Proposed § 1.128–2(h)(4) would deem 21 calendar days after the determination to be a reasonable period of time as a safe harbor.

The Treasury Department and the IRS request comments on whether any additional information is needed for this corrective notice requirement.

Proposed § 1.128–2(h)(2) would require an employer to adopt procedures to ensure that section 128 contributions are properly identified and to notify the trustee when a contribution is a section 128 contribution and when a contribution previously identified as a section 128 contribution is not a section 128 contribution. Proposed § 1.128–2(h)(3) would allow a Trump account trustee to rely on an employer's notice that an amount is a section 128 contribution until such time that the trustee receives a corrective notice or has contrary knowledge.

The Treasury Department and the IRS propose this rule to ensure that contributions intended to qualify as section 128 contributions are specifically identified as section 128 contributions when made and are corrected as necessary, so that the trustee may properly administer the contribution under the applicable rules governing Trump accounts, including properly accounting for whether the account beneficiary has basis in such contributions. The Treasury Department and the IRS recognize that the corrective notice requirement may be operationally challenging. For this reason, comments are requested on what elements in particular will be difficult to effectuate, and alternative ways to ensure that basis in Trump accounts may be properly accounted for where section 128 contributions are recharacterized. For example, the Treasury Department and the IRS ask commenters to consider whether it would be viable for the employer to furnish a notice to the affected employee that could be

submitted to, and relied upon by, the trustee of the affected account.

f. Trustee Selection

Comments received in response to Notice 2025–68 requested guidance on whether an employer may limit the number of trustees of Trump accounts to whom they will send contributions under a Trump account contribution program. Some commenters explained that allowing such limitations could minimize employer burden associated with directing contributions to multiple trustees as Trump accounts are established or rolled over.

Proposed § 1.128–2(d)(6) would provide that an arrangement is not a Trump account contribution program if an employer limits contributions to Trump accounts held by a particular trustee or trustees. Allowing for a Trump account contribution program to restrict the trustee or trustees would frustrate the purposes of section 128 and section 530A because, unlike analogous circumstances involving health savings accounts, only one Trump account may exist for a particular beneficiary. If the employer were permitted to select the trustees into which a section 128 contribution would be made, an employee whose dependent has a Trump account with a different trustee would be precluded from receiving contributions to the dependent's Trump account. In addition, in the case of parents working for different employers, each of whom limits section 128 contributions to particular, but different trustees, at least one parent would be precluded from receiving tax-favored employer contributions to the dependent's Trump account. Section 530A(b)(1)(A)(i), which contemplates the Treasury Department's role in organizing initial Trump accounts, supports the need for a rule that addresses systemic account structure problems that arise because only one Trump account may exist for a beneficiary. Trump accounts are a distinct statutory arrangement, not merely ordinary IRAs by another name, and the Treasury Department's general rulemaking authority under section 7805 supports issuance of administrable rules implementing sections 128 and 530A where the statute leaves operational gaps. Accordingly, the proposed regulations would provide that a Trump account contribution program may not restrict contributions to a particular trustee or trustees.

2. Salary Reduction

Consistent with Notice 2025–68, proposed § 1.128–2(d)(7) would provide that a Trump account contribution

program may allow an employee to make a contribution via salary reduction under a section 125 cafeteria plan if the contribution is made to the Trump account of the employee's dependent but not if the contribution is made to the Trump account of the employee. Although a Trump account contribution program would be a qualified benefit under section 125(f)(1), a contribution under the Trump account contribution program to a Trump account of the employee would provide deferred compensation that is prohibited under section 125(d)(2)(A), because the employee would have a vested right to compensation that may be payable to that individual in a later year. In contrast, in the case of a contribution to the Trump account of a dependent, the employee cedes dominion and control over the contributed amount after the contribution is made, retaining no future right to receive or assign later distributions from the account. In the case of a contribution to the account of a dependent, the amount is not a deferral of a right to compensation because there is no such future right.

Comments received in response to Notice 2025–68 that addressed salary reduction through a section 125 cafeteria plan generally described it as an important feature because it would let employees make pre-tax contributions to a dependent's Trump account, something they otherwise could not do. Several commenters treated this as a potentially meaningful path to employer adoption. One commenter asked for clarification regarding whether the elections would be required before the start of the program year or if employees could change or revoke their elections mid-year.

Proposed § 1.128–2(d)(7) would provide that a section 125 cafeteria plan may permit employees to make prospective salary reduction elections, or to change or revoke those elections, at any time during the plan year, provided the election change is effective before the salary becomes currently available. Proposed § 1.128–2(d)(7) would also require that the section 125 cafeteria plan specifically describe the Trump account program contribution benefit and permit participants to prospectively change or revoke elections at least monthly before salary becomes currently available. The Treasury Department and the IRS propose these regulations to facilitate administration of section 128 contributions through section 125 cafeteria plans while ensuring that any election to reduce salary remains prospective in operation. The Treasury Department and the IRS

intend to amend Treas. Reg. § 1.125–4 to incorporate these proposed rules concerning election changes with respect to salary reduction for section 128 contributions.

3. Annual Limitation

Proposed § 1.128–2(d)(5) would provide that, with respect to any employee, the total contributions under a Trump account contribution program for a calendar year may not exceed the lesser of the amount specified in section 128(b), as adjusted for inflation under section 128(b)(2), or the amount specified in the terms of the program's written plan.

An individual employee may not exclude employer contributions under section 128 for that individual's taxable year to the extent the aggregate amount of such contributions from all employers exceeds the annual limitation under section 128(b). Specifically, proposed § 1.128–2(d)(5) would provide that the amount which may be excluded by an individual with respect to all Trump account contribution programs for that individual's taxable year may not exceed the amount specified in section 128(b), which is \$2,500 for 2026 and 2027 and is adjusted for taxable years after 2027 as provided in section 128(b)(2). An employee's receipt of excess contributions due to participation in Trump account contribution programs sponsored by more than one employer will not cause those programs to fail to be Trump account contribution programs, provided that each program prohibits the payment of contributions under that plan with respect to an employee in excess of the annual limitation.

Several comments received in response to Notice 2025–68 requested that the Treasury Department and the IRS clarify how the annual limit for employer contributions applies in certain scenarios where multiple employers might make contributions to the same Trump account or an employee has multiple children who could receive contributions to their Trump accounts under an employer's Trump account contribution program. In response to these comments, proposed § 1.128–2(d)(5)(ii) would clarify that the annual limit applies with respect to each employee so that if an employee has more than one employer in a year, the maximum that an employee can receive from all employers is the amount specified in section 128(b). Further, as to employment for a single employer, the limit applies to the employee rather than on a dependent-by-dependent basis. If an employee has more than one dependent with a Trump

account, a program may permit the contribution to be allocated among those accounts, provided that the aggregate amount an employer contributes with respect to the employee for the calendar year does not exceed the annual limit. The proposed regulations provide examples clarifying the application of these rules.

A number of major employers have announced their intention to match the government's \$1,000 contributions pursuant to the section 6434 Trump accounts contribution pilot program for eligible children born in the years 2025 through 2028. Provided that the arrangement otherwise qualifies as a Trump account contribution program under section 128, these employer contributions would be excludable from employee gross income. Like other section 128 contributions, the match contributions would count toward the program's limit under proposed § 1.128–2(d)(5) and toward the individual employee's aggregate limit under section 128(b) for the taxable year. See Part B.7 of this Explanation of Provisions for a safe harbor for such match contributions under the otherwise applicable nondiscrimination rules that would apply under proposed § 1.128–3.

Proposed § 1.128–2(d)(5)(v) would provide that an employer has no obligation with respect to compliance with the section 530A(c)(2) limit. The Treasury Department and the IRS intend to provide in a separate notice of proposed rulemaking addressing contributions to a Trump account that, to the extent that section 128 contributions and other source contributions (such as from the parent, child, relative, etc. but not including pilot program contributions, qualified general contributions, or qualified rollover contributions) are made to a Trump account and exceed the section 530A(c)(2) annual limit, excess contributions will be considered first to be attributable to the other source contributions before being attributable to section 128 contributions. The Treasury Department and the IRS request comments on specific circumstances in which the section 128 contributions in addition to other contributions to a Trump account may exceed the applicable limit under section 530A and how such situations can best be addressed.

The Treasury Department and the IRS note that an employer may make contributions to a Trump account that are not section 128 contributions because, for example, the contribution exceeds the annual limit for contributions that are excludable from

gross income under a Trump account contribution program. Pursuant to section 219(f)(5), amounts paid by an employer on behalf of an employee to a Trump account that are not made under a Trump account contribution program, including by reason of exceeding the annual limit, are not excludable from income by virtue of section 128, and absent some other basis for exclusion, are payments of compensation to the employee that are includible in his or her gross income and wages in the taxable year for which the amounts were contributed and are subject to applicable employment tax reporting and withholding. For example, if an employer contributes an additional amount outside of the Trump account contribution program to a Trump account, it must treat that amount as gross income and wages to the employee rather than as a section 128 contribution. Proposed § 1.128–2(d)(5)(vi)(E) (*Example 5*) illustrates this rule.

4. Employer and Employee

For an amount to be excludable from gross income under section 128, it must be contributed by an employer to the Trump account of an employee or an employee's dependent. One comment received in response to Notice 2025–68 asked Treasury and the IRS to address whether section 128 contributions may be made for an “owner-employee,” specifically in the case of partners in a partnership and S corporation shareholders.

To address this comment proposed § 1.128–1(b) would provide that the term employee means an individual who is an employee under the common-law standard described in § 31.3401(c)–1. Therefore, the term employee does not include a self-employed individual within the meaning of section 401(c)(1), such as a partner in a partnership, a sole proprietor, a director solely by reason of service as a director, or a 2-percent shareholder of an S corporation within the meaning of section 1372(b). A self-employed individual is not disqualified from maintaining a Trump account contribution program covering employees of the self-employed individual's trade or business, but the self-employed individual would not be eligible to participate in the program.

This definition is narrower than the definition of employee in section 129 and is based on differences in the statutory structures of the two provisions. Section 128 does not define the term “employee.” Accordingly, in the absence of a contrary statutory indication, that term is interpreted under common-law principles. See

Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 322–24 (1992). Section 129 similarly does not provide a general definition of employee and thus would also rely on common law principles. In contrast to section 128, however, section 129(e)(3) states the term employee includes “an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).” Section 129(e)(3) is not among the paragraphs of section 129 that are incorporated into section 128. Moreover, section 128 does incorporate three of the four nondiscrimination provisions of section 129(d), omitting only section 129(d)(4), which tests owner concentration, a rule that is generally unnecessary when self-employed individuals, including owners in that capacity, are not eligible for the benefit. Accordingly, the statutory structure indicates that self-employed individuals were intentionally excluded from section 128.

Likewise, consistent with the proposed definition of employee, proposed § 1.128–1(c) would define employer by reference to the common-law standard. The proposed regulations would further provide that all persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 128. Although these rules are not referenced expressly in section 128, they are implicitly incorporated into section 128 because the section 129 rules referenced in section 128(c) are subject to them by virtue of section 414(t). As a result, in adopting rules similar to the referenced section 129 rules, as section 128(c) directs, it is appropriate to incorporate the same aggregation rules. Accordingly, the proposed regulations would treat related entities that are members of a controlled group of corporations, trades or businesses under common control, or an affiliated service group, or that otherwise are required to be aggregated under section 414(o), as one employer in applying section 128(c). The rules are intended to function under section 128 in the same manner as they would under section 129, including the application of special rules for separate lines of business under section 414(r).

5. Dependent

Proposed § 1.128–1(a) would define dependent for purposes of section 128 by cross-reference to the definition of dependent in section 152.⁵ Consequently, in the case of divorced or

⁵ As provided in section 152(a), the definition of dependent in section 152 applies for purposes of subtitle A of the Code, which includes section 128.

separated parents, or married taxpayers filing separately, a child cannot qualify as a dependent of both parents and only one of the parents can claim the child as a dependent. See section 152(c)(4) and (e). In the case of a married couple filing jointly, a child may qualify as a dependent of both parents for purposes of the exclusion under section 128.

6. Exclusion From Gross Income

Proposed § 1.128–2(a) would provide that gross income of an employee does not include an amount paid by the employer as a contribution to the Trump account of the employee or of any dependent of the employee pursuant to a Trump account contribution program. Such a contribution may be made via salary reduction, as explained in Part A.2 of this Explanation of Provisions.⁶ Amounts contributed by an employer in excess of the section 128 exclusion, or otherwise not meeting the requirements for exclusion under section 128, would not be excludable from the employee's gross income under section 128.

Several comments received in response to Notice 2025–68 asked for clarification regarding whether employer contributions under a Trump account contribution program are wages subject to the Federal Insurance Contributions Act (FICA), Railroad Retirement Tax Act (RRTA), and Federal Unemployment Tax Act (FUTA), as well as Federal income tax withholding requirements. Although section 128 excludes certain employer contributions from an employee's gross income for Federal income tax purposes, that exclusion does not extend to amounts that are taxed as wages under subtitle C of the Code. Thus, employer contributions that are excludable from gross income under section 128 have no corresponding exclusion from the definitions of wages under section 3121 (FICA) and section 3306 (FUTA), or compensation under section 3231 (RRTA), and are treated as wages or compensation for these purposes unless some other exclusion applies. Although there is also no express exclusion from the definition of wages under section 3401 for section 128 contributions, Federal income tax withholding generally is intended to be commensurate with an employee's income tax liability. Therefore, section 128 contributions that are excludable from an employee's income will not be treated as subject to Federal income tax

withholding. See, e.g., Notice 2001–14, 2001–6 IRB 516.

B. Nondiscrimination Rules

As discussed previously, section 128 provides that Trump account contribution programs must, among other things, satisfy “requirements similar to the requirements” of certain of the nondiscrimination rules under section 129. In general, the nondiscrimination rules under proposed §§ 1.128–3 and 1.129–2 are identical. However, these proposed regulations would differ with respect to the nondiscrimination rules in situations in which modifications would better effectuate the purposes of section 128.

Proposed § 1.129–1 would provide certain definitions related to dependent care assistance programs. Proposed §§ 1.128–3 and 1.129–2 would clarify the application of the nondiscrimination rules to Trump account contribution programs and dependent care assistance programs, respectively.

Comments received in response to Notice 2025–68 expressed support for comprehensive section 129 guidance that provides clear and administrable rules. Some commenters requested that safe harbors or other interim relief be provided in order to ensure that uncertainty does not discourage employers from implementing Trump account contribution programs. Commenters also raised unresolved questions about the definition of an HCE, what it means for “benefits or contributions” not to discriminate in favor of HCEs, and how the section 129(d)(3) classification test should work. They also emphasized that the 55-percent average benefits test under section 129(d)(8) has been the subject of confusion for many years and has been challenging for taxpayers to apply. Commenters also requested that the Treasury Department and the IRS provide guidance on opportunities for remediation and self-correction of contributions that would otherwise cause a nondiscrimination failure.

1. Definition of HCEs

For purposes of both sections 128 and 129, HCE is defined by cross-reference to section 414(q). Proposed §§ 1.128–1(f) and 1.129–1(a)(7) would define non-highly compensated employee (NHCE) to mean an employee who is not an HCE. These definitions would provide the basic employee groupings used throughout the proposed nondiscrimination rules under both sections 128 and 129. The Treasury Department and the IRS propose these regulations to provide an administrable framework for applying the statutory

requirement that eligibility classifications not discriminate in favor of HCEs, while aligning the analysis under sections 128 and 129 with established nondiscrimination principles used in other employee benefit contexts.

2. Contributions and Benefits

Proposed §§ 1.128–3(a) and 1.129–2(a) would provide parallel rules requiring that contributions and benefits provided under the Trump account contribution program and dependent care assistance plan, respectively, must not discriminate in favor of HCEs or their dependents. These proposed regulations would implement section 129(d)(2) (applied to Trump account contributions via section 128(c)) through qualitative rules governing the terms on which contributions are made available under the program. More specifically, proposed §§ 1.128–3(a) and 1.129–2(a) would provide that a Trump account contribution program or dependent care assistance program does not satisfy the nondiscrimination rule for contributions and benefits if the program provides more favorable terms for HCEs than for other employees. These proposed regulations would further provide that a program satisfies this requirement if it is designed to provide contributions and benefits on the same terms for all employees who are eligible to participate, even if eligible employees receive different amounts of contributions and benefits as a result of differing elections or differing utilization of the contributions and benefits.

3. Eligibility

Proposed §§ 1.128–3(b) and 1.129–2(b) would address the requirement in sections 128(c) and 129(d)(3), respectively, that the program benefit employees who qualify under a classification established by the employer and found by the Secretary not to be discriminatory in favor of HCEs or their dependents. Proposed §§ 1.128–3(b) and 1.129–2(b) would interpret these provisions as requiring both that the employer's eligibility classification be reasonable and that the classification be nondiscriminatory in operation.

Accordingly, proposed §§ 1.128–3(b)(2) and 1.129–2(b)(2) would provide that an eligibility classification must be, based on all facts and circumstances, reasonable and established under objective business criteria that identify the category of employees who are eligible under the program. Proposed §§ 1.128–3(b)(2) and 1.129–2(b)(2) would clarify that reasonable

⁶ The Treasury Department and the IRS note that employers may not provide section 128 contributions directly to the employee or employee's dependent; rather, the contributions must be made to Trump accounts.

classifications generally include specified job categories, nature of compensation (salaried or hourly), geographic location, and similar bona fide business criteria, but that an enumeration of employees by name, or by criteria having substantially the same effect, is not a reasonable classification. This is the same standard that is applied under § 1.410(b)–4(b).

Proposed §§ 1.128–3(b)(3) and 1.129–2(b)(3) would further provide rules for determining whether an employer's eligibility classification is nondiscriminatory. Under the proposed regulations, a classification would be nondiscriminatory for a plan year only if the group of employees eligible under the program satisfies either a facts-and-circumstances test or a numerical safe harbor, both of which are similar to the nondiscriminatory classification test for qualified plans described in § 1.410(b)–4.

Proposed §§ 1.128–3(b)(3)(ii) and 1.129–2(b)(3)(ii) would provide a facts-and-circumstances test for determining whether an employer's eligibility classification is nondiscriminatory. Under proposed §§ 1.128–3(b)(3) and 1.129–2(b)(3), a classification would satisfy the eligibility requirement if and only if, based on all the relevant facts and circumstances, the Secretary finds that the classification is nondiscriminatory. Proposed §§ 1.128–3(b)(3)(ii) and 1.129–2(b)(3)(ii) would clarify that no one factor is determinative and would identify relevant considerations including the underlying business reason for the classification, the percentage of the employer's employees who are eligible under the plan, whether the eligible employees under the plan are representative of the employer's workforce across salary ranges, and the extent to which the plan's ratio percentage differs from the employer's safe harbor percentage (as described in the following paragraph). In general, the greater the business justification for the classification, the broader the coverage under the plan, the more representative the classification is across salary ranges, and the smaller the difference between the plan's ratio percentage and the employer's safe harbor percentage, the more likely the classification is to be nondiscriminatory. The Treasury Department and the IRS propose these regulations to provide a flexible but administrable standard for evaluating classifications that do not satisfy the numerical safe harbor while ensuring that the classification does not discriminate in favor of HCEs or their dependents.

Proposed §§ 1.128–3(b)(3)(iii) and 1.129–2(b)(3)(iii) would provide a safe harbor under which the classification would be treated as nondiscriminatory if the plan's ratio percentage is greater than or equal to the safe harbor percentage of the employer. Proposed §§ 1.128–3(b)(3)(iii) and 1.129–2(b)(3)(iii) would define the plan's ratio percentage by comparing the percentage of NHCEs who are eligible under the program to the percentage of HCEs who are eligible under the program. The proposed regulations would define the safe harbor percentage of an employer as 90 percent, reduced by $\frac{3}{4}$ of a percentage point for each whole percentage point by which the NHCE concentration percentage exceeds 60 percent. The NHCE concentration percentage is the percentage of all the employer's employees who are NHCEs. Under this approach, a classification that satisfies the safe harbor is treated as nondiscriminatory without the need to establish, based on all the relevant facts and circumstances, that the classification is nondiscriminatory. The Treasury Department and the IRS propose this safe harbor to provide employers with certainty and to align the testing of eligibility classifications with established nondiscrimination concepts used in other employee benefit contexts. See, e.g., § 1.410(b)–4(c)(2) (safe harbor for nondiscriminatory classification test under section 410(b)).

As discussed in Part B.6 of this Explanation of Provisions, excluded employees are not taken into account under the eligibility rules in proposed §§ 1.128–3(b) and 1.129–2(b).

4. Owner Concentration

Proposed § 1.129–2(c) would provide rules for applying the owner concentration limitation in section 129(d)(4). Under that statutory rule, not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents) each of whom owns more than 5 percent of the stock or of the capital or profits interest in the employer on any day of the year. Proposed § 1.129–2(c) would restate this statutory requirement, which imposes a separate limitation based on ownership rather than compensation. No similar owner concentration limitation applies under section 128, and accordingly the proposed regulations under section 128 do not include a corresponding rule. However, as discussed in Part A of this Explanation of Provisions, the income exclusion under section 128 is not

available to self-employed individuals. Accordingly, self-employed individuals in their capacity as such may not participate in a section 128 Trump account contribution program.

5. Average Benefits

Proposed §§ 1.128–3(c) and 1.129–2(d) would provide rules for applying the average benefits test under sections 128(c) and 129(d)(8), respectively. A program satisfies this statutory test if the average benefits provided to NHCEs under all Trump account contribution programs and dependent care assistance programs of the employer, respectively, are at least 55 percent of the average benefits provided to HCEs.

Proposed §§ 1.128–3(c) and 1.129–2(d) would provide a framework for applying this test. In general, the average contributions and benefits provided to a group of HCEs or NHCEs under all Trump account contribution programs or dependent care assistance programs of the employer, respectively, for a plan year would equal the total dollar amount of such contributions and benefits provided during the plan year to employees in that group, divided by the number of employees in that group to whom such contributions and benefits in a dollar amount greater than zero are provided during the plan year, via salary reduction or otherwise. Proposed §§ 1.128–3(c) and 1.129–2(d) would further clarify that, solely for purposes of this calculation, an employee is taken into account in the denominator only if the employee is provided contributions and benefits under a Trump account contribution program or a dependent care assistance program of the employer, respectively, in an amount greater than zero during the plan year, and that these rules apply only for purposes of determining compliance with the average benefits test. Proposed §§ 1.128–3(c) and 1.129–2(d) would also reflect the statutory rule permitting a program, in the case of contributions and benefits provided through a salary reduction agreement, to disregard employees whose compensation is less than \$25,000. Additionally, as discussed in Part B.6 of this Explanation of Provisions, excluded employees are not taken into account in the average benefits test.

Proposed §§ 1.128–3(c)(3) and 1.129–2(d)(3) would provide parallel timing rules for applying the average benefits test. Under proposed §§ 1.128–3(c)(3) and 1.129–2(d)(3), compliance with the average benefits test is determined as of the last day of the plan year, taking into account any individual employed on any day of the plan year who is not an excluded employee and who was

provided section 128 contributions or dependent care assistance program benefits, as applicable, via salary reduction or otherwise, on any day during the plan year. The Treasury Department and the IRS are proposing these rules to provide a uniform testing date and to ensure that the test takes into account all relevant employees, rather than only employees employed or participating at a particular time during the plan year. The Treasury Department and the IRS request comments on whether any additional information would be helpful in applying the average benefits test.

6. Excluded Employees

Proposed §§ 1.128–3(e) and 1.129–2(f) would provide rules identifying employees who are excluded from consideration for purposes of applying specified nondiscrimination requirements. Consistent with section 129(d)(9),⁷ proposed §§ 1.128–3(e) and 1.129–2(f) would provide that, for purposes of the eligibility and average benefits tests, an employer shall exclude employees who have not attained age 21 and completed one year of service, subject to rules similar to the rules of section 410(b)(4). An employer shall also exclude employees not included in the Trump account contribution program or the dependent care assistance program who were covered by a collective bargaining agreement if there is evidence that the relevant benefits were the subject of good faith bargaining between employee representatives and the employer or employers.

The Treasury Department and the IRS are proposing these rules to reflect the statutory exclusions from nondiscrimination testing and to clarify the circumstances in which those employees are disregarded in applying the eligibility and average benefits rules. Proposed §§ 1.128–3(e) and 1.129–2(f) are generally parallel in this respect.

7. Pilot Match Contribution Arrangement Safe Harbor

Employers have expressed concern that their announced intentions to match payments made to Trump accounts of dependents of employees pursuant to the section 6434 Trump accounts contribution pilot program available to account beneficiaries born in calendar years 2025 through 2028 may cause a plan to fail applicable nondiscrimination requirements. To address these concerns, proposed

§ 1.128–3(d) would provide a safe harbor disregarding these contributions for purposes of the contribution and benefits requirement of proposed § 1.128–3(a), and the average benefits percentage requirement of proposed § 1.128–3(c). The safe harbor does not apply for purposes of proposed § 1.128–3(b).

To be eligible for the safe harbor, an employer must make contributions under a pilot match contribution arrangement designed to provide contributions on behalf of employees with dependents who are eligible to receive section 6434 pilot program contributions to their Trump accounts. These contributions must be made available on the same terms and conditions to all employees who are not excluded employees. An arrangement will not fail to be a pilot match contribution arrangement because the employer adopts reasonable measures to establish eligibility. Thus, for example, an employer might determine eligibility based on the age of a dependent or might alternatively base eligibility on validation of receipt of the pilot program contribution into an employee's dependent's Trump account. In either case, the arrangement uses a reasonable measure to determine eligibility.

If an employer makes pilot match contributions and also makes other section 128 contributions, via salary reduction or otherwise, the other contributions must separately satisfy the contribution and benefits requirement and the average benefits percentage requirement. In determining whether these requirements are separately satisfied, the employer may, but is not required to, disregard the pilot match contributions.

8. Failure and Remediation

Proposed §§ 1.128–3(c)(5) and (g) and 1.129–2(h) and (j) would provide rules addressing the effect of a failure to satisfy the nondiscrimination requirements and the circumstances in which a program may take remedial action. In general, these proposed rules would provide that, if a program would qualify as a Trump account contribution program or dependent care assistance program but for a failure to satisfy one or more of the applicable nondiscrimination requirements, the program would continue to be treated as satisfying those requirements with respect to employees who are NHCEs.

The proposed rules would also provide a remedial rule for failures of the average benefits test and, in the case of dependent care assistance programs, the owner concentration test. Under

proposed §§ 1.128–3(c)(5) and 1.129–2(j), if the program fails the average benefits test as of the last day of the plan year, the program may nonetheless be treated as satisfying that requirement if, on or before the deadline for furnishing Form W–2 for the year in which the benefits were provided, the employer includes in the gross income of affected HCEs the amount of excess benefits determined under the proposed regulations. In the case of dependent care assistance programs, proposed § 1.129–2(j)(3) would provide a similar remedial rule for excess ownership concentration.

In general, if all HCEs have benefits in excess of the amount that would satisfy the 55-percent average benefits threshold, the excess benefit amount for each HCE is determined by reference to that threshold. If not all HCEs have benefits in excess of that amount, proposed §§ 1.128–3(c)(5)(ii)(B)(2) and 1.129–2(j)(2)(ii) would permit the employer to allocate the excess benefit and required reduction among HCEs in any reasonable manner, including methods similar to those used under § 1.401(k)–2(b)(2)(iii).

A similar allocation of an excess ownership concentration is permitted in the case of failures to satisfy the ownership concentration test. In that case, the permitted concentration amount is subtracted from the benefit provided to participating principal shareholders or owners (defined to include their spouses and dependents) to determine the amount to be included in income. The permitted concentration amount is 25 percent of the total dependent care benefits provided by the employer to all participants during the year divided by the number of participating principal shareholders or owners.

The Treasury Department and the IRS are proposing these regulations to provide a practical correction mechanism for failures, while preserving the statutory focus on preventing HCEs from receiving the benefit of discriminatory arrangements. Proposed §§ 1.128–3(c)(5) and 1.129–2(j) are intended to allow employers to correct certain failures through income inclusion, rather than by requiring adjustment of benefits that have already been provided.

The proposed regulations regarding nondiscrimination remediation rules under sections 128 and 129 are generally parallel, but there are certain substantive differences between the two. First, because there is no corresponding ownership concentration test under section 128, no remediation rule for an ownership concentration failure is

⁷ Section 129(d)(9) applies for purposes of section 129(d)(3) and (8), which are incorporated by reference into section 128(c).

needed under section 128. In contrast, proposed § 1.129–2(j) would permit remediation for failures of either the ownership concentration test in section 129(d)(4) or the average benefits test in section 129(d)(8). Second, proposed § 1.128–3(c)(5)(ii)(A), through its cross-reference to § 1.128–2(h)(4), would require that the Trump account contribution program provide a corrective notice to advise the trustee that the contribution is not a section 128 contribution.

C. Applicability Date

These proposed regulations are proposed to apply to plan years beginning on or after the date final regulations are published in the **Federal Register**. Taxpayers may rely on these proposed regulations for plan years beginning before the date final regulations are published in the **Federal Register**.

IV. Special Analyses

Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the OMB regarding review of tax regulations. OIRA has determined that the proposed rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866 and subject to review under Executive Order 12866 and section 1(b) of the MOA. Accordingly, the proposed regulations have been reviewed by OMB. This proposed rule is not expected to be considered a regulatory action under Executive Order 14192 because it does not impose any more than de minimis regulatory costs.

Need for Regulation

The proposed regulations would clarify the rules for employer contributions to Trump accounts under

section 128 of the Internal Revenue Code (Code) and the rules for nondiscrimination testing under sections 128 and 129 of the Code.

The Statute and the Proposed Regulations

Public Law 119–21, commonly referred to as the One, Big, Beautiful Bill Act (OBBBA), added new sections 530A, 128, and 6434 to the Code. Section 530A describes Trump accounts, section 128 describes certain employer contributions to Trump accounts, and section 6434 describes the Trump accounts contribution pilot program. The proposed regulations provide guidance on employer contributions to Trump accounts under section 128.

Section 530A defines a Trump account as a traditional individual retirement account (IRA) with some special rules. Most special rules that distinguish Trump accounts from other IRAs apply only during the growth period. The first day of the growth period is the day the account is established, and the final day of the growth period is December 31 of the calendar year in which the account beneficiary attains age 17. The rules for traditional IRAs generally apply after the growth period. A Trump account may be established for the benefit of a child prior to the calendar year in which the child attains age 18 if the child has been issued a social security number.

In general, distributions from Trump accounts are not permitted during the growth period. The entire balance of a Trump account may be rolled over in a direct trustee-to-trustee transfer to a new Trump account of the account beneficiary. The entire balance of a Trump account may be rolled over in a direct trustee-to-trustee transfer to an ABLE account of the account beneficiary in the calendar year the account beneficiary attains age 17.

Investments in a Trump account must track the returns of a broad index of equities in primarily U.S. companies for which regulated futures contracts are traded, avoid the use of leverage, and avoid annual fees and expenses above 0.1 percent. Trump accounts may receive contributions from nonprofits, governments, employers, and individuals. In general, contributions to a Trump account are subject to an annual limit of \$5,000, adjusted for inflation.

Governments and nonprofits may make qualified general contributions through the Treasury Department, and such contributions must be allocated in equal amounts to the Trump accounts of every account beneficiary in a qualified

class. Qualified general contributions from governments and nonprofits through the Treasury Department do not count towards the \$5,000 annual contribution limit.

Section 128 sets rules for certain employer contributions to Trump accounts. Employers may contribute to the Trump account of an employee or an employee's dependent. Section 128 contributions to a Trump account are excluded from the employee's income, up to an annual limit of \$2,500, adjusted for inflation. Section 128 contributions count towards the \$5,000 annual contribution limit.

Section 6434 describes the Trump accounts contribution pilot program. In the pilot program, the Secretary will pay \$1,000 to the Trump accounts of eligible children. A U.S. citizen born in 2025, 2026, 2027, or 2028 who has been issued a social security number and for whom no request for a pilot program contribution has previously been processed is eligible for a pilot program contribution. Pilot program contributions do not count towards the \$5,000 annual contribution limit.

All other contributions to a Trump account, including contributions from friends or family members, create investment in the contract and count towards the \$5,000 annual contribution limit.

Section 129 describes dependent care assistance programs. Under section 129, an employee may exclude from gross income employer-provided dependent care assistance furnished under a qualifying program. To qualify, the program must satisfy nondiscrimination rules for eligibility and benefits, limit benefits for more-than-5-percent shareholders or owners to no more than 25 percent of total program benefits and provide average benefits to non-highly compensated employees equal to at least 55 percent of those provided to highly compensated employees. The exclusion is generally limited to \$7,500, or \$3,750 for married individuals filing separately, for taxable years beginning after December 31, 2025.

The proposed regulations are just one piece of the implementation of section 70204 of OBBBA; prior guidance addressed the election to open an initial Trump account and the election to receive a pilot contribution, and future guidance will address other Trump account issues. In addition to addressing issues specific to Trump accounts, the proposed regulations also address nondiscrimination testing in the context of both section 128 Trump account contribution programs and section 129 dependent care assistance programs.

The proposed regulations would define various terms for the purposes of section 128. The proposed regulations would adopt the common law definitions of employee and employer for section 128. An implication of these definitions of employee and employer is that a section 128 contribution cannot be made by a self-employed individual; a section 128 contribution must be made by an employer to the Trump account of an employee or an employee's dependent. The proposed regulations define dependent by cross referencing section 152. Other definitions in the proposed regulations generally adhere closely to definitions from section 128, other statutes, or prior regulations.

The proposed regulations would provide rules for Trump account contribution programs. Trump account contribution programs would be required to notify eligible employees of the terms of the program, report annually to an employee on Form W-2 or other written document the section 128 contributions made for that employee during the prior calendar year, verify that the destination of a section 128 contribution is a Trump account, identify a section 128 contribution as such to the trustee when it is made, and notify the trustee within a reasonable period (generally, within 21 calendar days) if a contribution previously identified as a section 128 contribution is later determined not to be a section 128 contribution. Trump account contribution programs would be permitted to rely on an employee's certification of the age of the account beneficiary and the employee's relationship to the account beneficiary. Trump account contribution programs would not be permitted to limit contributions to accounts held by one or more particular trustees.

The proposed regulations would provide rules for the use of section 125 cafeteria plans by Trump account contribution programs. A Trump account contribution program would be permitted to allow an employee to fund a section 128 contribution to a dependent's Trump account via salary reduction under a section 125 cafeteria plan. A cafeteria plan that includes section 128 contributions would be required to allow an employee to prospectively change or revoke elections at least monthly.

The proposed regulations would clarify the statutory limit on section 128 contributions. Section 128 contributions are generally excludable from the income of the employee and limited to \$2,500 per year. The \$2,500 section 128 contribution limit would apply to each employee, regardless of how many

employers the employee has and regardless of how many dependents the employee has. Employer contributions in excess of \$2,500 would not be excludable from the gross income of the employee.

The proposed regulations would define various terms for the purposes of section 129. In contrast to section 128, the definition of employee for section 129 would include both common law employees and self-employed individuals. For both section 128 and section 129, the proposed regulations would adopt the definition of HCE in section 414(q).

The proposed regulations would provide nondiscrimination rules for Trump account contribution programs under section 128 and dependent care assistance programs under section 129. The proposed regulations would require section 128 and section 129 benefits to be made available on terms that do not discriminate in favor of HCEs or their dependents. The proposed regulations would require eligibility classifications to be reasonable, based on objective business criteria, and nondiscriminatory under either a facts-and-circumstances test or a numerical safe harbor. The facts-and-circumstances test would include consideration of the business reason for the classification, the percentage of eligible HCEs, and the percentage of eligible non-HCEs. The numerical safe harbor would be satisfied if the percent of non-HCEs eligible is at least 90 percent as large as the percent of HCEs eligible, and the 90 percent threshold would be reduced by $\frac{3}{4}$ of a percentage point for each whole percentage point by which the percent of an employer's employees who are non-HCEs exceeds 60 percent.

The proposed regulations would clarify that the average benefits test, which requires that average benefits of non-HCEs be at least 55 percent as large as average benefits of HCEs, is based exclusively on employees who receive more than zero benefits during the plan year. The proposed regulations would exclude employees under age 21, employees who have not completed one year of service, and certain collectively bargained employees from the eligibility and average benefits tests. The proposed regulations would provide a nondiscrimination testing safe harbor for section 128 contributions tied to section 6434 pilot program contributions, if those section 128 contributions are made available on the same terms and conditions to all non-excluded employees. The proposed regulations would generally preserve favorable treatment for non-HCEs after a nondiscrimination failure and would

allow certain average benefits failures, and section 129 owner concentration failures, to be remediated no later than the general deadline for W-2 reporting through income inclusion for affected individuals.

Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

Affected Entities and Taxpayers

The proposed regulations are expected to affect 73 million children in 44 million families and 3 million employers.

Economic Effects of the Proposed Regulations

The proposed regulations generally minimize compliance burdens on employers, subject to the access requirements of taxpayers, operational requirements of Trump account trustees, and applicable law. Some employers have announced intentions to "match" the \$1,000 pilot payments from the U.S. Treasury. The proposed regulations facilitate the prompt implementation of that structure by giving employers a safe harbor from nondiscrimination testing.

In the long run, the most important aspect of section 128 is likely to be the ability of employers to facilitate pre-tax contributions by their employees. The proposed regulations clarify how section 128 contributions can be made via salary reduction through a cafeteria plan. Pre-tax contributions to a Trump account are on par with pre-tax contributions to other traditional IRAs, and they are even competitive with section 529 accounts in the context of family savings for higher education expenses.

Comparisons with other savings vehicles for children are challenging in practice because they involve long time horizons and uncertainty about future income and tax rates. Nevertheless, an apples-to-apples comparison is possible with a clear question and clear assumptions. If a family saves one dollar of after-tax income now, how many after-tax dollars will the child have in 20 years? Table 1 shows the answers when the after-tax dollar is saved in a section 529 account, a Trump account through a pre-tax contribution, and a Trump account through an after-tax contribution, assuming a 10 percent annual nominal rate of return, a 27 percent present marginal tax rate (including a 22 percent federal marginal

tax rate and a 5 percent state marginal tax rate), and a 17 percent future marginal tax rate (including a 12 percent

federal marginal tax rate and a 5 percent state marginal tax rate).

Account	After-tax future value in 20 years generated by one present after-tax dollar	Formula
529	7.08	$\frac{1}{1 - SMTR_p} (1 + RETURN)^{20}$
530A (pre-tax contribution)	7.65	$\frac{1 - MTR_F}{1 - MTR_p} (1 + RETURN)^{20}$
530A (after-tax contribution)	5.75	$(1 - MTR_F)((1 + RETURN)^{20} - 1) + 1$

These comparisons do not incorporate the “kiddie tax” in section 1(g) of the Code or how financial aid might be impacted by taking distributions while a child is in college. Pre-tax contributions to Trump accounts will not be universally better for families than contributions to section 529 accounts, but they are competitive.

By minimizing compliance burdens for employers, the proposed regulations make widespread adoption of Trump account contribution programs, including programs that permit pre-tax contributions through a cafeteria plan, more likely.

Pilot Program Safe Harbor

The proposed regulations would clarify how to apply the nondiscrimination rules to section 128 contributions. The proposed regulations would provide a safe harbor under which section 128 contributions are disregarded for purposes of the contributions and benefits rule and average benefits test, but not for purposes of the eligibility rule, if the contributions are tied to section 6434 pilot program contributions and made available on the same terms and conditions to all non-excluded employees. An alternative would be to provide no safe harbor, such that employers would be required to do ordinary nondiscrimination testing. The same-terms safe harbor gives employers the legal certainty they need to implement a match for section 6434 pilot contributions and is narrow enough to prevent employers from targeting the benefit to HCEs. Employers will be more likely to match the pilot contribution as a result of the safe harbor, which could benefit up to 15 million children expected to be born in 2025 through 2028. With median historical returns, an additional \$100 in

contributions made by an employer to a newborn would result in an additional \$620 dollars in the account when the child turns 18.

Many employers offer benefits to support families with children. As of March 2025, 13 percent of civilian employees had access to childcare, 46 percent had access to a dependent care flexible spending account, and 85 percent had access to personal leave, sick leave, or paid family leave. Using the same-terms safe harbor makes it more likely that employers will offer broadly available matches for section 6434 pilot contributions through a Trump account contribution program. However, section 128 contributions that are tied to section 6434 pilot contributions will be more costly to employers than section 128 contributions that are structured as a salary reduction through a cafeteria plan. Section 128 contributions structured as salary reductions shift employer costs from one purpose (salaries) to a different purpose (benefits) without increasing total costs. Section 128 contributions structured as a “match” to the pilot contribution do not shift costs from one purpose to another, they simply increase the employer’s cost of providing benefits. The extent of adoption will be limited to employers who are willing to bear the incremental marginal cost of a new benefit for employees.

Eligibility Classification Safe Harbor

The proposed regulations would clarify how to apply the eligibility component of the nondiscrimination rules for section 128 and section 129 benefits. The proposed regulations would provide a safe harbor under which benefits satisfy the eligibility test if the percentage of non-highly compensated employees eligible for the

benefit is at least 90 percent as large as the percentage of highly compensated employees eligible for the benefit. The 90 percent threshold would be reduced by three-fourths of a percentage point for each whole percentage point by which the percentage of the employer’s employees who are non-highly compensated employees exceeds 60 percent. Alternatives would be to provide a safe harbor with a different percentage, use a fixed threshold that does not vary with workforce composition, or provide no safe harbor. The 90 percent threshold is high enough to ensure that eligibility is broadly available to non-highly compensated employees and flexible enough to account for employers with workforces that are heavily composed of non-highly compensated employees. A safe harbor gives employers more certainty in designing section 128 and section 129 benefits and reduces the compliance burden of applying a facts-and-circumstances eligibility test. Facts-and-circumstances tests are generally more costly to comply with because they are more complicated. Evaluating a multi-pronged test is harder than checking a simple numerical threshold.

The eligibility classification safe harbor makes it more likely that employers will offer section 128 and section 129 benefits. However, the safe harbor is narrow enough, starting at a threshold of 90 percent, such that employers meeting the safe harbor would in any case have some confidence of satisfying the facts-and-circumstances test. The eligibility classification safe harbor is more of a relief from compliance burdens than a relaxation of the eligibility component of nondiscrimination testing. The relief from compliance burdens makes it more likely that employers will offer Trump account contribution programs and

dependent care assistance programs and reduces the compliance costs of administering those programs.

Remediation Deadline

The proposed regulations would clarify when employers may correct certain nondiscrimination failures for section 128 and section 129 benefits through income inclusion for affected individuals. The proposed regulations would provide that certain average benefits failures, and section 129 owner concentration failures, may be remediated no later than the general deadline for W-2 reporting. Alternatives would be to require remediation by the end of the plan year, allow remediation through a later amended return process, or provide no remediation deadline. The W-2 reporting deadline is late enough to give employers time to identify nondiscrimination failures after year-end and early enough to ensure that affected amounts are included in income through the regular annual wage reporting system. A clear remediation deadline gives employers certainty, preserves administrability for payroll reporting, and helps ensure that failed benefits are taxed to the affected individuals.

Correction periods in other retirement and tax contexts commonly allow time for orderly correction rather than requiring immediate action. For example, under IRS self-correction rules, many significant retirement plan operational failures may be corrected before the end of the third plan year after the year of the failure. The excise tax rules for prohibited transactions also distinguish between an initial tax of 15 percent of the amount involved and an additional 100 percent tax if the transaction is not corrected within the taxable period. Compared with these correction frameworks, a remediation deadline tied to the deadline for Form W-2 is relatively prompt. However, the remedy of including benefits in the income of affected individuals is also relatively straightforward, so the impact of the remediation deadline is likely small.

Corrective Notice Timing

The proposed regulations would clarify the timing and information reporting obligations for Trump account contribution programs that make section 128 contributions. The proposed regulations would require a program to identify a section 128 contribution as such to the trustee when the contribution is made and to notify the trustee within a reasonable period (within 21 calendar days is deemed a reasonable period) if a contribution

previously identified as a section 128 contribution is later determined not to be a section 128 contribution. Alternatives would be to require immediate notice, provide a longer correction period, or provide no specific deadline. The 21-day deadline is long enough to give contribution programs time to identify and process errors and short enough to allow trustees to maintain accurate account records before errors become difficult to correct. A clear 21-day deadline gives trustees timely information, reduces uncertainty about the tax character of contributions, and supports consistent administration of Trump accounts.

As noted in the previous section, correction periods in other retirement and tax contexts commonly allow time for orderly correction rather than requiring immediate action. Compared with other retirement and tax correction frameworks, the 21-day corrective notice requirement is relatively prompt. However, the circumstances leading to a corrective notice are expected to be rare, so the impact of the 21-day corrective notice deadline is expected to be small.

Salary Reduction Election Change Frequency

The proposed regulations would clarify how cafeteria plan election rules apply to section 128 contributions. The proposed regulations would require a cafeteria plan that includes section 128 contributions to allow an employee to prospectively change or revoke elections at least monthly. Alternatives would be to require more frequent election changes, allow less frequent election changes, or provide no specific frequency rule. The monthly frequency is frequent enough to give employees flexibility to adjust section 128 contributions as household budgets and savings needs change and limited enough to avoid imposing excessive administrative burdens on employers and payroll systems. A clear monthly election-change rule gives employers a workable standard for plan administration and gives employees meaningful access to adjust section 128 contributions during the plan year. The impact of requiring a cafeteria plan to allow changes at least monthly is expected to be small. The marginal cost to employers of building the capacity for employees to change elections at least monthly is likely to be a one-time cost. Most cafeteria plans already have this capacity for HSA and section 401(k) contributions because the proposed timing rule is similar to the timing rules for HSA and section 401(k) contributions, and Treasury and the IRS

expect most employees to rarely change their contributions within a plan year.

Statement of Contributions by W-2

The proposed regulations would clarify how Trump account contribution programs must notify employees of section 128 contributions made for them during the prior calendar year. The proposed regulations would allow the annual notice requirement to be satisfied on Form W-2 or another written document. Alternatives would be to require a separate stand-alone notice, prescribe a specific Treasury or IRS form, or require reporting only on Form W-2. Allowing Form W-2 reporting is flexible enough to let employers use an existing wage reporting process and specific enough to ensure that employees receive annual information about section 128 contributions in a familiar year-end document. A Form W-2 option reduces compliance costs for employers, limits duplicative reporting, and helps employees identify section 128 contributions when preparing their tax returns. Allowing the statement of contributions requirement to be satisfied by Form W-2 is expected to minimize compliance burdens.

Summary

Based on the available models and data, the Treasury Department and the IRS estimate that the proposed regulations would minimize compliance burdens and make employers more likely to create Trump account contribution programs, including programs that allow employees to fund pre-tax contributions to Trump accounts. The Treasury Department and the IRS invite public comments and additional data on the economic effects that would result from these proposed regulations.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking will be submitted, under approval number 1545-NEW, to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, C:DC:TS:CAR:MP:T:M:S, Washington, DC 20224. Comments on the collection of information should be received by

October 13, 2026. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in §§ 1.128–2, 1.128–3, 1.129–1, and 1.129–2. This information is necessary to provide guidance with respect to employer contributions to Trump accounts and the nondiscrimination rules for dependent care assistance programs. The collection of information is required to comply with the provisions of section 70204 of the OBBBA. The likely respondents are employers maintaining a Trump account contribution program or a dependent care assistance program.

The estimated number of respondents is 217,000.

The estimated average annual burden per respondent varies from 2 to 14 hours, depending on individual circumstances, with an estimated average of 8 hours.

The estimated total annual reporting burden is 1,736,000 hours.

The estimated frequency of responses is annually.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Regulatory Flexibility Act

The Secretary of the Treasury certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that these proposed regulations would not impose significant reporting requirements on small entities.

These proposed regulations would apply to employers maintaining a

Trump account contribution program under section 128 or a dependent care assistance program under section 129. For purposes of section 128, these proposed regulations would include requirements related to a written plan, employee certifications, section 125 cafeteria plan elections (if applicable), notifications to employees, statements of contributions, employer-to-trustee communications, corrective notices (if applicable), and nondiscrimination requirements. It is estimated that the written plan requirement would take no more than three hours to complete, the nondiscrimination requirements would take no more than two hours to complete, and the other requirements would take no more than one hour to complete. For purposes of section 129, these proposed regulations would not impose any new requirements on small entities but rather provide clarifications to assist employers in satisfying existing requirements under the statute, including requirements for a written plan and nondiscrimination requirements. It is estimated that the written plan requirement would take no more than three hours to complete, if a written plan has not already been adopted, and the nondiscrimination requirements would take no more than two hours to complete and are largely already performed by employers with dependent care assistance programs.

The Treasury Department and the IRS also expect that Trump account contribution programs and dependent care assistance programs are primarily maintained by large employers, given that small employers are less likely to adopt these programs. Small employers that do adopt these programs may be more likely to use third-party administrators to satisfy any reporting requirements.

For these reasons, these proposed regulations are unlikely to impact a substantial number of small entities and any economic impact to small entities is expected to be insignificant. Therefore, a Regulatory Flexibility Act analysis is not required.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities.

Section 7805(f)

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be made available at www.regulations.gov or upon request. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing is being held on October 15, 2026, beginning at 10 a.m. ET, in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The public hearing will be conducted according to the procedures set out in 26 CFR 601.601(a)(2) and (3). Persons

who wish to testify at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by September 25, 2026. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at www.regulations.gov, search IRS and REG–101355–26. Copies of the agenda will also be available by emailing a request to publichearings@irs.gov. Please put “REG–101355–26 Agenda Request” in the subject line of the email. Copies of the agenda will be available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by September 25, 2026, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to publichearings@irs.gov to have their name added to the building access list. The subject line of the email must contain the regulation number (REG–101355–26) and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–101355–26.

Individuals who want to testify by telephone at the public hearing must send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–101355–26 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–101355–26.

Individuals who want to attend the public hearing in person without testifying must also send an email to publichearings@irs.gov to have the individual's name added to the building access list. The subject line of the email must contain the regulation number REG–101355–26 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–101355–26. Requests to attend the public hearing must be received by 5 p.m. ET on October 13, 2026.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to publichearings@irs.gov to receive the telephone number and access code for the hearing. The subject line of the

email must contain the regulation number REG–101355–26 and the language ATTEND Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–101355–26. Requests to attend the public hearing must be received by 5 p.m. ET on October 13, 2026.

Any questions regarding speaking at or attending the public hearing may also be emailed to publichearings@irs.gov. Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to publichearings@irs.gov (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by October 9, 2026.

VI. Statement of Availability of IRS Documents

Guidance cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <https://www.irs.gov>.

VII. Drafting Information

The principal author of these proposed regulations is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). Personnel from the Treasury Department and the IRS also participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Sections 1.128–1 through 1.129–2 are added to read as follows:

* * * * *

Sec.

1.128–1 Trump account contribution program; definitions.

1.128–2 Trump account contribution program; in general.

1.128–3 Nondiscrimination requirements.

1.129–1 Dependent care assistance programs.

1.129–2 Nondiscrimination requirements.

1.128–1 Trump account contribution program; definitions.

* * * * *

Definitions. For purposes of section 128 and this section and §§ 1.128–2 and 1.128–3—

(a) *Dependent.* The term *dependent* means an individual who, for the calendar year in which the contribution is made, the employee anticipates will be a dependent of the employee under section 152. In the case of a married couple filing a joint return, an individual is treated as the dependent of both individuals filing the joint return.

(b) *Employee*—(1) *In general.* The term *employee* means an individual who is an employee under the common-law standard described in § 31.3401(c)–1 of this chapter.

(2) *Self-employed individuals not treated as employees.* The term *employee* does not include a self-employed individual within the meaning of section 401(c)(1). A self-employed individual may maintain a Trump account contribution program covering the employees of the self-employed individual's trade or business, but the self-employed individual may not participate in the program.

(c) *Employer.* The term *employer* means the person that is the employer of an employee under the common-law standard described in § 31.3401(c)–1 of this chapter. If the employer is a member of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o), then all employers in that group will be treated as a single employer for purposes of section 128. The rules of section 414 shall apply with respect to a Trump account contribution program in the same manner as they would with respect to a dependent care assistance program under section 129.

(d) *Growth period.* The term *growth period* means, with respect to an account beneficiary, the period that begins when the initial Trump account is established and ends on December 31 of the calendar year in which the account beneficiary attains age 17. For example, a child born on October 1, 2025, would attain age 17 on October 1, 2042, and the last day of the growth period with respect to the child would be December 31, 2042.

(e) *Highly compensated employee.* The term *highly compensated employee* or *HCE* has the meaning set forth in section 414(q).

(f) *Non-highly compensated employee.* The term *non-highly compensated employee* or *NHCE* means an employee who is not a highly compensated employee.

(g) *Plan year.* The term *plan year* means the 12-month period on the basis of which the Trump account contribution program is administered or, if shorter, the period for which the program is maintained.

(h) *Section 128 contribution.* The term *section 128 contribution* means a contribution made by an employer to a Trump account under a Trump account contribution program.

(i) *Trump account.* The term *Trump account* has the meaning set forth in section 530A(b)(1).

(j) *Trump account contribution program.* The term *Trump account contribution program* means a separate written plan of an employer for the exclusive benefit of its employees to provide contributions to the Trump accounts of the employees or their dependents that meets the requirements of § 1.128-2(b) through (h).

(k) *Applicability date.* This section applies to plan years beginning on or after the date of publication of the final rule in the **Federal Register**.

§ 1.128-2 Trump account contribution program; in general.

(a) *Exclusion from gross income for contributions.* Gross income of an employee does not include an amount paid by the employer as a contribution, including by salary reduction to the extent permitted under paragraph (d)(7) of this section, to the Trump account of the employee or of any dependent of the employee pursuant to a Trump account contribution program.

(b) *Requirement of separate written plan.*

(1) A Trump account contribution program must be set forth in a separate written plan that includes the items specified in paragraph (b)(2) of this section.

(2) The written plan must specify—

(i) The classes of employees eligible to participate;

(ii) The rules governing employer contributions, including the amount of contributions and whether contributions may be made via a section 125 cafeteria plan salary reduction arrangement;

(iii) The procedures under which an employee must designate the Trump account of the employee or of a dependent of the employee to receive contributions;

(iv) The certification, notice, and reporting procedures required under paragraphs (d), (f), and (g) of this section;

(v) The plan year; and

(vi) The procedures for correcting administrative failures and for furnishing notices to employees and trustees when amounts previously

designated as section 128 contributions are subsequently determined not to be excludable from an employee's gross income under section 128(a) (for example, due to the nondiscrimination requirements of paragraph (e) of this section).

(c) *Operational compliance.* The employer must follow the terms of the Trump account contribution program's written plan.

(d) *Permitted contributions—*(1) *Permitted recipients.* A Trump account contribution program may make contributions only to a Trump account whose account beneficiary—

(i) Is in his or her growth period; and

(ii) Is an employee or an employee's dependent.

(2) *Permitted amounts.* The aggregate amount contributed with respect to any employee under a Trump account contribution program may not exceed the annual limit specified in paragraph (d)(5) of this section.

(3) *Treatment of impermissible amounts.* Amounts contributed by an employer that are not permitted under paragraph (d)(1) or (d)(2) of this section are not made pursuant to a Trump account contribution program (and thus are not section 128 contributions and are not excludable from income under paragraph (a) of this section).

(4) *Certification and employer reliance—*(i) *In general.* Except as provided in paragraph (d)(4)(iii) of this section, an employer may rely on an employee certification meeting the requirements of paragraph (d)(4)(ii) of this section for purposes of determining whether a contribution satisfies the requirements of paragraph (d)(1) of this section, unless the employer has actual knowledge that the certification is incorrect.

(ii) *Content of employee certification.* An employee certification relied on under paragraph (d)(4)(i) of this section must be made in writing, in paper or electronic form, and must include the following representations:

(A) The beneficiary of the account designated for the employer contribution is the employee or anticipated to be the dependent of the employee for the employee's taxable year in which the contribution is to be made;

(B) Such account beneficiary's date of birth; and

(C) No facts known to the employee would make such account beneficiary ineligible to receive a contribution to his or her Trump account for that calendar year.

(iii) *No reliance on an employee certification that a Trump account is valid.* An employer may not rely solely

on an employee certification to establish that the recipient account is a valid Trump account. The employer must use a method reasonably designed to verify, through information provided by the trustee, payroll processor, or other service provider, that the contribution is made to a valid Trump account.

(5) *Annual limits—*(i) *In general.* With respect to an employee, total contributions under a Trump account contribution program for a calendar year may not exceed the lesser of—

(A) The amount specified in section 128(b), as adjusted for inflation under section 128(b)(2); or

(B) The amount specified under the terms of the Trump account contribution program's written plan.

(ii) *Limit by employee.* The annual limit applies with respect to the employee as an individual, taking into account section 128 contributions made with respect to the employee by all employers for the employee's taxable year. The excess of any section 128 contributions received by an individual over the amount specified in section 128(b), as adjusted for inflation under section 128(b)(2) for the taxable year, (for example, due to contributions being received from Trump account contribution programs of two employers of an employee), may not be excluded from the individual's gross income under section 128(a). Thus, an individual's section 128 contributions in excess of the section 128(b) limit must be included in gross income for the employee's taxable year. See paragraph (d)(5)(iii) of this section for the effect of such contributions in excess of the limit under section 128(b) on the Trump account contribution program.

(iii) *Effect on plan.* Notwithstanding the provisions of paragraph (d)(5)(ii) of this section, an arrangement does not fail to be a Trump account contribution program by reason of an individual being in receipt of excess contributions for the taxable year, provided that the plan prohibits contributions under that plan with respect to an employee in excess of the amount specified in paragraph (d)(5)(i) of this section.

(iv) *Allocation.* A program may permit the contribution to be allocated (either by the terms of the program or by election by the employee) among the Trump account of the employee and the Trump account of one or more dependents of the employee, provided that the aggregate amount an employer contributes with respect to an employee for the calendar year does not exceed the limit specified in this paragraph (d)(5).

(v) *Section 530A(c)(2) limit.* The employer does not have any obligation with respect to compliance with the section 530A(c)(2) limit.

(vi) *Examples.* The rules of this paragraph (d)(5) are illustrated by the following examples. The examples assume that the Trump account contribution program written plan allows for contributions up to \$2,500, via salary reduction or otherwise; that there are no nondiscrimination failures; that there are no other contributions to the Trump account(s) for the year; and that the Trump account contribution program has a calendar year plan year.

(A) *Example 1.* For 2027, Employee has two dependents and works for an employer that offers a Trump account contribution program under which the employer provides a section 128 contribution in the amount of \$2,500 with respect to each employee. The program allows Employee to allocate the section 128 contribution among the Trump accounts of the two dependents, but the total amount allocated by Employee may not exceed \$2,500 for 2027. The program complies with the annual limit requirement of this paragraph (d)(5). The conclusion would not change if the section 128 contributions were made via salary reduction.

(B) *Example 2.* For 2027, Employee and Employee's spouse, who are married and file jointly, have one dependent. The employers of Employee and Employee's spouse each offer Trump account contribution programs under which each employer provides a section 128 contribution in the amount of \$2,500 with respect to each employee. Employee and Employee's spouse each allocate the \$2,500 section 128 contribution to the Trump account of their dependent through their respective Trump account contribution programs. The programs comply with the annual limit requirement of this paragraph (d)(5). The conclusion would not change if the section 128 contributions were made via salary reduction.

(C) *Example 3.* The facts are the same as in paragraph (d)(5)(vi)(B) of this section (*Example 2*), except Employee and Employee's spouse both work for the same employer. Employee and Employee's spouse each allocate the \$2,500 section 128 contribution to the Trump account of their dependent through the employer's Trump account contribution program. The program complies with the annual limit requirement of this paragraph (d)(5). The conclusion would not change if the section 128 contributions were made via salary reduction.

(D) *Example 4.* For 2027, Individual has one dependent. Individual is employed by two unrelated employers, each of which offers a Trump account contribution program under which the employer provides a section 128 contribution in the amount of \$2,500 with respect to each employee. Each plan prohibits contributions under that plan with respect to an employee in excess of the amount specified in section 128(b), as adjusted for inflation under section 128(b)(2). Individual allocates the \$2,500 section 128 contribution under each program with respect to a Trump account for Individual's dependent. The programs comply with the annual limit requirement of this paragraph (d)(5). Neither employer is required to provide a corrective notice described in paragraph (h)(4) of this section solely because of the other employer's contribution. However, Individual must include the excess contribution of \$2,500 in Individual's gross income on Individual's Federal income tax return for that taxable year. The conclusion would not change if the section 128 contributions were made via salary reduction.

(E) *Example 5.* For 2027, Employee has one dependent and works for Employer, which offers a Trump account contribution program under which Employer provides a section 128 contribution in the amount of \$2,500 with respect to each employee. Employee allocates the \$2,500 section 128 contribution to the Trump account of Employee's dependent through Employer's Trump account contribution program. In addition to the section 128 contribution made under the Trump account contribution program, Employer contributes an additional \$1,000 to the Trump account that is not a section 128 contribution made under the Trump account contribution program to Employee's dependent's Trump account. No other exclusion from gross income or wages applies to the \$1,000 contribution. In accordance with the requirements of paragraph (h)(1) of this section, Employer identifies the \$2,500 to the trustee as a section 128 contribution and does not identify the \$1,000 as a section 128 contribution. On Employee's Form W-2, Employer reports the \$2,500 to Employee as a section 128 contribution, and the \$1,000 to Employee as gross income and wages. The program complies with the annual limit requirement of this paragraph (d)(5).

(6) *Selection of trustee.* An arrangement is not a Trump account contribution program if an employer

limits contributions to Trump accounts held by a particular trustee or trustees.

(7) *Section 125 salary reduction arrangements—(i) In general.* A Trump account contribution program may be offered via salary reduction under a section 125 cafeteria plan but only if the contribution is made to a Trump account of the dependent of an employee. A contribution to a Trump account of an employee may not be offered via salary reduction under a section 125 cafeteria plan.

(ii) *Elections.* A section 125 cafeteria plan providing for section 128 contributions through salary reduction may permit employees to make a prospective salary reduction election or change or revoke a salary reduction election for section 128 contributions (for example, to increase or decrease a salary reduction election) at any time during the plan year, provided that the election is effective only as to salary that is not yet currently available. The section 125 cafeteria plan must specifically describe the Trump account contribution benefit and permit participants to prospectively change or revoke elections at least monthly, before salary becomes currently available.

(e) *No discrimination in favor of HCEs.* A Trump account contribution program must satisfy the nondiscrimination requirements of § 1.128-3(a) through (c). An arrangement that fails to satisfy such requirements will not be considered a Trump account contribution program with respect to HCEs participating in the program, but will not affect the program's status as a Trump account contribution program with respect to the NHCE participants.

(f) *Notification to eligible employees.* Reasonable notification of the availability and terms of the Trump account contribution program must be provided to all eligible employees.

(g) *Statement of contributions.* A written statement showing the amount of section 128 contributions that were made for an employee during the previous calendar year under the employer's Trump account contribution program must be furnished to that employee. This requirement is satisfied by including the amount of Trump account contributions on the employee's Form W-2, *Wage and Tax Statement*, in the manner specified in the form's instructions for reporting of section 128 contributions.

(h) *Employer communications—(1) Affirmative statement.* With respect to an amount contributed under a Trump account contribution program, the employer must, at the time the amount is transmitted to the trustee,

affirmatively identify the amount as a section 128 contribution in writing to the trustee.

(2) *Procedures.* The employer must adopt procedures to ensure that section 128 contributions are properly identified and to notify the trustee when a contribution is a section 128 contribution and when a contribution previously identified as a section 128 contribution is not a section 128 contribution.

(3) *Reliance by the trustee.* The trustee of a Trump account receiving a contribution may rely on the identification of a contribution as a section 128 contribution for purposes of section 530A until such time that the trustee receives a corrective notice pursuant to paragraph (h)(4) of this section or has contrary knowledge.

(4) *Corrective notice*—(i) *In general.* If an amount previously identified under paragraph (h)(1) of this section as a section 128 contribution is subsequently determined not to be a section 128 contribution, in whole or in part, the employer must provide notice in writing to the trustee identifying the affected account, the calendar year in which the contribution was made, and the amount determined not to be a section 128 contribution.

(ii) *Timing.* The notice described in paragraph (h)(4)(i) of this section must be furnished within a reasonable period of time following the date the employer determines that an amount is not a section 128 contribution. For purposes of this section, 21 calendar days following the date the employer makes this determination is deemed to be a reasonable period of time.

(i) *Applicability date.* This section applies to plan years beginning on or after the date of publication of the final rule in the **Federal Register**.

§ 1.128–3 Nondiscrimination requirements.

(a) *Contributions and benefits.* The contributions or benefits provided under the Trump account contribution program must not discriminate in favor of HCEs or their dependents. A Trump account contribution program that provides benefits on the same terms for all eligible employees satisfies this requirement. For example, a term that allows all NHCEs to reduce salary in the same amount as HCEs does not discriminate as to contributions or benefits.

(b) *Eligibility*—(1) *In general.* The program must benefit employees who qualify under an eligibility classification established by the employer that is reasonably based on objective business criteria in satisfaction of paragraph (b)(2) of this section and not found by

the Secretary to be discriminatory in favor of HCEs or their dependents in satisfaction of paragraph (b)(3) of this section. For these purposes, an employee is eligible under the program only if the employee had a meaningful opportunity to receive benefits, via salary reduction or otherwise, regardless of whether any benefits were actually received.

(2) *Reasonable eligibility classification established by the employer.* An eligibility classification must be, based on all facts and circumstances, reasonable and established under objective business criteria that identify the category or categories of employees who are eligible under the plan. Reasonable classifications generally include specified job categories, nature of compensation (that is, salaried or hourly), geographic location, and similar bona fide business criteria. An enumeration of employees by name or other specific criteria having substantially the same effect as an enumeration by name is not considered a reasonable classification.

(3) *Nondiscriminatory classification*—(i) *In general.* An eligibility classification must be found by the Secretary not to be discriminatory in favor of HCEs or their dependents. A classification is nondiscriminatory for a plan year if and only if the group of employees included in the classification eligible under the plan satisfies the requirements of either paragraph (b)(3)(ii) or (iii) of this section for the plan year.

(ii) *Facts and circumstances.* A plan satisfies the requirements of this paragraph (b)(3)(ii) if and only if, based on all the relevant facts and circumstances, the Secretary finds that the classification is nondiscriminatory. No one particular fact is determinative. Included among the facts and circumstances relevant in determining whether a classification is nondiscriminatory are the following—

(A) The underlying business reason for the classification. The greater the business reason for the classification, the more likely the classification is to be nondiscriminatory.

(B) The percentage of the employer's employees eligible under the plan. The higher the percentage, the more likely the classification is to be nondiscriminatory.

(C) Whether the number of employees eligible under the plan in each salary range is representative of the number of employees in each salary range of the employer's workforce. In general, the more representative the percentages of employees eligible under the plan in

each salary range, the more likely the classification is to be nondiscriminatory.

(D) The difference between the plan's ratio percentage (within the meaning of paragraph (b)(3)(iii)(A) of this section) and the employer's safe harbor percentage (within the meaning of paragraph (b)(3)(iii)(B) of this section). The smaller the difference, the more likely the classification is to be nondiscriminatory.

(iii) *Safe harbor.* A plan satisfies the requirements of this paragraph (b)(3)(iii) for a plan year if and only if the plan's ratio percentage (as defined in paragraph (b)(3)(iii)(A) of this section) is greater than or equal to the employer's safe harbor percentage (as defined in paragraph (b)(3)(iii)(B) of this section).

(A) *Ratio percentage.* For purposes of this paragraph (b)(3)(iii), with respect to a plan for a plan year, the plan's *ratio percentage* means the ratio expressed as a percentage (rounded to the nearest hundredth of a percentage point) determined by dividing the eligibility percentage of NHCEs by the eligibility percentage of HCEs, as such eligibility percentages are defined in paragraph (b)(3)(iii)(C) of this section.

(B) *Safe harbor percentage.* The safe harbor percentage of an employer is 90 percent, reduced by $\frac{3}{4}$ of a percentage point for each whole percentage point by which the NHCE concentration percentage exceeds 60 percent.

(C) *Eligibility percentage.* The *eligibility percentage of NHCEs* is determined by dividing the number of NHCEs who are eligible under the plan by the total number of NHCEs of the employer. The *eligibility percentage of HCEs* is determined by dividing the number of HCEs who are eligible under the plan by the total number of HCEs of the employer. In determining these eligibility percentages, employees described in paragraph (e) of this section are excluded.

(D) *NHCE concentration percentage.* The *NHCE concentration percentage* of an employer is the percentage of all the employees of the employer who are NHCEs.

(c) *Average benefits test*—(1) *In general.* A plan satisfies the requirements of this paragraph (c)(1) if the average benefits provided to employees who are NHCEs under all Trump account contribution programs of the employer is at least 55 percent of the average benefits provided to HCEs under all Trump account contribution programs of the employer.

(2) *Average benefits provided*—(i) *General rule.* For purposes of paragraph (c)(1) of this section, the average benefits provided to a group of HCEs or

NHCEs for a plan year equals the total dollar amount of contributions provided under all Trump account contribution programs of the employer during the plan year to employees in that group, divided by the number of employees in that group to whom any such contributions are provided during the plan year, via salary reduction or otherwise.

(ii) *Employees taken into account.* For purposes of applying the calculation in paragraph (c)(2)(i) of this section, any individual employed by the employer on any day of the plan year is taken into account in the denominator if:

(A) The employer makes a section 128 contribution to a Trump account as to which the employee or the employee's dependent is the beneficiary during the plan year, via salary reduction or otherwise; and

(B) The employee is not described in paragraph (e) of this section.

(3) *Time to perform nondiscrimination test.* The requirements of this paragraph (c) must be satisfied as of the last day of the plan year.

(4) *Salary reduction agreements.* For purposes of this paragraph (c), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employee whose compensation is less than \$25,000. For purposes of this paragraph (c)(4), the term "compensation" has the meaning given such term by section 414(q)(4).

(5) *Correction of nondiscrimination failures—(i) In general.* If a plan fails the requirements of the average benefits test of this paragraph (c) as of the last day of the plan year, the plan may nonetheless be treated as satisfying the requirements with respect to HCEs and their dependents if the plan takes remedial action as described in paragraph (c)(5)(ii) of this section.

(ii) *Remedial measures—(A) Correction.* If a Trump account contribution program fails to satisfy the requirements of this paragraph (c) as of the last day of the plan year, the plan may be treated as satisfying those requirements by including in income any excess benefit amounts received by HCEs. For this purpose, an excess benefit amount is included in income if the amount is treated by the employer as gross income and, to the extent applicable, wages within the meaning of sections 3401, 3121, and 3306, and compensation within the meaning of section 3231, and reported as such with respect to the year being tested by the deadline prescribed in § 31.6051-1(d)(1)(i) of this chapter for furnishing statements on Form W-2, *Wage and Tax Statement*, for the year in which the

excess benefits were received. In addition, because the excess benefit amounts are not provided under a Trump account contribution program, the plan must provide a corrective notice as provided in § 1.128-2(h)(4).

(B) *Allocation of excess benefits.* (1) If all HCEs have section 128 contributions in excess of the quotient of the amount of the average section 128 contribution for all NHCEs divided by 0.55, the amount of excess benefits to be included in income of each HCE is the excess of the amount of that HCE's section 128 contribution over that quotient.

(2) If not all HCEs have section 128 contributions in excess of the quotient of the amount of the average section 128 contribution for all NHCEs divided by 0.55, the plan may allocate the reduction of section 128 contributions among HCEs in any reasonable manner, including methods for apportioning distributions of excess amounts similar to those used in § 1.401(k)-2(b)(2)(iii).

(d) *Safe harbor for contributions made with respect to pilot program amounts—*

(1) *In general.* Contributions under a pilot match contribution arrangement described in paragraph (d)(2) of this section are disregarded for the purposes of paragraphs (a) and (c) of this section.

(2) *Pilot match contribution arrangements.* A pilot match contribution arrangement must—

(i) Be designed to provide contributions to Trump accounts because the account beneficiary is:

(A) A dependent of an employee; and
(B) An eligible child within the meaning of section 6434(c); and

(ii) Make contributions under the arrangement available on the same terms and conditions to all employees not described in paragraph (e) of this section.

(3) *Establishment of eligibility.* An arrangement will not fail to be a pilot match contribution arrangement because the arrangement relies on reasonable measures to establish that an employee's dependent is an eligible child within the meaning of section 6434(c). For this purpose, employee certification of a dependent's date of birth is a reasonable measure to ensure eligibility.

(4) *Additional section 128 contributions.* If an employer makes contributions under a pilot match contribution arrangement described in paragraph (d)(2) of this section and also makes section 128 contributions that are not under such an arrangement, via salary reduction or otherwise, such contributions that are not pilot match contributions must separately satisfy paragraphs (a) and (c) of this section. In determining whether paragraphs (a) and

(c) of this section are so separately satisfied, the pilot match contributions may be disregarded.

(e) *Excluded employees.* For purposes of paragraphs (b) and (c) of this section, there shall be excluded from consideration—

(1) Subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed one year of service (as defined in section 410(a)(3)); and

(2) Employees not included in a Trump account contribution program who are included in a unit of employees covered by an agreement that the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that the Trump account contribution program was the subject of good faith bargaining between such employee representatives and such employer or employers.

(f) *Contributions taken into account.* For purposes of paragraphs (a), (b), and (c) of this section, an employer's contributions to the Trump account of an employee or an employee's dependent outside any Trump account contribution program (such as taxable contributions in excess of the § 1.128-2(d)(5) annual limit) are not taken into account.

(g) *Effect of failure.* Except as otherwise provided in paragraph (c)(5) of this section, if a plan would qualify as a Trump account contribution program but for a failure to satisfy one or more of the requirements of this section, then the plan is not a Trump account contribution program with respect to HCEs. Notwithstanding such failure, the plan is treated as a Trump account contribution program with respect to employees who are NHCEs.

(h) *Examples.* The following examples illustrate the rules in this section.

(1) *Example 1.* For 2026, an employer has 15 HCEs and 15 NHCEs. The employer maintains a Trump account contribution program funded solely via salary reduction elections made by employees under the employer's section 125 cafeteria plan. All 30 employees are eligible to make salary reduction elections under the plan on the same terms. Eleven of the HCEs elect benefits under the plan of \$2,500 each, and four of the NHCEs elect benefits under the plan of \$2,500 each. The remaining employees elect no benefits under the plan. The average benefits provided to the HCEs is \$2,500 (\$27,500/11) and the average benefits provided to the NHCEs is also \$2,500 (\$10,000/4). Accordingly, the average benefits provided to the NHCEs is 100 percent of the average benefits provided to the HCEs, and the

required threshold of 55 percent under paragraph (c)(1) of this section is satisfied.

(2) *Example 2.* For 2026, an employer has 15 HCEs and 15 NHCEs. The employer maintains a Trump account contribution program funded solely via salary reduction elections made by employees under the employer's section 125 cafeteria plan. All 30 employees are eligible to make salary reduction elections under the plan on the same terms. Eleven of the HCEs elect benefits under the plan of \$2,500 each; one of the NHCEs elects benefits of \$2,500; three of the NHCEs elect benefits of \$1,500; one of the NHCEs elects benefits of \$1,000; and two of the NHCEs elect benefits of \$500, for a collective \$9,000 in benefits provided to seven NHCEs, and an average benefits provided to NHCEs of \$1,285.71 (\$9,000/7). The average benefits provided to the HCEs is \$2,500 (\$27,500/11). Accordingly, the average benefits provided to the NHCEs is 51.4 percent of the average benefits provided to the HCEs (\$1,285.71/\$2,500), and the required threshold of 55 percent under paragraph (c)(1) of this section is not satisfied.

(3) *Example 3.* The facts are the same as in paragraph (h)(2) of this section (*Example 2*) except that the following four NHCEs are excluded employees within the meaning of paragraph (e) of this section: two of the NHCEs who elected benefits under the plan of \$1,500; and the two NHCEs who elected benefits of \$500. With the exclusion of these employees, a collective \$5,000 in benefits are provided to three NHCEs, and the average benefits provided to NHCEs is \$1,666.67 (\$5,000/3). Accordingly, the average benefits provided to the NHCEs is 66.7 percent of the average benefits provided to the HCEs (\$1,666.67/\$2,500), and the required threshold of 55 percent under paragraph (c)(1) of this section is satisfied.

(4) *Example 4.* The facts are the same as in paragraph (h)(2) of this section (*Example 2*) except that on or before the furnishing deadline for the Form W-2 for the year in which the benefits were provided, the employer treats \$500 of the benefits elected by each of the HCEs as gross income and wages for the year in which the benefits were provided, reducing the benefits provided to the HCEs to a collective \$22,000 in benefits provided to 11 HCEs, reducing the average benefit to HCEs to \$2,000 (\$22,000/11). Accordingly, the average benefits provided to the NHCEs is 64.29 percent of the average benefits provided to the HCEs (\$1,285.71/\$2,000), and the required threshold of 55 percent under

paragraph (c)(1) of this section is satisfied.

(5) *Example 5.* The facts are the same as in paragraph (h)(3) of this section (*Example 3*) except the employer also makes a contribution of \$1,000 that is not excludable from income under section 128 (a non-section 128 contribution) to each of the employees who elected benefits under the plan. The taxable employer contributions are not considered when calculating the average benefits. Accordingly, the conclusion is the same as in paragraph (h)(3) of this section (*Example 3*).

(6) *Example 6.* The facts are the same as in paragraph (h)(1) of this section (*Example 1*) except that the 11 NHCEs to whom benefits are not provided are not eligible to elect benefits under the terms of the plan. The 11 excluded NHCEs are not excluded employees within the meaning of paragraph (e) of this section. The plan has discriminated in favor of HCEs as to eligibility and thus does not satisfy the requirements of paragraph (b) of this section. Thus, the plan is not a Trump account contribution program with respect to HCEs and the benefits provided to HCEs are included in their income and wages within the meaning of sections 3401, 3121 (or compensation within the meaning of section 3231), and 3306. Because the benefits are not provided under a Trump account contribution program, the plan must provide a corrective notice as provided in § 1.128-2(h)(4).

(i) *Applicability date.* This section applies to plan years beginning on or after the date of publication of the final rule in the **Federal Register**.

§ 1.129-1 Dependent care assistance programs.

(a) *Definitions.* For purposes of section 129, this section and § 1.129-2—

(1) *Dependent care assistance.* The term *dependent care assistance* has the meaning set forth in section 129(e)(1).

(2) *Dependent care assistance program.* The term *dependent care assistance program* means a separate written plan of an employer for the exclusive benefit of its employees to provide such employees with dependent care assistance that satisfies the requirements of section 129(d) and this section.

(3) *Dependent care assistance provided to an employee.* The term *dependent care assistance provided to an employee* means amounts paid or incurred by the employer to provide dependent care assistance to the employee that are excludable under section 129, including amounts provided through a salary reduction

agreement under a section 125 cafeteria plan.

(4) *Employee.* The term *employee* means an individual who is an employee under the common-law standard described in § 31.3401(c)-1 of this chapter, and a self-employed individual within the meaning of section 401(c)(1).

(5) *Employer.* The term *employer* means the person that is the employer of an employee under the common-law standard described in § 31.3401(c)-1 of this chapter. All persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer for purposes of section 129.

(6) *Highly compensated employee or HCE.* The term *highly compensated employee* has the meaning set forth in section 414(q).

(7) *Non-highly compensated employee or NHCE.* The term *non-highly compensated employee* means an employee who is not a highly compensated employee.

(8) *Principal shareholder or owner.* The term *principal shareholder or owner* means an individual, or such individual's spouse or dependent, who (on any day of the taxable year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(9) *Plan year.* The term *plan year* means the 12-month period on the basis of which the dependent care assistance program is administered (or, if shorter, the period for which the program is maintained).

(b) *Applicability date.* This section applies to plan years beginning on or after the date of publication of the final rule in the **Federal Register**.

§ 1.129-2 Nondiscrimination requirements.

(a) *Contributions and benefits.* The contributions or benefits provided under a plan that provides dependent care assistance must not discriminate in favor of HCEs or their dependents. A plan that provides benefits on the same terms for all eligible employees satisfies this requirement. For example, a term that allows all NHCEs to reduce salary in the same amount as HCEs does not discriminate as to contributions or benefits.

(b) *Eligibility—(1) In general.* The dependent care assistance program must benefit employees who qualify under an eligibility classification established by the employer that is reasonably based on objective business criteria in satisfaction of paragraph (b)(2) of this section and not found by the Secretary to be discriminatory in favor of HCEs or their dependents in satisfaction of paragraph (b)(3) of this section. For

these purposes, an employee is eligible under the dependent care assistance program only if the employee had a meaningful opportunity to receive benefits, via salary reduction or otherwise, regardless of whether any benefits were actually received.

(2) *Reasonable eligibility classification established by the employer.* An eligibility classification must be, based on all facts and circumstances, reasonable and established under objective business criteria that identify the category or categories of employees who are eligible under the plan. Reasonable classifications generally include specified job categories, nature of compensation (that is, salaried or hourly), geographic location, and similar bona fide business criteria. An enumeration of employees by name or other specific criteria having substantially the same effect as an enumeration by name is not considered a reasonable classification.

(3) *Nondiscriminatory classification—*(i) *In general.* An eligibility classification must be found by the Secretary not to be discriminatory in favor of HCEs or their dependents. A classification is nondiscriminatory for a plan year if and only if the group of employees included in the classification eligible under the plan satisfies the requirements of either paragraph (b)(3)(ii) or (iii) of this section for the plan year.

(ii) *Facts and circumstances.* A plan satisfies the requirements of this paragraph (b)(3)(ii) if and only if, based on all the relevant facts and circumstances, the Secretary finds that the classification is nondiscriminatory. No one particular fact is determinative. Included among the facts and circumstances relevant in determining whether a classification is nondiscriminatory are the following—

(A) The underlying business reason for the classification. The greater the business reason for the classification, the more likely the classification is to be nondiscriminatory.

(B) The percentage of the employer's employees eligible under the plan. The higher the percentage, the more likely the classification is to be nondiscriminatory.

(C) Whether the number of employees eligible under the plan in each salary range is representative of the number of employees in each salary range of the employer's workforce. In general, the more representative the percentages of employees eligible under the plan in each salary range, the more likely the classification is to be nondiscriminatory.

(D) The difference between the plan's ratio percentage (within the meaning of paragraph (b)(3)(iii)(A) of this section) and the employer's safe harbor percentage (within the meaning of paragraph (b)(3)(iii)(B) of this section). The smaller the difference, the more likely the classification is to be nondiscriminatory.

(iii) *Safe harbor.* A plan satisfies the requirements of this paragraph (b)(3)(iii) for a plan year if and only if the plan's ratio percentage (as defined in paragraph (b)(3)(iii)(A) of this section) is greater than or equal to the employer's safe harbor percentage (as defined in paragraph (b)(3)(iii)(B) of this section).

(A) *Ratio percentage.* For purposes of this paragraph (b)(3)(iii), with respect to a plan for a plan year, the plan's *ratio percentage* means the ratio expressed as a percentage (rounded to the nearest hundredth of a percentage point) determined by dividing the eligibility percentage of NHCEs by the eligibility percentages of HCEs, as such eligibility percentages are defined in paragraph (b)(3)(iii)(C) of this section.

(B) *Safe harbor percentage.* The safe harbor percentage of an employer is 90 percent, reduced by $\frac{3}{4}$ of a percentage point for each whole percentage point by which the NHCE concentration percentage exceeds 60 percent.

(C) *Eligibility percentage.* The *eligibility percentage of NHCEs* is determined by dividing the number of NHCEs who are eligible under the plan by the total number of NHCEs of the employer. The *eligibility percentage of HCEs* is determined by dividing the number of HCEs who are eligible under the plan by the total number of HCEs of the employer. In determining these eligibility percentages, employees described in paragraph (f) of this section are excluded.

(D) *NHCE concentration percentage.* The *NHCE concentration percentage* of an employer is the percentage of all the employees of the employer who are NHCEs.

(c) *Principal shareholders or owners.* Not more than 25 percent of the amounts paid or incurred by the employer for dependent care assistance during the year may be provided for the class of individuals who are principal shareholders or owners.

(d) *Average benefits test—*(1) *In general.* A plan satisfies the requirements of this paragraph (d) if the average benefits provided to employees who are NHCEs under all dependent care assistance programs of the employer is at least 55 percent of the average benefits provided to HCEs under all dependent care assistance programs of the employer.

(2) *Average benefits provided—*(i) *General rule.* For purposes of paragraph (d)(1) of this section, the "average benefits provided" to a group of HCEs or NHCEs for a plan year equals the total dollar amount of dependent care assistance provided under all dependent care assistance programs of the employer during the plan year to employees in that group, divided by the number of employees in that group to whom any dependent care assistance is provided during the plan year, via salary reduction or otherwise.

(ii) *Employees taken into account.* For purposes of applying the calculation in paragraph (d)(2)(i) of this section, any individual employed by the employer on any day of the plan year is taken into account in the denominator if:

(A) The employer provides any amount of dependent care assistance to that employee during the plan year, via salary reduction or otherwise; and

(B) The employee is not described in paragraph (f) of this section.

(3) *Time to perform nondiscrimination test.* The requirements of this paragraph (d) must be satisfied as of the last day of the plan year.

(4) *Salary reduction agreements.* For purposes of this paragraph (d), in the case of any benefits provided through a salary reduction agreement, a plan may disregard any employee whose compensation is less than \$25,000. For purposes of this paragraph (d)(4), the term "compensation" has the meaning given such term by section 414(q)(4).

(e) *Utilization rates.* Notwithstanding paragraph (d)(2)(ii) of this section, utilization rates are taken into account to the extent provided in section 129(e)(6) in determining whether a plan satisfies section 129(d)(4) and (8).

(f) *Excluded employees.* For purposes of paragraphs (b) and (d) of this section, there shall be excluded from consideration—

(1) Subject to rules similar to the rules of section 410(b)(4), employees who have not attained the age of 21 and completed one year of service (as defined in section 410(a)(3)); and

(2) Employees not included in a dependent care assistance program who are included in a unit of employees covered by an agreement that the Secretary finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that dependent care benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(g) *Contributions taken into account.* For purposes of paragraphs (a) through

(d) of this section, an employer's payment or reimbursement for an employee's dependent care outside any dependent care assistance program is not taken into account.

(h) *Effect of failure.* Except as otherwise provided in paragraph (j) of this section, if a plan would qualify as a dependent care assistance program but for a failure to satisfy one or more of the requirements of section 129(d) and this section, then the plan is not a dependent care assistance program with respect to HCEs. Notwithstanding such failure, the plan is treated as a dependent care assistance program with respect to employees who are NHCEs.

(i) [Reserved]

(j) *Correction of nondiscrimination failures—(1) In general.* If a plan fails the requirements of the nondiscrimination tests of paragraphs (c) or (d) of this section as of the last day of the plan year, the plan may nonetheless be treated as satisfying the requirements if the plan takes remedial action as described in paragraph (j)(2) (with respect to HCEs) or (j)(3) (with respect to principal shareholders and owners) of this section.

(2) *Remedial measures to correct average benefits testing failures—(i) Correction.* If a plan fails to satisfy the requirements of paragraph (d) of this section as of the last day of the plan year, the plan may be treated as satisfying those requirements by including in income any excess benefit amounts received by HCEs. For this purpose, an excess benefit amount is included in income if the amount is treated by the employer as gross income and, to the extent applicable, wages within the meaning of sections 3401, 3121, and 3306, and compensation within the meaning of section 3231, and reported as such with respect to the year being tested by the deadline prescribed in § 31.6051-1(d)(1)(i) of this chapter for furnishing statements on Form W-2, *Wage and Tax Statement*, for the year in which the excess benefits were received.

(ii) *Allocation of excess benefits.*

(A) If all HCEs have dependent care benefits in excess of the quotient of the amount of the average dependent care benefits of all NHCEs divided by 0.55, the amount of excess benefits to be included in income of each HCE is the excess of the amount of that HCE's dependent care benefit over that quotient.

(B) If not all HCEs have dependent care benefits in excess of the quotient of the amount of the average dependent care benefits of all NHCEs divided by 0.55, the plan may allocate the reduction of dependent care benefits among HCEs in any reasonable manner,

including methods for apportioning distributions of excess amounts similar to those used in § 1.401(k)-2(b)(2)(iii).

(3) *Remedial measures to correct principal shareholders and owners concentration failures—(i) Correction.* If a plan fails to satisfy the requirements of paragraph (c) of this section as of the last day of the plan year, the plan may be treated as satisfying those requirements by including in income any excess ownership concentration as defined in paragraph (j)(3)(ii) of this section. For this purpose, an excess ownership concentration is included in income if the amount is treated by the employer as gross income and, to the extent applicable, wages within the meaning of sections 3401, 3121, and 3306, and compensation within the meaning of section 3231, and reported as such with respect to the year being tested by the deadline prescribed in § 31.6051-1(d)(1)(i) of this chapter for furnishing statements on Form W-2, *Wage and Tax Statement*, for the year in which the excess ownership concentration was received.

(ii) *Allocation of excess ownership concentration.*

(A) If each of the principal shareholders or owners has dependent care benefits in excess of the permitted concentration amount, the excess ownership concentration for each such individual is the dependent care benefits received by that individual less the permitted concentration amount. For this purpose, the permitted concentration amount is 25 percent of the total dependent care benefits provided by the employer to all participants during the year divided by the number of such individuals to whom benefits were provided.

(B) If not all principal shareholders or owners have dependent care benefits in excess of the permitted concentration amount, the plan may allocate the reduction of dependent care benefits among such individuals in any reasonable manner, including methods for apportioning distributions of excess amounts similar to those used in § 1.401(k)-2(b)(2)(iii).

(k) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1.* For 2026, an employer has 15 HCEs and 15 NHCEs. The employer maintains a dependent care assistance program funded solely via salary reduction elections made by employees under the employer's section 125 cafeteria plan. All 30 employees are eligible to make salary reduction elections under the plan on the same terms. Eleven of the HCEs elect benefits under the plan of \$7,500 each, and four of the NHCEs elect benefits under the

plan of \$7,500 each. The remaining employees elect no benefits under the plan. The average benefits provided to the HCEs is \$7,500 (\$82,500/11) and the average benefits provided to the NHCEs is also \$7,500 (\$30,000/4). Accordingly, the average benefits provided to the NHCEs is 100 percent of the average benefits provided to the HCEs, and the required threshold of 55 percent under section 129(d)(8) and paragraph (d)(1) of this section is satisfied.

(2) *Example 2.* An employer has 15 HCEs and 15 NHCEs. The employer maintains a dependent care assistance program funded solely via salary reduction elections made by employees under the employer's section 125 cafeteria plan. All 30 employees are eligible to make salary reduction elections under the plan on the same terms. Eleven of the HCEs elect benefits under the plan of \$7,500 each for a collective \$82,500 in benefits provided to eleven HCEs, and an average benefits provided to HCEs of \$7,500 (\$82,500/11); one of the NHCEs elects benefits of \$7,500; three of the NHCEs elect benefits of \$5,000; one of the NHCEs elects benefits of \$2,500; and two of the NHCEs elect benefits of \$1,000, for a collective \$27,000 in benefits provided to seven NHCEs, and an average benefits provided to NHCEs of \$3,857.14 (\$27,000/7). Accordingly, the average benefits provided to the NHCEs is 51.4 percent of the average benefits provided to the HCEs (\$3,857.14/\$7,500), and the required threshold of 55 percent under section 129(d)(8) and paragraph (d)(1) of this section is not satisfied.

(3) *Example 3.* The facts are the same as in paragraph (k)(2) of this section (*Example 2*) except that the following four NHCEs are excluded employees within the meaning of paragraph (f) of this section: two of the NHCEs who elected benefits under the plan of \$5,000; and the two NHCEs who elected benefits of \$1,000. With the exclusion of these employees, a collective \$15,000 in benefits are provided to three NHCEs, and the average benefits provided to NHCEs is \$5,000 (\$15,000/3). The average benefits provided to the HCEs is \$7,500 (\$82,500/11). Accordingly, the average benefits provided to the NHCEs is 66.7 percent of the average benefits provided to the HCEs (\$5,000/\$7,500), and the required threshold of 55 percent under section 129(d)(8) and paragraph (d)(1) of this section is satisfied.

(4) *Example 4.* The facts are the same as in paragraph (k)(2) of this section (*Example 2*) except that on or before the furnishing deadline for the Form W-2 for the year in which the benefits were provided, the employer treats \$500 of the benefits elected by each of the HCEs

as gross income and wages for the year in which the benefits were provided, reducing the benefits provided to the HCEs to a collective \$77,000 in benefits provided to 11 HCEs, reducing the average benefit to HCEs to \$7,000 (\$77,000/11). Accordingly, the average benefits provided to the NHCEs is 55.1 percent of the average benefits provided to the HCEs (\$3,857.14/\$7,000), and the required threshold of 55 percent under section 129(d)(8) and paragraph (d)(1) of this section is satisfied.

(5) *Example 5.* The facts are the same as in paragraph (k)(1) of this section (*Example 1*) except that the 11 NHCEs to whom benefits are not provided are not eligible to elect benefits under the terms of the plan. The 11 excluded NHCEs are not excluded employees within the meaning of section 129(d)(9) and paragraph (f) of this section. The plan has discriminated in favor of HCEs as to eligibility and thus does not satisfy the requirements of section 129(d)(3) and paragraph (b) of this section.

(l) *Applicability date.* This section applies to plan years beginning on or after the date of publication of the final rule in the **Federal Register**.

Frank J. Bisignano,
Chief Executive Officer.

[FR Doc. 2026-16314 Filed 8-10-26; 8:45 am]

BILLING CODE 4831-GV-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

[COE-2026-0067]

Restricted Area: Naval Weapons Station Seal Beach

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to revise the existing regulations for a restricted area within Naval Weapons Station Seal Beach (NWSSB). The Department of the Navy requested amendment of a restricted area located within NWSSB, in the City of Seal Beach, Orange County, California (33.7334 Latitude/ -118.0953 Longitude). NWSSB is the primary West Coast installation for the supply of munitions to U.S. Navy vessels. Following an extensive project to reconfigure Anaheim Bay, including the creation of a new ammunition pier and the relocation of a public boating

channel, the Department of the Navy requested the Corps modify the existing restricted area regulations to protect the public from navigational and operational hazards, and to protect government assets, missions, and the base population in general.

DATES: Written comments must be submitted on or before September 10, 2026.

ADDRESSES: You may submit comments, identified by docket number COE-2026-0067, by any of the following methods:

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

Email: linda.speerstra@usace.army.mil. Include the docket number, COE-2026-0067, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (Linda Speerstra), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery/Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2026-0067. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](https://www.regulations.gov) email. The [regulations.gov](https://www.regulations.gov) website is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to the Corps without going through [regulations.gov](https://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Speerstra, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-945-2101 or Gerardo Salas, Corps of Engineers, Los Angeles District Regulatory Branch at 213-321-0786.

SUPPLEMENTARY INFORMATION: In response to a request from the Department of the Navy, and pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3), the Corps is proposing to amend its regulations at 33 CFR 334.930 by revising the restricted area boundaries and the associated regulations for NWSSB to reflect current site conditions and operational needs.

Procedural Requirements

a. Review Under Executive Orders 12866 and 13563, this proposed rule has not been designated a “significant regulatory action”. If issued, it would be with respect to a military function of the Department of Defense therefore, Executive Order 12866 and 13563 do not apply.

b. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.* This proposed rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The restricted area is necessary to protect public safety. Unless information is obtained to the contrary during the comment period, the Corps certifies that the proposed rule would have no significant economic impact on the public.

c. Review Under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not

have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments that have been received will be considered.

d. Unfunded Mandates Reform Act of 1995. This proposed rule does not impose an enforceable duty among the private sector nor State, local, and Tribal governments and, therefore, it is not a Federal private sector mandate, nor a State, local, or Tribal government mandate, and it is not subject to the requirements of either section 202 or section 205 of Public Law 104–4 (Unfunded Mandates Reform Act of 1995). We have also found that under section 203 of the Act, small governments will not be significantly and uniquely affected by this rulemaking.

e. Congressional Review Act. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. This proposed rule is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set forth in the preamble, the United States Army Corps of Engineers is proposing to amend 33 CFR part 334 as set forth below:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.930 to read as follows:

§ 334.930 Anaheim Bay Harbor, California, Naval Weapons Station, Seal Beach; restricted area.

(a) *The restricted area.* The waters of Anaheim Bay Harbor between the east and west jetties at the United States Naval Weapons Station, Seal Beach, California, and the contiguous inner basin. The restricted area is divided into two sub-areas:

(1) *The Navy Operational Area.* Consisting of the entire inner basin, and a majority of the outer harbor with the exception of the southeastern-most section and returning to Point A as shown in table 1:

TABLE 1 TO PARAGRAPH (a)(1)

	Latitude	Longitude
Point A	33°43'39" N	118°06'07" W.
Point B	33°44'02" N	118°06'04" W.
Point C	33°44'18" N	118°05'47" W.
Point D	33°44'06" N	118°05'24" W.
Point E	33°44'09" N	118°05'22" W.
Point F	33°44'07" N	118°05'18" W.
Point G	33°43'60" N	118°05'16" W.
Point H	33°43'50" N	118°05'34" W.

(2) *The public navigation channel.* The designated public navigation channel within the southeastern portion

of Anaheim Bay, starting at the mouth of the outer harbor and running northeast, adjacent to the East Jetty, as

far north as the Anaheim Bay Bridge and returning to Point A as shown in table 2:

TABLE 2 TO PARAGRAPH (a)(2)

	Latitude	Longitude
Point A	33°43'39" N	118°06'07" W.
Point H	33°43'50" N	118°05'34" W.
Point G	33°43'60" N	118°05'16" W.
Point I	33°43'56" N	118°05'13" W.
Point J	33°43'56" N	118°05'07" W.
Point K	33°43'53" N	118°05'06" W.
Point L	33°43'52" N	118°05'11" W.
Point M	33°43'54" N	118°05'20" W.
Point N	33°43'45" N	118°05'35" W.
Point O	33°43'36" N	118°06'01" W.

(b) *The regulation—(1) The Navy Operational Area.* No persons, vessels, watercraft, or other floating devices shall enter, occupy, transit through, or conduct any activities within the Navy Operational Area unless authorized by the Navy.

(2) *The public navigation channel.* Unless otherwise approved by the Commanding Officer, Naval Weapons

Station Seal Beach, civilian craft are only authorized to transit through Anaheim Bay within the limits of the marked public navigation channel adjacent to the East Jetty.

(i) The authority of the Naval Weapons Station Commanding Officer in this area extends to restricting and disallowing the navigating of craft during such times as the Commanding

Officer determines that considerations of national security or safety warrant such action(s). All persons and all vessels, watercraft, or other devices shall promptly vacate the areas when ordered to do so by the U.S. Navy, U.S. Coast Guard, or local law enforcement.

(ii) Vessels under sail, hand-powered watercraft, recreational swimming or any other activities involving persons in

the water are prohibited within the designated public navigation channel.

(iii) Anchoring or stopping within the designated public navigation channel is prohibited without prior approval by the Commanding Officer, Naval Weapons Station Seal Beach.

(iv) Boats unable to throttle down or to maintain steerage way at 5 miles per hour speed shall proceed at the minimum speed consistent with safe navigation.

(v) Smoking, open flames and barbecues in boats are prohibited during the transit of this area.

(vi) Nothing in the regulations in this section shall be construed as relieving the owner or persons in command of any vessels from the penalties of the law for obstructing navigation or for not complying with the navigation laws in regard to lights or signals or for otherwise violating law.

(vii) All vessel operators shall heed and obey all posted signs and/or instructions issued by security personnel of Naval Weapons Station Seal Beach.

(c) *Enforcement.* The regulations in this section shall be enforced by the Commanding Officer, Naval Weapons Station Seal Beach, California, and such agencies as the Commanding Office may designate. For clarification or other information, the Naval Weapons Station Seal Beach Public Affairs Officer should be contacted at (562) 626-7215.

Stephen L. Hill,

*Chief, Operations and Regulatory Division,
Directorate of Civil Works.*

[FR Doc. 2026-16357 Filed 8-10-26; 8:45 am]

BILLING CODE 3720-58-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2026-5743; FRL-13518-02-R9]

Air Quality Plan; Arizona; Maricopa County Air Quality Department; Gasoline Loading

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to approve and conditionally approve revisions to the Maricopa County Air Quality Department (MCAQD or “County”) portion of the Arizona State Implementation Plan (SIP). These revisions concern emissions of volatile organic compounds (VOC) from loading

organic liquids and gasoline. We are proposing action on local rules to regulate these emission sources under the Clean Air Act (CAA or “Act”). We are also proposing to approve and conditionally approve the MCAQD’s reasonably available control technology (RACT) demonstration for the source categories associated with these rules for the 2008 8-hour ozone national ambient air quality standards (NAAQS) in the Phoenix-Mesa ozone nonattainment area.

DATES: Comments must be received on or before September 10, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2026-5743 at <https://www.regulations.gov>. For comments submitted at [regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by telephone at: (415) 947-4129; or by email at sherman.donnique@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this proposed rule, the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple abbreviations and terms in this proposed rule. While this list may not be exhaustive, for ease of reading and

for reference purposes, the EPA defines the following terms and acronyms here:

ADEQ—Arizona Department of Environmental Quality
A.R.S.—Arizona Revised Statutes
CAA—Clean Air Act
CARB—California Air Resources Board
CBI—Confidential Business Information
CTG—Control Technology Guideline
FIP—Federal Implementation Plan
GDF—Gas Dispensing Facility
MCAQD—Maricopa County Air Quality Department
NAAQS—National Ambient Air Quality Standards
RACT—Reasonably Available Control Technology
SIP—State Implementation Plan
TSD—Technical Support Document
VOC—Volatile Organic Compounds

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I. Executive Summary

A. What action is the EPA taking?

The EPA is proposing action on the October 8, 2025, submittal by the Arizona Department of Environmental Quality (ADEQ or “State”) of MCAQD Rule 352, “Gasoline Cargo Tank Testing and Use,” as revised on October 1, 2025 (“Rule 352”), and MCAQD Rule 353, “Storage and Loading of Gasoline at a Gasoline Dispensing Facility (GDF),” as revised on October 1, 2025 (“Rule 353”) (collectively, “the MCAQD submittal”). The MCAQD submittal is also intended to meet RACT requirements for the 2008 8-hour ozone NAAQS for the category of sources regulated by each rule.

Rule 352 limits VOC emissions from gasoline cargo tanks that are used to load or unload gasoline within Maricopa County. Because it fulfills all relevant requirements, we are proposing to fully approve Rule 352 and the County’s RACT demonstration for the 2008 8-hour ozone NAAQS for the category of sources covered by the EPA Control Techniques Guideline (CTG) document, “Control of Volatile Organic Compound Leaks from Gasoline Tank

Trucks and Vapor Collection Systems.”¹

Rule 353 limits VOC emissions from storage and loading of gasoline at gasoline dispensing facilities (GDFs). We are proposing to conditionally approve Rule 353 and the County’s RACT demonstration for the 2008 8-hour ozone NAAQS for the category of sources covered by the EPA CTG document “Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations.”² We are proposing to conditionally approve Rule 353 and the associated RACT demonstration based on a commitment from the ADEQ to correct a deficiency in Rule 353 within one year of the EPA’s final action on the MCAQD submittal. The deficiency relates to the enforceability of a provision that adds a new annual testing requirement but cites to and relies on requirements in an Arizona statute that has not been approved into the Arizona SIP.

If finalized as proposed, Rules 352 and 353 would be incorporated into the federally enforceable portion of the Maricopa County portion of the Arizona SIP and would replace the current SIP-approved versions.

B. What is the legal authority and what are the requirements?

We are taking this proposed action under CAA section 110. Pursuant to CAA section 110(a), States are required to submit SIPs to the EPA that provide for the implementation, maintenance, and enforcement of the NAAQS. CAA section 110(k) requires SIPs to meet certain procedural requirements and requires the EPA to approve or disapprove SIP submissions. CAA section 110(l) requires States to provide public notice and an opportunity for public hearing of SIP revisions prior to their submittal and prohibits the EPA

from approving any SIP revisions that would interfere with attainment or maintenance of the NAAQS, reasonable further progress, or other applicable requirements of the CAA. If a SIP submittal meets all the applicable CAA requirements, then the EPA must approve the submittal under CAA section 110(k)(3).

For the MCAQD submittal to be approved we must consider several requirements related to enforceability and stringency of the emission limitations. CAA section 110(a)(2)(A) requires emission limitations in the SIP to be enforceable and CAA section 172(c)(6) requires SIPs for nonattainment areas “include enforceable emission limitations, and such other control measures means or techniques . . . as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date” Also, 40 CFR part 51, subpart K requires SIPs to have legally enforceable procedures for monitoring the status of compliance with the requirements in the control strategy. Further, this submittal is intended to meet the RACT requirement in CAA section 182(b)(2) for the 2008 8-hour ozone NAAQS. Thus, these rules must also establish RACT level controls for the applicable sources.

Because Rule 353 is not fully approvable, we are proposing to conditionally approve this portion of the MCAQD submittal under CAA section 110(k)(4). Under CAA section 110(k)(4), the EPA may approve a plan revision based on a commitment from the State to adopt specific enforceable measures by not later than one year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails

to comply with such commitment. On June 9, 2026, the ADEQ submitted a commitment to address this deficiency.

The deficiency in Rule 353 relates to CAA section 110(i), which prohibits the modification of SIP requirements outside the SIP approval process. The rule cites requirements that are not a part of the Arizona SIP and could result in the modification or relaxation of SIP requirements without a SIP revision.

II. Background

Rules 352 and 353 regulate emissions of VOC, which contribute to the formation of ground-level ozone. Ozone harms human health and the environment and is a pollutant for which the EPA has established a NAAQS. Section 110(a) of the CAA requires States to submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. In addition, CAA section 182(b)(2) requires that SIPs for ozone nonattainment areas classified as “Moderate” or higher implement RACT for sources covered by a control techniques guidelines (CTG) document. The MCAQD regulates a portion of the Phoenix-Mesa area designated as nonattainment for ozone and classified as Moderate nonattainment for the 2008 ozone NAAQS.³ Therefore, the MCAQD is required to submit SIP revisions that implement RACT-level controls for all sources covered by a CTG. For the 2008 8-hour ozone NAAQS, the MCAQD submitted Rule 352 and Rule 353 to establish RACT-level controls for VOC emissions from sources covered by the CTGs listed in Table 1. Rule 352 limits VOC emissions from gasoline cargo tanks that are used to load or unload gasoline within Maricopa County. Rule 353 limits VOC emissions from storage and loading of gasoline at GDFs.

TABLE 1—RULES AND ASSOCIATED CTGS

MCAQD rule	Associated CTGs
Rule 352	Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems (EPA–450/2–78–051), December 1978.
Rule 353	Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations (EPA–450/R–75–102), November 1975.

¹ EPA–450/2–78–051, December 1978.

² EPA–450/R–75–102, November 1975.

³ On November 12, 2019 (84 FR 60920), the EPA issued a determination that the Phoenix-Mesa ozone nonattainment area attained the 2008 ozone National Ambient Air Quality Standard (NAAQS)

by the Moderate area attainment date of July 20, 2018. That determination did not constitute a redesignation of the area to attainment for the 2008 ozone standard.

Section III.D of the preamble to the EPA's final rule to implement the 2008 8-hour ozone NAAQS discusses RACT requirements.⁴ It states in part that RACT SIPs must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment areas subject to a specific CTG. The County's RACT SIP provides MCAQD's analysis of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS.⁵

On February 26, 2020, the EPA conditionally approved MCAQD Rule 352, MCAQD Rule 353, and the County's RACT demonstration for the CTGs associated with these rules into the Arizona SIP.⁶ The rules contained deficiencies that precluded full SIP approval and were conditionally approved based on a commitment by the MCAQD and the ADEQ to provide, within one year, a SIP submission that would address those deficiencies. The MCAQD subsequently revised these rules to address the identified deficiencies and ADEQ submitted the revised rules on December 3, 2020. On

January 10, 2025, the EPA finalized a limited approval and limited disapproval of MCAQD Rule 352 and Rule 353, and we disapproved the County's RACT demonstration for the CTGs associated with these rules.⁷ The EPA concluded that the State met its commitment and that these revised rules corrected the deficiencies previously identified in the earlier versions of the rules that were conditionally approved into the SIP. However, the rules contained newly identified deficiencies that precluded full SIP approval. Additionally, because of the disapprovals, the CAA requires offset sanctions under the nonattainment New Source Review program to be triggered 18 months after the action's effective date of February 10, 2025, and highway sanctions six months later, unless the State submits revisions that correct the deficiencies. Further, the EPA must promulgate a Federal Implementation Plan (FIP) under CAA section 110(c) unless we approve subsequent SIP revisions that correct the deficiencies within 24 months.

The MCAQD subsequently revised these rules to address the identified

deficiencies and ADEQ submitted the revised rules on October 8, 2025. These revised rules are the versions we are proposing to conditionally approve in this proposed action. The EPA's technical support document (TSD) for each rule has more background information on our prior actions related to these rules and is available in the docket for this action.

III. Summary of Arizona's Submittal

On October 8, 2025, the ADEQ, the governor's designee for Arizona SIP submittals, submitted the MCAQD submittal to the EPA on behalf of the MCAQD. The MCAQD submittal includes the rules listed in Table 2 that we are proposing for inclusion in the federally enforceable Arizona SIP. The submittal also includes documents demonstrating that the submittal was adopted in accordance with CAA section 110 and includes the Department's technical support materials. On April 8, 2026, the submittal became complete by operation of law with respect to the completeness criteria in 40 CFR part 51, appendix V.

TABLE 2—RULES PROPOSED FOR INCLUSION IN ARIZONA SIP

Local agency	Rule No.	Rule title	Revised	Submitted
MCAQD	352	Gasoline Cargo Tank Testing and Use	10/1/2025	10/8/2025
MCAQD	353	Storage and Loading of Gasoline at a Gasoline Dispensing Facility (GDF).	10/1/2025	10/8/2025

If Rule 352 is approved and Rule 353 is conditionally approved, these rules would replace the current SIP-approved versions in the Arizona SIP from our January 10, 2025, limited approval and limited disapproval action.⁸ Additionally, the prior disapproval of the County's RACT demonstration for the CTGs associated with these rules would be approved for Rule 352 and conditionally approved for Rule 353.

IV. The EPA's Evaluation of Arizona's Submittal

A. How is the EPA evaluating the submittal?

Emission limitations in the SIP must be enforceable and SIP revisions must not interfere with applicable requirements concerning attainment and

reasonable further progress or other CAA requirements.⁹ In addition, because these rules were submitted to satisfy the RACT requirement for sources covered by the CTGs listed in Table 1, these rules must establish RACT level controls for such sources. For our evaluation, we considered relevant guidance and policy documents to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants.¹⁰

B. Does the submittal meet the evaluation criteria?

The EPA is proposing to conclude that these revised rules have corrected the deficiencies previously identified in our limited approval and limited

disapproval action. Below we summarize the prior deficiencies and explain how they have been corrected. The TSD has more information on our evaluation, including in-depth descriptions of the individual deficiencies and the way that each was addressed in the current submitted version of the rules.

1. Prior Deficiencies in Rule 352

In our January 2025 limited disapproval and limited disapproval action, we identified that Rule 352 outlined leak detection tests to be performed beyond the annual certification test, but the rule did not require those tests to be conducted periodically, nor did it establish any requirements for maintaining records or

(April 16, 1992); 57 FR 18070 (April 28, 1992); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990); "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook); and the CTGs listed in Table 1.

⁴ 80 FR 12264 (Mar. 6, 2015).

⁵ "Analysis of Reasonably Available Control Technology for the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) State Implementation Plan (RACT SIP)" submitted June 22, 2017.

⁶ 85 FR 10986 (Feb. 26, 2020).

⁷ 90 FR 1903 (Jan. 10, 2025).

⁸ 90 FR 1903 (Jan. 10, 2025).

⁹ See CAA section 110(a)(2)(A) and CAA section 110(l), respectively.

¹⁰ See, "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498

reporting the results.¹¹ To address this deficiency, MCAQD clarified that such leak inspections and vapor tightness determinations outside of the annual vapor tightness certification test are for inspections performed by MCAQD and not owners and operators. Additionally, MCAQD added a corrective action schedule for repairing and retesting equipment when a leak is identified from these inspections and added a requirement for the MCAQD to document and maintain records when it performs such tests.¹² These changes eliminate requirements that depended on specialized training for owners and operators to calibrate testing equipment. These previous requirements lacked a clear enforcement mechanism. Rule 352 now includes enforceable recordkeeping requirements for these tests and because the additional testing is performed by MCAQD; therefore separate reporting by the owner/operator to the County is unnecessary.¹³ In combination with the existing annual vapor tightness certification testing, we can conclude that the compliance provisions of the Rule are sufficient, the Rule is enforceable, and this deficiency has been corrected.

The other Rule 352 deficiency identified in our January 2025 limited approval and limited disapproval action involved procedures for establishing an exemption from the annual vapor tightness testing requirements.¹⁴ The rule allowed gasoline cargo tank owners and operators to be exempt from the annual testing if they demonstrated compliance through a test method “at least as stringent as” the tests specified in the rule. This language was previously not enforceable because it did not specify which alternative test methods are acceptable to qualify for the exemption or who would determine whether the alternative test methods met the required level of stringency. This ambiguity could have allowed changes to testing requirements without following the CAA’s required SIP revision process. To address this deficiency MCAQD removed the phrase “at least as stringent as those,” therefore requiring gasoline cargo tank testing companies to use only the test methods specified in the rule to demonstrate vapor tightness.¹⁵

¹¹ See, Sections 502 and 503 of the November 18, 2020 version of Rule 352.

¹² See, revisions made to Rule 352, Sections 502 and 503 in the MCAQD submittal.

¹³ See, addition of Sections 303 and 504.6 to Rule 352 in the MCAQD submittal.

¹⁴ Sections 301.1 and 501.1 of the November 18, 2020 version of Rule 352.

¹⁵ See revisions to Section 103.3(a) of Rule 352 in the MCAQD submittal.

2. Prior Deficiencies in Rule 353

In our January 2025 limited approval and limited disapproval action,¹⁶ we identified that Rule 353 did not require all sources subject to the rule’s vapor tight standard to conduct periodic testing to demonstrate compliance. The rule included a weekly monitoring requirement, but that requirement did not ensure the use of a replicable test method for demonstrating vapor tightness. Rule 353 required a facility to first determine if there is a “potential vapor leak” prior to being required to determine the vapor tight status using applicable test methods. The rule allowed owners and operators to choose from a menu of monitoring options with one option being “sight, sound, or smell.”¹⁷ We explained that while the use of sight, sound, or smell allows for a high frequency of relatively simple checks, allowing the use of sight, sound, or smell to potentially be the only mechanism used in determining a potential vapor leak would allow for the vapor tight status of equipment to be solely evaluated based on the operator’s discretion and sensory inputs. To address this deficiency, MCAQD added a requirement for annual testing of Stage I vapor recovery systems that handle 10,000 gallons or more of gasoline in a month, with testing performed by a licensed Arizona Department of Agriculture, Weights and Measures Services Division service representative. Although the rule does not specify the testing methods, existing Arizona SIP requirements already require annual testing using California Air Resources Board (CARB) TP–201.4, CARB TP–201.5, and San Diego TP–96–1.¹⁸ Therefore, the identified deficiency is considered resolved.

In our January 2025 limited approval and limited disapproval action we identified that Rule 353 contained reporting requirements that applied to some but not all sources subject to Rule

¹⁶ 90 FR 1903, Jan. 10, 2025

¹⁷ See, Section 501 of the November 18, 2020 version of Rule 353.

¹⁸ See SIP-approved statute A.R.S. section 41–2132(C)(5) and rules from the Arizona Administrative Code (AAC) R20–2–910 and R20–2–905 (80 FR 70689, November 16, 2015 and 77 FR 35279, June 13, 2012, respectively). A.R.S. section 41–2132(C)(5) requires that “In Area A and other geographical areas as provided by subsection G of this section, have the stage I vapor recovery system tested annually by a registered service representative licensed by the department.” “Area A” generally overlaps with the 2008 8-hour nonattainment NAAQS area in Maricopa County. AAC R20–2–910 establishes the annual inspection and testing requirements. AAC R20–2–910(B) states that the annual inspection shall include the tests in R20–2–905(A)(1–8). AAC R20–2–905(A) lists the test methods for stage I vapor recovery systems in R20–2–905(A)(1–4).

353. While Rule 353 requires reporting of some compliance information for most sources, it did not include such a requirement for aviation gasoline.¹⁹ To correct this deficiency, MCAQD added a requirement to Rule 353 that ensures storage tanks with aviation gasoline must meet the same reporting requirements.²⁰

3. New Deficiency in Rule 353

Rule 353 now requires annual testing “in accordance with Arizona Revised Statutes [A.R.S.] § 3–3512(C)(5).”²¹ However, A.R.S. section 3–3512(C)(5) is not in the Arizona SIP and has not been submitted for SIP approval. CAA section 110(a)(2)(A) requires emission limits to be enforceable, and 40 CFR 51.212 requires SIPs to provide for periodic testing of stationary sources and the use of enforceable test methods for each emission limitation. Reliance on requirements outside of the Arizona SIP could allow the SIP requirements to be revised and relaxed without the CAA section 110(i) required SIP approval process. Further, submittal of A.R.S. section 3–3512 alone would be insufficient since the SIP would still not otherwise specify which tests are needed to comply with Rule 353. As a result, EPA is proposing to determine that this undermines the enforceability of the submission and is inconsistent with the requirements of CAA Section 110.

On June 9, 2026, ADEQ submitted a commitment to the EPA to submit the State’s current version of its vapor recovery statutes and regulations for EPA approval into the SIP within one year of the EPA’s final action on the MCAQD submittal.²² The inclusion of these provisions in the SIP, which include A.R.S. section 3–3512(C)(5) and specific testing requirements with test methods, would ensure that the necessary test methods are clearly specified within the SIP and would resolve the identified deficiency.

Based on our evaluation, and as described in more detail in the TSDs in the docket for this action, the submitted

¹⁹ The reporting requirements in Rule 353 are incorporated by reference through 40 CFR part 63 subpart CCCCCC. See, Rule 353, Section 301. Aviation gasoline is subject to Rule 353 but is exempt from 40 CFR part 63, subpart CCCCCC. As a result, aviation gasoline storage tanks were previously not subject to the same reporting requirements as all other sources subject to Rule 353.

²⁰ Rule 353, Section 504.8.

²¹ Rule 353, Section 405.

²² Letter dated June 8, 2026, from Daniel Czecholinski, CHMM, Director, Air Quality to Mike Martucci, Acting Regional Administrator, EPA, Region 9, Subject, “Request for Conditional Approval of Arizona Stage II Vapor Recovery Controls.”

rules resolve the previously identified deficiencies, strengthen the SIP, and generally establish RACT level controls. However, EPA is proposing to conditionally approve Rule 353 because the ADEQ has committed to correcting a new deficiency that prevents full approval of the rule.

C. The EPA's Recommendations

The TSDs include additional recommendations for MCAQD related to these rules.

D. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve Rule 352 and the RACT demonstration for the source category associated with the rule in Table 1 for the 2008 8-hour ozone NAAQS standard because it fulfills all relevant requirements. If we finalize this approval as proposed, we will replace the current SIP-approved version with the October 8, 2025 submitted version in the federally enforceable SIP and stop all sanctions clock and the Federal Implementation Plan (FIP) obligations associated with our January 10, 2025, limited disapproval of Rule 352 and the associated CTG RACT obligation.

As described in section IV.B of this preamble, our analysis indicates that Rule 353 largely fulfills the relevant CAA section 110 and part D requirements, but the identified deficiency precludes full SIP approval pursuant to section 110(k)(3) of the Act. Section 110(k)(4) of the CAA authorizes the EPA to conditionally approve SIP revisions based on a commitment by the state to adopt specific enforceable measures by a date certain but not later than one year after the date of the plan approval.²³ Because ADEQ has committed to provide the EPA with a SIP submission within one year of final action of Rule 353 that will include updated rules that would adequately address the identified deficiency, we are proposing to conditionally approve Rule 353 pursuant to section 110(k)(4) of the Act. If ADEQ submits the updated rules by the specified deadline, and the EPA approves the submission, then the identified deficiency will be cured. However, if this proposed conditional approval is finalized and ADEQ fails to submit the revision within the required timeframe, the conditional approval will be treated as a disapproval. In addition, as authorized in section 110(k)(3) of the Act, the EPA is proposing a conditional approval of the RACT demonstration for the 2008 ozone NAAQS for the sources

covered by the CTG associated with Rule 353, because the deficiency precludes the EPA from proposing to approve this RACT demonstration as a whole. If we finalize this conditional approval as proposed, we will replace the current SIP-approved version with the October 8, 2025, submitted version in the federally enforceable SIP and stop all sanctions clock and the FIP obligations associated with our January 10, 2025, limited disapproval of Rule 353 and the associated CTG RACT obligation. We are concurrently making an interim final determination to stay and defer the CAA section 179 sanctions associated with our January 10, 2025 limited disapproval of Rule 352 and Rule 353. Consistent with our order of sanction regulations,²⁴ this determination is based on this proposed approval of SIP revisions to resolve the deficiencies that were the basis of our prior January 10, 2025 limited disapproval.

We will accept comments from the public on this proposal until September 10, 2026. If we take final action to approve and conditionally approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

III. Incorporation by Reference

In this proposed rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference MCAQD Rule 352, "Gasoline Cargo Tank Testing and Use," revised on October 1, 2025, which regulates VOC emissions during loading and unloading of gasoline to any gasoline cargo tank within Maricopa County. The EPA is also proposing to incorporate by reference MCAQD Rule 353, "Storage and Loading of Gasoline at a Gasoline Dispensing Facility (GDF)," revised on October 1, 2025, which regulates VOC emissions during storage and loading of gasoline at gasoline dispensing facilities. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
 - Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a State program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and

²³ 42 U.S.C. 7410(k)(4).

²⁴ 40 CFR 52.31.

recordkeeping requirements, Volatile organic compounds.

Dated: July 31, 2026.

Michael Martucci,

Acting Regional Administrator, Region IX.

[FR Doc. 2026–16335 Filed 8–10–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2026–2147; FRL–13566–01–R1]

Air Plan Approval; New Hampshire; Repeal of Motor Vehicle Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to conditionally approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire on December 24, 2025, through the New Hampshire Department of Environmental Services (NHDES). The proposed revision would remove the Statewide motor vehicle inspection and maintenance (I/M) program as an active measure, which was previously approved into the SIP to address emissions from on-road sources. In accordance with plan revision requirements of the Clean Air Act (CAA), the SIP submittal contains a demonstration that the removal of the I/M program will not interfere with New Hampshire's compliance with any National Ambient Air Quality Standard (NAAQS) or with any applicable requirement of the CAA. In a letter to the EPA, NHDES committed to submitting an additional SIP revision within one year of a final conditional approval to address maintenance plan requirements.

DATES: Written comments must be received on or before September 25, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2026–2147 at <https://www.regulations.gov>, or via email to martinelli.ayla@epa.gov. For comments submitted at <https://www.regulations.gov>, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from <https://www.regulations.gov>. For either manner of submission, the EPA may publish any comment received to the Agency's

public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.¹

FOR FURTHER INFORMATION CONTACT: Ayla Martinelli, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, telephone number: (617) 918–1057, email address: martinelli.ayla@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

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- V. Statutory and Executive Order Reviews

I. Introduction

On December 24, 2025, the State of New Hampshire petitioned the EPA pursuant to CAA section 176A(a)(2) for the removal of the State of New Hampshire from the Ozone Transport Region (OTR). Section 184(b) of the CAA establishes specific control

requirements that each State in the OTR is required to implement within the State, including certain controls on sources of nitrogen oxides (NO_x) and volatile organic compounds (VOCs). These control requirements are required to be implemented in any State included within the OTR, regardless of ozone attainment status. Under CAA section 184(b)(1)(A), OTR States must include vehicle I/M programs in their SIPs.

Section 176A(a)(2) of the CAA states that the Administrator may remove any state or portion of a state from the OTR whenever the Administrator has reason to believe that the control of emissions in that state or portion of that state pursuant to its inclusion in the transport region will not significantly contribute to the attainment of the standard in any area in the region. In its 176A petition to be removed from the OTR, New Hampshire committed to retaining all existing OTR control measures in its SIP, except the vehicle I/M program. In a separate document, the EPA evaluates, and proposes to grant, New Hampshire's 176A petition. In the document you are reading now, the EPA addresses New Hampshire's SIP revision regarding the I/M program, which contains a section 110(l) analysis, as required by the CAA. NHDES consulted with the EPA during the development of the CAA section 110(l) demonstration, and the EPA finds that the methodology in this demonstration supports this proposed action.

For the reasons fully described in this document, and in consideration of the data submitted by NHDES, including impacts to air quality, the EPA proposes to find that removal of the I/M program as an active SIP measure will not interfere with attainment or maintenance of the NAAQS or any other applicable CAA requirements.

II. Proposed Action

The EPA is proposing to conditionally approve New Hampshire's SIP revision, submitted on December 24, 2025, to remove the State's I/M program as an active SIP measure and to include it on the list of potential contingency measures for the 1997 ozone NAAQS maintenance area in southern New Hampshire.² The EPA is soliciting public comments on the EPA's proposal. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the

¹ For additional information see <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>.

² The proposed conditional approval in this document is contingent upon the EPA taking final action to grant New Hampshire's CAA section 176A petition, submitted under a separate cover letter.

instructions listed in the **ADDRESSES** section of this **Federal Register**.

Under CAA section 110(k)(4), the EPA may conditionally approve a plan revision based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the EPA conditionally approves the December 24, 2025, SIP revision in a final rulemaking action, the State must meet its commitment to submit a SIP revision addressing the requirement of CAA section 175A(d). If the State fails to do so, this action will become a disapproval one year from the date of final approval. The EPA will notify the State by letter that this action has occurred. The EPA subsequently will publish a document in the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment within the applicable time frame, the I/M program will remain on the list of potential contingency measures for the maintenance area unless the EPA takes final action disapproving the new submittal. If the EPA disapproves the new submittal, the request to remove the I/M program as an active control measure and include it on the list of potential contingency measures will be disapproved at that time. If the EPA approves the submittal, the December 24, 2025, revision will be fully approved in its entirety, and the I/M program will remain on the list of potential contingency measures for the maintenance area.

III. Background and Purpose

New Hampshire has enacted legislation, House Bill 2 (HB2), mandating the repeal of the motor vehicle I/M program under portions of New Hampshire's Revised Statute Annotated (RSA) Chapter 266 *Equipment of Vehicles*, Chapter 260 *Administration of Motor Vehicle Laws*, and Chapter 125-S *Motor Vehicle Abatement Fund*, effective January 31, 2026.³ Consequently, the NHDES submitted a SIP revision on December 24, 2025, to remove the I/M program from the SIP, including those sections of the New Hampshire Code of Administrative Rules Chapter Saf-C 3200 *Official Motor Vehicle Inspection Requirements* regulation, most recently approved into the New Hampshire SIP in a final rulemaking published April 29, 2024.⁴ On June 11, 2026, NHDES supplemented the current SIP submittal

with a letter to the EPA committing to submit an additional SIP revision requesting that the I/M program be included on the list of potential contingency measures portion of the maintenance plan pertaining to the 1997 ozone NAAQS.⁵

A. Carbon Monoxide and Ozone NAAQS Attainment History

Two areas in New Hampshire, the City of Manchester and the City of Nashua, were designated nonattainment for the 1971 8-hour and 1-hour CO NAAQS, which are 9 ppm and 35 ppm, respectively, both not to be exceeded more than once per year. The CAA required these areas to achieve the CO NAAQS by November 15, 1995.⁶ The EPA redesignated the City of Nashua and the City of Manchester from nonattainment to attainment for CO and approved the first maintenance plans for both, effective January 29, 2001.⁷ The 1999 CO NAAQS redesignation requests from New Hampshire contained CO motor vehicle emissions budgets (budgets) of 55.83 tons per winter day for Manchester, and 60.13 tons per winter day for Nashua. These budgets were considered adequate for transportation conformity purposes. For the second 10-year period, 2011–2021, NHDES submitted a limited maintenance plan (LMP) to the EPA, committing to continuing to implement the I/M program and other emissions reduction strategies during the 10-year period of the LMP. In the LMP, New Hampshire projected CO emissions in 2026 of 26.38 tons per winter day for the City of Manchester and 25.51 tons per winter day for the City of Nashua, both of which are significantly below the initial tons per winter day budgets set for each location in the redesignation requests. The EPA approved the LMP, effective April 9, 2014. The 20-year maintenance period for the CO NAAQS ended in 2021.⁸

Consistent with the 1990 CAA Amendments, which established a classification system for nonattainment areas, several New Hampshire counties were designated as nonattainment of the now-revoked 1979 1-hour ozone

NAAQS (0.12 parts per million (ppm)).⁹ In 2012, the EPA determined that these areas met the revoked 1-hour ozone standard by the areas' respective, applicable attainment dates.¹⁰ On July 18, 1997, the EPA revised the ozone primary and secondary NAAQS to 0.08 ppm and the averaging time from 1-hour to 8-hour (annual fourth-highest daily maximum 8-hour concentration, averaged over three years).¹¹ The EPA initially designated the three New Hampshire nonattainment areas (two Serious and one Marginal) as a single area, the New Hampshire portion of the Boston-Manchester-Portsmouth area under the 1997 8-hour ozone NAAQS. New Hampshire submitted a redesignation request, maintenance plan, requisite emission inventory and budgets for the Boston-Manchester-Portsmouth area related to the 1997 8-hour ozone NAAQS on March 2, 2012, supplemented on September 21, 2012. The EPA redesignated the Boston-Manchester-Portsmouth area to attainment of the 1997 8-hour ozone NAAQS on January 31, 2013.¹² Although the EPA revoked the 1997 8-hour ozone NAAQS in 2015, certain CAA requirements remain in place, such as a second maintenance plan.¹³ Accordingly, NHDES submitted an LMP to the EPA for the second 10-year maintenance period (2023–2032) for the Boston-Manchester-Portsmouth area on July 29, 2021, which the EPA approved on April 22, 2022.¹⁴ Finally, the entire State of New Hampshire is also designated attainment/unclassifiable for the 2008 and 2015 ozone NAAQS.¹⁵

B. History of Vehicle I/M Program in New Hampshire

The CAA requires I/M programs for ozone and CO nonattainment areas based upon certain criteria, such as air quality status and population.¹⁶ Additionally, certain areas in the OTR

⁹ The southeastern counties of Strafford, Rockingham, and Hillsborough had areas that were classified as Serious nonattainment. Merrimack County was classified as a Marginal nonattainment area. Cheshire County was designated as a nonattainment area on the basis of incomplete data. For a complete list of New Hampshire attainment designations under the ozone NAAQS at time of implementation, see tables 1 & 2 of the NH SIP submittal.

¹⁰ 40 CFR 52.1534(f)–(h); 77 FR 31496 (May 29, 2012) and 77 FR 65625 (Oct. 30, 2012).

¹¹ 62 FR 38856 (Jul. 18, 1997).

¹² 78 FR 6741 (Jan. 31, 2013).

¹³ 80 FR 12264 (Mar. 6, 2015).

¹⁴ 87 FR 24058 (Apr. 22, 2022).

¹⁵ 77 FR 30088 (May 21, 2012), and 82 FR 54232 (Nov. 16, 2017).

¹⁶ For more information on I/M programs, see *Overview of Vehicle Inspection and Maintenance (I/M) Programs* (October 2021, EPA-420-F-21-067) which has been added to the docket for this action.

³ See Attachment 1 of New Hampshire's December 24, 2025, SIP submittal.

⁴ 89 FR 33232 (Apr. 29, 2024).

⁵ A copy of this commitment letter can be found in the docket of this rulemaking.

⁶ The EPA retained the 1971 CO primary NAAQS without revision during the 1985, 1994 and 2011 NAAQS reviews. The EPA revoked the 1971 CO secondary NAAQS in 1985.

⁷ 65 FR 71060 (Nov. 29, 2000).

⁸ 79 FR 13254 (Mar. 10, 2014). Note a letter from the EPA acknowledging the end of this maintenance period can be found in the docket of this rulemaking, Docket ID No. EPA-R01-OAR-2026-2147.

are required to implement I/M programs pursuant to CAA section 184(b)(1)(A). Currently, all of New Hampshire, as well as all or portions of eleven other States and the District of Columbia comprise the OTR. As stated in the previous section, portions of New Hampshire used to be in nonattainment under the CO, 1979 1-hour ozone, and 1997 8-hour ozone NAAQS but have since redesignated to attainment, and the entire State is designated attainment for the 2008 and 2015 ozone NAAQS.¹⁷ Thus, there are no outstanding I/M implementation requirements due to nonattainment designations, and New Hampshire's obligation to implement a vehicle I/M program is now due only to its inclusion in the OTR. Concurrently with this proposed SIP revision, the EPA has in a separate action proposed to grant New Hampshire's petition to remove the State from the OTR pursuant to CAA section 176A(a)(2).¹⁸

The EPA's I/M rule was established on November 5, 1992.¹⁹ The EPA made significant revisions to the I/M rule on September 18, 1995, and on July 25, 1996.^{20,21} The I/M regulations are codified at 40 CFR part 51, subpart S, and generally require a State in the OTR to have an Enhanced I/M program in its SIP that covers areas of the State within a metropolitan statistical area (MSA), but a State may choose to include additional areas outside of any MSA, as well. New Hampshire chose to include the entire State in its Enhanced I/M program.

States subject to the I/M requirement are to submit an I/M SIP revision that addresses the elements necessary to implement I/M as specified in the EPA's I/M rule at 40 CFR part 51, subpart S. The most recent revision to New Hampshire's I/M SIP was submitted on September 22, 2022, and included amendments to the Department of Safety Chapter Saf-C 3200, *Official Motor Vehicle Inspection Requirements*. The remaining technical aspects of the I/M SIP, including emission modeling and other technical documentation included in prior I/M SIP revisions, were still applicable to the technical demonstration that New Hampshire's Enhanced I/M program met the requirements of 40 CFR part 51, subpart S. Therefore, the EPA approved this revision into the New Hampshire SIP,

effective May 29, 2024.²² For a further detailed history of the State's I/M program, see section 2.5.2 of New Hampshire's December 24, 2025, submittal.

In sum, New Hampshire is attaining the CO and ozone standards, which are the criteria pollutants I/M programs are designed to address. While the State is well within the attainment limits for all other criteria pollutants, there are no emissions reductions from the I/M program attributable to the direct emissions of particulate matter, lead, and sulfur dioxide (SO₂). Additionally, nitrogen dioxide (NO₂) is captured generally through consideration of NO_x impacts, and the PM_{2.5} precursor pollutants, NO_x and VOCs, are already addressed by the consideration of ozone precursors, which are also NO_x and VOCs. In addition, while CAA section 184(b)(1)(A) requires New Hampshire's SIP to provide for an I/M program because the State is in the OTR, the EPA is concurrently proposing in a separate action to grant New Hampshire's request pursuant to CAA section 176A(a)(2) to be removed from the OTR. The EPA will not finalize the proposal to remove the I/M program as an active control measure and include it on New Hampshire's list of contingency provisions for the maintenance area unless and until the EPA grants New Hampshire's request to be removed from the OTR.

IV. EPA Evaluation of Section 110(l) Analysis

The December 24, 2025 New Hampshire SIP revision seeking the removal of the I/M program from the SIP includes an evaluation of monitored design values and emissions data. The data show a consistent downward trend in CO design values since the initial designation, with negligible design values since 2014 (i.e., <1 ppm). New Hampshire has also shown an overall downward trend in ozone design values since the 1980s, with the three most recent design value periods consistently below the current, and most stringent, 8-hour ozone NAAQS of 70 parts per billion (ppb) in the State.²³ Notably, the current 2022–2024 design values across all 12 monitoring sites measure a statewide maximum of 65 ppb or below.

For the non-interference demonstration pursuant to CAA section 110(l), NHDES used the National Emissions Collaborative's 2022v1 Emissions Modeling Platform (EMP), using 2022 as the base year and 2026 as

the future analytic year. The analysis focuses on CO and ozone precursor pollutants, NO_x and VOC. The 2022 base year serves as a baseline for comparison of future projected emissions and includes emissions benefits from the I/M program. NHDES considered two options for a base year emissions inventory, the 2020 NEI and the 2022v1 EMP. Ultimately, NHDES decided on 2022, since using 2020 data may not realistically represent vehicle emissions due to VMT decreases in that year resulting from the COVID–19 pandemic. NHDES chose 2026 for future-year analysis since it is the same year the I/M discontinuation is slated to take effect and thus coincides with the removal of emissions benefits from the New Hampshire I/M program. NHDES consulted with the EPA during the development of this demonstration, and the EPA finds that the methodology in the CAA section 110(l) demonstration supports this proposed action.

NHDES used the latest version of the EPA's mobile source emissions model, Motor Vehicle Emission Simulator (MOVES5), to quantify 2026 projected emissions from on-road vehicles without the I/M program and replaced the EMP on-road mobile emissions estimates. Additionally, NHDES estimated its own 2022 on-road mobile emissions using MOVES5 to ensure an accurate comparison, since the EMP used the previous MOVES4 model to calculate 2022 on-road mobile emissions. For more detailed information on the methodologies, assumptions, and data inputs used, see attachment 3 of the NHDES December 24, 2025, SIP submittal.

Even with the discontinuation of the I/M program, the State's submittal shows a reduction in NO_x, VOC, and CO emissions by 16.0%, 2.7% and 1.9%, respectively, from the 2022 base year with I/M to the 2026 projected year without I/M. This continued decrease in emissions, despite projected increases in VMT, is generally agreed to be partially a result of fleet turnover, with old vehicles being replaced with newer, lower emitting vehicles that meet more stringent engine and emission standards.^{24,25,26} Additionally, since all

¹⁷ See section I.B. for more information on New Hampshire's designations history.

¹⁸ For additional information see <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>.

¹⁹ 57 FR 52950 (Nov. 5, 1992).

²⁰ 60 FR 48035 (Sep. 18, 1995).

²¹ 61 FR 39032 (Jul. 25, 1996).

²² 89 FR 33232 (Apr. 29, 2024).

²³ See table 7 and Figure 3 on p. 25–26 of the NH SIP submittal.

²⁴ See p. 6 of Attachment 3 of the State submittal. VMT projections increase from the 2022 base year to the 2026 analytic year in each county and for every vehicle type besides combination trucks.

²⁵ Emissions reductions from fleet turnover occur because of the continued implementation of more stringent engine and fuel standards resulting from Federal rules such as the "Tier 2 standards" that began in 2004. See EPA Regulatory Announcement: EPA 420-F-99-051 (December 1999), which has been added to Docket for this action.

areas in New Hampshire are designated attainment for all applicable NAAQS with current emissions levels, we are proposing to approve the State's conclusion that New Hampshire will continue to attain in the future with projected emissions reductions. The EPA agrees with New Hampshire's conclusion that on-road mobile source emissions are expected to decline even without implementation of the State's I/

M program. New Hampshire is also retaining all other active control measures in the SIP that were implemented due to New Hampshire's inclusion in the OTR, ensuring New Hampshire remains in attainment. Additionally, in previous rulemakings, the EPA determined that New Hampshire does not significantly contribute to nonattainment, or interfere with maintenance, of the 2008 and 2015

ozone NAAQS.²⁷ New Hampshire's removal of its I/M program does not affect the prior non-contribution findings, because the reductions attributed to New Hampshire's I/M program are minor and have been overtaken by greater emissions reductions from other mitigation measures, like fleet turnover, since those previous rulemakings.

TABLE 1—2022 BASE YEAR AND 2026 PROJECTED YEAR EMISSIONS WITHOUT VEHICLE I/M PROGRAM FOR NEW HAMPSHIRE
[tpy]

Year	NO _x total from all sectors	VOC total from all sectors	CO total from all sectors
2022	29,199	35,590	223,527
2026	24,538	34,628	219,366
Emissions Reduction from 2022	–4,661	–962	–4,161

Since the maintenance plan for the New Hampshire portion of the Boston-Manchester-Portsmouth area for the revoked 1997 8-hour ozone NAAQS is still active, New Hampshire may remove the I/M program as an active control measure but must include it in its list of potential contingency measures for the maintenance area in accordance with CAA section 175A(d). To address this requirement, New Hampshire has committed to submit a SIP revision which will formally request the EPA approval to include the I/M program on the list of potential contingency measures portion of the 1997 8-hour ozone NAAQS maintenance plan. The forthcoming SIP revision must be submitted no later than one year from a final conditional approval of the December 24, 2025, I/M SIP revision.

Because 2026 emissions without the I/M program are projected to be lower than the 2022 emissions with the I/M program, the EPA proposes to find that the State's submittal demonstrates that the removal of the I/M program in New Hampshire will not interfere with attainment or maintenance of the NAAQS or any other applicable CAA requirements.²⁸ Further, because New Hampshire has committed to submit a SIP revision to include the I/M program on the list of potential contingency measures, the EPA proposes to conditionally approve the current SIP revision.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993);
- Is not subject to an Executive Order 14192 (90 FR 9065, February 6, 2025) regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

List of Subjects in 40 CFR Part 52

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

²⁶ See the 2025 EPA Automotive Trends Report for more information on vehicle fleet trends, which has been added to the Docket for this action.

²⁷ 81 FR 70631 (Oct. 13, 2016); 86 FR 45870 (Aug. 17, 2021).

²⁸ As noted elsewhere, the EPA has concurrently proposed in a separate action to grant New Hampshire's petition to be removed from the OTR. If the EPA grants the State's petition, removing the State's I/M program from an active measure in the

SIP to the list of potential contingency measures for the maintenance area would not interfere with the requirement in CAA section 184(b)(1)(A) that the SIP for a State in the OTR provide for an enhanced I/M program.

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

Dated: August 6, 2026.

Mark Sanborn,

Regional Administrator, EPA Region 1.

[FR Doc. 2026–16330 Filed 8–10–26; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2026–2179; FRL–13567–01–R1]

Response to Clean Air Act Section 176A Petition From New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed action on petition.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant a Clean Air Act (CAA or Act) petition submitted by the state of New Hampshire on December 24, 2025. The petition requests that the EPA remove the State of New Hampshire from the Ozone Transport Region (OTR) based on New Hampshire's continued attainment of the ozone National Ambient Air Quality Standards (NAAQS) and technical analyses demonstrating that the additional control of emissions from the state will not significantly contribute to ozone attainment in any area in the OTR. The OTR was established by the 1990 Clean Air Act Amendments and included the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and portions of northern Virginia.

DATES: Comments must be received on or before September 25, 2026.

Public hearing: The EPA will hold a virtual public hearing on August 26, 2026. The EPA may close a session 15 minutes after the last registered speaker has testified if there are no additional speakers. The EPA will announce further details at <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>.

The EPA will begin pre-registering speakers for the hearing on August 11, 2026. To register to speak at the virtual hearing, please use the online registration form available at <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>. The last day to pre-register to speak at the hearing will be August 18, 2026. Prior to the hearing, the EPA will

post a general agenda that will list pre-registered speakers at: <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>.

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to submit a copy of their oral testimony as written comments electronically to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>. While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by August 8, 2026. The EPA may not be able to arrange accommodations without advanced notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2026–2179 at <https://www.regulations.gov>, or via email to rackauskas.eric@epa.gov. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. The EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 5–MI), Boston, MA 02109–3912, telephone number: (617) 918–1628, email address: rackauskas.eric@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA.

The information in this **SUPPLEMENTARY INFORMATION** section of this preamble is organized as follows:

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I. General Information

A. Where can I get a copy of this document and other related information?

Publicly available docket materials are available at <https://www.regulations.gov> identified by Docket ID No. EPA-HQ-OAR-2026-2179. In addition to being available in the docket, an electronic copy of this document will be posted at <https://www.epa.gov/nh/new-hampshire-clean-air-act-176a-petition-im-program-sip-revision>.

B. What acronyms, abbreviations, and units are used in this preamble?

APA Administrative Procedure Act
 AGL Above Ground Level
 BACT Best Available Control Technology
 CAA or Act Clean Air Act
 CAIR Clean Air Interstate Rule
 CSAPR Cross-State Air Pollution Rule
 CFR Code of Federal Regulations
 CTG Control Techniques Guideline
 D.C. Circuit United States Court of Appeals for the District of Columbia Circuit
 EGU Electric Generating Unit
 EPA U.S. Environmental Protection Agency
 FIP Federal Implementation Plan
 FR Federal Register
 HYSPLIT Hybrid Single-Particle Lagrangian Integrated Trajectory
 I/M program Inspection and Maintenance Program
 LAER Lowest Achievable Emission Rate
 LMP Limited Maintenance Plan
 NAM North American Mesoscale Model
 NAAQS National Ambient Air Quality Standard
 NEI National Emissions Inventory
 NHDES New Hampshire Department of Environmental Services
 NNSR Nonattainment New Source Review
 NOAA National Oceanic and Atmospheric Administration
 NO_x Nitrogen Oxides
 NSPS New Source Performance Standard
 NSR New Source Review
 OAR Office of Air and Radiation
 ORVR Systems Onboard Refueling Vapor Recovery Systems
 OTC Ozone Transport Commission
 OTR Ozone Transport Region
 PM Particulate Matter
 PPB Parts per Billion
 PPM Parts per Million
 PSD Prevention of Significant Deterioration
 PTE Potential to Emit
 RACT Reasonably Available Control Technology
 RFP Reasonable Further Progress
 ROP Rate of Progress
 SIP State Implementation Plan
 SO₂ Sulfur Dioxide
 VOC Volatile Organic Compound

II. Executive Summary of the EPA's Proposed Decision on the New Hampshire CAA Section 176A Petition

On December 24, 2025, the state of New Hampshire petitioned the EPA pursuant to CAA section 176A(a)(2) for the removal of the state of New Hampshire from the OTR. New Hampshire concludes that emissions from the state are not significant contributors to ozone nonattainment in other States in the OTR. Therefore, removing New Hampshire from the OTR would not degrade the air quality in New Hampshire or in any other state. The petition includes monitoring data and technical analyses to support a demonstration that the state is attaining the ozone NAAQS and that emissions from New Hampshire do not significantly contribute to ozone nonattainment in any area of the OTR. For the reasons described in this document, the EPA is proposing to grant the petition on the basis that removing the state from the OTR would not result in emissions changes that would significantly contribute to nonattainment or interfere with maintenance in any area of the OTR.

Section 176A(a) of the CAA provides the Administrator with the authority to develop interstate transport regions for particular pollutants where the Administrator determines that interstate transport of air pollutants from one or more States contributes significantly to violations of air quality standards in other States. In the 1990 CAA Amendments, Congress created the OTR by statute under CAA section 184(a) to address the interstate transport of ozone pollution in the Northeast and Mid-Atlantic regions of the United States (U.S.).

The creation of an interstate transport region requires establishing a transport commission with representatives from each state who make recommendations to mitigate interstate pollution. The Ozone Transport Commission (OTC) was formed in 1991 under section 184 of the CAA, serving as the multi-state body responsible for advising the EPA and States on developing and implementing regional solutions to ground-level ozone issues in the Northeast and Mid-Atlantic regions. Model rules and programs designed through the OTC may be adopted by the individual States through their own rulemaking processes. Under CAA section 184(c), the OTC may petition the EPA to approve additional control measures to be applied within all or part of the transport region. New Hampshire seeks to remove the state from the OTR, thereby releasing those areas from OTC

recommendations and applicable control requirements established under CAA section 184.

Section 176A(a)(1) of the CAA provides the Administrator with authority to "add any state or portion of a state to any [transport] region . . . whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region." Conversely, CAA section 176A(a)(2) allows the Administrator to "remove any state or portion of a state from [a transport] region whenever the Administrator has reason to believe that the control of emissions in that state or portion of the state . . . will not significantly contribute to the attainment of the standard in any area in the region." These provisions of CAA section 176A are made applicable to the OTR by virtue of the second sentence of CAA section 184(a).

For the reasons fully described in this document, and in consideration of monitoring data, technical demonstrations, and impacts to air quality controls in the areas to be removed, the EPA believes the removal of New Hampshire from the OTR does not contribute to a violation of any ozone standard in any area of the OTR, and that control of emissions from New Hampshire will not significantly contribute to attainment of any ozone standard in any area of the OTR. Accordingly, the EPA is proposing to grant the CAA section 176A petition filed by the state of New Hampshire to remove the state from the OTR.

III. Background and Legal Authority

A. Ozone Formation and Impacts

Ground-level ozone is predominantly a secondary air pollutant created by chemical reactions between ozone precursors including nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight. Emissions from various stationary and mobile sources are some of the major anthropogenic sources of ozone precursors. The potential for ground-level ozone formation tends to be highest during months with warmer temperatures and stagnant air masses; therefore, ozone levels are generally higher during the summer months.¹ Increased temperatures may also increase emissions of anthropogenic and biogenic VOC emissions and can

¹ Rasmussen, D.J. et. al. (2011) Ground-level ozone-temperature relationship in the eastern US: A monthly climatology for evaluating chemistry-climate models. *Atmospheric Environment* 47: 142–153.

indirectly increase anthropogenic NO_x emissions as well (*e.g.*, through increased electricity generation to power air conditioning).

The EPA has regulated ozone pollution and the precursor emissions that contribute to ozone for the last five decades.² Currently, there are two NAAQS in effect for ozone.³ On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 ppb.⁴ On October 1, 2015, the EPA lowered the primary and secondary standards to 70 ppb.⁵ Section 109(d)(1) of the Act requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge concerning the effects of the pollutant on public health and welfare. Under this provision, the EPA is to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria. The EPA last reviewed the ozone NAAQS in 2020 at which time the 2015 primary and secondary ozone NAAQS were retained.⁶

In accordance with CAA section 107(d), the EPA designates areas as “attainment” (meeting the standard), “nonattainment” (not meeting the standard), or “unclassifiable” (insufficient data to classify). States with areas designated as nonattainment must develop and submit State Implementation Plans (SIPs) to the EPA with the goal of attaining and maintaining the level of the NAAQS by the applicable attainment deadline. The EPA and States work collaboratively to establish and implement nonattainment area planning requirements that are designed to bring areas into attainment of the NAAQS by the applicable attainment deadline. A key step in ensuring that areas attain and maintain the ozone NAAQS is to assess and understand the potential for ozone formation (and sources of its precursor pollutants) in a given area, including the potential for upwind States’ emissions

to impact ozone formation in downwind States.

Precursor emissions can be transported downwind directly or, after transformation in the atmosphere, as ozone or secondary ozone precursors. Studies have established that ozone formation, atmospheric residence, and transport can occur on a regional scale (*i.e.*, hundreds of miles) over much of the eastern U.S., with elevated concentrations occurring in rural as well as metropolitan areas.⁷ Additionally, observational studies have demonstrated the presence of ozone and ozone precursor transport, and documented the impact that upwind emissions have on high concentrations of ozone pollution.⁸ As a result of ozone transport, ozone pollution levels in a given location are impacted by a combination of local emissions and emissions from upwind sources. While substantial progress has been made in reducing ozone in many urban areas, regional-scale ozone transport is still a major component of peak ozone concentrations during the summer ozone season.

B. Sections 176A and 184 of the CAA and the OTR Process

Subpart 1 of part D of title I of the CAA provides the general plan requirements for designated nonattainment areas. This subpart includes provisions governing the development of transport regions to address the interstate transport of pollutants that contribute to NAAQS violations. In particular, section 176A(a) of the CAA provides that, on the EPA’s own motion or by a petition from the Governor of any state, whenever the EPA has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of the NAAQS in one or more other States, the EPA may establish, by rule, a transport region for such pollutant that includes such States. The provision further provides that the EPA may add any state or portion of a state to any transport region whenever the Administrator has reason to believe that the interstate transport of air pollutants from such state significantly contributes to a violation of the standard in the transport region.

⁷ National Research Council. 1991. Rethinking the Ozone Problem in Urban and Regional Air Pollution. Washington, DC: The National Academies Press. <https://doi.org/10.17226/1889>.

⁸ Downs, T., R. Fields, R. Hudson, I. Kheirbek, G. Kleiman, P. Miller, and L. Weiss. 2010. The Nature of the Ozone Air Quality Problem in the Ozone Transport Region: A Conceptual Description. Northeast States for Coordinated Air Use Management.

Section 176A(b) of the CAA provides that when the EPA establishes a transport region, the Administrator shall establish an associated transport commission, comprised of (at a minimum) the following: The Governor or her or his designee of each covered state, the EPA Administrator or designee, the Regional EPA Administrator or designee, and an air pollution control official appointed by the Governor of each state. The purpose of the transport commission is to assess the degree of interstate transport throughout the transport region and assess and recommend control strategies to the EPA to mitigate such interstate transport.

Subpart 2 of part D of title I of the CAA provides plan requirements specific to the ozone NAAQS. Consistent with CAA section 176A, found in subpart 1, subpart 2 includes specific provisions focused on the interstate transport of ozone. CAA section 184(a) established a single transport region for ozone—the OTR—comprising the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area for the District of Columbia, which includes certain portions of northern Virginia.⁹ The Virginia counties and cities included in the OTR are Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

Section 184(b) of the CAA establishes specific control requirements that each state in the OTR is required to implement within the state, including certain controls on sources of NO_x and VOCs. These control requirements are required to be implemented statewide in any state included within the OTR, regardless of ozone attainment status.¹⁰ Under CAA section 184(b)(1)(A), OTR States must include Enhanced vehicle emissions inspection and maintenance (I/M) programs in their SIPs.¹¹ Under CAA section 184(b)(2), major stationary sources of VOCs in OTR States are

⁹ In 2022, the EPA finalized an action to remove the state of Maine from the OTR except for 111 towns and cities comprising the Androscoggin Valley, Down East and Metropolitan Portland Air Quality Control Regions. See 87 FR 7734 (February 10, 2022).

¹⁰ We note two exceptions to the statewide applicability of these control requirements: Maine and Virginia, as only portions of those States are included within the OTR.

¹¹ In the OTR, Enhanced I/M programs are required in metropolitan statistical areas in the OTR with a 1990 Census population of 100,000 or more.

² Primary and secondary NAAQS were first established for photochemical oxidants in 1971. 36 FR 8186 (April 30, 1971). In 1979, the EPA revised the NAAQS to change the indicator from photochemical oxidants to ozone (O₃) and to revise the primary and secondary standards. 44 FR 8202 (Feb. 8, 1979). In 1997, the EPA once again revised the primary and secondary standards for ozone NAAQS. 62 FR 38856 (July 18, 1997). In 2015, the 1997 ozone NAAQS were revoked. 80 FR 12264 (March 6, 2015).

³ The 1997 ozone NAAQS were revoked in 2015. 80 FR 12264 (March 6, 2015).

⁴ See National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

⁵ See National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

⁶ See 85 FR 87256 (December 31, 2020).

subject to the same requirements that apply to major sources in designated ozone nonattainment areas classified as Moderate.¹² Thus, the state must adopt rules to apply nonattainment new source review (NNSR) and reasonably available control technology (RACT) (pursuant to CAA section 182(b)(2)) provisions for major VOC sources statewide. Under CAA section 184(b)(2) States must also implement Stage II gasoline refueling vapor recovery programs, incremental to vehicle Onboard Refueling Vapor Recovery achievements, or measures that achieve comparable emissions reductions for both attainment and nonattainment areas.¹³

Section 182(f) of the CAA requires States to apply the same requirements to major stationary sources of NO_x as are applied to major stationary sources of VOCs under subpart 2. Thus, the same NNSR and RACT requirements that apply to major stationary sources of VOC in the OTR also apply to major stationary sources of NO_x.¹⁴

C. Legal Standard for This Action

Section 176A(a)(2) of the CAA states that the Administrator may remove any state or portion of a state from the Ozone Transport Region whenever the Administrator has reason to believe that the control of emissions in that state or portion of that state pursuant to its inclusion in the transport region will not significantly contribute to the attainment of the standard in any area in the region. The provision does not provide further methodology or criteria for the Administrator to apply other than this language when determining whether to remove a state or portion of a state from the OTR. As explained in this action, in determining whether to grant the state of New Hampshire's petition the EPA intends to follow the best reading of the statute, drawing upon interpretations of the CAA's suite of interstate pollution transport provisions in court decisions and in prior EPA actions and consistent with the EPA's previous interpretations of section 176A(a)(2) in an action granting a request from the State of Maine to remove a portion of that state from the OTR.¹⁵ Prior to that action, the Agency

had also acted pursuant to CAA section 176A(a)(1) to deny a request to expand the OTR but did not in that action have cause to interpret the operative language in CAA section 176A.¹⁶

The EPA believes it is appropriate to read the key terms in section 176A(a)(2) (*i.e.*, “control of emissions . . . will not significantly contribute to the attainment of the standard” and “in any area in the region”) consistently with other parts of the CAA that govern the interstate transport of ozone pollution, taking into account relevant facts and circumstances and the EPA's past approaches to addressing interstate ozone transport.

The CAA provision that States and the EPA have primarily relied upon to address interstate pollution transport is section 110(a)(2)(D)(i)(I) of the CAA, often referred to as the “good neighbor” provision. The provision requires all States to submit SIPs that contain adequate provisions prohibiting any source or other type of emissions activity within the state from emitting any air pollutant in amounts which “will contribute significantly” to nonattainment in, or interfere with maintenance by, any other state with respect to any NAAQS. Thus, each state is required to submit a SIP that demonstrates that the state is adequately controlling sources of emissions that would impact other States' air quality relative to the NAAQS in violation of the good neighbor provision. However, if a state does not adequately address the good neighbor provision requirements in a SIP submission, the CAA requires that the EPA must address the requirements of the good neighbor provision in the State's stead. Specifically, if the EPA disapproves a State's SIP submission or if the EPA finds that a state has failed to submit a required SIP, then the EPA must promulgate a Federal Implementation Plan (FIP) within two years, unless the state corrects the deficiency and the

EPA approves the plan or plan revision before the EPA promulgates a FIP.¹⁷

To address the regional transport of ozone pursuant to the CAA's good neighbor provision, the EPA has promulgated several regional interstate transport rules focusing on the reduction of NO_x emissions, as the primary meaningful precursor to address regional ozone transport across state boundaries.¹⁸ These interstate transport rules are the NO_x SIP Call,¹⁹ Clean Air Interstate Rule (CAIR),²⁰ the Cross-State Air Pollution Rule (CSAPR),²¹ the Cross-State Air Pollution Rule Update (CSAPR Update), the Revised Cross-State Air Pollution Rule Update (Revised CSAPR Update),²² 23 24 and the Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards (Good Neighbor Plan).²⁵

Through the development and implementation of CSAPR and the CSAPR Update, the EPA, working in partnership with the States, developed a four-step interstate transport framework to interpret and address the requirements of the good neighbor provision. The four steps are: (1) identifying downwind air quality monitors (known as “receptors”) that are expected to have problems attaining or maintaining clean air standards (*i.e.*, NAAQS); (2) identifying upwind States that impact those downwind air quality problems sufficiently such that they are considered “linked” and therefore warrant further review and analysis; (3) identifying the emissions reductions necessary (if any), considering cost and air quality factors, to prevent linked upwind States identified in step 2 from contributing significantly to nonattainment or interfering with maintenance of the NAAQS at the locations of the downwind air quality problems; and (4) adopting permanent

¹⁷ CAA section 110(c)(1).

¹⁸ Two of these rules also addressed the reduction of annual NO_x and sulfur dioxide (SO₂) emissions for the purposes of addressing the interstate transport of particulate matter pollution pursuant to the good neighbor provision.

¹⁹ 62 FR 57356 (October 27, 1998).

²⁰ 70 FR 25162 (May 12, 2005).

²¹ 76 FR 48208 (August 8, 2011).

²² 81 FR 74504 (October 26, 2016).

²³ In December of 2018, the EPA also promulgated a determination regarding remaining good neighbor obligations under the 2008 ozone NAAQS for the CSAPR region (referred to as the “CSAPR Close Out”) at 83 FR 65878, but that determination was vacated by the D.C. Circuit. *New York v. EPA*, 781 Fed. Appx. 4 (D.C. Cir. 2019).

²⁴ 86 FR 23054 (April 30, 2021).

²⁵ 88 FR 9336 (February 13, 2023). The Good Neighbor Plan is currently stayed and is undergoing reconsideration. *See* 91 FR 4026, 4030 (January 30, 2026).

¹² Section 184(b)(2) of the CAA provides that, for purposes of implementing these requirements, a major stationary source shall be defined as any source that emits or has the potential to emit at least 50 tons per year of VOCs.

¹³ *See* 72 FR 28772 (May 16, 2012), Air Quality: Widespread Use for Onboard Refueling Vapor Recovery and Stage II Waiver.

¹⁴ *See* 57 FR 55620, 55622 (Nitrogen Oxides Supplement to the General Preamble) (November 25, 1992).

¹⁵ 87 FR 7734 (February 10, 2022).

¹⁶ The EPA denied the request from several States in the OTR to add an additional nine States to the transport region on the basis that Congress' use of the term “may” in CAA section 176A(a) granted the Administrator reasonable discretion in determining whether or not to grant the petition, and that other statutory authorities the EPA had historically relied upon to address interstate transport provided advantages over expanding the OTR. 82 FR 51238 (November 3, 2017). The D.C. Circuit upheld the EPA's denial of the section 176A petition to expand the OTR, noting that its review of the EPA's denial was “extremely limited and highly deferential,” and that even if petitioners had met CAA section 176A(a)(1)'s criterion for expanding the OTR, “the statute provides only that the EPA ‘may’ expand the region, not that it ‘shall’ or ‘must’ do so.” *New York v. EPA*, 921 F.3d 257, 261–62 (D.C. Cir. 2019).

and enforceable measures needed to achieve those emissions reductions.

Given the use of the phrase “significantly contribute to [] attainment” in CAA section 176A(a)(2), the EPA has determined it is reasonable to look to the 4-step interstate transport framework to guide its analysis of whether a state or portion of a state has met the necessary condition for removal from the OTR in CAA section 176A(a)(2). Under Step 1 of the interstate transport framework, the EPA has interpreted the term “will” in the phrase “will significantly contribute” in section 110(a)(2)(D)(i)(I) by looking at current downwind air quality problems and whether those air quality problems will persist in a future year, *i.e.*, by focusing its analysis regarding downwind interstate transport impacts on an analytic year in the future. In its transport rules, the EPA has considered monitored air quality data in addition to future projections “because will” can mean either certainty or indicate the future tense,” and considering present-day data to inform the projected identification of downwind air quality problems “give[s] effect to both interpretations of the word.”^{26 27}

Specifically, in those rules, the EPA explained that it had the most confidence in its projections of nonattainment for those counties that also measure nonattainment for the most recent period of available ambient data.²⁸ In the CSAPR Update, receptors that had clean measured data but were projected to have nonattainment problems in the future-year modeling were denoted by the EPA as maintenance-only receptors, acknowledging that while currently attaining the NAAQS, such areas could violate the standard in the future under certain meteorological conditions. The D.C. Circuit has upheld this balance struck by the EPA in considering historical monitored data as well as future projected modeled data as a method for identifying downwind air quality problems at Step 1.²⁹

In CSAPR and the CSAPR Update, the EPA used a threshold of one percent of

the NAAQS to determine whether a given upwind state was “linked” at step 2 of the four-step interstate transport framework and would, therefore, contribute to downwind nonattainment and maintenance sites identified in step 1. If a State’s impact did not equal or exceed the one percent threshold, the upwind state was not “linked” to a downwind air quality problem, and the EPA therefore concluded that the state will not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in the downwind States. However, if a State’s impact equaled or exceeded one percent, the State’s emissions were further evaluated in step 3, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary to address the good neighbor provision. More recently, the EPA proposed to reconsider policies and actions underlying the Interstate Transport of Air Pollution for the 2015 Ozone NAAQS (Good Neighbor Plan).³⁰ In that proposed rule, the EPA proposed to identify 1 ppb as an acceptable contribution threshold at Step 2 of the interstate transport framework. The EPA finds New Hampshire’s use of the one percent of the NAAQS threshold as acceptable for this petition, as it is more conservative than if the state had used the more recently proposed 1 ppb interpretation.³¹

These first two steps of the 4-step interstate transport framework are particularly informative to analyze the standard for removal of areas from the OTR established by CAA section 176A(a)(2). In the previous action under CAA section 176A(a)(2) (EPA’s granting of Maine’s request), the EPA acknowledged that the specific inquiry posed by the OTR removal provision does not perfectly align with the inquiry in the CAA section 110 good neighbor provision or in CAA section 176A(a)(1). Read literally, rather than identify significant contribution of *emissions* to nonattainment or maintenance receptors—that is, determining whether a State’s emissions are large enough that they negatively impact air quality in another state and thus may warrant the imposition of control measures—CAA section 176A(a)(2) presents a different but related question: Whether OTR *controls* in a state will not significantly contribute to *attainment* anywhere in the OTR. Despite the framing of CAA

section 176A(a)(2) as significant contribution to attainment rather than significant contribution to nonattainment, we continue to think CAA section 176A(a)(2) is best read within the context of the statutory section as a whole, and in conjunction with the other CAA provisions addressing interstate pollution transport and therefore focused on impacts to areas that are struggling with attaining or maintaining the NAAQS. While one *could* read CAA section 176A(a)(2) as asking the EPA to analyze only OTR areas that are already in attainment and determine whether such areas would remain so after the removal of a state or portion of a state from the OTR per CAA section 176A(a)(2),³² a better interpretation of CAA section 176A(a)(2) is that it is establishing a standard that is the inverse of the question presented in CAA section 176A(a)(1). At base, CAA section 176A(a) presents two authorities—the Administrator may add a state or a portion of a state to the transport region whenever the Administrator has reason to believe that pollutants from that state significantly contribute to a violation of the NAAQS in the transport region and may remove a state or a portion of a state whenever the Administrator has reason to believe that the State’s continued inclusion in the OTR will not be required for attainment in the transport region, *i.e.*, that the petitioning state is not significantly contributing to air quality problems in the region and *will not* so contribute if the state is removed from the OTR. Interpreting the statute in this way means that under CAA section 176A(a)(2), although there is no explicit reference to significant contribution to nonattainment or maintenance, the EPA’s inquiry focuses on whether the state, or portion of the state, to be removed is significantly contributing or will contribute to nonattainment of the standard in the OTR. The EPA’s inquiry, therefore, does not solely focus on consequences to areas that are already in attainment.

In determining whether removal is warranted under section 176A(a)(2), the EPA must also interpret the phrase “control of emissions in that State or portion of that State pursuant to this section.” Consistent with the previous

²⁶ *North Carolina v. EPA*, 531 F.3d 896, 913–14 (D.C. Cir. 2008). See 63 FR 57356, 57375 (October 27, 1998) (NO_x SIP Call) (relying on both monitored and modeled data); 70 FR 25162, 25241 (May 12, 2005) (CAIR); 81 FR 74504, 74517 (October 26, 2016) (CSAPR Update).

²⁷ The EPA did not consider current monitored data in conjunction with modeled projections of air quality in a future year in CSAPR because the most recent monitoring data prior to CSAPR’s promulgation reflected effects of the unlawful CAIR. 76 FR 48208, 48230 (August 8, 2011).

²⁸ 81 FR 74517, 74531 (April 30, 2021).

²⁹ See, e.g., *Wisconsin v. EPA*, 938 F.3d 303, 326 (D.C. Cir. 2019).

³⁰ 91 FR 4026 (January 30, 2026).

³¹ The EPA noted in the proposal, “Any SIP that was approved under that threshold, which translates to 0.7 ppb, would be approvable under the 1 ppb threshold.” 91 FR at 4033 n.75.

³² We note that this interpretation would not address whether the reductions achieved by OTR controls in a state are also effective at ameliorating air quality in areas that are in nonattainment. In addition, it would require the EPA to establish an entirely new framework to analyze how emissions control measures “significantly contribute” to attainment—a standard that would not necessarily be equivalent to or in harmony with the “significant contribution” standard of CAA section 110(a)(2)(D)(i)(I).

action granting Maine's 176A(a)(2) petition, the EPA reads "controls" to refer to new controls that would be required under CAA section 184(b) if the state or portion of the state were to remain in the OTR, as opposed to controls that the state has already adopted as required by the CAA due to its inclusion in the OTR. Interpreting "controls" in this manner gives effect to the forward-looking nature of the provision, which asks the Administrator to analyze whether removal of the state or portion of the state from the OTR "will" have the effect of contributing to air quality problems in any area in the OTR. In undertaking that forward-looking analysis, it is reasonable to assume that existing SIP-approved controls (not including, in this instance, New Hampshire's vehicle I/M program) that were adopted by the state due to its inclusion in the OTR will remain in place.

Under the CAA, a state seeking to revise its SIP must undergo a section 110(l) demonstration. Section 110(l) of the CAA states that the Administrator cannot approve a SIP revision if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the CAA. Therefore, the EPA will only approve a SIP revision that removes or modifies control measures after the state has demonstrated that such removal or modification will not interfere with attainment of the NAAQS, Rate of Progress (ROP), RFP or any other applicable requirement of the CAA.

States may demonstrate a revision's noninterference with NAAQS-related requirements by substituting one measure with another that achieves equivalent or greater emissions reductions or air quality benefit or by preparing an air quality analysis showing that removing the measure will not interfere with other applicable requirements (*i.e.*, without a substitute measure).³³ Additionally, for areas that do not have an attainment demonstration, the EPA would consider alternative analyses to demonstrate noninterference on a case-by-case basis. The level of rigor in the alternative demonstration would vary depending on the nature of the requirement, its potential impact on air quality in the area, and the air quality of the area in which the requirement applies.

Moreover, this reading of CAA section 176A(a)(2) is consistent with the EPA's treatment of nonattainment areas seeking redesignation to attainment

under CAA section 107(d)(3). States seeking redesignation of a nonattainment area to attainment are required to demonstrate that the area will maintain the NAAQS, per CAA section 107(d)(3)(E)(iv) and CAA section 175A. In making demonstrations of maintenance, States perform air quality modeling or emissions projections showing that *existing* control requirements are sufficient to maintain the NAAQS in question. However, once redesignated, a state may seek revision of its SIP to remove nonattainment SIP measures that are not necessary to maintain the NAAQS, subject to a section 110(l) demonstration. We, therefore, think this analysis under CAA section 176A(a)(2) should, like a CAA section 175A maintenance demonstration, assume continued implementation of existing OTR control measures even though such measures would no longer be statutorily mandated once the EPA removes a state or portion of the state from the OTR. As in the case of an area redesignated to attainment, a state could only stop actively implementing those measures and remove them from its SIP after satisfying its obligation under section 110(l), as discussed earlier. We note that in submitting its petition to the EPA to remove the state from the OTR, New Hampshire committed to retaining all existing OTR control measures in its SIP, except the vehicle I/M program. The request to remove the I/M program from the New Hampshire SIP is, as mentioned throughout this document, currently being evaluated by the EPA in a separate rulemaking document. We note that the request contains a section 110(l) analysis, as required by the CAA for New Hampshire's I/M SIP revision. The EPA has included some information later in this document regarding expected emissions trends with the proposed removal of I/M as described in that SIP revision.³⁴

To establish the proper geographic scope of the EPA's CAA section 176A(a)(2) "significant contribution" analysis, another phrase in the provision must be interpreted: "any area in the region." This phrase could reasonably mean all existing areas in the OTR, including areas within the petitioning state.³⁵ Here, this would include the state of New Hampshire, because the entire state is included in the OTR as established under section 184. However, we recognize that it is

possible that Congress intended the EPA to focus primarily on *interstate* impacts within the OTR, rather than impacts within the petitioning state.

Read literally, "any" is a broad term that, in this context, encompasses areas within the petitioning state because they are currently in the OTR. However, case law recognizes that "'any' can and does mean different things depending upon the setting."³⁶ Here, aspects of the statutory structure and context indicate that "any" may reasonably be interpreted to have a narrower scope than all areas of the current OTR. For instance, it could be relevant that the provision at issue is part of CAA section 176A, which is titled, "Interstate Transport Commissions," and the provision at issue is located within the subsection entitled "Authority to Establish Interstate Transport Regions." The basis under CAA section 176A(a) for creating or expanding a transport region is the *interstate* effects of air pollution. Further, under the CAA's cooperative federalism scheme, States retain the primary regulatory role in developing and implementing the necessary emissions reductions within their borders to meet the air quality standards established by the EPA.³⁷ If a State's removal from the OTR were projected to have negative impacts on other areas within the state, under the CAA that state would retain jurisdiction, authority, and responsibility to address such air quality problems in the first instance.³⁸ Rejecting a State's petition to be removed from the OTR solely on the basis of intrastate impacts could be seen as going beyond the purpose of CAA section 176A, which was promulgated to address the interstate effects of air pollution, *i.e.*, a problem in which affected States might otherwise have no recourse.

Nonetheless, it is also possible that Congress envisioned that the grounds for removing an area from the OTR should require a different bar (*i.e.*, a demonstration that removal would not cause air quality problems in other States *and* in one's own state) than the conditions for adding a new area to a transport region (which are limited to out-of-state impacts). This broader reading of the term "any" in this context also comports with the overall public health and welfare purposes of the CAA. In this action, as explained below, the EPA proposes that New Hampshire's

³⁴ For New Hampshire's SIP revision request to repeal the New Hampshire I/M program and the EPA's action on that SIP revision request see Docket ID No. EPA-R01-OAR-2026-2147 at <https://www.regulations.gov>.

³⁵ 87 FR at 7736 (February 10, 2022).

³⁶ *Nixon v. Missouri Municipal League*, 541 U.S. 125, 132 (2004); see also *Small v. U.S.*, 544 U.S. 385, 388 (2005) ("The word 'any' considered alone cannot answer [the] question").

³⁷ See CAA section 101(a)(3).

³⁸ See, e.g., CAA sections 110, 172, 181, 182.

³³ 78 FR 68378, 68382 (November 14, 2013).

petition may be granted under either interpretation, because its own emissions' impact on itself does not—and is not expected to if the petition is granted—contribute to ozone NAAQS attainment problems within the state. Therefore, we need not decide whether we must apply the narrower or the broader interpretation.

Turning back to the provision as a whole, informed by the backdrop and context of other CAA provisions addressing interstate pollution transport and the States' and the EPA's actions addressing those provisions, we think CAA section 176A(a)(2) is best read in a manner consistent with the EPA's 4-step interstate transport framework, and in particular here, Steps 1 and 2. Under this interpretation, the EPA determines whether air quality problems exist in the transport region (including the state or area of a state petitioned to be removed) based on projected air quality modeling and also current monitored data. If so, the EPA then determines whether the state (or portion of a state) to be removed from the OTR is contributing less than the contribution threshold to those problems, indicating that the state (or portion of a state) is not significantly contributing to air quality problems in the OTR, and that additional OTR controls in that state (or portion of that state) and continued OTR membership are, therefore, unnecessary for attainment of the NAAQS in the OTR. Applying that framework to the question presented by CAA section 176A(a)(2), we think the best reading requires the Administrator to identify whether there are ambient air monitoring sites in the OTR that either are projected to be in nonattainment based on modeling data, or potentially struggle with maintenance or are currently violating the NAAQS based on monitored data, and whether the area petitioned to be removed from the transport region contributes less than the contribution threshold to those monitors.³⁹

D. Previous New Hampshire Ozone Designations

Consistent with the 1990 CAA Amendments, several New Hampshire counties were designated as nonattainment of the now-revoked 1979 1-hour ozone NAAQS (0.12 parts per

million (ppm)). The more populous southeastern counties of Strafford, Rockingham, and Hillsborough had areas that were designated as Serious nonattainment areas. South centrally located Merrimack County was classified as a Marginal nonattainment area. Cheshire County, in the State's rural southwest corner, was designated as a nonattainment area on the basis of incomplete data. These areas were all subsequently redesignated as attainment in 2012.⁴⁰

On July 18, 1997,⁴¹ the EPA promulgated an 8-hour ozone standard of 0.08 ppm. On April 30, 2004, the EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS.⁴² These designations and classifications became effective June 15, 2004. The EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003. The Boston-Manchester-Portsmouth Southern NH area was designated as nonattainment for the 1997 8-hour ozone standard and classified as a “Moderate” nonattainment area. This area includes 54 cities and towns in Hillsborough, Merrimack, Rockingham, and Strafford Counties.⁴³ This area was redesignated to attainment on January 31, 2013.⁴⁴ NHDES later submitted a Limited Maintenance Plan (LMP) to the EPA for the second 10-year maintenance period (2023–2032) for the Boston-Manchester-Portsmouth area which was approved on April 22, 2022.⁴⁵ On March 12, 2008, the EPA promulgated a revision to the ozone NAAQS, lowering both the primary and secondary standards to 75 parts per billion (ppb).⁴⁶ On October 1, 2015, the EPA lowered the primary and secondary standards to 70 ppb.⁴⁷ New Hampshire was designated “Attainment/Unclassifiable” statewide for both the 2008 and 2015 8-hour ozone standards of 75 ppb and 70 ppb, respectively.⁴⁸

⁴⁰ 77 FR 31496 (May 29, 2012) and 77 FR 65625 (October 30, 2012).

⁴¹ 62 FR 38856 (July 18, 1997).

⁴² 69 FR 23858 (April 20, 2004).

⁴³ See 40 CFR 81.330 for exact listing of cities and towns.

⁴⁴ 78 FR 6741 (January 31, 2013).

⁴⁵ 87 FR 24058 (April 22, 2022).

⁴⁶ See National Ambient Air Quality Standards for Ozone, Final Rule, 73 FR 16436 (March 27, 2008).

⁴⁷ See National Ambient Air Quality Standards for Ozone, Final Rule, 80 FR 65292 (October 26, 2015).

⁴⁸ 77 FR 30088 (May 12, 2012) and 82 FR 54232 (November 16, 2017).

IV. New Hampshire CAA Section 176A Petition

A. Summary of the New Hampshire CAA Section 176A Petition

On December 24, 2025, the state of New Hampshire petitioned the EPA pursuant to CAA section 176A(a)(2) for the removal of the state of New Hampshire from the OTR. The NHDES provided an analysis making the case that New Hampshire's emissions are not a significant contributor to the nonattainment for the 8-hour ozone NAAQS in other States and in New Hampshire. New Hampshire's analysis consists of modeling “back trajectories” for ozone exceedance days in 2021, 2022, and 2024,⁴⁹ ozone contribution modeling, emissions data, and an analysis of mobile source impacts. The EPA's assessment of the CAA section 176A petition is discussed in section V.

B. Provisions Impacted by the New Hampshire CAA Section 176A Petition

If the EPA takes final action granting New Hampshire's petition, the main change is that New Hampshire will no longer be required to implement an Enhanced motor vehicle I/M program if the EPA also approves the SIP revision removing the program. On December 24, 2025, together with the 176A petition, New Hampshire submitted a request to revise its SIP to remove the State's vehicle I/M program. Concurrent with today's proposal to grant New Hampshire's 176A petition, the EPA is also proposing to approve New Hampshire's SIP revision in a separate Notice of Proposed Rulemaking in the **Federal Register**.

In the December 24, 2025, petition to remove the state from the OTR, New Hampshire confirmed that no current control requirements in the SIP will be relaxed as a result of the petition request with the exception of the I/M program. To date, other than for the removal of the I/M program, New Hampshire has not submitted any SIP revisions to modify current OTR control requirements. Should the EPA grant final approval of New Hampshire's petition, this would not in itself have the effect of revising New Hampshire's existing SIP requirements. A more detailed discussion of the changes follows in paragraphs i–iv.

⁴⁹ The year 2023 was excluded from the analysis due to extensive wildfires which could potentially give inaccurate conclusions about trajectory results.

⁵⁰ Back trajectory analyses use interpolated measured or modeled meteorological fields to estimate the most likely central path over geographical areas that an air parcel travels before reaching a specific location at a given time.

³⁹ As discussed earlier, New Hampshire used the 1 percent of the 2015 ozone NAAQS (0.70 ppb) threshold in its submission. In the recently proposed reconsideration of good neighbor obligations for the 2015 ozone NAAQS, EPA used the 1 ppb threshold. January 27, 2026 (91 FR 4026). We propose to find that the test for OTR removal is satisfied even when applying the more stringent 1 percent of NAAQS threshold.

i. NSR

The NSR provisions in Parts C and D of title I of the CAA are a combination of air quality planning and air pollution control technology provisions that require stationary sources of air pollution to obtain permits before they are first constructed or engage in a modification of an existing facility. To comply with the requirements of the CAA and the NSR implementing regulations at 40 CFR 51.160 through 51.166, most States have EPA-approved SIPs in place to implement the Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and minor NSR preconstruction permit programs. The state of New Hampshire implements its CAA permitting program requirements through Env-A 600, Statewide Permit System. Revisions to the NNSR and PSD programs were last approved into the New Hampshire SIP on May 25, 2017.⁵¹ Together, New Hampshire's PSD, NNSR, and minor NSR permitting programs ensure that construction of new and modified stationary sources of air pollutant emissions do not significantly deteriorate air quality, impede reasonable further progress in nonattainment areas, or interfere with maintenance of any NAAQS.

Pursuant to New Hampshire's NNSR program, new major stationary sources are subject to New Hampshire's NNSR permitting program requirements, including installing control technology that meets the statutory definition of the Lowest Achievable Emission Rate (LAER) and obtaining emissions offsets, for any pollutant (*i.e.*, NO_x or VOC) which the source has the potential to emit in amounts equal to or greater than the respective major source threshold. For existing major stationary sources in New Hampshire, NNSR permitting requirements apply to construction projects, or "major modifications," that would result in a significant net emissions increase of NO_x or VOC.

New Hampshire, in its submittal, indicated that the state intends to keep the NNSR program intact, so any new major sources and major modifications at existing major sources would still be subject to NNSR (including LAER and emissions offsets.). If, in the future, the state requested to change this program, it would need to submit a request to modify Env-A 600 in the SIP, which would also require an anti-backsliding demonstration under section 110(l).

⁵¹ 82 FR 24057 (May 25, 2017).

ii. New Hampshire I/M Program

Section 184(b)(1)(A) of the Act requires certain areas in the OTR to adopt and implement an inspection and maintenance program meeting the EPA's Enhanced I/M performance standard. The EPA's I/M rule was established on November 5, 1992.⁵² The I/M regulation was codified at 40 CFR part 51, subpart S, and requires States subject to the I/M requirement to submit an I/M SIP revision that includes all necessary legal authority and the items specified in 40 CFR 51.350 through 51.373. New Hampshire will no longer be required by CAA section 184(b)(1)(A) to implement an I/M program if the EPA approves the State's petition to withdraw from the OTR. New Hampshire's I/M program, however, is approved in the SIP, and requires a formal request from the state to remove it. New Hampshire submitted a request for a SIP revision to remove this program, along with a section 110(l) anti-backsliding analysis, on the same day it submitted the 176A petition. That SIP revision is being addressed in more detail in a separate rulemaking document (see Docket ID No. EPA-R01-OAR-2026-2147 at <https://www.regulations.gov>).

iii. Stage II Refueling Vapor Recovery

Stage II refueling vapor recovery systems and vehicle onboard refueling vapor recovery (ORVR) systems were initially both required by the 1990 Amendments to the CAA. Section 182(b)(3) requires ozone nonattainment areas classified Moderate and above to implement Stage II refueling vapor recovery programs. Under CAA section 184(b)(2), States in the OTR were also required to implement Stage II or comparable measures. CAA section 202(a)(6) required the EPA to promulgate regulations for ORVR for light duty vehicles (passenger cars).⁵³ New Hampshire's Stage II requirements were included in Env-Or 500 "Recovery

⁵² 57 FR 52950 (November 5, 1992). The EPA made significant revisions to the I/M rule on September 18, 1995 (60 FR 48035), and on July 25, 1996 (61 FR 39036).

⁵³ The EPA adopted these requirements in 1994. ORVR equipment has been phased in for new passenger vehicles beginning with model year 1998 and starting with model year 2001 for light-duty trucks and most heavy-duty gasoline powered vehicles. ORVR equipment has been installed on nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles since 2006. During the phase-in of ORVR controls, Stage II provided volatile organic compound (VOC) reductions in ozone nonattainment areas and certain attainment areas of the OTR. Congress recognized that ORVR systems and Stage II vapor recovery systems would eventually become largely redundant technologies and provided authority to the EPA to allow States to remove Stage II vapor recovery programs from their SIPs after the EPA finds that ORVR is in "widespread use."

of Gasoline Vapors." With the widespread use of ORVR, New Hampshire's revised Env-Or 500 decommissioning Stage II vapor recovery requirements was approved into the SIP.⁵⁴ The EPA's proposed granting of New Hampshire's 176A petition would have no impact on Stage II requirements due to the decommissioning of the program in New Hampshire.

iv. RACT

Sections 182(b)(2) and 184(b)(1)(B) of the CAA require States with ozone nonattainment areas that are classified as Moderate or above, as well as areas in the OTR, to submit a SIP revision requiring the implementation of RACT for sources covered by a control techniques guideline (CTG) and for all major sources of VOCs and NO_x. A CTG is a document issued by the EPA that is used to help determine VOC RACT for a specific VOC source category. RACT is defined as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The CTGs usually identify a particular control level that informs a RACT analysis. States in the OTR are required to address RACT for the source categories covered by CTGs through adoption of rules as part of the SIP, and they are also required to adopt RACT for major sources of VOCs (50 tpy) and major sources of NO_x (50 tpy) even if a CTG does not apply. The EPA approved New Hampshire's RACT certification for the 2008 and 2015 ozone standards on September 6, 2023,⁵⁵ and on April 30, 2024.⁵⁶

If finalized, the EPA's grant of New Hampshire's petition would terminate New Hampshire's federal obligation under CAA section 184 to adopt RACT requirements for any potential future ozone NAAQS. As noted above in the NSR discussion, New Hampshire has indicated in its 176A petition that it does not intend or desire to remove any stationary source programs currently in the SIP from the SIP. The EPA notes again that if, in the future, the state decided to seek to relax or remove RACT requirements in its SIP, any such revision would be required to satisfy an anti-backsliding demonstration under section 110(l).

⁵⁴ 79 FR 30735 (May 29, 2014).

⁵⁵ 88 FR 60893 (September 6, 2023).

⁵⁶ 89 FR 34137 (April 30, 2024).

V. The EPA's Technical Assessment of the New Hampshire CAA Section 176A Petition

A. Description of the Technical Analysis Included in the New Hampshire CAA Section 176A Petition

As noted previously, the New Hampshire petition included detailed technical analyses for VOC and NO_x emissions in the state, including an analysis of whether emissions from New Hampshire impact other areas in the OTR. The State's analysis contains back trajectories using the National Oceanic and Atmospheric Administration (NOAA) Air Resources Laboratory's Hybrid Single-Particle Lagrangian Integrated Trajectory (HYSPLIT) model and photochemical contribution modeling.⁵⁷ HYSPLIT trajectory analyses provide information on wind patterns and can indicate whether air masses originating over New Hampshire emissions sources reached locations near violating ozone monitors (forward trajectories) and whether air masses impacting violating monitors originated from or passed over New Hampshire locations (back trajectories). These wind patterns could potentially be used to exclude impacts if air from New Hampshire did not reach violating monitors. However, trajectories alone cannot be used to indicate the magnitude or significance of contributions because wind patterns do not show whether, or to what extent, emissions from the upwind locations impact air pollution concentrations at a downwind receptor, only that transport of air from the upwind location was present. In contrast, the photochemical contribution modeling tools referenced in this assessment calculate combined impacts of emissions, mixing, transport and chemistry to provide quantitative estimates of ozone impacts due to tracked emissions from the upwind state.

New Hampshire used a four-phase analysis to demonstrate how it does not, and will not, contribute to attainment status for areas in the OTR. In Phase 1, NHDES performed an initial screening of potential New Hampshire connections to OTR 8-hour ozone exceedances by conducting HYSPLIT 48-hour forward trajectory analysis. In phase 2, New Hampshire conducted additional HYSPLIT back trajectory analysis for dates and approximate locations of ozone exceedances in States directly adjacent to New Hampshire as

well as dates and approximate locations of ozone exceedances in any other OTR state where the NHDES Phase 1 forward trajectories passed within approximately 100 kilometers of an exceeding monitor. Phase 3 further refined the HYSPLIT back trajectory analysis to more specifically assess transport to the exact location of violating monitors at the exact times impacting the measured exceedances. In Phase 4, NHDES examined photochemical contribution modeling to quantify the State's contribution to these nonattainment areas. NHDES provided further inspection of New Hampshire's emissions trends in their technical demonstration to supplement the HYSPLIT and source apportionment modeling analyses.

For Phase 1, New Hampshire applied HYSPLIT v5.4.0 with NAM 12 km meteorology; and produced 48-hour forward trajectories at 100 m and 750 m AGL start heights with four start times per day (starting two days before the exceedance day). New Hampshire identified 324 site-day combinations experiencing ozone NAAQS exceedances within the OTR in 2021, with 27 of those exceedances being in the neighboring States of Maine and Massachusetts.⁵⁸ In 2022, 177 site-day combinations experienced ozone exceedances within the OTR, with 17 of the exceedances occurring in Maine and Massachusetts. In 2024, New Hampshire found 304 site-day combinations experiencing ozone NAAQS exceedances within the OTR, with 11 of these in Maine and Massachusetts. New Hampshire performed forward trajectories for 105 dates⁵⁹ for Phase 1, including 34 for 2021, 32 for 2022, and 39 for 2024, for all States in the OTR. Accounting for the two different starting elevations, New Hampshire completed a total of 840 forward trajectories for Phase 1. New Hampshire, through Phase 1 modeling, found 21 dates during 2021, 2022 and 2024 on which ozone exceedance either occurred in neighboring States to New Hampshire or on which forward trajectories passed within approximately 100 kilometers of an exceeding monitor in a non-neighboring OTR state. NHDES determined that further analysis was warranted on these dates for which New

Hampshire emissions could potentially influence ozone exceedances in other OTR States. These dates were further analyzed in Phase 2.

For Phase 2, NHDES conducted 48-hour back trajectories using the data and methods listed below for each day where NHDES determined that Phase 1 trajectories identified the potential for New Hampshire ozone precursor emission influence on ozone exceedances observed elsewhere in the OTR (and for the above-mentioned neighboring States' exceedances).⁶⁰ While NHDES did not conduct a separate back trajectory for every violating monitor location on these days, they determined that using a smaller number of representative monitoring locations appropriately captured the transport of air parcels relevant to ozone exceedances within the OTR. NHDES selected a total of 47 site-day combinations as starting points for HYSPLIT back trajectories relevant to monitored ozone exceedances during 27 dates in the Phase 2 assessment. Again, HYSPLIT trajectories applied the same two starting elevations as were used in the Phase 1 forward trajectories. NHDES then performed back trajectories for each of these exceedances. The air trajectories used by NHDES are four-dimensional representations of the path an air parcel follows, in 3-D space and time, based on surface and upper-level meteorological data during the day of and days prior to the measured exceedances. A back trajectory represents the path an air parcel takes to reach a specific point in time and space. Through the Phase 2 back trajectory analysis, NHDES concluded that New Hampshire emissions could potentially influence exceedances at monitors in three other OTR States on three dates.⁶¹ New Hampshire further evaluated these monitor exceedances in Phase 3.

For Phase 3 of the analysis, NHDES again conducted 48-hour back trajectories for monitors beginning on the dates of the ozone exceedances, but this time using the exact locations of all exceeding monitors and the exceedance hours starting on hour 3, 5, and 7 on the 8-hour period to represent the maximum daily exceedance period. NHDES used 10, 100, and 750-meter start heights, and again used the HYSPLIT v5.4.0 model with NAM 12km meteorology. NHDES, through this analysis, identified four ozone exceedances (one in Connecticut, three in New Jersey) that could suggest potential back trajectory linkage to

⁵⁸ There were no exceedances of the ozone NAAQS in the neighboring State of Vermont in 2021, 2022, and 2024.

⁵⁹ Using forward trajectories for phase 1 allowed for simulating trajectories from a single location (at multiple heights) on each of these 105 days in contrast to back trajectories which would require a larger number of simulations to capture starting points representing each of the exceeding monitor locations on each of the 105 days.

⁶⁰ See tables 6 and 7 of the NH petition.

⁶¹ See table 11 of the NH petition.

⁵⁷ For more information about HYSPLIT, please refer to the following document by Roland R. Draxler and G.D. Hess: Description of the HYSPLIT 4 Modeling System, available at <https://www.arl.noaa.gov/documents/reports/arl-224.pdf>.

emissions from New Hampshire. These monitors are located in Chester, NJ; Ramapo, NJ; Columbia, NJ; and Groton, CT.⁶² For each of these exceedances, according to NHDES, the only trajectory that showed any possible New Hampshire connection started at the highest altitude (750-m) while trajectories starting at lower altitudes did not show potential linkages.⁶³ NHDES indicated that these trajectories passed over only the very northern portion of New Hampshire (which has very low population and emission density), and any emissions from these areas were small compared to emissions occurring along the lower-level trajectories from high density areas like New York City and New Jersey. Given the form of the ozone NAAQS which is based on the 3-year average of the annual 4th highest value, NHDES maintained that the fact that this analysis only found these four locations with potential linkages over the three years analyzed, makes it extremely unlikely that emissions from New Hampshire contributed to nonattainment anywhere in the OTR. NHDES further analyzed the potential for the State's emissions to impact ozone attainment in Phase 4.

In addition to the trajectory analysis discussed above, New Hampshire's petition uses the EPA's photochemical modeling for the EPA's Transport Assessment contribution modeling with emissions that were projected from a 2016 base year to a 2023 analytic year. New Hampshire also analyzed an OTC version of a similar scenario using the same base and projected years as the EPA model. Both modeling platforms provided similar results. New Hampshire found, through analyzing the EPA model results, that total anthropogenic emissions in the State of New Hampshire contributed less than the 1 percent of the NAAQS contribution threshold to all OTR monitors outside of Maine and Massachusetts. The largest NH contributions at monitors outside of Maine and Massachusetts were 0.2 ppb or 0.28% for Chester, NJ; 0.06 ppb or 0.08% for Ramapo, NJ; 0.21 ppb or 0.30% for Columbia, NJ; and 0.01 ppb or 0.02% for Groton, CT. These results were all well below the 1 percent of NAAQS contribution threshold New Hampshire chose to apply, as described in section III.C. of this document. Additionally, New Hampshire asserted

that higher contributions modeled to occur at monitoring sites in Maine and Massachusetts are not currently interfering with those States' attainment of the ozone NAAQS as evidenced by ozone design values below the 70 ppb NAAQS standard based on current and recent air quality data (this is further evaluated later in this document).

New Hampshire supplemented the analysis by examining an EPA Transport Climatology study for several ozone nonattainment areas throughout the country. The analysis conducted back trajectories for a 12-year period from 2010 through 2021 for specific monitors of interest, including monitors in Connecticut. The study found that back trajectories to Connecticut ozone exceedances rarely passed over New Hampshire.⁶⁴

Additionally, New Hampshire provided graphical figures showing NO_x and VOC historical statewide emissions trends as well as projected emissions trends out to 2038. The projected emissions data are broken out into four source types (on-road vehicles, non-road equipment, point sources, and nonpoint sources), and show that emissions in the state are declining and are expected to continue to decline through 2038. Additionally, the petition provides data to show that the total annual anthropogenic NO_x and VOC emissions in 2022 for the entire State of New Hampshire are just over 2% and 3%, respectively, of the OTR total.⁶⁵

Finally, New Hampshire provided a demonstration of how emissions from vehicles registered and residing in New Hampshire will not impact air quality in other OTR States. New Hampshire found that for the mobile source emissions sector in 2022, the emissions from the state accounted for only 2.48% of NO_x and 3.54% of VOC emissions in the OTR. NHDES also analyzed commuter patterns compiled by the New Hampshire Department of Employment Security based on information from the American Community Survey (ACS). NHDES, in this analysis, found overall low mobile source emissions from New Hampshire vehicles commuting to other States, especially when offset by emissions from vehicles from other States commuting to New Hampshire.

B. The EPA's Technical Assessment of the New Hampshire Section 176A Petition

As noted in section III.C. of this proposed document, the EPA views the inquiry under CAA section 176A(a)(2)

as necessitating the identification of current and future air quality problems in the OTR, determining whether the petitioning area is significantly contributing to those problems, and examining whether removal of the petitioning area from the OTR will significantly contribute to nonattainment or maintenance problems in the future. The EPA proposes to find that the technical analyses submitted by New Hampshire in its CAA section 176A petition, in conjunction with analysis performed by the EPA, support New Hampshire's petition to remove the state from the OTR.

Typically, the EPA has relied on photochemical grid modeling in the first instance when conducting analysis of potential linkages between upwind and downwind States for purposes of evaluating interstate transport obligations for ozone. However, in this case the HYSPLIT analyses performed by New Hampshire and summarized in section V.A. are a technically sound and appropriate method to support showing the potential (or lack of potential) of an area to contribute to high-ozone values at a downwind location. This type of trajectory analysis is a commonly used method to examine potential source-receptor relationships based on air transport patterns. We are proposing to agree that the analysis provided by New Hampshire showed that in 2021, 2022, and 2024, air parcels containing high-ozone concentrations at monitors in the OTR on ozone exceedance days rarely ever originated from or recently passed over New Hampshire. The analysis NHDES conducted using HYSPLIT accords with the available photochemical grid modeling in demonstrating that New Hampshire does not contribute above even a 1 percent of NAAQS threshold to any locations struggling to attain or maintain the ozone NAAQS in the OTR.

The EPA agrees that the forward and back trajectories provided by NHDES in the petition demonstrate that emissions from New Hampshire are extremely unlikely to contribute to attainment problems in the OTR. NHDES indicated only four monitor locations, on two dates over three years of monitoring data (2021, 2022, and 2024), that showed any potential linkage to emissions from New Hampshire, and even on those dates, the back trajectories showed linkages only from airmasses aloft at the highest modeled start height (750 m). The lower-level modeled back trajectories at the 10-m and 100-m start heights passed through New York City (NYC) and New Jersey (NJ), areas with much higher population and emissions density and higher

⁶² See table 12 of the NH petition.

⁶³ Ozone monitor inlets are generally sited at 3–5 m, so backward trajectories with starting heights of 10–100 m are likely to provide information that is most relevant to measured ozone exceedances.

⁶⁴ See appendix C4 and C5 of the NH petition.

⁶⁵ See table 16 of the NH petition.

mobile source emissions. Given the higher emissions from NYC and NJ and the trajectories from NYC and NJ having a closer proximity to the monitors than New Hampshire emissions, the NYC and NJ areas would likely have had a much larger impact on the monitor values for those days than any potential New Hampshire contribution aloft at 750 m.⁶⁶

The EPA also provided NHDES with a Transport Climatology Study⁶⁷ that conducted back trajectories for a 12-year period from 2010 through 2021. NHDES used this study to supplement their own analysis and closely examined the back trajectories—focusing on the most recent years of 2019–2021. The EPA agrees that the Transport Climatology analysis supports the conclusion that New Hampshire ozone precursor emissions do not significantly contribute to nonattainment areas within the OTR. The back trajectories in the images provided by NHDES rarely, if ever, pass over the state of New Hampshire during the hours leading up to measured exceedance days.

The EPA's interstate transport modeling for the 2015 ozone NAAQS further supports the conclusions that: (1) New Hampshire has historically contributed below 0.70 ppb to all States other than Maine and Massachusetts (neither of which contain current or projected ozone nonattainment receptors (as defined within the EPA's 4-step framework)) and contributes well below that threshold to any such receptors in the OTR; and (2) the State will continue to contribute below that threshold to all receptors in the OTR in the future. Further, the EPA agrees with NHDES's analysis in the petition that New Hampshire does not have any monitors showing design values above the 70-ppb standard and that granting the petition would not cause any to fall into nonattainment in the future. As discussed throughout this document, New Hampshire has indicated that it intends to keep SIP approved measures other than the I/M program intact, which will help New Hampshire stay in attainment. The EPA's source apportionment modeling employs enhanced techniques that track the formation and transport of ozone from specific emissions sources and calculates the contribution of sources and precursors to ozone for individual receptor locations. The strength of the photochemical model source apportionment technique is that all

modeled ozone at a given receptor location in the modeling domain is tracked back to specific sources of emissions and boundary conditions to fully characterize culpable sources.

Data from the contribution analysis are summarized within table 15 of the State's submittal, showing the maximum modeled ozone contribution from New Hampshire's emissions in other OTR States. The data indicate a maximum modeled impact of only 0.21 ppb for a receptor in any state containing an ozone nonattainment area in 2023 (New Jersey) which is well below one percent of the NAAQS (0.70 ppb) that New Hampshire chose to apply as described in III.C of this proposed action. The EPA also examined its 2023 contribution modeling to identify the highest contribution from New Hampshire to any other monitor in another state, regardless of attainment status. The EPA agrees with NHDES that New Hampshire's highest contributions to monitors in other States are to monitors located in southern Maine and northeastern Massachusetts, which are areas that are in attainment for the 2008 and 2015 ozone NAAQS, and have shown no indication that they will struggle with attainment in the future.^{68 69}

EPA notes that the projected modeled contributions were for the year 2023, which was not one of the years for which NHDES performed HYSPLIT trajectory analyses. The 2023 contributions were modeled using 2016 meteorology, 2016 emissions from natural sources such as biogenics and fires, and projected 2023 anthropogenic emission inventories. Although NHDES did not analyze 2023 for back trajectories the projected 2023 model results from the EPA's 2016v3 modeling are informative for this assessment. 2023 back trajectories were not analyzed at the EPA's suggestion due to the complexity of interpreting potential for contributions using HYSPLIT trajectories in a year with substantial wildfire emissions that originated from locations upwind of New Hampshire.⁷⁰

However, those wildfire events did not affect the validity of the EPA modeling of the 2023 analytic year, which used a 2016 base year. The EPA also notes that both the EPA and OTC 2023 modeled scenarios displayed a very low contribution from New Hampshire to any of the potentially affected monitors.⁷¹

We also propose to find that the NO_x and VOC historical emissions trends and projected future emissions trends information to 2032 and 2038 provided in New Hampshire's submittal further support removal of the petitioning area from the OTR. VOC and NO_x emissions in New Hampshire have declined since 2005 and are expected to continue to decline into the future. The historical and projected downward trend is driven, in large part, by emissions reductions from the point source and on-road mobile source categories.⁷²

The EPA notes that New Hampshire's future year emissions projections for the years 2022, 2026, 2032, and 2038 were developed using EPA's 2022v1 Emissions Modeling Platform (2022v1 EMP). The 2022v1 EMP used EPA's Motor Vehicle Emission Simulator (MOVES) model version 4 (MOVES4) to estimate emissions from onroad and nonroad mobile sources. On February 12, 2026, the EPA finalized the rescission of the Greenhouse Gas (GHG) Endangerment Finding and repealed all GHG emission standards for light-duty, medium-duty, and heavy-duty vehicles and engines ("Endangerment Finding Rescission Rule").⁷³ Due to this action, aspects of the State's planning assumptions from the MOVES4 model may no longer be entirely consistent with the latest information. The EPA recognizes that States have relied on MOVES4 and MOVES model version 5, including the national default electric vehicle (EV) projections tied in part to the implementation of these now-repealed standards, in developing some actions that have been submitted to the EPA.

Per the EPA's MOVES Policy Guidance, States "should use the latest version of MOVES that is available at

⁶⁸ See <https://www.epa.gov/outdoor-air-quality-data/download-daily-data> for monitor values in these (or any other) States.

⁶⁹ Dukes County, in southeastern Massachusetts, is in nonattainment for the 2008 ozone standard, but the modeling did not find any contributions from NH above the 1% threshold that NH chose to apply to monitors in this area. Since the initial designation, Dukes County has recorded design values below the 2008 standard and was found to be in attainment for the more stringent 2015 standard. Massachusetts has not yet requested to have this area redesignated to attainment, mostly due to resource and administrative constraints.

⁷⁰ See section IV.A.

⁷¹ As noted, NHDES found that New Hampshire's highest contributions were to attaining monitors in Massachusetts and Maine.

⁷² In New Hampshire's December 24, 2025, I/M SIP Revision submission, which is being further evaluated in a separate rulemaking document, included on page 27 is table 8 that shows New Hampshire's mobile source emissions, including NO_x, VOC, and CO emissions, will continue to decrease even without their I/M program (see Docket ID No. EPA-R01-OAR-2026-2147 at <https://www.regulations.gov>).

⁷³ Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act, 91 FR 7686 (February 18, 2026).

⁶⁶ See appendix C3 of the New Hampshire petition.

⁶⁷ See appendix C4 of the New Hampshire petition.

the time that a SIP is developed.”⁷⁴ In this guidance, the EPA also stated that an earlier version of MOVES can be used if significant work has already been completed using that earlier version.⁷⁵ In addition, the EPA indicated that for fuel type distributions for onroad vehicles that include estimates of EVs, States should use local data if available and could rely on the default information within the model as planning assumptions.⁷⁶ While this action is not a SIP revision, this guidance for SIPs, including mobile source emissions inventories, could be applied to the emissions inventories in this petition. Therefore, based on the EPA’s statements in the EPA’s MOVES Policy and Technical Guidance, the State reasonably relied on the assumptions in MOVES4 and thus the 2022v1 EMP.

New Hampshire’s documentation shows that statewide point source emissions of NO_x and VOC decreased by 87 and 62 percent, respectively from 2005 to 2020. New Hampshire’s projections predict that NO_x and VOC emissions will continue to decrease into the future. For example, New Hampshire’s analysis of statewide emissions shows NO_x and VOC reductions of 30 and 7 percent, respectively, between 2022 and 2038. The EPA, therefore, proposes to find that granting New Hampshire’s petition to remove the state from the OTR, and the changes in the extent of emissions controls that would result, will not significantly contribute to nonattainment or maintenance problems for any area in the OTR. As noted, the emissions trends in New Hampshire indicate continued decline in emissions of ozone precursors associated with on-the-books emissions controls and do not depend on any new emissions limitations that would be driven by OTR control requirements under CAA section 184(b). In addition, New Hampshire’s highest modeled contribution to any currently identified receptor in the OTR that has struggled with attainment of the 2015 ozone NAAQS is only 0.21 ppb. This suggests that the ozone contribution from anthropogenic ozone precursor emissions in New Hampshire would have to increase by more than a

factor of three for New Hampshire to potentially contribute above one percent of the 2015 ozone NAAQS to an existing or projected ozone nonattainment or maintenance problem in the OTR. The EPA finds that granting the petition would not result in a change in emissions sufficient to increase its downwind ozone contribution by a factor of more than three resulting from either removal of existing emissions controls or unchecked growth in new source emissions. The historic emissions trends in New Hampshire and the CAA’s section 110(l) anti-backsliding provisions for SIP revisions provide assurances that a substantial increase in emissions is highly unlikely and would represent an unprecedented reversal in overall emissions reductions for any state, whether in the OTR or not.

Further, the primary change in the ozone control regime that will result from granting the petition would be if the EPA approves New Hampshire’s SIP revision to remove the I/M program. This revision is discussed in a separate rulemaking, but the New Hampshire submittal includes a section 110(l) demonstration that shows how removing the program will not interfere with attainment or maintenance of any NAAQS or other CAA requirements.

Finally, the EPA acknowledges the significant amount of time and resources required by New Hampshire to develop this petition. In the evaluation of this petition, the EPA is considering the modeling and information provided by New Hampshire and affirming that the State relied on the appropriate EPA models and guidance information available at the time it developed this petition. To acknowledge and accommodate reliance interests States may have had in MOVES4, and thus the 2022v1 EMP, based on the EPA’s statements in the EPA’s MOVES Policy and Technical Guidance, the EPA is proposing to find that New Hampshire appropriately considered onroad mobile source emissions for this petition. The EPA also notes that the New Hampshire modeled scenario displays an overall reduction in both VOCs and NO_x by 2038, even when disregarding the projected on-road sector emission reductions.⁷⁷

VI. The EPA’s Proposed Action on the New Hampshire CAA Section 176A Petition

Based on the information discussed in this document, the EPA is proposing to grant New Hampshire’s CAA section

176A petition. In consideration of monitoring data, emissions data, technical demonstrations (including air quality modeling and trajectory analyses), and the potential impact to air quality control regimes, the EPA proposes to find that additional OTR controls under CAA section 184(b) for New Hampshire will not significantly contribute to attainment of any ozone NAAQS in any area of the OTR. In support of this proposed conclusion, the EPA finds that removing the state from the OTR will not result in emissions changes that would significantly contribute to nonattainment or interfere with maintenance of any ozone NAAQS in any area of the OTR. The entire state of New Hampshire has been designated attainment for ozone since 2013. Technical demonstrations from New Hampshire’s HYSPLIT back trajectory analysis, the EPA’s ozone source apportionment modeling, and emissions trends all support the assertion that emissions from New Hampshire will not significantly contribute to nonattainment or maintenance problems in any area in the OTR, including within the state of New Hampshire itself, in the foreseeable future. Furthermore, removing the state from the OTR will not result in unchecked relaxation of existing NO_x and VOC controls included in New Hampshire’s SIP or revoke permitted emissions limits at existing facilities. Any future revisions to New Hampshire’s SIP (including potential removal of the State’s I/M program) would be subject to CAA section 110(l) anti-backsliding demonstrations. Accordingly, the EPA proposes to grant the CAA section 176A petition filed by the state of New Hampshire. The EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Judicial Review and Determinations Under Sections 307(b)(1) and 307(d) of the CAA

Under section 307(b)(1) of the CAA, petitions for judicial review of this action, if finalized, must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication of any final action. Filing a petition for reconsideration by the Administrator of this rule, if finalized, will not affect the finality of the rule for the purposes of judicial review nor will it extend the time within which a

⁷⁴ See section 6 “Use of MOVES4 in SIPs” on page 8 of “Policy Guidance on the Use of MOVES4 for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes” (EPA-420-B-23-009, August 2023).

⁷⁵ *Id.*

⁷⁶ See section of 4.8.3 (page 54) of “MOVES4 Technical Guidance: Using MOVES to Prepare Emission Inventories for State Implementation Plans and Transportation Conformity” (EPA-420-B-23-011, August 2023).

⁷⁷ See Figures 9 and 10 of the New Hampshire petition.

petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. The Administrator of the EPA hereby determines that this action is subject to CAA section 307(d), as authorized by section 307(d)(1)(V).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Ozone, Particulate matter.

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

Lee Zeldin,
Administrator.

For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart E—Identification of Interstate Transport Regions

■ 2. Revise § 81.457 to read as follows:

§ 81.457 Ozone Transport Region.

Except as provided in paragraph (a), the Ozone Transport Region is comprised of the areas identified by Congress under 42 U.S.C. 7511c(a).

(a) *Ozone Transport Region boundary.* As of [DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the boundary for the Ozone Transport Region consists of the entire States of Connecticut, Delaware, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; portions of Maine identified in this section under table 1 to Paragraph (a); and the Consolidated Metropolitan Statistical Area that includes the District of Columbia and the following counties and cities in Virginia: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

(b) *Applicability.* As of March 14, 2022, the provisions of 42 U.S.C. 7511c will no longer be applicable in the following areas of Maine: The State of Maine, with the exception of the towns and cities listed in this section under table 1 to paragraph (a). As of [DATE 30

DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], the provisions of 42 U.S.C. 7511c will no longer be applicable in New Hampshire.

[FR Doc. 2026–16331 Filed 8–10–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 26–195; RM–12023; DA 26–804; FR ID 360895]

Television Broadcasting Services St. George, Utah

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Table of TV Allotments (Table) of the Federal Communications Commission's (Commission) rules in response to a petition for rulemaking filed by KUTV Licensee, LLC (Licensee), the Licensee of full service television station KMYU(TV) (KMYU or Station), St. George, Utah (St. George). The Licensee applied for a construction permit (CP) to construct a facility on UHF channel 21 at St. George, which remains pending, and now requests that the Bureau substitute VHF channel 9 for UHF channel 21 in the Table with technical parameters set forth in KMYU's current license. The Media Bureau previously granted a petition for rulemaking submitted by the Licensee to substitute UHF channel 21 for VHF channel 9 at St. George. The Licensee later filed an application for a CP for its new channel, however, under further consideration and restraints, wishes to abandon its plans to modify its license for KMYU to operate on channel 21, and proposes to continue to operate on VHF channel 9 and specify the technical parameters of its currently licensed VHF channel 9 facility. The substitution of VHF channel 9 for UHF channel 21 in the Table will allow the Station to remain on the air and continue to provide service to viewers within its service area. Given that the Licensee proposes to utilize its currently licensed parameters, we believe VHF channel 9 can be substituted for UHF channel 21 at St. George as proposed, in compliance with the principal community coverage requirements of § 73.618(a) of the Commission's rules.

DATES: Comments must be filed on or before September 10, 2026 and reply comments on or before September 25, 2026.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Paul A. Cicelski, Lerman Senter PLLC, 2001 L Street NW, Suite 400, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Emily Harrison at Emily.Harrison@fcc.gov, (202) 418–1665 or Mark Colombo at Mark.Colombo@fcc.gov, (202) 418–7611.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 26–195; RM–12023; DA 26–804, adopted July 31, 2026, and released July 31, 2026. The full text of this document is available online at <https://www.fcc.gov/edocs>.

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 §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

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 Utah, revise the entry for “St. George” to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community					Channel No.
*	*	*	*	*	*
Utah					
*	*	*	*	*	*
St. George					9,* 18
*	*	*	*	*	*

* * * * *

[FR Doc. 2026-16317 Filed 8-10-26; 8:45 am]

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Notices

Federal Register

Vol. 91, No. 153

Tuesday, August 11, 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 COMMERCE

Foreign-Trade Zones Board

[B-57-2026]

Foreign-Trade Zone (FTZ) 153; Withdrawal of Notification of Proposed Production Activity; Foxx Development, Inc.; (Production of Smartphones); San Diego, California

Notice is hereby given of the withdrawal of the notification of proposed production activity submitted by Foxx Development, Inc. for its facility in San Diego, California, within FTZ 153. The notification was docketed on May 27, 2026 (91 FR 34215, June 5, 2026). The withdrawal was requested by Foxx Development, Inc. on August 6, 2026.

Dated: August 7, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-16355 Filed 8-10-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-100-2026]

Foreign-Trade Zone (FTZ) 61, Notification of Proposed Production Activity; Viatris Pharmaceuticals LLC; (Medications); Vega Baja, Puerto Rico

Viатris Pharmaceuticals LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Vega Baja, Puerto Rico within FTZ 61. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on July 30, 2026.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished

product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via www.trade.gov/ftz.

The proposed finished products include: ativan tablets, atorvastatin tablets, celebrex capsules; colestid tablets; Detrol capsules; Dilantin tablets and capsules; Effexor capsules; eplerenone tablets; ibranche capsules; inspra tablets; Lipitor tablets; lorbrene tablets; lorviqua tablets; lyrica capsules; Neurontin tablets and capsules; nitrostat tablets; Norvasc tablets; Pristiq tablets; vizimpro tablets; Xanax immediate release tablets; Xeljanz extended release tablets; Zithromax tablets; and zyvox tablets (duty-free).

The proposed foreign-status materials/components include: amlodipine besylate active pharmaceutical ingredient (API); atorvastatin API; Ativan tablets; azithromycin API; calcium carbonate; Cardura bulk tablets; celecoxib API; dacomitinib tablets; Effexor capsules; eplerenone API; gabapentin API; Geodon capsules; microcrystalline cellulose; mini bags; pharmitose (lactose for atorvastatin/Lipitor); pregabalin API; propranolol API; pregabalin bulk capsules; rapamune tablets; tabletose; Xanax IR tablets; Xanax XR tablets; Zoloft tablets; disopyramide API; linezolid API; lorlatinib tablets; palbociclib tablets; Pristiq tablets; rapamune tablets; and, talazoparib tablets (duty rate ranges from duty-free to 8.4%).

The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 (section 232), depending on the country of origin. The applicable section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is September 21, 2026.

A copy of the notification will be available for public inspection in the

“Online FTZ Information System” section of the Board's website.

For further information, contact Brian Warnes at brian.warnes@trade.gov.

Dated: August 7, 2026.

Elizabeth Whiteman,
Executive Secretary.

[FR Doc. 2026-16356 Filed 8-10-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-121]

Difluoromethane (R-32) From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on difluoromethane (R-32) from the People's Republic of China (China) would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable August 4, 2026.

FOR FURTHER INFORMATION CONTACT: Ajay Menon, 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) 482-0208.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 2021, Commerce published in the **Federal Register** the AD order on R-32 from China.¹ On February 2, 2026, the ITC instituted,² and Commerce initiated,³ the first sunset review of the *Order*, pursuant to

¹ See *Difluoromethane (R-32) from the People's Republic of China: Antidumping Duty Order*, 86 FR 13886 (March 11, 2021) (*Order*).

² See *Difluoromethane (R-32) from China: Institution of a Five-Year Review*, 91 FR 4620 (February 2, 2026).

³ See *Initiation of Five-Year (Sunset) Reviews*, 91 FR 4499 (February 2, 2026).

section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.⁴

On August 4, 2026, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.⁵

Scope of the Order

The merchandise covered by this *Order* is difluoromethane (R-32), or its chemical equivalent, regardless of form, type or purity level. R-32 has the Chemical Abstracts Service (CAS) registry number of 75-10-5 and the chemical formula CH₂F₂. R-32 is also referred to as difluoromethane, HFC-32, FC-32, Freon-32, methylene difluoride, methylene fluoride, carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. Subject merchandise also includes R-32 and unpurified R-32 that are processed in a third country or the United States, including, but not limited to, purifying or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope R-32. R-32 that has been blended with products other than pentafluoroethane (R-125) is included within this scope if such blends contain 85% or more by volume on an actual percentage basis of R-32. In addition, R-32 that has been blended with any amount of R-125 is included within this scope if such blends contain more than 52% by volume on an actual percentage basis of R-32. Whether R-32 is blended with R-125 or other products, only the R 32 component of the mixture is covered by the scope of this *Order*. The scope also includes R 32 that is commingled with R-32 from sources not subject to this *Order*. Only the subject component of such commingled products is covered by the scope of this *Order*.

Excluded from the current scope is merchandise covered by the scope of the antidumping order on

hydrofluorocarbon blends from the People's Republic of China. See *Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order*, 81 FR 55436 (August 19, 2016) (*Blends Order*).

R-32 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035. Other merchandise subject to the current scope, including the above-mentioned blends that are outside the scope of the *Blends Order*, may be classified under 2903.39.2045 and 3824.78.0020. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Order*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be August 4, 2026.⁶ Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Order* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) review and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

⁶ See ITC Final Determination.

Dated: August 6, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-16297 Filed 8-10-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-469-817]

Ripe Olives From Spain: Final Results and Partial Rescission 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) determines that certain producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR) August 1, 2023, through July 31, 2024.

DATES: Applicable August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Maria Teresa Aymerich, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-0499.

SUPPLEMENTARY INFORMATION:

Background

On February 13, 2026, Commerce published the *Preliminary Results* of the 2023–2024 administrative review of the antidumping duty order on ripe olives from Spain in the **Federal Register**.¹ Between March 25 and 27, 2026, we conducted a verification of Agro Sevilla's Herndon, Virginia office.² Between April 13 and 17, 2026, we verified Agro Sevilla in Sevilla, Spain.³ On June 3, 2026, Commerce invited interested parties to comment on the *Preliminary Results* and Verification

¹ See *Ripe Olives from Spain: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2023–2024*, 91 FR 6816 (February 13, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memorandum, “Agro Sevilla Aceitunas, S. Coop.And.’s Constructed Export Price Verification Report,” dated June 2, 2026 (CEP Verification Report).

³ See Memorandum, “Verification Report of Agro Sevilla Aceitunas, S. Coop.And.,” dated June 2, 2026 (Agro Sevilla Verification Report).

⁴ See *Difluoromethane (R-32) from the People's Republic of China: Final Results of the Expedited First Sunset Review of the Antidumping Duty Orders*, 91 FR 31700 (May 28, 2026), and accompanying Issues and Decision Memorandum.

⁵ See *Difluoromethane (R-32) from China; Determination* 91 FR 49448 (August 4, 2026) (*ITC Final Determination*).

Report.⁴ No parties submitted comments.

Although Commerce made certain changes to Agro Sevilla's U.S. and home market sales data pursuant to verification, the revisions did not result in a change to Agro Sevilla's dumping margin calculated in the *Preliminary Results*. Accordingly, we will issue a final analysis memorandum for Agro Sevilla but no decision memorandum accompanies this notice. On May 26, 2026, Commerce extended the final results of this review by 53 days, until August 5, 2026.⁵

Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order⁶

The products covered by the *Order* are ripe olives from Spain. For a full description of the scope of the *Order*, see *Preliminary Results*.⁷

Verification

As provided in section 782(i) of the Act, in March and April 2026, Commerce verified the sales data reported by Agro Sevilla. We used standard verification procedures, including an examination of relevant accounting and sales records, and original source documents provided by Agro Sevilla.⁸

Changes Since the Preliminary Results

While no party submitted comments on our *Preliminary Results*, we made certain changes to Agro Sevilla's U.S. sales database based on our verification findings.⁹ For further discussion of these changes, see the Final Analysis Memorandum.¹⁰

Rate for Non-Examined Companies

The statute and Commerce's regulations at the initiation of this review do not address the establishment of a rate to be assigned to respondents not selected for individual examination when Commerce limits its examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act.

Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}." For the final results, we have calculated a weighted-average dumping margin for Agro Sevilla that is not zero, *de minimis*, or determined entirely on the basis of facts available. Thus, because we received no comments on our *Preliminary Results* and consistent with our practice, for the final results of review, we continue to assign Agro Sevilla's rate of 3.54 percent to Angel Camacho Alimentacion, S.L. (Angel Camacho).¹¹

Partial Rescission of Administrative Review

We initiated an administrative review of Alimentary Group DCOOP, S.Coop.And. (Alimentary Group).¹² However, because Alimentary Group did not have any entries during the POR¹³ and no party commented on our preliminary intent to rescind the review on Alimentary Group,¹⁴ we are rescinding the review with respect to this company.

Final Results of Review

In the *Preliminary Results*, Commerce preliminarily determined that Agro Sevilla sold subject merchandise in the United States at prices below NV during the POR.¹⁵ Because we received no comments and certain changes to Agro Sevilla's home market and U.S. sales datasets did not change the margin from the *Preliminary Results*, we continue to find that Agro Sevilla and Angel Camacho Alimentacion, S.L. sold subject merchandise in the United States at prices below NV.

Exporter	Weighted-average dumping margin (percent)
Agro Sevilla Aceitunas, S. Coop. And	3.54
Angel Camacho Alimentacion, S.L.	3.54

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties for these final 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).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, 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. Because the weighted-average dumping margin for Agro Sevilla is not zero or *de minimis* (i.e., less than 0.5 percent) in the final results of this review, we calculated 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 those same sales in accordance with 19 CFR 351.212(b)(1).¹⁶ Where an importer-specific assessment rate is *de minimis* (i.e., less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. 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.¹⁷

For the non-selected company subject to this review, Angel Camacho, we will instruct CBP to liquidate all entries of subject merchandise that entered the United States during the POR at the rate calculated for Agro Sevilla as listed above.

Pursuant to a refinement to Commerce's assessment practice, where sales of subject merchandise that was produced or exported by Agro Sevilla

⁴ See Memorandum "Briefing Schedule," dated June 3, 2026.

⁵ See Memorandum, "Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated May 26, 2026.

⁶ See *Ripe Olives from Spain: Antidumping Duty Order*, 83 FR 37465 (August 1, 2018) (*Order*).

⁷ See *Preliminary Results* PDM at 3–5.

⁸ See Agro Sevilla Verification Report and CEP Verification Report.

⁹ *Id.*

¹⁰ See Memorandum, "Final Analysis Memorandum," dated concurrently with this notice (Final Analysis Memorandum).

¹¹ See *Preliminary Results* PDM at 4.

¹² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 89 FR 77079 (September 20, 2024) (*Initiation Notice*).

¹³ See Memorandum, "Respondent Selection," dated October 22, 2024, at Attachment; see also 19 CFR 351.213(d)(3).

¹⁴ See *Preliminary Results*, 91 FR at 6816.

¹⁵ See *Preliminary Results* PDM at 1.

¹⁶ In these final 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 Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁷ See section 751(a)(2)(C) of the Act.

were not reported in the U.S. sales data, but the merchandise was entered for consumption into the United States during the POR, we will instruct CBP to liquidate any entries of such merchandise at the all-others rate (*i.e.*, 19.98 percent)¹⁸ if there is no rate for the intermediate company(ies) involved in the transaction.¹⁹

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this 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).

With regard to Alimentary Group DCOOP, S.Coop.And. (Alimentary Group), for which we have rescinded this review, Commerce will instruct CBP to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit rate for estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of ripe olives from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the weighted-average dumping margins established in the final results of the review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation but the producer is, then the cash

deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.98 percent,²⁰ the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final 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 the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of countervailing duties.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). 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 subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing the final results of this review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: August 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. 2026-16360 Filed 8-10-26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-557-818]

Mattresses From Malaysia: Final Results of Antidumping Duty Administrative Review; 2024-2025

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that mattresses from Malaysia were sold at prices below than normal value (NV) during the period of review (POR), May 1, 2024, through April 30, 2025.

DATES: Applicable August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Kristen Ho, 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 or (202) 482-4243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2026, Commerce published in the **Federal Register** the *Preliminary Results* of this administrative review and invited interested parties to comment.¹ We received no comments from interested parties on the *Preliminary Results*. Therefore, we made no changes from the *Preliminary Results* and, accordingly, there is no decision memorandum accompanying this notice. The *Preliminary Results* are hereby adopted as the final results of this review. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order²

The merchandise subject to the *Order* is mattresses from Malaysia. For a complete description of the scope of the *Order*, see the *Preliminary Results*.³

Final Results of Review

Commerce determines the following weighted-average dumping margin

¹ See *Mattresses from Malaysia: Preliminary Results and Recission, in Part, of Antidumping Administrative Review; 2024-25*, 91 FR 20095 (April 15, 2026) (*Preliminary Results*).

² 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, 26463 (May 14, 2021) (*Order*).

³ See *Preliminary Results*, 91 FR at 20098-99.

¹⁸ See *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Final Determination*).

¹⁹ For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

²⁰ See *Final Determination*.

exists for the period, May 1, 2024, through April 30, 2025:

Producer or exporter	Weighted-average dumping margin (percent)
CS Vision Supply SDN BHD	42.92
Orient GIC Global	42.92
Pinnacle Salute SDN BHD	42.92
Premier High Ventures	42.92
Lion YTT World	42.92
Weld Tack Industries	42.92
Non-Selected Companies Receiving a Review-Specific Rate ⁴	42.92

Disclosure

Normally, Commerce discloses to interested parties the calculations of the final results of an administrative review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results*, there are no calculations to disclose.⁵

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, 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 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 deposit requirements will be effective upon publication in the **Federal Register** of the notice of these final results for all shipments of mattresses from Malaysia entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for CS Vision, Orient Global, Pinnacle Salute, Premier High, Lion World, Weld Tack,

and non-examined companies will be equal to weighted-average dumping margin established in the final results of this review; (2) for merchandise exported by a company not covered in this 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; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the company-specific rate established for the completed segment for the most recent period 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 established in the less than fair value investigation (*i.e.*, 42.92 percent).⁶ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final 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.

Administrative Protective Order (APO)

In accordance with 19 CFR 351.305(a)(3), this notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under the APO, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results of review in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 6, 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

Companies Not Selected for Individual Examination

- 1. Hestart Venture
 - 2. Kin Heng Furniture SDN BHD
 - 3. Maxmatt Industries SDH BHD
 - 4. Oyxen Ventures
 - 5. Perniagaan Jaya Nokkorn
- [FR Doc. 2026–16361 Filed 8–10–26; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration
[C–570–968]

Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.
SUMMARY: The U.S. Department of Commerce (Commerce) determines that producers and exporters of aluminum extrusions from the People's Republic of China (China) received countervailable subsidies during the period or review (POR) January 1, 2024, through December 31, 2024.
DATES: Applicable August 11, 2026.
FOR FURTHER INFORMATION CONTACT: Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (240) 956–8630.
SUPPLEMENTARY INFORMATION:

Background

On April 15, 2026, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interested parties to comment.¹ No interested party submitted comments. Thus, Commerce made no changes from the *Preliminary Results*, which are herein adopted as the final results of review. Additionally, because these final results remain unchanged from the *Preliminary Results*, no decision memorandum

⁴ *Id.*, 91 FR at 20097; see also Appendix to this notice; and 19 CFR 351.109(f)(2).
⁵ See *Preliminary Results*, 91 FR at 20097.
⁶ See *Order*, 86 FR at 26462.

¹ See *Aluminum Extrusions from the People's Republic of China: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review; 2024*, 91 FR 20106 (April 15, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

accompanies this notice. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order ²

The products covered by the *Order* are aluminum extrusions from China. For a complete description of the scope of the *Order*, see the appendix to this notice.

Use of Adverse Facts Available (AFA)

As discussed in the *Preliminary Results*, we assigned the six non-responsive companies a net countervailable subsidy rate based entirely on AFA, pursuant to sections 776(a) and (b) of the Act.³ There is no new information on the record that would cause us to revisit our decision in the *Preliminary Results*. Accordingly, for these final results, we continue to find that the application of AFA pursuant to sections 776(a) and (b) of the Act is warranted with respect to the non-responsive companies.

Final Results of Administrative Review

As a result of this review, we determine the following net countervailable subsidy rates exist for the POR, January 1, 2024, through December 31, 2024:

Exporter or producer	Subsidy rate (percent <i>ad valorem</i>)
Anji Chang Hong Chain Manufacturing	* 164.29
Assa Abloy (Zhongshan) Security Technology	* 164.29
Dezhou Huoamei Windows and Doors	* 164.29
Ewellix Motion Technologies	* 164.29
Ningbo Lianda Winch	* 164.29
Shanghai Zesheng Automotive Technology	* 164.29

* Rate based on facts available with adverse inferences.

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in the final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we made no changes from the *Preliminary Results*, there are no new calculations to disclose.

² See *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Order*).

³ See *Preliminary Results*, 91 FR at 20107, and PDM at Section V.

Assessment

Consistent with sections 751(a)(1) and (a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP regarding the companies listed above no earlier than 35 days after the 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 Instructions

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.107(e), Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated individual countervailable subsidy rates determined 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) if both the producer and exporter of the subject merchandise have company-specific estimated subsidy rates assigned, and their rates differ, then the applicable cash deposit rate will be the higher of these two rates; (3) if either the producer or the exporter, but not both, of the subject merchandise has a company-specific estimated subsidy rate assigned, the applicable cash deposit rate will be that company's company-specific rate; and (4) the cash deposit rate for all other producers and exporters will be continue to be 7.37 percent, the all-others subsidy rate established in the investigation.⁴ These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

⁴ See *Aluminum Extrusions from the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination Pursuant to Court Decision*, 80 FR 69640 (November 10, 2015).

Administrative Protective Order (APO)

This notice serves as a final 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

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: August 6, 2026.

Christopher Abbott,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Order

The merchandise covered by this *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by the Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents). Specifically, the subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 1 contains not less than 99 percent aluminum by weight. The subject merchandise made from aluminum alloy with an Aluminum Association series designation commencing with the number 3 contains manganese as the major alloying element, with manganese accounting for not more than 3.0 percent of total materials by weight. The subject merchandise is made from an aluminum alloy with an Aluminum Association series designation commencing with the number 6 contains magnesium and silicon as the major alloying elements, with magnesium accounting for at least 0.1 percent but not more than 2.0 percent of total materials by weight, and silicon accounting for at least 0.1 percent but not more than 3.0 percent of total materials by weight. The subject aluminum extrusions are properly identified by a four-digit alloy series without either a decimal point or leading letter. Illustrative examples from among the approximately 160 registered alloys that may characterize the subject merchandise are as follows: 1350, 3003, and 6060. Aluminum extrusions are produced and imported in a wide variety of shapes and forms, including, but not limited to, hollow profiles, other solid profiles, pipes, tubes, bars, and rods. Aluminum extrusions that are drawn subsequent to extrusion (drawn aluminum) are also included in the scope.

Aluminum extrusions are produced and imported with a variety of finishes (both coatings and surface treatments), and types of fabrication. The types of coatings and treatments applied to subject aluminum extrusions include, but are not limited to, extrusions that are mill finished (*i.e.*, without any coating or further finishing), brushed, buffed, polished, anodized (including brightdip anodized), liquid painted, or powder coated. Aluminum extrusions may also be fabricated, *i.e.*, prepared for assembly. Such operations would include, but are not limited to, extrusions that are cut-to-length, machined, drilled, punched, notched, bent, stretched, knurled, swedged, mitered, chamfered, threaded, and spun. The subject merchandise includes aluminum extrusions that are finished (coated, painted, *etc.*), fabricated, or any combination thereof. Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (*e.g.*, by welding or fasteners) to form subassemblies, *i.e.*, partially assembled merchandise unless imported as part of the finished goods 'kit' defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.

Subject extrusions may be identified with reference to their end use, such as fence posts, electrical conduits, door thresholds, carpet trim, or heat sinks (that do not meet the finished heat sink exclusionary language below). Such goods are subject merchandise if they otherwise meet the scope definition, regardless of whether they are ready for use at the time of importation.

The following aluminum extrusion products are excluded: aluminum extrusions made from aluminum alloy with an Aluminum Association series designations commencing with the number 2 and containing in excess of 1.5 percent copper by weight; aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 5 and containing in excess of 1.0 percent magnesium by weight; and aluminum extrusions made from aluminum alloy with an Aluminum Association series designation commencing with the number 7 and containing in excess of 2.0 percent zinc by weight. The scope also excludes finished merchandise containing aluminum extrusions as parts that are fully and permanently assembled and completed at the time of entry, such as finished windows with glass, doors with glass or vinyl, picture frames with glass pane and backing material, and solar panels. The scope also excludes finished goods containing aluminum extrusions that are entered unassembled in a "finished goods kit." A finished goods kit is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as

cutting or punching, and is assembled "as is" into a finished product. An imported product will not be considered a "finished goods kit" and therefore excluded from the scope of the *Order* merely by including fasteners such as screws, bolts, *etc.* in the packaging with an aluminum extrusion product.

The scope also excludes aluminum alloy sheet or plates produced by other than the extrusion process, such as aluminum products produced by a method of casting. Cast aluminum products are properly identified by four digits with a decimal point between the third and fourth digit. A letter may also precede the four digits. The following Aluminum Association designations are representative of aluminum alloys for casting: 208.0, 295.0, 308.0, 355.0, C355.0, 356.0, A356.0, A357.0, 360.0, 366.0, 380.0, A380.0, 413.0, 443.0, 514.0, 518.1, and 712.0. The scope also excludes pure, unwrought aluminum in any form.

The scope also excludes collapsible tubular containers composed of metallic elements corresponding to alloy code 1080A as designated by the Aluminum Association where the tubular container (excluding the nozzle) meets each of the following dimensional characteristics: (1) length of 37 millimeters ("mm") or 62 mm, (2) outer diameter of 11.0 mm or 12.7 mm, and (3) wall thickness not exceeding 0.13 mm. Also excluded from the scope of this *Order* are finished heat sinks. Finished heat sinks are fabricated heat sinks made from aluminum extrusions the design and production of which are organized around meeting certain specified thermal performance requirements and which have been fully, albeit not necessarily individually, tested to comply with such requirements. Also excluded from the scope of the *Order* is certain rectangular wire produced from continuously cast rolled aluminum wire rod, which is subsequently extruded to dimension to form rectangular wire. The product is made from aluminum alloy grade 1070 or 1370, with no recycled metal content allowed. The dimensions of the wire are 5 mm (+/- 0.05 mm) in width and 1.0 mm (+/- 0.02 mm) in thickness. Imports of rectangular wire are provided for under HTSUS category 7605.19.0000.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7606.12.3091, 7606.12.3096, 7604.21.0010, 7604.21.0090, 7604.29.1010, 7604.29.1090, 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50,

8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.

[FR Doc. 2026-16362 Filed 8-10-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Rescission of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based upon the timely withdrawal of all review requests, the U.S. Department of Commerce (Commerce) is rescinding the administrative reviews covering the periods of review (PORs) of the antidumping duty (AD) and countervailing duty (CVD) orders identified in the table below.

DATES: Applicable August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230, telephone: (202) 482-4735.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.221(c)(1)(i),¹ based upon timely requests for review, Commerce initiated administrative reviews of certain companies for the PORs and the AD and CVD orders listed

in the table below. All requests for these reviews have been timely withdrawn.²

Rescission of 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 review requests within 90 days of the date of publication of the notice of initiation for the

requested review. All parties withdrew their requests for the reviews listed in the table below within the 90-day deadline. No other parties requested administrative reviews of these AD/CVD orders for the PORs noted in the table. Therefore, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding, in their entirety, the administrative reviews listed in the table below.

	Period of review
AD Proceedings	
Egypt: Common Alloy Aluminum Sheet, A-729-803	4/1/2025-3/31/2026
Germany: Common Alloy Aluminum Sheet, A-428-849	4/1/2025-3/31/2026
India: Common Alloy Aluminum Sheet, A-533-895	4/1/2025-3/31/2026
Indonesia: Common Alloy Aluminum Sheet, A-560-835	4/1/2025-3/31/2026
Israel: Brass Rod, A-508-814	12/14/2023-8/31/2025
Italy:	
Common Alloy Aluminum Sheet, A-475-842	4/1/2025-3/31/2026
Stainless Steel Butt-Weld Pipe Fittings, A-475-828	2/1/2025-1/31/2026
Republic of Korea: Forged Steel Fittings, A-580-904	12/1/2024-11/30/2025
Republic of Türkiye: Hot-Rolled Steel Flat Products, A-489-826	10/1/2024-9/30/2025
South Africa: Common Alloy Aluminum Sheet, A-791-825	4/1/2025-3/31/2026
Socialist of Vietnam: Gas Powered Pressure Washers, A-552-008	10/1/2024-9/30/2025
Taiwan:	
Common Alloy Aluminum Sheet, A-583-867	4/1/2025-3/31/2026
Crystalline Silicon Photovoltaic Products, A-583-853	2/1/2025-1/31/2026
Thailand:	
Polyester Textured Yarn, A-549-843	12/1/2024-11/30/2026
Prestressed Concrete Steel Wire Strand, A-549-820	1/1/2025-12/31/2026
The People's Republic of China:	
Certain Plastic Decorative Ribbon, A-570-075	3/1/2025-2/28/2026
Certain Vertical Shaft Engines Between 225C and 999CC and Parts Thereof, A-570-119	3/1/2025-2/28/2026
Crystalline Silicon Photovoltaic Products, A-570-010	2/1/2025-1/31/2026
Gas Powered Pressure Washers, A-570-148	2/1/2025-1/31/2026
Lightweight Thermal Paper, A-570-920	11/1/2024-10/31/2025
Mattresses, A-570-092	12/1/2024-11/30/2025
Seamless Refined Copper Pipe and Tube, A-570-964	11/1/2024-10/31/2025
Wooden Bedroom Furniture, A-570-890	1/1/2025-12/31/2025
Wooden Cabinets and Vanities and Components Thereof, A-570-106	4/1/2025-3/31/2026
CVD Proceedings	
Israel: Brass Rod, C-508-815	9/29/2023-12/31/2024
The People's Republic of China:	
Gas Powered Pressure Washers, C-570-149	1/1/2025-12/31/2025
Certain Paper Plates, C-570-165	4/2/2024-12/31/2025
Certain Plastic Decorative Ribbon, C-570-076	1/1/2025-12/31/2025
Wooden Cabinets and Vanities and Components Thereof, C-570-107	1/1/2025-12/31/2025

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping and/or countervailing duties on all appropriate entries during the PORs noted above for each of the listed administrative reviews at rates equal to the cash deposit of estimated antidumping or countervailing duties, as applicable, required at the time of entry, or withdrawal of merchandise

from 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 the date of publication of this rescission notice in the **Federal Register** for rescinded administrative reviews of AD/CVD orders on countries other than Canada and Mexico. For rescinded administrative reviews of AD/CVD

orders on Canada or Mexico, Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of this rescission notice in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Notification to Importers

This notice serves as the only reminder to importers of merchandise subject to AD orders of their

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 91 FR 229 (January 5, 2026); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 91 FR 3421 (January 27, 2026); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 91 FR 8186 (February 20, 2026); *Initiation of Antidumping and*

Countervailing Duty Administrative Reviews, 91 FR 11274 (March 9, 2026); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 91 FR 15951 (March 31, 2026); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 91 FR 23941 (May 4, 2026); and *Initiation of Antidumping and Countervailing*

Duty Administrative Reviews, 91 FR 32928 (June 2, 2026).

² The letters withdrawing the review requests may be found in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>.

responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

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 disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in these segments of these proceedings. 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 the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: August 4, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–16346 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073; C–570–074; A–525–001; C–525–002; A–351–854; A–891–001; A–729–803; A–428–849; A–533–895; C–533–896; A–560–835; A–475–842; A–523–814; A–485–809; A–801–001; A–856–001; A–791–825; A–469–820; A–583–867; A–489–839; C–489–840]

Common Alloy Aluminum Sheet From the People's Republic of China, Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Türkiye: Initiation and Preliminary Results of Changed Circumstances Reviews and Intent To Revoke the Antidumping and Countervailing Duty Orders, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is initiating and issuing preliminary results of changed circumstances reviews (CCRs) of the antidumping duty (AD) and countervailing duty (CVD) orders on common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China), Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Türkiye (Türkiye), to revoke the orders, in part, with respect to certain aluminum can stock. Interested parties are invited to comment on these preliminary results.

DATES: Applicable August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Daniel Saba, 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) 482–5849.

SUPPLEMENTARY INFORMATION:

Background

On February 6 and 8, 2019, Commerce published the AD and CVD orders on CAAS from China, respectively.¹ On April 27, 2021, Commerce published the CVD orders on CAAS from Bahrain, India, and Türkiye, and the AD orders

¹ See *Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order*, 84 FR 2813 (February 8, 2019) (*China Aluminum Sheet AD Order*); see also *Common Alloy Aluminum Sheet from the People's Republic of China: Countervailing Duty Order*, 84 FR 2157 (February 6, 2019) (*China Aluminum Sheet CVD Order*) (collectively, *China Aluminum Sheet Orders*).

on aluminum sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Türkiye.² On June 22, 2026, the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its members³ (collectively, CAAS Enforcement Working Group), requested, through a CCR, that Commerce amend the scope of, and retroactively revoke, the *China Aluminum Sheet Orders* and the *Bahrain et al. Aluminum Sheet Orders*, in part, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216, and 19 CFR 351.221(c)(3)(ii).⁴ The CAAS Enforcement Working Group's members are producers of the domestic like product and, as such, qualify as interested parties pursuant to section 771(9)(C),(E), and (F) of the Act and 19 CFR 351.102(b)(29)(v),(vii), and (viii).

On July 21 and 24, 2026, Commerce issued two supplemental questionnaires to the CAAS Enforcement Working Group.⁵ On July 24 and 28, 2026, the CAAS Enforcement Working Group submitted timely supplemental questionnaire responses.⁶ The CAAS Enforcement Working Group's July 24th Response demonstrated that the CAAS Enforcement Working Group's individual members along with Jupiter Aluminum Corporation (Jupiter Aluminum), collectively account for substantially all of the production of the domestic like product.⁷ The CAAS Enforcement Working Group's July 28th

² See *Common Alloy Aluminum Sheet from Bahrain, India, and the Republic of Turkey: Countervailing Duty Orders*, 86 FR 22144 (April 27, 2026) (*Bahrain et al. Aluminum Sheet CVD Orders*); and *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, India, Indonesia, Italy, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey*, 86 FR 22139 (April 27, 2021) (*Bahrain et al. Aluminum Sheet AD Orders*) (collectively, *Bahrain et al. Aluminum Sheet Orders*).

³ The individual members of the CAAS Enforcement Working Group are Arconic Corporation; Commonwealth Rolled Products Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc.

⁴ See CAAS Enforcement Working Group's Letter, "Request for Initiation of Changed Circumstances Review to Further Clarify Exclusion of Aluminum Can Stock from Scope of AD/CVD Orders," dated June 22, 2026 (CCR Requests).

⁵ See Commerce's Letters, "Supplemental Questionnaire," dated July 21, 2026, and "Supplemental Questionnaire," dated July 24, 2026.

⁶ See CAAS Enforcement Working Group's Letters, "Response to Supplemental Questionnaire," dated July 24, 2026 (July 24th Response), and "Response to Second Supplemental Questionnaire," dated July 28, 2026 (July 28th Response).

⁷ See July 24th Response at Attachment 1.

Response included a signed declaration from Jupiter Aluminum indicating that it supports the CCR Requests.⁸ Accordingly, we preliminarily find that substantially all the domestic industry supports the CCR Requests.

Scope of the China Aluminum Sheet Orders

The merchandise covered by these *Orders* is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of these *Orders* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209–14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these *Orders* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the

nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095.⁹ Further, merchandise that falls within the scope of these *Orders* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Scope of the Bahrain et al. Aluminum Sheet Orders¹⁰

The merchandise covered by these *Orders* is common alloy aluminum

⁹ The HTSUS has undergone several relevant modifications at the 10-digit level since 2018. Specifically, effective July 1, 2019, HTS subheading 7606.91.3090 was consolidated with HTS subheading 7606.91.3075 into current HTS subheading 7606.91.3095. Further, HTS subheading 7606.91.6080 was consolidated with HTS subheading 7606.91.6060 into current HTS subheading 7606.91.6095. Moreover, HTS subheading 7606.92.3090 was consolidated with HTS subheading 7606.92.3075 into current HTS subheading 7606.92.3035. In addition, HTS subheading 7606.92.6080 was consolidated with HTS subheading 7606.92.6060 into current HTS subheading 7606.92.6095. Effective January 1, 2020, HTS subheading 7606.12.3090 was sub-divided into HTS subheading 7606.12.3091 and HTS subheading 7606.12.3096. See *Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 19444 (April 7, 2020) and accompanying initiation checklist at 2–3. Pursuant to 19 CFR 351.225(g)(1)(iii)(B), we preliminarily clarify that CAAS is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these orders may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive. The language above reflects this preliminary clarification. Interested parties may comment on this scope clarification.

¹⁰ We note that there is an error in the *Bahrain et al. Aluminum Sheet CVD Orders*, where the temper H–39 was not included in the scope language regarding the aluminum can stock exclusion. As seen in the final determinations of the *CVD Orders*, temper H–39 should have been included in the scope language regarding the aluminum can stock exclusion. See, e.g., *Common Alloy Aluminum Sheet from Bahrain: Final*

sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of these *Orders* includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-, 3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209–14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these *Orders* is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H–19, H–41, H–48, H–39 or H–391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would

Affirmative Countervailing Duty Determination, 86 FR 13333 (March 8, 2021) (CAAS Bahrain Final).

⁸ See July 28th Response at Attachment 1.

place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these *Orders* may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Proposed Revocation of the China Aluminum Sheet Orders and Bahrain et al. Aluminum Sheet Orders, in Part

The CAAS Enforcement Working Group requested that the *China Aluminum Sheet Orders* and *Bahrain et al. Aluminum Sheet Orders* be revoked, in part, and retroactively,¹¹ specifically requesting that the exclusionary language regarding aluminum can stock be modified to further exclude aluminum can stock that meets the written description of aluminum can stock but is not classified under HTSUS subheadings 7606.12.3045 and 7606.12.3055.¹²

The original exclusionary language for aluminum can stock with regard to the *China Aluminum Sheet Orders* is as follows:

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. *Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.*

The original exclusionary language for aluminum can stock with regard to the *Bahrain et al. Aluminum Sheet Orders* is as follows:

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is

produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, H-39,¹³ or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. *Aluminum can stock is properly classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055.*

The proposed modified exclusionary language for aluminum can stock with regard to the *China Aluminum Sheet Orders* is as follows:¹⁴

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. *Aluminum can stock is generally classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055; however, the written description of aluminum can stock covered by the scope exclusion set forth above is dispositive, regardless of HTSUS classification.*

In the interest of aligning the aluminum can stock exclusion language across the *China Aluminum Sheet Orders* and *Bahrain et al. Aluminum Sheet Orders*, interested parties are invited to comment whether it is appropriate to include temper H-39 in the modified exclusionary language for aluminum can stock with regard to the *China Aluminum Sheet Orders*.¹⁵

The proposed modified exclusionary language for aluminum can stock with regard to the *Bahrain et al. Aluminum Sheet Orders* is as follows:¹⁶

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, H-39 or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines

used in the manufacture of beverage cans. *Aluminum can stock is generally classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055; however, the written description of aluminum can stock covered by the scope exclusion set forth above is dispositive, regardless of HTSUS classification.*

Initiation of CCRs

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a CCR upon receipt of a request from an interested party that shows changed circumstances sufficient to warrant a review of the *Orders*. In accordance with 19 CFR 351.216(d), Commerce determines that the information submitted by the CAAS Enforcement Working Group shows changed circumstances sufficient to warrant a review of the *Orders*.

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In its administrative practice, Commerce has interpreted “substantially all” to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the orders.¹⁷

Preliminary Results of the CCRs and Intent To Revoke the Orders, in Part

Section 351.221(c)(3)(ii) of Commerce’s regulations permits Commerce to combine the notice of initiation and the notice of preliminary results when expedited action is warranted.¹⁸ In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of the preliminary results.¹⁹

¹⁷ See, e.g., *Certain Cased Pencils from the People’s Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent to Revoke Order in Part*, 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People’s Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order, in Part*, 77 FR 53176 (August 31, 2012).

¹⁸ See 19 CFR 351.221(c)(3)(ii); see also *Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy CCR Prelim*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review*, 80 FR 48807 (August 14, 2015) (*Pasta from Italy CCR Final*).

¹⁹ See, e.g., *Pasta from Italy CCR Prelim*, 80 FR at 33480–41, unchanged in *Pasta from Italy CCR Final*, 80 FR at 48807.

¹¹ See CCR Request at 5–6.

¹² *Id.* at 6–7.

¹³ We note that there is an error in the *Bahrain et al. Aluminum Sheet CVD Orders*, where the temper H-39 was not included in the scope language regarding the aluminum can stock exclusion. As seen in the final determinations of the *CVD Orders*, temper H-39 should have been included in the scope language regarding the aluminum can stock exclusion. See, e.g., CAAS *Bahrain Final*, 86 FR at 13333.

¹⁴ See CCR Request at 6–7.

¹⁵ See 19 CFR 351.225(q)(iii)(A).

¹⁶ See CCR Request at 6–7.

Pursuant to section 751(d)(1) of the Act and 19 CFR 351.222(g), Commerce may revoke an AD or CVD order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a CCR). Section 751(b)(1) of the Act requires a CCR to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) of Commerce's regulations provides that Commerce will conduct a CCR of an AD or CVD order under 19 CFR 351.216, and may revoke an order (in whole or in part), if it concludes that: (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part; or (ii) if other changed circumstances sufficient to warrant revocation exist. Thus, both the Act and Commerce's regulations require that "substantially all" domestic producers express a lack of interest in the order for Commerce to revoke the order, in whole or in part.²⁰ In its administrative practice, Commerce has interpreted "substantially all" to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.²¹

As explained above, the individual members of the CAAS Enforcement Working Group and Jupiter Aluminum account for greater than 85 percent of the domestic industry and have expressed support for the CCR Requests.²² In light of the CAAS Enforcement Working Group and Jupiter Aluminum's statements of support of modifying the *Orders*, in part, with respect to the addition of exclusion language for certain aluminum can stock as described by the CAAS Enforcement Working Group, and in the absence of any other interested party comments addressing the issue of domestic industry support, we preliminarily conclude that producers accounting for

substantially all of the production of the domestic like product to which the *China Aluminum Sheet Orders* and the *Bahrain et al. Aluminum Sheet Orders* pertain lack interest in the relief provided by the *China Aluminum Sheet Orders* and the *Bahrain et al. Aluminum Sheet Orders* with respect to certain aluminum can stock that is the subject of the CAAS Enforcement Working Group's new proposed aluminum can stock exclusion language. Thus, we preliminarily determine that changed circumstances warrant revocation of the *Orders*, in part, with respect to such aluminum can stock as described in the CAAS Enforcement Working Group's new proposed exclusion language, with retroactivity of the revocation for all unliquidated entries of aluminum can stock. Accordingly, we are notifying the public of our intent to revoke the *Orders*, in part, with respect to certain aluminum can stock described in the "Proposed Revocation of the *China Aluminum Sheet Orders* and *Bahrain et al. Aluminum Sheet Orders*, in Part" section above, with retroactivity of the revocation applying to all unliquidated entries of aluminum can stock.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs no later than 14 days after the date of publication of this notice.²³ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the due date for case briefs. Electronically filed documents must be successfully received in their entirety by ACCESS by 5:00 p.m. Eastern Time on the due date.

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.²⁴ 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 CCR. 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).²⁵

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice in the **Federal Register**.²⁴ Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs.²⁵ If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

Final Results of Review

Unless extended, consistent with 19 CFR 351.216(e), Commerce intends to issue the final results of these CCRs no later than 270 days after the date on which this review was initiated or 45 days if all parties agree to the outcome of the reviews.

Notification to Interested Parties

These initiations and preliminary results notices are published in accordance with section 751(b)(1) of the Act, 19 CFR 351.221(b)(1), and 19 CFR 351.221(c)(3)(ii).

Dated: August 6, 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

Proposed Scope of the China Aluminum Sheet Orders

The merchandise covered by these orders is aluminum common alloy sheet (common alloy sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of these orders includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Common alloy sheet may be made to ASTM specification B209-14, but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is

²⁰ See section 782(h) of the Act; and 19 CFR 351.222(g).

²¹ See, e.g., *Honey from Argentina: Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders*, 77 FR 67790, 67791 (November 14, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders*, 77 FR 77029 (December 31, 2012).

²² See July 24th Response and July 28th Response.

²³ Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

²⁴ Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

²⁵ See 19 CFR 351.310(c).

included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, H-39, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is generally classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055; however, the written description of aluminum can stock covered by the scope exclusion set forth above is dispositive, regardless of HTSUS classification.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these orders may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

Appendix II

Proposed Scope of the Bahrain et al. Aluminum Sheet Orders

The merchandise covered by these orders is common alloy aluminum sheet, which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Common alloy sheet within the scope of these orders includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, common alloy sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, common alloy sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core. The use of a proprietary alloy or non-proprietary alloy that is not specifically registered by the Aluminum Association as a discrete 1XXX-,

3XXX-, or 5XXX-series alloy, but that otherwise has a chemistry that is consistent with these designations, does not remove an otherwise in-scope product from the scope.

Common alloy sheet may be made to ASTM specification B209-14 but can also be made to other specifications. Regardless of specification, however, all common alloy sheet meeting the scope description is included in the scope. Subject merchandise includes common alloy sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of these orders if performed in the country of manufacture of the common alloy sheet.

Excluded from the scope of these orders is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, H-39, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is generally classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7606.12.3045 and 7606.12.3055; however, the written description of aluminum can stock covered by the scope exclusion set forth above is dispositive, regardless of HTSUS classification.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Common alloy sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of these orders may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015, 7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2026-16358 Filed 8-10-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF948]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Groundfish Advisory Subpanel (GAP), Groundfish Management Team (GMT), Ecosystem Workgroup (EWG), Ecosystem Advisory Subpanel (EAS), Highly Migratory Species Advisory Subpanel (HMSAS), Highly Migratory Species Management Team (HMSMT), Salmon Technical Team (STT), and Salmon Advisory Subpanel (SAS) will hold online meetings to discuss items on the Pacific Council's September 2026 meeting agenda as detailed in the Supplementary Information section below. These meetings are open to the public.

DATES: The GAP and GMT will hold a meeting on Friday, September 11, 2026, from 1 p.m. to 5 p.m. and Monday, September 14, 2026, from 9 a.m. to 4 p.m. Pacific Daylight Time (PDT), or until business is completed.

The GAP will hold a meeting on Tuesday, September 15, 2026, from 12 p.m. to 3 p.m. PDT, or until business is completed.

The GMT will hold a meeting on Tuesday, September 15, 2026, and Wednesday, September 16, 2026, from 8 a.m. to 5 p.m. PDT, or until business is completed.

The EWG meeting will be held Tuesday, September 15, 2026, from 9 a.m. to 12 p.m. PDT, or until business is completed.

The EAS meeting will be held Thursday, September 3, 2026, from 1 p.m. to 4 p.m. PDT, or until business is completed.

The HMSMT meeting will be held Wednesday, September 9, 2026, from 8:30 a.m. to 5 p.m. PDT, or until business is completed. A portion of the meeting will be a joint session with the HMSAS.

The HMSAS meeting will be held Wednesday, September 9, 2026, from 8:30 a.m. to 5 p.m. PDT, or until business is completed. A portion of the meeting will be a joint session with the HMSMT.

The STT meeting will be held Wednesday, September 9, 2026, from 9

a.m. to 4 p.m. PDT, or until business is completed.

The SAS meeting will be held Monday, September 14, 2026, from 9 a.m. to 4 p.m. PDT, or until business is completed.

ADDRESSES: These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcements 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: Angela Forristall, Staff Officer, Pacific Council; telephone: (503) 820-2419.

SUPPLEMENTARY INFORMATION: The primary purpose of these meetings is for the GAP, GMT, EWG, EAS, HMSAS, HMSMT, STT, and SAS to prepare for the September 2026 Pacific Council meeting. The GAP, GMT, EWG, EAS, HMSAS, HMSMT, STT, and SAS will discuss items related to each advisory body's particular management items and other matters on the Pacific Council's September agenda. No management actions will be decided by the GAP, GMT, EWG, EAS, HMSAS, HMSMT, STT, or SAS. The GAP, GMT, EWG, EAS, HMSAS, HMSMT, STT, and SAS recommendations will be considered by the Pacific Council at their September Council meeting. A detailed agenda for each of the GAP, GMT, EWG, EAS, HMSAS, HMSMT, STT, and SAS webinars will be available on the Pacific Council's website prior to the meetings.

Although non-emergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. 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 days prior to the meeting date.

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

Dated: August 6, 2026.

Anna Michelle Harrison,

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

[FR Doc. 2026-16343 Filed 8-10-26; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XF617]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to the North Barge Expansion Project at Dutch Harbor, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the Qawalangin Tribe of Unalaska (QTU) for authorization to take marine mammals incidental to the North Barge Expansion Project at Dutch Harbor, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to take marine mammals incidental to the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in the Request for Public Comments section at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization.

DATES: Comments and information must be received no later than September 10, 2026.

ADDRESSES: Comments should be addressed to Howard Goldstein, Biologist, Permits and Conservation Division, Office of Protected Resources (OPR), NMFS and should be submitted via email to ITP.Goldstein@noaa.gov. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: [https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-](https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities)

activities. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein, OPR, NMFS, (301) 427-8417.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the "take" of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking and other "means of effecting the least practicable adverse impact" on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as "mitigation"); and requirements pertaining to the mitigation, monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included

in the relevant sections below (see also 16 U.S.C. 1362; 50 CFR 216.3, 216.103).

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On October 28, 2025, NMFS received a request from QTU for an IHA to take marine mammals incidental to vibratory pile driving and removal, impact pile driving, and down-the-hole (DTH) drilling activities associated with the North Barge Expansion Project at Dutch Harbor, Alaska. Following NMFS' review of the application, and discussions between NMFS and QTU, QTU submitted a revised version of the application on May 6, 2026. The application was deemed adequate and complete on July 8, 2026. Subsequently, QTU provided a revised application on July 14, 2026, that aligns with the information in this notice of proposed IHA. QTU's request is for take of six species of marine mammals by Level B harassment and, for a subset (three) of these species, by Level A harassment. Neither QTU nor NMFS expect serious

injury or mortality to result from this activity, and none is proposed to be authorized; therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Dutch Harbor is an international, deep draft, ice-free year-round port in the Aleutian Islands that provides vital services to vessels operating on the North Pacific Ocean and Bering Sea. The port has the western-most container terminal in the United States and provides ground and warehouse storage and transshipment opportunities for thousands of vessels that fish in the region or transit between North America and Asia. The project site is adjacent to a large container terminal that is called upon approximately two times per week.

QTU is proposing to construct a purpose-built barge ramp and dock north of the existing dock, several barge mooring dolphins and shore winches capable of receiving 400 feet (ft) long (121.9 meters [m]) barges, approximately 7.5 acres (30,351.4 square m) of expanded container storage yard, and drainage infrastructure. The project would allow the terminal to handle ocean-going vessels and regional barge operations concurrently. This would eliminate the excessive wait-time for available berthing space that vessels and barges experience with the existing single vessel dock terminal.

Figure 3 of the application includes a diagram of the elements (ramp plan) of the North Barge Expansion Project. Vibratory pile driving and removal, impact pile driving, and DTH drilling associated with the project have the potential to result in take of marine mammals.

Dates and Duration

The proposed IHA would be valid for the statutory maximum of 1 year from the date of effectiveness. It will become effective upon written notification from

the applicant to NMFS, but not beginning later than 1 year from the date of issuance nor extending beyond 2 years from the date of issuance. The project would likely occur between April and November 2027 and would require up to approximately 62 days of vibratory pile driving and removal, impact pile driving, and DTH drilling. However, project delays may occur due to a number of factors, including project funding, permitting requirements, availability of equipment and/or materials, weather-related delays, equipment maintenance and/or repair, transits to and from ports, and other contingencies.

In-water pile removal and installation activities would only occur during daylight hours over a 12-hour workday, up to 7 days per week. Work would be intermittent within and across days as the contractors would need time to set up between piles and logistical constraints (*e.g.*, inclement weather) may prevent pile driving on consecutive days.

Specific Geographic Region

The proposed specified activities would occur at Dutch Harbor, which is within the City of Unalaska on Amaknak Island, Alaska. Amaknak Island is a remote island in the central Aleutian Islands. The City of Unalaska is approximately 800 miles (1,287.5 kilometers [km]) from Anchorage, Alaska. The project area includes Iliuliuk Bay and Unalaska Bay. The water depth in Iliuliuk Bay is approximately 100 ft (30.5 m) mean lower low water (MLLW) with a sediment bar that is 42 ft (12.8 m) MLLW and dredged to 58 ft (17.7 m) MLLW. Iliuliuk Bay and Unalaska Bay host a subarctic marine ecosystem, supporting over 450 species of fish and invertebrates, sea birds, and marine mammals. Key habitats include the nutrient-rich waters of Dutch Harbor and the spawning grounds of the lower Iliuliuk River.

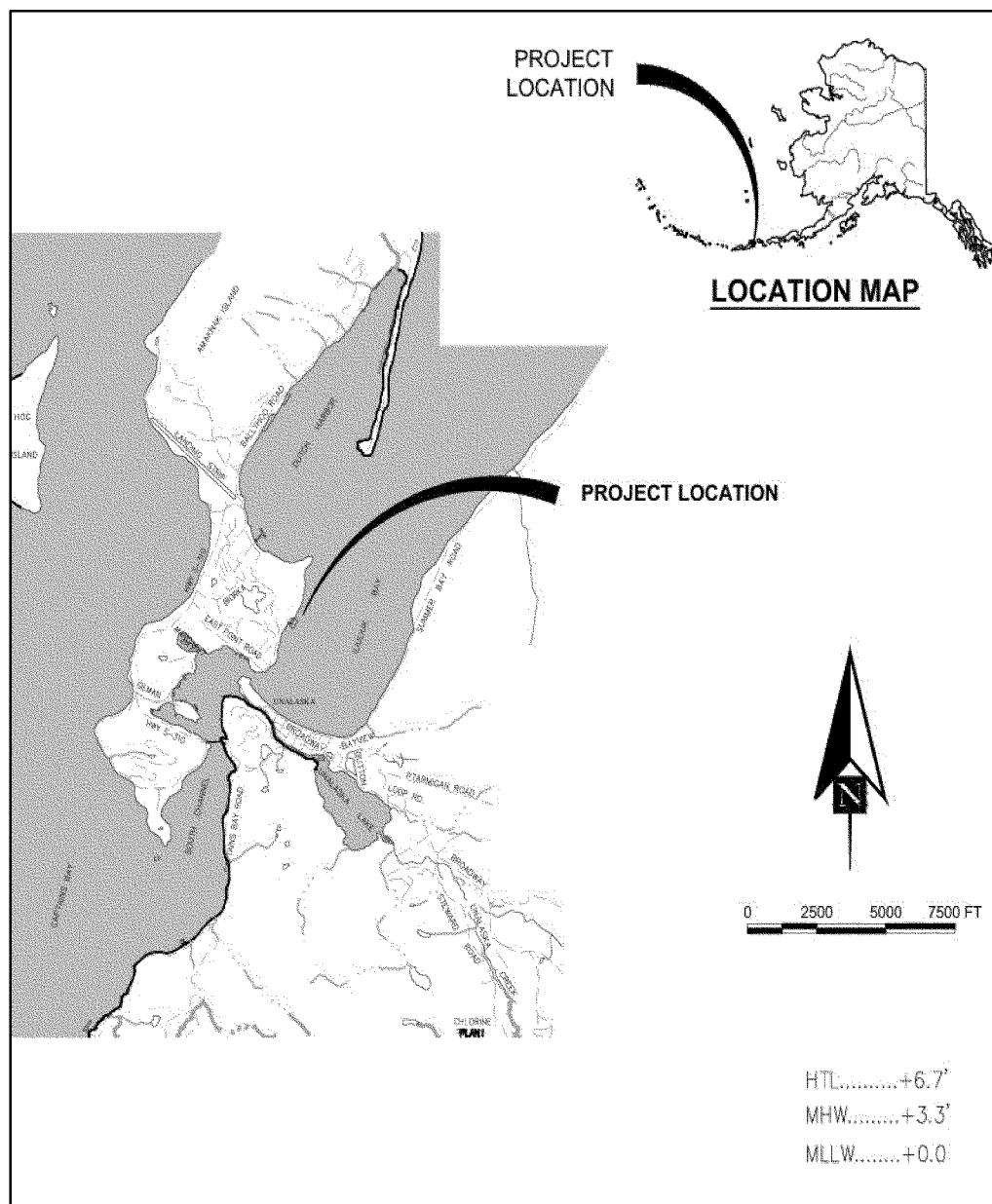


Figure 1 -- Project Location at Dutch Harbor, Alaska

Figure—Project Location at Dutch Harbor, Alaska

Detailed Description of the Specified Activity

The project area has extensive bedrock overlain with sediments along a rocky shoreline, hence the need for the pile driving methods described below. The North Barge Expansion Project would conduct vibratory pile driving and removal, impact pile driving, and DTH drilling to install and remove a variety of pile sizes (*i.e.*, 8-inch, 24-inch, 30-inch, 36-inch, and AZ26) and types (*i.e.*, steel pile, sheet pile, tension anchor, and rock socket) as well as other

specified activities such as fill placement and vessel operations. The models of equipment that may be used during the North Barge Expansion Project would not be known until the construction bid is advertised and a contractor is selected. A summary of the methods (vibratory pile driving and removal, impact pile driving, and DTH drilling), size, quantity, time, and effort of the specified activities are described further in table 1.

Vibratory Pile Driving and Removal—Vibratory hammers would be used to drive in and remove piles, where substrates (sediments) allow. For vibratory pile driving, a pile would be

placed into position using a choker and crane and then vibrated between 1,200 and 2,400 vibrations per minute. The vibrations liquefy the sediment surrounding the pile allowing it to penetrate to the required seating depth, or to be removed.

Impact Pile Driving—Impact hammers (see figure 5 of the application) would be used to install piles when substrate conditions are difficult (such as glacial till) or when proofing (gathering load bearing data). Impact hammers have guides (called a lead) that hold the hammer in alignment with the pile while a heavy piston moves up and down, striking the top of the pile, and

driving it into the substrate from the downward force of the hammer on the top of the pile. To drive the pile, the pile would be first moved into position and set in the proper location using a vibratory hammer. Once the pile is vibrated into place, pile installation with an impact hammer could take less than 15 minutes under good conditions, to over an hour under poor conditions. Examples of poor conditions for impact pile driving include, but are not limited to, glacial till and bedrock or loose material in which the pile repeatedly moves out of position.

DTH Drilling—DTH drilling (see figure 6 of the application) would be used for hard soils, rock, or cobble layers that are commonly encountered in marine foundations. DTH drilling would use a percussion hammer located directly at the bottom of the borehole, inside the drill string. The hammer strikes the rock or substrate directly while compressed air or water flushes the cuttings upward through the drill rods. Because the site has shallow bedrock, tension anchors and rock

sockets would be used for piles with embedment depth greater than the newly placed shot rock fill.

Other Specified Activities—Fill placement below the high-tide line, mean high water, and MLLW lines (total of 10.5 acres [42,492 square m]) would occur to create uplands. Fill would be placed from shore to build out the fill pad. Most pile driving would be conducted from shore (*i.e.*, the new fill pad), but some pile driving would be conducted from a barge. Drainage upgrades and required oil-water separators would be installed to meet current stormwater discharge requirements. A barge ramp and lift frame would be installed for barge loading and unloading once the required pilings and sheet pile retaining wall are in place. A sheet pile bulkhead would support the fill. Fill placement is not expected to result in marine mammal harassment. A summary of the fill quantities of the specified activities is described further in table 1 of the application.

Vessel Operations—The specified activities would include up to three project-dedicated tugboats with barges that would transit along a standard commercial shipping route for transporting materials from/to Seattle, Washington and Dutch Harbor, Alaska. The transit would be expected to take up to 3 weeks. The tugboats and barges would be kept at the construction site as much as possible to use and offload equipment and materials, but may be temporarily moved to a protected area inside a spit in Dutch Harbor as needed due to weather. The tugboats would be approximately 100 ft (30.5 m) long and towed barges would be 400 ft (121.9 m) long and 100 ft (30.5 m) wide. The vessels would generally travel no more than 8 knots. For more details on the vessel operations, please see the QTU biological assessment. The use of tugboats, barges, and other vessels (for crew) are not expected to result in marine mammal harassment. Therefore, QTU did not request, and NMFS is not proposing to authorize, take from barges or above-water activities.

TABLE 1—SUMMARY OF NORTH BARGE EXPANSION PROJECT SPECIFIED ACTIVITIES

Pile type and size	Total number of piles	Maximum piles per day	Strikes per pile	Time per pile (minutes)	Time per day (minutes)	Number of days	Time total (minutes)
Vibratory Pile Driving—Temporary Installation							
24-inch Steel Pile	20	4	NA	15	60	5	300
Vibratory Pile Driving—Temporary Removal							
24-inch Steel Pile	20	4	NA	15	60	5	300
Vibratory Pile Driving—Permanent Installation							
24-inch Steel Pile	14	4	NA	30	120	3.5	420
30-inch Steel Pile	5	4	NA	30	120	1.25	150
36-inch Steel Pile	4	4	NA	30	120	4	480
AZ26 Sheet Pile	35	4	NA	30	120	8.75	1,050
Impact Pile Driving—Permanent Installation							
24-inch Steel Pile	14	4	50	5	20	3.5	70
30-inch Steel Pile	5	4	50	5	20	1.25	25
36-inch Steel Pile	16	4	50	5	20	4	80
Down-the-Hole Drilling—Temporary Installation							
24-inch Steel Pile	20	3	NA	240	720	7	4,800
Down-the-Hole Drilling—Permanent Installation							
8-inch Tension Anchor	24	3	NA	240	720	8	5,760
24-inch Steel Pile	12	3	NA	240	720	4	2,880
30-inch Steel Pile	5	3	NA	240	720	2	1,200
36-inch Steel Pile	12	3	NA	240	720	4	2,880

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information

regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and refers the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS'

Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>) and more general information about

these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing

that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species

represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska Marine Mammal Stock Assessments (e.g., Young *et al.*, 2025). All values presented in table 2 are the most recent available at the time of publication, including from the 2024 SARs, and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>.

TABLE 2—SPECIES, STOCKS, AND THE STATUS OF MARINE MAMMALS WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (yes/no) ¹	Stock abundance (CV, N _{min} , most recent abundance survey) ²	Potential biological removal	Total annual mortality/ serious injury ³
Order Artiodactyla—Infraorder Cetacea—Mysticeti (Baleen Whales)						
<i>Family Balaenopteridae:</i> Humpback Whale	<i>Megaptera novaeangliae</i>	Hawai'i	-, -, N	11,278 (0.56, 7,265, 2002–2020).	127	27.09
		Mexico—North Pacific	T, D, Y	NA (NA, NA, 2006) ⁴	UND	0.57
		Western North Pacific	E, D, Y	1,084, (0.088, 1,007, 2004–2006).	3.4	5.82
Minke Whale	<i>Balaenoptera acutorostrata</i>	Alaska	-, -, N	NA (NA, NA, NA) ⁵	NA	0
Odontoceti (Toothed Whales, Dolphins, and Porpoises)						
<i>Family Delphinidae (Dolphins):</i> Killer Whale	<i>Orcinus orca</i>	Eastern North Pacific Alaska Resident.	-, -, N	1,920 (NA, 1,920, 2005–2019).	19	1.3
		Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.	-, -, N	587 (NA, 587, 2012)	5.9	0.8
<i>Family Phocoenidae (Porpoises):</i> Harbor Porpoise	<i>Phocoena phocoena</i>	Bering Sea	-, -, NS	UNK (UNK, NA, 2008) ..	UND	1.8
Order Carnivora—Pinnipedia (Seals and Sea Lions)						
<i>Family Otariidae (Eared Seals and Sea Lions):</i> Steller Sea Lion	<i>Eumetopias jubatus</i>	Western	E, D, Y	49,837 (NA, 73,211, 2021–2022).	439	267
<i>Family Phocidae (Earless Seals):</i> Harbor Seal	<i>Phoca vitulina</i>	Aleutian Islands	-, -, N	5,588 (NA, 5,366, 2018)	97	90

¹ ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

² NMFS marine mammal SARs online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>. CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. NA is not available or applicable.

³ These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strike, Native subsistence mortality). Annual Mortality/Serious Injury often cannot be determined precisely and is in some cases presented as a minimum value or range.

⁴ Abundance estimates are based upon data collected more than 8 years ago and therefore current estimates are considered unknown.

⁵ Reliable population estimates are not available for this stock. Please see Friday *et al.* (2013) and Zerbini *et al.* (2006) for additional information on numbers for minke whales in Alaska.

As indicated above, all six species (with nine managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is likely to occur. All species of marine mammals that could potentially occur in the proposed project area are included in table 3 of the application.

While blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), eastern North Pacific and North Pacific gray whale (*Eschrichtius robustus*), North Pacific right whale (*Eubalaena japonica*), sei whale (*Balaenoptera borealis*), sperm whale (*Physeter macrocephalus*), Baird's

beaked whale (*Berardius bairdii*), Cuvier's beaked whale (*Ziphius cavirostris*), Sato's beaked whale (*Berardius minimus*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Dall's porpoise (*Phocoenoides dalli*), northern fur seal

(*Callorhinus ursinus*), northern elephant seal (*Mirounga angustirostris*), and ribbon seal (*Histiophoca fasciata*) could occur in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur. These species all have extremely low abundances, and most are observed in areas outside of the project area due to it being nearshore and its inlet geography; therefore, they are not discussed further beyond the explanation provided here.

In addition, northern sea otter (*Enhydra lutris kenyoni*) may be found in the central Aleutian Islands. However, this species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

Humpback Whale

On September 8, 2016, NMFS divided the once single population into 14 distinct population segments (DPS) under the ESA, removed the species-level listing as endangered, and, in its place, listed 4 DPSs as endangered and 1 DPS as threatened (81 FR 62260, September 8, 2016). The remaining nine DPSs were not listed. There are four DPSs in the North Pacific Ocean, including: the Western North Pacific and Central America, which are listed as endangered; Mexico, which is listed as threatened; and Hawai'i, which is not listed.

The 2022 Alaska and Pacific SARs described a revised stock structure for humpback whales which modifies the previous stocks designated under the MMPA to align more closely with the ESA-designated DPSs (Caretta *et al.*, 2023; Young *et al.*, 2023). Specifically, the three previous North Pacific humpback whale stocks (central and Western North Pacific stocks and a California/Oregon/Washington [CA/OR/WA] stock) were replaced by five stocks, largely corresponding with the ESA-designated DPSs. These include the Western North Pacific and Hawai'i stocks and a Central America/southern Mexico—CA/OR/WA stock (which corresponds with the Central America DPS). The remaining two stocks, corresponding with the Mexico DPS, are the Mainland Mexico—CA/OR/WA and Mexico—North Pacific stocks (Caretta *et al.*, 2023; Young *et al.*, 2023). The former stock is expected to occur along the west coast from California to southern British Columbia, while the latter stock may occur across the Pacific, from northern British Columbia through the Gulf of Alaska and Aleutian Islands/Bering Sea region to Russia.

The Hawai'i stock consists of one demographically independent population (DIP)—Hawai'i—Southeast

Alaska/Northern British Columbia DIP and one unit—Hawai'i—North Pacific unit, which may or may not be composed of multiple DIPs (Wade *et al.*, 2021). The DIP and unit are managed as a single stock at this time, due to the lack of data available to separately assess them and lack of compelling conservation benefit to managing them separately (NMFS, 2023, 2019, 2022b). The DIP is delineated based on two strong lines of evidence: genetics and movement data (Wade *et al.*, 2021). Whales in the Hawai'i—Southeast Alaska/Northern British Columbia DIP winter off Hawai'i and largely summer in Southeast Alaska and Northern British Columbia (Wade *et al.*, 2021). The group of whales that migrate from Russia, western Alaska (Bering Sea and Aleutian Islands), and central Alaska (Gulf of Alaska excluding Southeast Alaska) to Hawai'i have been delineated as the Hawai'i—North Pacific unit (Wade *et al.*, 2021). There are a small number of whales that migrate between Hawai'i and southern British Columbia/Washington, but current data and analyses do not provide a clear understanding of which unit these whales belong to (Wade *et al.*, 2021; Carretta *et al.*, 2023; Young *et al.*, 2023).

The Mexico—North Pacific unit is likely composed of multiple DIPs, based on movement data (Martien *et al.*, 2021; Wade, 2021; Wade *et al.*, 2021). However, because currently available data and analyses are not sufficient to delineate or assess DIPs within the unit, it was designated as a single stock (NMFS, 2023a, 2019, 2022c). Whales in this stock winter off Mexico and the Revillagigedo Archipelago and summer primarily in Alaska waters (Martien *et al.*, 2021; Carretta *et al.*, 2023; Young *et al.*, 2023).

The Western North Pacific stock consists of two units—the Philippines/Okinawa—North Pacific unit and the Marianas/Ogasawara—North Pacific unit. The units are managed as a single stock at this time, due to a lack of data. Recognition of these units is based on movements and genetic data (Oleson *et al.*, 2022). Whales in the Philippines/Okinawa—North Pacific unit winter near the Philippines and in the Ryukyu Archipelago and migrate to summer feeding areas primarily off the Russian mainland (Oleson *et al.*, 2022). Whales that winter off the Mariana Archipelago, Ogasawara, and other areas not yet identified and then migrate to summer feeding areas off the Commander Islands, and to the Bering Sea and Aleutian Islands comprise the Marianas/Ogasawara—North Pacific unit.

Humpback whales that occur in the project area are predominantly members

of the Hawai'i stock, which corresponds to the Hawai'i DPS (91 percent probability in the Aleutian Islands), and is not listed under the ESA. However, members of the Mexico North Pacific stock, which include the Mexico DPS and is listed as threatened under the ESA, have a small potential to occur in the project location (7 percent probability in the Aleutian Islands), and the Western North Pacific stock, which corresponds to the Western North Pacific DPS and is listed as endangered under the ESA, have an even smaller potential to occur in the project location (2 percent probability in the Aleutian Islands).

Humpback whale migrate to the North Pacific Ocean, including the Aleutian Islands, to feed after months of fasting in equatorial breeding grounds. Humpback whales generally travel alone or in small groups that persist for only a few hours. In Iliuliuk Bay and Unalaska Bay, humpback whales are often sighted as solitary individuals or in small groups of up to 3 individuals, but up to 60 at one time have been observed (QTU application, 2026). Groups may stay together for longer in the summer in order to feed cooperatively. The Alaska Department of Fish and Game reports that humpback whales occur in the Aleutian Islands in the spring, summer, and fall during their migration. Humpback whales are often observed in Unalaska Bay from April through most of October (QTU application, 2026) when prey availability is highest. They are common in seaward areas, especially the pass between Akutan Island and Unalaska Island. The abundance of humpback whales in Unalaska Bay during the construction window (April through November) is highly variable. From June 24 through July 30, 2025, Protected Species Observers (PSOs) employed for the U.S. Army Core of Engineers (USACE) Unalaska Channel Project, which involved dredging to deepen the entrance channel to Iliuliuk Bay, observed a total of 94 (78 adults and 16 juveniles) humpback whales (USACE, 2025a, 2025b).

Minke Whale

Minke whales occur in polar, temperate, and tropical waters worldwide in a range extending from the ice edge in the Arctic during the summer to near the equator during winter. However, they are known to prefer temperate to boreal waters due to the abundance of prey (Guerrero, 2008b). When comparing distribution and abundance in the years 2002, 2008, and 2010, it was found that that minke whales were scattered throughout all

oceanographic domains: coastal, middle shelf, and outer shelf/slope (Muto *et al.*, 2021). The minke whale mostly migrates seasonally and can travel long distances; although, some minke whale individuals and stocks have resident home ranges and are not highly migratory (Guerrero, 2008b). Minke whales belonging to the Alaska stock are migratory and are common in the waters of the Bering Sea, Gulf of Alaska, and Southeast Alaska in the spring and summer (NMFS, 2023c).

The distribution of minke whales varies according to age, sex, and reproductive status. Older mature males are commonly found in small social groups around the ice edge of polar regions during the summer feeding season. Comparatively, adult females will migrate farther into the higher latitudes but generally remain in coastal waters. Immature minke whales tend to be solitary and stay in lower latitudes during the summer (Guerrero, 2008b). Although the minke whale tends to be solitary or in groups of 2 to 3 individuals, they can congregate into larger groups containing up to 400 individuals at the higher latitude foraging areas (Clark, 2008a; Guerrero 2008b; NOAA, 2021). During surveys in Alaska, minke whales were predominately observed alone (Wade *et al.*, 2003; Waite, 2003). Breeding season typically occurs from December to March, but in some regions minke whales breed year-round. When migrating north in spring and summer, they will travel along in coastal waters, whereas in fall and winter, they move farther offshore (NMFS, 2023c). Minke whales are uncommonly sighted in Iliuliuk Bay and Unalaska Bay. There are no confirmed sightings of minke whales in the project area; however, they could occasionally be present during the proposed project (C. Hoffman personal communication, June 29, 2026).

Killer Whale

Killer whales occur in every ocean in the world and are the most widely distributed of all cetaceans. Along the west coast of North America, killer whales occur along the entire Alaska coast (Braham and Dahlheim, 1982). This proposed IHA considers only the eastern North Pacific Alaska Resident stock (Alaska Resident stock), and the eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock because all other killer whale stocks occur outside the geographic area under consideration (Muto *et al.*, 2021; Young *et al.*, 2023).

There are three distinct ecotypes, or forms, of killer whales recognized:

Resident, Transient, and Offshore. The three ecotypes differ morphologically, ecologically, behaviorally, and genetically. Spatial distribution has been shown to vary among the different ecotypes, with resident and, to a lesser extent, transient killer whales more commonly observed along the continental shelf, and offshore killer whales more commonly observed in pelagic waters (Rice *et al.*, 2021).

When comparing movement, residents tend to have more predictable movements and the smallest home ranges and they return annually, whereas transients are less predictable due to their larger home ranges and quick transits through local areas. Offshore ecotypes have the largest home ranges that are generally farther offshore compared to the other two ecotypes (Zimmerman and Small, 2008). Resident killer whales live in large, stable groups ranging normally from 5 to 50 individuals and up to 100 or more. They feed only on fish, especially Pacific salmon. Transient killer whales, on the other hand, hunt marine mammals, like pinnipeds and porpoises, in smaller groups of 10 individuals or less (Forney and Wade, 2006).

Killer whales have been observed in the Aleutian Islands and into the Bering Sea year-round, most commonly during the summer Chinook salmon run (May through July) when the project would occur. They are infrequently sighted in Unalaska Bay. Anecdotal reports include visual sightings of killer whales in Dutch Harbor (in group sizes of about 6 to 8 individuals) twice in approximately 150 visits over 25 years (C. Hoffman personal communication, April 15, 2026). It is unknown whether the killer whales sighted in Unalaska Bay are from the resident or transient stocks.

Harbor Porpoise

The Bering Sea stock of harbor porpoise occurs within the project area, ranging from throughout the Aleutian Islands and into all waters north of Unimak Pass. The harbor porpoise frequents nearshore waters and coastal embayments throughout their range, including bays, harbors, estuaries, and fjords less than 650 ft (198 m) deep. They are most often observed in groups of 2 or 3 individuals but could be in groups up to 10 individuals. There are not much data on sightings of harbor porpoise in the Aleutian Islands, and they were rarely observed during USACE surveys (2000 through 2018) (QTU application, 2025). Opportunistic reports suggest harbor porpoise are infrequent and almost always solitary but a group of more than one could

occur (C. Hoffman personal communication, June 18, 2026).

Steller Sea Lion

Steller sea lions in the project area are anticipated to be from the western stock, which includes all Steller sea lions originating from rookeries west of Cape Suckling (144° west longitude). The centers of abundance and distribution for western DPS Steller sea lions are located in the Gulf of Alaska and Aleutian Islands. At sea, Steller sea lions commonly occur near the 656-ft (200-m) depth contour but have been found from nearshore to well beyond the continental shelf (Kajimura and Loughlin, 1988). Steller sea lions move offshore to pelagic waters for feeding excursions.

There are major (*i.e.*, haulouts supporting greater than 200 individuals) Steller sea lion haulouts and rookeries throughout the Aleutian Islands and along the southern end of southwest Alaska. There are haulouts and rookeries around Unalaska Island. The closest major haulouts are “Old Man Rocks,” “Unalaska/Cape Sedanka” (both approximately 15 nautical miles [27.8 km] from the project area), and “Akutan/Lava Reef” (approximately 19 nautical miles [35.2 km] from the project area). The closest rookery is “Akutan/Cape Morgan” (approximately 19 nautical miles [35.2 km] from the project area). Dutch Harbor is part of the Bogoslof foraging area (see figure 15 of the application). Steller sea lions occur year-round in Dutch Harbor and were commonly sighted during USACE surveys (2000 through 2018) (QTU application, 2026). One or two individuals are often hauled out at the two mooring buoys inside the spit of Dutch Harbor. They can also be found along the rocky coastline near Priest Rock near Cape Kalekta (northeast of the ensonified area; QTU application, 2026). From June 24 through July 30, 2025, PSOs employed for the USACE’s Unalaska Channel Project observed 1,207 Steller sea lions (USACE, 2025a, 2025b). Figure 14 of the application is a map of the common Steller sea lion aggregation areas in Iliuliuk Bay and Unalaska Bay relative to the project area.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are generally non-migratory, with local movements associated with such factors as tides, weather, season, food availability, and reproduction (Muto *et al.*, 2021). They are opportunistic feeders and often

adjust their distribution to take advantage of locally and seasonally abundant prey (Womble *et al.*, 2010). Although they tend to be solitary when in the water, they can form groups of about 30 or less individuals of both sexes and all ages when hauling out. Harbor seals haul out to rest periodically, give birth, or nurse.

Harbor seals in the project area are recognized as part of the Aleutian Island stock, occurring along the entire Aleutian island chain from Attu Island to Ugamak Island. Pupping season in the Aleutian Islands occurs between mid-June to mid-July (Sease, 1992). From June 24 through July 30, 2025, PSOs employed for the USACE's Unalaska Channel Project observed six harbor seals (USACE, 2025a, 2025b).

Harbor seals occasionally haul out in groups of 1 to 10 individuals at 3 locations in Iliuliuk Bay. Up to 40 individuals have been sighted at the haulout near Ulakta Head on the large flat reefs at low tide in calm conditions

(QTU application, 2026). Ulakta Head is the largest haul out in the project area, it is on Amaknak Island and not inside Iliuliuk Bay. Within Iliuliuk Bay, it is less common for harbor seals to haul out. They may haul out in groups of three to five individuals on flat rocky outcrops that are not connected to the shoreline close to the project site. Harbor seals have not been observed hauling out in Dutch Harbor. Harbor seals may be sighted in-water along the shoreline and are commonly found foraging in the kelp beds nearshore. When not at haulouts, they are usually observed as solitary individuals (C. Hoffman personal communication, April 15, 2026).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure

to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024) as reflected below in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS
[NMFS, 2024]

Hearing group	Generalized hearing range *
Low-Frequency (LF) Cetaceans (Baleen Whales)	7 Hz to 35 kHz.
High-Frequency (HF) Cetaceans (Dolphins, Toothed Whales, Beaked Whales, Bottlenose Whales)	150 Hz to 160 kHz.
Very High-Frequency (VHF) Cetaceans (True Porpoises, <i>Kogia</i> , River Dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> , and <i>L. australis</i>).	200 Hz to 165 kHz.
Phocid Pinnipeds (PW) (Underwater) (True Seals)	40 Hz to 90 kHz.
Otariid Pinnipeds (OW) (Underwater) (Sea Lions and Fur Seals)	60 Hz to 68 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Additionally, animals are able to detect very loud sounds above and below that "generalized" hearing range.

For more details concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section discusses how components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the

species or stock through effects on annual rates of recruitment or survival.

There are a variety of types and degrees of effects on marine mammals, prey species, and habitats that could result from the project. Below is a brief description of the sound sources the projects would generate, the general impacts of these activities, and an analysis of the anticipated impacts on marine mammals from the project.

Description of Sound Sources

In-water pile removal and installation activities associated with the project would include vibratory pile driving and removal, impact pile driving, and DTH drilling. The sounds produced by these specified activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.*, explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and

rapid decay (American National Standards Institute [ANSI], 1986; National Institute of Occupational Safety and Health [NIOSH], 1998; NMFS, 2018). Non-impulsive sounds (*e.g.*, aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with rapid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.*, Ward 1997 in Southall *et al.*, 2007).

Three types of hammers would be used on this project: vibratory, impact, and DTH drilling. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound

generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound Pressure Levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

A DTH hammer is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, in concert with a hammering mechanism operated by a pneumatic (or sometimes hydraulic) component integrated into the DTH hammer to increase speed of progress through the substrate (*i.e.*, it is similar to a “hammer drill” hand tool). The sounds produced by the DTH method contain both a continuous, non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, for purposes of evaluating Level A and Level B harassment under the MMPA, NMFS treats DTH systems as both impulsive (Level A harassment thresholds) and continuous, non-impulsive (Level B harassment thresholds) sound source types simultaneously.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from vibratory pile driving and removal, impact pile driving, and DTH drilling equipment is the primary means by which marine mammals may be harassed from QTV's specified activities. In general, animals exposed to natural or anthropogenic sounds may experience behavioral, physiological, and/or physical effects, ranging in magnitude from none to severe (Southall *et al.*, 2007). Generally, exposure to vibratory pile driving and removal, impact pile driving, and DTH drilling noise has the potential to result in behavioral reactions (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and, in limited cases, auditory threshold shifts. Exposure to anthropogenic noise can also lead to non-observable physiological responses such as an

increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of vibratory pile driving and removal, impact pile driving, and DTH drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), the species, age and sex class (*e.g.*, adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.*, 2003; Southall *et al.*, 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

Hearing Threshold Shifts

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how animal uses sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Auditory Injury (AUD INJ)

NMFS (2024) defines AUD INJ as damage to the inner ear that can result in tissue destruction, such as loss of cochlear neuron synapses or auditory neuropathy (Houser, 2021; Finneran, 2024). AUD INJ may or may not result in a permanent TS (PTS). PTS is defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). PTS generally affects only a

limited frequency range, and animals with PTS have some level of hearing loss at the relevant frequencies; typically, animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB TS approximates AUD INJ onset (Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Henderson *et al.*, 2008). However, a variety of terrestrial and marine mammal studies (see Ward *et al.*, 1958, 1959; Ward, 1960; Miller *et al.*, 1963; Kryter *et al.*, 1966; Finneran *et al.*, 2007; Kastelein *et al.*, 2013) indicate that TSs of up to 40 to 50 dB (measured a few minutes after exposure) may be induced without resulting in PTS. PTS levels for marine mammals are estimates; with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), no empirical data measure PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024). NMFS has set the PTS onset as an initial TS of 40 dB.

However, after sound exposure ceases or between successive sound exposures, the potential for recovery from hearing loss exists. Thus, because a TS is measured a few minutes after noise exposure does not mean that those initial shifts are persistent (*i.e.*, no recovery). When initial TSs fully recover back to baseline hearing levels, these are considered temporary TS (TTS). PTS indicates there is no full recovery back to baseline hearing levels; however, it does not mean there is no recovery. Rather, PTS indicates incomplete recovery of hearing. Recovery depends on the initial TS amount, the frequency at which the shift occurred, the temporal pattern of exposure (*e.g.*, exposure duration; continuous vs. intermittent exposure), and the physiological mechanisms underlying the shift (*e.g.*, mechanical vs. metabolic). Since recovery is complicated, our current AUD INJ onset criteria do not account for the potential for recovery.

TTS

A temporary, fully reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.*, 2007), a TTS of 6 dB is considered the minimum TS clearly larger than any

day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.*, 2000; Finneran *et al.*, 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion. At low exposures with lower SEL_{cum} , the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum} , the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in *Auditory Masking*, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.*, 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiatica*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.*, mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine

mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and table 5 in NMFS (2018).

Activities for this project include vibratory pile driving and removal, impact pile driving, and DTH drilling activities. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Effects

Exposure to noise can also behaviorally disturb marine mammals to a level that rises to the definition of harassment under the MMPA. Generally speaking, NMFS considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response. In other words, not every response qualifies as a behavioral harassment, and for responses that do, those of higher level or longer duration have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include subtle changes (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed; reducing/increasing vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping); and avoidance of areas where sound sources are located. In addition, pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). However, in general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans.

Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartok *et al.*, 2004; Southall *et al.*, 2007, 2019; Weilgart, 2007; Archer *et al.*, 2010).

Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; National Research Council [NRC], 2005).

Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source).

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.*, 2007).

Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts

for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Alteration of Dive Behavior

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (e.g., Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013). Seals exposed to non-impulsive sources with a received SPL within the range of calculated exposures (142–193 dB referenced to 1 micropascal [re 1 μ Pa]), have been shown to change their behavior by modifying diving activity and avoidance of the sound source (Götz and Janik, 2010; Kvadsheim *et al.*, 2010). Variations in dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Alteration of Feeding Behavior

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007; Melcón *et al.*, 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (e.g., Silve *et al.*, 2016; Wensveen *et al.*, 2017). An evaluation of whether foraging disruptions would be likely to incur fitness consequences considers temporal and spatial scale of the activity in the context of the available foraging habitat and, in more severe cases may necessitate consideration of information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success,

and the life history stage of the animal. Goldbogen *et al.* (2013) indicate that disruption of feeding and displacement could impact individual fitness and health. However, for this to be true, we would have to assume that an individual could not compensate for this lost feeding opportunity by either immediately feeding at another location, by feeding shortly after cessation of acoustic exposure, or by feeding at a later time. There is no indication this is the case here, particularly since prey would likely still be available in the environment in most cases following the cessation of acoustic exposure.

Respiration

Respiration naturally varies with different behaviors, and variations in respiration rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Studies with captive harbor porpoises showed increased respiration rates upon introduction of acoustic alarms (Kastelein *et al.*, 2001, 2006a) and emissions for underwater data transmission (Kastelein *et al.*, 2005). Various studies also have shown that species and signal characteristics are important factors in whether respiration rates are unaffected or change, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2005, 2006, 2018; Gailey *et al.*, 2007; Isojunno *et al.*, 2018).

Vocalization

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Fristrup *et al.*, 2003; Foote *et al.*, 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007; Rolland *et al.*, 2012). Killer whales off

the northwestern coast of the United States have been observed to increase the duration of primary calls once a threshold in observing vessel density (e.g., whale watching) was reached, which has been suggested as a response to increased masking noise produced by the vessels (Foote *et al.*, 2004; NOAA, 2014). In some cases, however, animals may cease or alter sound production in response to underwater sound (e.g., Bowles *et al.*, 1994; Castellote *et al.*, 2012; Cerchio *et al.*, 2014). Studies also demonstrate that even low levels of noise received far from the noise source can induce changes in vocalization and/or behavioral responses (Blackwell *et al.*, 2013; Blackwell *et al.*, 2015).

Avoidance

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). Avoidance is qualitatively different from the flight response, but also differs in the magnitude of the response (*i.e.*, directed movement, rate of travel, *etc.*). Often avoidance is temporary, and animals return to the area once the noise has ceased. Acute avoidance responses have been observed in captive porpoises and pinnipeds exposed to a number of different sound sources (Kastelein *et al.*, 2001; Finneran *et al.*, 2003; Kastelein *et al.*, 2006a, 2006b, 2015b, 2015c, 2018). Short-term avoidance of seismic surveys, low frequency emissions, and acoustic deterrents have also been noted in wild populations of odontocetes (Bowles *et al.*, 1994; Goold, 1996; Goold and Fish, 1998; Morton and Symonds, 2002; Hiley *et al.*, 2021) and to some extent in mysticetes (Malme *et al.*, 1984; McCauley *et al.*, 2000; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

Forney *et al.* (2017) described the potential effects of noise on marine mammal populations with high site fidelity, including displacement and auditory masking. In cases of Western North Pacific DPS/stock of gray whales and Cuvier's/goose-beaked whales (*Ziphius cavirostris*), anthropogenic effects in areas where they are resident or exhibit site fidelity could cause severe biological consequences, in part because displacement may adversely affect foraging rates, reproduction, or

health, while an overriding instinct to remain in the area could lead to more severe acute effects. Avoidance of overlaps between disturbing noise and areas and/or times of particular importance for sensitive species may be critical to avoiding population-level impacts because (particularly for animals with high site fidelity) there may be strong motivation to remain in the area despite negative impacts.

Harbor porpoises are considered behaviorally sensitive species and exhibit strong avoidance reactions to impulsive noise such as impact pile driving. For example, displacement of harbor porpoises has been observed during impact pile driving associated with the construction at multiple offshore wind projects (e.g., Tougaard *et al.*, 2009; Bailey *et al.*, 2010.; Dähne *et al.*, 2013; Lucke *et al.*, 2012; Haelters *et al.*, 2015; Brandt *et al.*, 2016). These studies document long-distance (*i.e.*, several km) displacement; however, the duration of displacement has been documented to generally be temporary. The piles involved in coastal construction projects are smaller than those in these studies; however, other data support predicted avoidance responses wherein porpoise move away from a man-made sound source; thereby reducing accumulated noise energy. For example, Kok *et al.* (2018) found that two captive harbor porpoises spatially avoided a noisy pool when exposed to intermittent or continuous artificially generated sound stimuli (*i.e.*, brown noise from 400 to 2000 Hz).

Flight Response

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (e.g., directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). There are limited data on flight response for marine mammals in water; however, there are examples of this response in species on land. For instance, the probability of flight responses in Dall's sheep (*Ovis dalli dalli*) (Frid, 2003), hauled out ringed seals (*Phoca hispida*) (Born *et al.*, 1999),

Pacific brant (*Branta bernicla nigricans*), and Canada geese (*B. canadensis*) increased as a helicopter or fixed-wing aircraft more directly approached groups of these animals (Ward *et al.*, 1999). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Habituation and Vigilance

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than as, more generally, moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; NRC, 2003; Wartzok *et al.*, 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; Richardson *et al.*, 1995; Nowacek *et al.*, 2007).

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.*, when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been observed in marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates and efficiency (e.g., Beauchamp and Livoreil, 1997; Fritz *et*

al., 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (e.g., decline in body condition) and subsequent reduction in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998).

Stress Responses

An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (e.g., Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (e.g., Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals

(e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as “distress.” In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects.

Auditory Masking

Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (e.g., snapping shrimp, wind, waves, precipitation) or anthropogenic (e.g., pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under

quieter conditions and would itself be masked.

Airborne Acoustic Effects

Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA. Airborne noise would primarily be an issue for pinnipeds that are swimming with heads above the waterline or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been ‘taken’ because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound (i.e., 1,000.7 ft [305 m] for phocid pinnipeds, 318.2 ft [97 m] for otariid pinnipeds). Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of additional incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further.

Potential Effects on Marine Mammal Habitat

QTU's proposed vibratory pile driving and removal, impact pile driving, and DTH drilling activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water SPLs, and slightly decreasing water quality from increased turbidity. Manmade structures in Dutch Harbor often attract marine mammals, including pinnipeds, due to the availability of prey nearby. Increased noise levels may affect acoustic habitat (see Auditory Masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). Elevated levels of underwater noise would ensnify the project area where both prey (e.g., fishes and marine invertebrates) and marine mammals occur and could affect foraging success.

Additionally, marine mammals may avoid the area during vibratory pile driving and removal, impact pile driving, and DTH drilling activities; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized reduction in water quality would occur as a result of in-water vibratory pile driving and removal, impact pile driving, and DTH drilling activities. Most of this effect would occur during the removal and installation of steel pipe and sheet piles as well as installation of tension anchors and rock sockets, when bottom sediments are disturbed, and may temporarily increase suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column causing a sediment plume. Following the completion of sediment-disturbing activities, suspended sediment in the water column should dissipate and quickly return to background levels across all construction scenarios due to currents and tides in the project area.

Turbidity in the water column can reduce dissolved oxygen levels and irritate the gills of prey fish in the proposed project area. Studies of the effects of turbid water on fish (marine mammal prey) suggest that concentrations of suspended sediment can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993). However, turbidity plumes associated with the North Barge Expansion Project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Overall, the water quality in the immediate area that is likely impacted by the proposed activities is relatively small compared to the available marine mammal habitat.

The proposed vibratory pile driving and removal, impact pile driving, and DTH drilling activities would also remove approximately 10.5 acres (42,492 square m) of habitat to construct the fill pad. A relatively small area would be converted to an upland area for container storage, loading, and unloading activities. The existing bottom habitat is shallow gradient and rocky, which is covered with sparse algae and marine invertebrates. Much of this area that would be filled is exposed at low tide. The total net reduction would permanently decrease the in-water area that is available as marine mammal habitat in Dutch Harbor for potential foraging. There would be no

impacts to known haulouts or rookeries for pinnipeds.

In-Water Pile Removal and Installation as Well as DTH Drilling Activities Effects on Potential Prey

Pile removal and installation as well as DTH drilling activities would produce continuous (*i.e.*, vibratory pile driving and removal and DTH drilling) and intermittent (*i.e.*, impact pile driving and DTH drilling) sounds. Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.*, crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.*, Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds that are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.*, feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.*, Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.*, Fewtrell

and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.*, Pena *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function is likely restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012b; Casper *et al.*, 2013).

The most likely impact to fishes from vibratory pile driving and removal, impact pile driving, and DTH drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after vibratory pile driving and removal, impact pile driving, and DTH drilling stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated.

Vibratory pile driving and removal, impact pile driving, and DTH drilling activities have the potential to have adverse impacts on forage fish in the project area in the form of increased turbidity. Forage fish form a significant prey base for many marine mammal species that occur in the project area. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish in the proposed project area. However, fish in the proposed project area would be able to move away from and avoid the areas where increased turbidity may occur. Given the limited area affected and ability of fish to move to other areas, any effects on forage fish are expected to be minor or negligible.

Data indicate that marine invertebrates can be impacted by exposure to noise, such as pile driving, by demonstrating physiological (*e.g.*, stress responses) or behavioral responses (*e.g.*, alarm responses), with in some extreme situations resulting in damage to sensory systems (see review in Sole *et al.*, 2023). Most recent studies have focused on potential impacts

associated with pile driving and offshore wind construction (*e.g.*, Jones *et al.*, 2020, 2021; Sole *et al.*, 2022; Jones *et al.*, 2023; Jezequel *et al.*, 2023; Jezequel and Mooney, 2024; Terschek *et al.*, 2025).

In summary, given the short daily duration of sound associated with the North Barge Expansion Project and the relatively small areas being affected, vibratory pile driving and removal, impact pile driving, and DTH drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on marine mammal habitat other than permanent loss of habitat in the fill location. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of prey and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of the specified activities (other than fill placement) are not likely to have more than short-term adverse effects on marine mammal habitat, including prey. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform both NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment, as use of the acoustic sources (*i.e.*, vibratory pile driving and removal, impact pile driving, and DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for AUD INJ (Level A harassment) to result for mysticetes (low-frequency cetaceans), phocids, and otariids. The proposed mitigation and monitoring measures are expected to

minimize the severity of the taking to the extent practicable. As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (e.g., previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment). We note that the criteria for AUD INJ, as well as the names of two hearing groups, have been recently updated (NMFS, 2024) as reflected below in the Level A harassment section.

Level B Harassment

Though significantly driven by received level, the onset of behavioral

disturbance from anthropogenic noise exposure is also informed by varying degrees by other factors related to the source or exposure context (e.g., frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (e.g., bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (e.g., Southall *et al.*, 2007, 2021; Ellison *et al.*, 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB re 1 μ Pa for continuous (e.g., vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (e.g., seismic airguns) or intermittent (e.g., scientific sonar) sources. Generally speaking, Level B harassment estimates based on these behavioral harassment thresholds are expected to include TTS effects as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not

otherwise occur. QTU's proposed specified activities includes the use of continuous (vibratory pile driving and removal and DTH drilling) and impulsive (impact pile driving and DTH drilling) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable. NMFS applies the continuous threshold of 120 dB to assess the potential for Level B harassment from DTH drilling.

Level A Harassment

NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0; Updated Technical Guidance, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). QTU's proposed specified activities includes the use of impulsive (impact pile driving and DTH drilling) and non-impulsive (vibratory pile driving and removal and DTH drilling) sound sources. NMFS applies the impulsive thresholds to assess the potential for Level A harassment from DTH drilling.

The 2024 Updated Technical Guidance criteria include both updated thresholds and updated weighting functions for each hearing group. The thresholds are provided in table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2024 Updated Technical Guidance, which may be accessed at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools>.

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF AUDITORY INJURY

Hearing group	Auditory injury onset acoustic thresholds* (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	Cell 1: $L_{pk,flat}$: 222 dB; $L_{E,LF,24h}$: 183 dB	Cell 2: $L_{E,LF,24h}$: 197 dB.
High-Frequency (HF) Cetaceans	Cell 3: $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 193 dB	Cell 4: $L_{E,MF,24h}$: 201 dB.
Very High-Frequency (VHF) Cetaceans	Cell 5: $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 159 dB	Cell 6: $L_{E,HF,24h}$: 181 dB.
Phocid Pinnipeds (PW) (Underwater)	Cell 7: $L_{pk,flat}$: 223 dB; $L_{E,PW,24h}$: 183 dB	Cell 8: $L_{E,PW,24h}$: 195 dB.
Otariid Pinnipeds (OW) (Underwater)	Cell 9: $L_{pk,flat}$: 230 dB; $L_{E,OW,24h}$: 185 dB	Cell 10: $L_{E,OW,24h}$: 199 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak SPL thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μ Pa, and weighted cumulative sound exposure level ($L_{E,B}$) has a reference value of 1 μ Pa²s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript “flat” is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.*, 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The North Barge Expansion Project includes vibratory pile driving and removal, impact pile driving, and DTH drilling. Vibratory pile driving has relatively lower sound levels than impact pile driving and are not expected to cause AUD INJ to marine mammals. Source levels for these activities are based on reviews of measurements of

the same or similar types and dimensions of piles available in the literature. Estimated source levels for each pile size and activity are presented in table 5. Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 5—ESTIMATES OF UNDERWATER SOUND SOURCE LEVELS (AT 10 m) GENERATED DURING VIBRATORY PILE DRIVING AND REMOVAL, IMPACT PILE DRIVING, AND DOWN-THE-HOLE DRILLING

Pile/hole size and material	dB Peak	dB RMS	dB SEL	Reference
Vibratory Pile Driving and Removal				
≤24-inch Steel Piles	NA	163	NA	PR1 2023 Calculations.
30-inch Steel Piles	NA	166	NA	PR1 2023 Calculations.
36-inch Steel Piles	NA	166	NA	PR1 2023 Calculations.
AZ26 Steel Sheets	175	160	NA	Caltrans, 2015.
Impact Pile Driving				
24-inch Steel Piles	203	190	177	Caltrans, 2015.
30-inch Steel Piles	210	190	177	Caltrans, 2020.
36-inch Steel Piles	210	193	183	Caltrans, 2015, 2020.
DTH Drilling				
8-inch Tension Anchors	144	156	170	Reyff and Heyvaert, 2019; Reyff, 2020.
24-inch Steel	159	167	184	Guan and Miner, 2020; Heyvaert and Reyff, 2021.
30-inch Steel	164	174	194	Denes <i>et al.</i> , 2019; Reyff and Heyvaert, 2019; Reyff, 2020.
36-inch Steel	164	174	194	Denes <i>et al.</i> , 2019; Reyff and Heyvaert, 2019; Reyff, 2020.

dB peak = peak sound level; RMS = root mean square; SEL = sound exposure level; and NA = not available or applicable.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \log_{10} (R1/R2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient

$R1$ = the distance of the modeled SPL from the driven pile, and

$R2$ = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates

away from a sound source depends on various factors, most notably the water bathymetry and the presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source ($20 * \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 * \log[\text{range}]$). A practical spreading value of 15 is often used in coastal waters, such as those found in the North Barge Expansion Project area. In these environments, sound waves

repeatedly reflect off the surface and bottom, reflecting an expected propagation environment between spherical and cylindrical spreading-loss conditions. Therefore, the default coefficient of 15 is used to calculate distances to the Levels A and B harassment isopleths for vibratory pile driving and impact pile driving. Based on similar specified activities and comparable data from locations in Alaska, a spreading value of 18 is used for tension anchors and a spreading value of 17 is used for rock sockets to calculate distances to the Levels A and B harassment isopleths for DTH drilling.

Assuming practicable spreading and other assumptions regarding the source characteristics and operational logistics (*e.g.*, source level, number of strikes per pile, number of piles per day), QTU calculated distances to the Levels A and

B harassment isopleths and associated ensonified areas. The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the 2024 Updated Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. ([https://](https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools)

www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools). We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers a practical, alternative way to

estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur AUD INJ. Inputs used in the optional User Spreadsheet tool (table 6), and the resulting estimated isopleths (table 7), are reported below.

TABLE 6—USER SPREADSHEET INPUTS PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

	Vibratory pile driving				Impact pile driving			DTH drilling			
	24-inch steel piles	30-inch steel piles	36-inch steel piles	AZ26 steel sheets	24-inch steel piles	30-inch steel piles	36-inch steel piles	8-inch tension anchors	24-inch steel	30-inch steel	36-inch steel
	Installation or removal	Installation									
Spreadsheet Tab Used	A.1) Vibratory Pile Driving.	A.1) Vibratory Pile Driving.	A.1) Vibratory Pile Driving.	A.1) Vibratory Pile Driving.	E.1) Impact Pile Driving.	E.1) Impact Pile Driving.	E.1) Impact Pile Driving.	E.2) DTH Systems.	E.2) DTH Systems.	E.2) DTH Systems.	E.2) DTH Systems.
Source Level (SPL-Peak/RMS/SEL).	163 RMS	166 RMS	166 RMS	160 RMS	203 Peak 190 RMS 177 SEL.	210 Peak 190 RMS 177 SEL.	210 Peak 193 RMS 183 SEL.	170 Peak 144 SEL.	184 Peak 159 SEL.	194 Peak 164 SEL.	194 Peak 164 SEL.
Transmission Loss Coefficient.	15	15	15	15	15	15	15	18	17	17	17.
Weighting Factor Adjustment (kHz).	2.5	2.5	2.5	2.5	2	2	2	2	2	2	2.
Number of Strikes per Pile.	NA	NA	NA	NA	50	50	50	NA	NA	NA	NA.
Strike Rate (Average Strikes per Second).	NA	NA	NA	NA	NA	NA	NA	20.3	13	13	10.
Activity Duration per Single Pile (Minutes).	15	15	15	15	NA	NA	NA	240	240	240	240.
Number of Piles per Day	4	4	4	4	4	4	4	3	3	3	3.
Activity Duration per Day (Minutes).	60	60	60	60	NA	NA	NA	NA	NA	NA	NA.
Distance of Peak Measurement.	NA	NA	NA	NA	10	10	10	10	10	10	10.
Distance of Sound Pressure Level Measurement.	10	10	10	10	10	10	10	10	10	10	10.

DTH = down-the-hole, RMS = root mean squared, SEL = sound exposure level, and NA = not available or applicable.

Using the practical spreading model and assumptions identified in tables 5 and 6, QTU calculated, and NMFS has

carried forward into this analysis, the distances to the Levels A and B

harassment thresholds for marine mammals (table 7).

TABLE 7—LEVELS A AND B HARASSMENT ISOPLETHS FROM VIBRATORY PILE DRIVING, IMPACT PILE DRIVING, AND DOWN-THE-HOLE DRILLING

Pile size and type	Level A harassment isopleths (m)					Level B harassment isopleth (m)
	LF Cetaceans	HF Cetaceans	VHF Cetaceans	PW Pinnipeds	OW Pinnipeds	
Vibratory Pile Driving						
24-inch Steel Piles	9.2	3.5	7.5	11.9	4	5,412
30-inch Steel Piles	19.9	7.6	16.2	25.6	8.6	11,659
36-inch Steel Piles	19.9	7.6	16.2	25.6	8.6	11,659
AZ26 Steel Sheets	19.9	7.6	16.2	25.6	8.6	11,659
Impact Pile Driving						
24-inch Steel Piles	250.3	31.9	387.4	22.4	82.9	1,585
30-inch Steel Piles	396.7	50.6	614	352.5	131.4	1,585

TABLE 7—LEVELS A AND B HARASSMENT ISOPLETHS FROM VIBRATORY PILE DRIVING, IMPACT PILE DRIVING, AND DOWN-THE-HOLE DRILLING—Continued

Pile size and type	Level A harassment isopleths (m)					Level B harassment isopleth (m)
	LF Cetaceans	HF Cetaceans	VHF Cetaceans	PW Pinnipeds	OW Pinnipeds	
36-inch Steel Piles	396.7	50.6	614	352.5	131.4	1,585
DTH Drilling						
8-inch Tension Anchors	135.9	24.4	195.5	123.1	54.1	1,000
24-inch Steel (Rock Socket)	929.7	151.1	1,366.6	837.5	350.6	5,817
30-inch Steel (Rock Socket)	1,830	297.5	2,690.1	1,648.5	690.1	15,031
36-inch Steel (Rock Socket)	1,568.3	254.9	2,305.4	1,412.7	591.4	15,031

LF=low-frequency, HF=high-frequency, VHF=very high-frequency, PW=phocid, and OW=otariid.

While the modeled ensounded area for the Level B harassment isopleth for vibratory pile driving and removal, impact pile driving, and DTH drilling is 3,280.8 to 49,314.3 ft (1,000 to 15,031 m) depending on the size and type of pile, the Level B harassment isopleth is actually smaller in most directions as it is attenuated by landforms (breakwaters, islands, and other landmasses) that impede the transmission of underwater sounds and create shadows behind them where sound from the vibratory pile driving and removal, impact pile driving, and DTH drilling is not audible or does not rise to threshold for Level B harassment. In Iliuliuk Bay, the isopleths that exceed 1,190 m (3,904.2 ft) would be cut off by land on the opposite shoreline. As the smaller Iliuliuk Bay opens to the larger Unalaska Bay, the isopleth distances may not be impeded by landforms.

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. Here we describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Density estimates for marine mammals within the project area were not available to directly inform the take estimates. QTU conducted a literature review to determine specific occurrence of marine mammals for Iliuliuk Bay and/or Unalaska Bay, but most documents were too broad for the specific project area. However, monitoring has been conducted in the area for past projects. In 2018, the USACE conducted marine mammal

surveys near the project area to gather baseline information for confined blasting of a channel in Iliuliuk Bay. Visual monitoring was conducted by two biologists for 4 days per month during April through October for a total of 28 days. The survey area was divided into zones; the red zone roughly corresponds to the Level A harassment zones calculated for QTU's proposed project. Figure 16 of the application shows the marine mammal survey zones in 1.2 miles (2 km) increments and survey data by species and month for each survey zone, respectively. Marine mammal observations from the USACE 2018 surveys are provided in table 8. NMFS notes that a survey report from USACE is unpublished and not available; however, a participating biologist who conducted the survey included those data in QTU's application.

TABLE 8—UNITED STATES ARMY CORPS OF ENGINEERS 2018 MARINE MAMMAL SURVEY DATA

Month	Humpback whale					Steller sea lion					Harbor seal				
	OZ	YZ	GZ	RZ	Total	OZ	YZ	GZ	RZ	Total	OZ	YZ	GZ	RZ	Total
April	1	0	0	NS	1	4	0	0	NS	4	9	2	8	NS	19
May	2	0	0	NS	2	7	0	1	NS	8	7	1	3	NS	11
June	10	0	0	1	11	0	2	1	3	6	38	5	6	3	52
July	13	0	0	0	13	0	5	32	4	41	43	5	8	4	60
August	40	0	0	4	44	4	0	3	9	16	40	6	9	6	61
September	47	0	0	2	49	0	1	0	23	24	27	8	7	3	45
October	7	0	0	1	8	0	0	7	11	18	5	2	4	2	13
Total	120	0	0	8	128	15	8	44	50	117	169	29	45	20	263

OZ=orange zone; YZ=yellow zone; GZ=green zone; RZ=red zone; and NS=not surveyed.

To account for the uncertainty regarding the construction schedule (e.g., unexpected delays, weather conditions, etc.), the maximum monthly abundance reported from the USACE 2018 surveys for each species observed was used to inform estimated take for species observed during the survey. Given surveys occurred 4 days each month, the abundance was then divided

by the 4 days (12 hours per day) of survey effort to determine the estimated number of animals per day that would be in the project area (table 8).

Anecdotal sighting information informed take estimates for rare species (killer whales, minke whales, harbor porpoise) that were not observed during the USACE 2018 survey. NMFS recognizes that while anecdotal data

provide some insight into the potential number of marine mammals present within the action area, the data may have some biases based on when personnel were observing for marine mammals (e.g., during favorable weather) and these efforts were sparse.

The estimated group size and predictable occurrence of marine

mammal species in the project area per day is shown in table 9.

TABLE 9—ESTIMATED AVERAGE GROUP SIZE/OCCURRENCE PER DAY AND FREQUENCY OF OCCURRENCE OF MARINE MAMMAL SPECIES IN DUTCH HARBOR

Species	Estimated average group size or occurrence per day	Frequency of occurrence in the project area	Reference
Humpback Whale—Hawai'i Stock, Mexico-North Pacific Stock, and Western North Pacific Stock.	12.25 Animals per Day	September	C. Hoffman personal communication, April 15, 2026.
Minke Whale	2 Animals per Group	Once during construction	Guerrero, 2008b.
Killer Whale—Eastern North Pacific Alaska Resident Stock and Gulf of Alaska, Aleutian Islands, and Bering Sea Transient Stock.	8 Animals per Group	Twice during construction	C. Hoffman personal communication, April 15, 2026.
Harbor Porpoise—Bering Sea Stock.	2 Animals per Group	8 out of 64 days of construction ...	C. Hoffman personal communication, April 15, 2026; Zerbini <i>et al.</i> , 2022.
Steller Sea Lion—Western Stock ..	10.25 Animals per Day (from July)	Daily	C. Hoffman personal communication, April 15, 2026.
Harbor Seal—Aleutian Islands Stock.	15.25 Animals per Day (from August).	Daily	C. Hoffman personal communication, April 15, 2026.

USACE=U.S. Army Corps of Engineers and NA=not available or applicable.

The total number of takes anticipated to occur incidental to the project were determined by multiplying the number of animals per day expected to be in the project area by the number of days (62) of the vibratory pile driving and removal, impact pile driving, and DTH drilling. The number of Level A harassment exposures were determined by multiplying the number of animals in the red zone (table 8), which is approximately equal to the 1.2 miles (2 km) for DTH drilling (threshold for Level A harassment) by 17 days. While DTH drilling would occur for 25 days, NMFS subtracted the 8 days for 8-inch tension anchors, which results in 17 days because the ensonified areas for 8-inch tension anchors are relatively small and the shutdown zones are larger than those distances. NMFS determined takes by Level A harassment for vibratory pile driving and removal, impact pile driving, and DTH drilling of 8-inch tension anchors is unlikely due to the small size of the Level A harassment zones and establishment of a shutdown zones.

The number of takes by Level B harassment was determined by subtracting the number of takes by Level A harassment from the total number of

exposures. For example, based on tables 8 and 9, the number of Steller sea lion takes by Level A harassment is calculated as the maximum number of animals in the red zone (23)/4 days $\times$ 17 days, which equals 98 takes.

For humpback whales, NMFS portioned takes for the three stocks of humpback whales based on the information on their occurrence in the waters off the coast of Alaska in the Aleutian Islands. The percent probability of harassment to occur to individuals from the Hawai'i stock, Mexico North Pacific stock, and Western North Pacific stock is 91 percent, 7 percent, and 2 percent, respectively.

As described above, for species that were not observed during the USACE 2018 survey, QTU and NMFS relied on anecdotal reports to estimate take. NMFS assumes one group of minke whales, two groups of killer whales, and eight groups of harbor porpoises, respectively, may be taken by Level B harassment incidental to the project. NMFS is not proposing to authorize take by Level A harassment for minke whale and killer whales, because the small zone sizes make AUD INJ unlikely. As described in the Description of Marine

Mammals in the Area of Specified Activities section, harbor porpoise are behaviorally sensitive species, and it is well documented they exhibit strong avoidance reactions to noise such as pile driving. Therefore, despite the larger Level A harassment zone generated by the User Spreadsheet, harbor porpoises are not expected to remain in the area such that they would incur AUD INJ and NMFS is not proposing to authorize Level A harassment of harbor porpoise.

The resulting take estimates from the calculations described above are provided in table 10. NMFS acknowledges that the number of estimated exposures above higher threshold criteria, (e.g., sound exposures exceeding Level A harassment criteria), also encompass the potential for less impactful effects (e.g., Level B harassment). An individual exposure exceeding a Level A harassment criterion may not result in actual AUD INJ, yet the individual may have experienced Level B harassment. This outcome is accounted for in our authorization of potential higher-level takes and in our analysis.

TABLE 10—PROPOSED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Proposed authorized take		Proposed take as a percentage of stock abundance (total authorized takes/stock abundance) ¹
		Level A harassment	Level B harassment	
Humpback Whale	Hawai'i	16	676	6.1 (692/11,278)
	Mexico-North Pacific	1	52	* (53/NA)
	Western North Pacific	0	15	1.4 (16/1,084)

TABLE 10—PROPOSED TAKE BY STOCK AND HARASSMENT TYPE AND AS A PERCENTAGE OF STOCK ABUNDANCE—Continued

Species	Stock	Proposed authorized take		Proposed take as a percentage of stock abundance (total authorized takes/stock abundance) ¹
		Level A harassment	Level B harassment	
Minke Whale	Alaska	0	2	* (2/NA)
Killer Whale	Eastern North Pacific Alaska Resident	0	16	0.8 (16/1,920)
	Eastern North Pacific Gulf of Alaska, Aleutian Islands, and Bering Sea Transient.			2.79 (16/587)
Harbor Porpoise	Bering Sea	0	16	* (16/UNK)
Steller Sea Lion	Western	98	538	1.3 (636/49,837)
Harbor Seal	Aleutian Islands	26	920	16.9 (946/5,588)

* Reliable abundance estimates for these stocks are currently unavailable.

UNK=unknown and NA=not available or applicable.

¹ The percentages calculated here represent if each take is of a unique individual.

NMFS considered the number of takes proposed to be authorized against more recent USACE reports. As described in the Description of Marine Mammals in the Area of Specified Activities section, the USACE also provided monthly marine mammal monitoring reports (June and July 2025) to NMFS for the Unalaska Channels Project in Iliuliuk Bay. During 7 days of dredging operations in June 2025, USACE observed humpback whales (1 event of 2 adults), unknown whales (2 events of 2 adults), and Steller sea lions (47 events of 98 adults). During dredging operations in July 2025, USACE observed humpback whales (74 adults and 16 juveniles), unknown whales (6 adults), Steller sea lions (1,108 adults and 1 juvenile), and harbor seals (6 adults). Based on these more recent data, the number of takes proposed to be authorized for these species is likely conservative and sufficient to account for the impacts of the project.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or

stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The mitigation requirements described in the following were proposed by QTU in its adequate and complete application or are the result of subsequent coordination between NMFS and QTU. QTU has agreed that all of the mitigation measures are practicable. NMFS has fully reviewed the specified activities and the mitigation measures to determine if the mitigation measures would result in the least practicable adverse impact on marine mammals and their habitat, as required by the MMPA, and has determined the proposed measures are appropriate. NMFS describes these below as proposed mitigation requirements and has included them in the proposed IHA.

QTU must ensure that construction supervisors and crews, the monitoring team and relevant QTU staff are trained prior to the start of all vibratory pile driving and removal, impact pile driving, and DTH drilling activities, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Along with the application, QTU provided a comprehensive Marine Mammal Monitoring and Mitigation Plan (4MP) for the North Barge Expansion Project, which included PSO qualifications, data collection, PSO equipment, Level A and Level B harassment zones, monitoring locations, pre-/during-/post-activity monitoring, breaks in work, shutdowns, and reporting (e.g., modifications, unauthorized exposure without injury, injured or dead marine mammals, and annual report) as well as marine mammal observation record and Beaufort sea scale forms. Please see that document for more detailed information.

Mitigation for Marine Mammals and Their Habitat

Clearance and Shutdown Zones

QTU proposed, and NMFS would require, the establishment of clearance and shutdown zones identified in table 11 for vibratory pile driving and removal, impact pile driving, and DTH drilling activities. The purpose of “clearance” of a particular zone is to prevent potential instances of AUD INJ and more severe behavioral disturbance the maximum extent practicable by delaying the commencement of impact pile driving and DTH drilling if marine mammals are detected within certain pre-defined distances from the pile

being installed. The purpose of a shutdown is to prevent a specific acute impact, such as AUD INJ or severe behavioral disturbance of sensitive species, by halting the activity. Additionally, to avoid unauthorized takes, QTU would be required to delay an activity or shut down in the event that a species for which take is not authorized or for which take has been reached is observed within or entering

any designated harassment zone. After shutdown, an activity may be reinitiated once all clearance zones are clear of marine mammals for the minimum species-specific periods (15 minutes for odontocetes or pinnipeds and 30 minutes for mysticetes). Specified activities would also be delayed or shutdown if PSOs cannot visually observe the zones in table 11. QTU proposed large shutdown zones for

harbor porpoise; however, NMFS reduced these distances to 984.3 ft (300 m) due to this species being difficult to detect based on their small size and cryptic nature. In-water activities that do not include the specified activities but require heavy equipment would also shutdown if a marine mammal approaches within 32.8 ft (10 m) to avoid direct interaction.

TABLE 11—PROPOSED SHUTDOWN ZONES

Activity	Pile size and type	Shutdown zones (m)				
		LF cetaceans	HF cetaceans	VHF cetaceans	PW pinnipeds	OW pinnipeds
Vibratory Pile Driving	24-inch Steel	15	15	15	15	10
Vibratory Pile Driving	30-inch Steel	30	20	20	30	10
Vibratory Pile Driving	36-inch Steel	30	20	20	30	10
Vibratory Pile Driving	AZ26 Sheet	30	20	20	30	10
Impact Pile Driving	24-inch Steel	275	50	300	225	100
Impact Pile Driving	30-inch Steel	400	60	300	225	150
Impact Pile Driving	36-inch Steel	400	60	300	225	150
Down-the-Hole Drilling	8-inch Tension Anchor	170	35	250	100	70
Down-the-Hole Drilling	24-inch Steel (Rock Socket)	250	200	300	200	200
Down-the-Hole Drilling	30-inch Steel (Rock Socket)	470	350	300	200	200
Down-the-Hole Drilling	36-inch Steel (Rock Socket)	470	275	300	200	200

LF=low-frequency, HF=high-frequency, VHF=very high-frequency, PW=phocid, and OW=otariid.

Soft Start

The use of soft-start procedures provide warning, giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy (at no more than half the operational power), with each strike followed by a 30-second waiting period, then two subsequent reduced-power strike sets. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer (and PSO visual monitoring has also stopped). Soft start is not required during vibratory pile driving and removal as well as DTH drilling activities.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the

MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (e.g., presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (e.g., source characterization, propagation, ambient noise); (2) affected species (e.g., life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral

context of exposure (e.g., age, calving or feeding areas);

- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

- Effects on marine mammal habitat (e.g., marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements described in the following were proposed by QTU in its adequate and complete application and/or are the result of subsequent coordination between NMFS and QTU. QTU has agreed to the requirements. NMFS describes these below as requirements and has included them in the proposed IHA.

Marine mammal monitoring must be conducted in accordance with the 4MP. Marine mammal monitoring during vibratory pile driving and removal, impact pile driving, and the DTH drilling activities must be conducted by NMFS-approved PSOs who have no

other assigned tasks during monitoring periods. At least one PSO would have prior experience performing the duties of a PSO during vibratory pile driving and removal, impact pile driving, and the DTH drilling activities pursuant to a NMFS-issued Incidental Take Authorization. Visual monitoring would be conducted by at least two to three PSOs (depending on activity type) positioned at suitable vantage points taking into consideration access, safety, and space limitations. At least three PSOs would be used for all vibratory pile driving and removal activities; at least two PSOs would be used for all impact pile driving activities; and at least three PSOs would be used for DTH drilling activities. The PSOs would be stationed at locations that allow visual observations of as much of the Levels A and B harassment zones as possible. The seven likely land-based locations for PSO visual monitoring sites are shown in figure 3–1 of the 4MP. Two to three locations would be used concurrently based on the type of vibratory pile driving and removal, impact pile driving, and the DTH drilling activities. The PSOs would most likely conduct visual monitoring from sites A, D, E, and/or G (see figure 3–3 of the 4MP) for vibratory pile driving and removal; sites A, B, C, and/or F for impact pile driving (see figure 3–2 of the 4MP); and sites A, D, E, and/or G (see figure 3–4 of the 4MP) for DTH drilling. The location would be decided based on the work schedule, accessibility, as well as environmental and visibility conditions. The PSOs may select alternate locations with better visibility conditions if necessary. All PSOs would be required to use standard equipment such as reticle binoculars (7 by 50 or better), Big-Eye binoculars, spotting scopes, clinometers, and range finders as well as the naked eye. A contact list, field guide, instructional handbook, and maps, chronometer (watch), compass, daily tide table, Global Positioning System unit, and notebook with waterproof forms would also be available to PSOs. PSOs would work shifts of up to 4 consecutive hours followed by a rotation or 1 hour break and would work no more than 12 hours in a 24-hour period. PSOs would be in continuous contact with construction personnel using portable two-way radios. Details regarding PSO qualifications and monitoring requirements can be found in the draft IHA available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Reporting

QTU would submit a draft marine mammal monitoring report to NMFS within 90 calendar days after the completion of pile driving activities, or 60 calendar days prior to the requested issuance of any subsequent IHA for similar activities at the same location, whichever comes first. The information required to be collected and reported to NMFS is included in the draft IHA available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In summary, the report would include, but not be limited to, information regarding activities that occurred, marine mammal sighting data, and whether mitigative actions were taken or could not be taken. QUTU would also be required to submit reports on any observed injured or dead marine mammals. If the death or injury was clearly caused by the specified activity, QUTU would immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. QUTU would not resume its activities until notified by NMFS.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be “taken” through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS’ implementing regulations (54 FR 40338, September 29,

1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in table 2, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Specified activities associated with the QUTU’s North Barge Expansion Project, as outlined previously, have the potential to disturb or displace as well as cause AUD INJ to marine mammals. Specifically, the specified activities may result in take, in the form of Levels A and B harassment, from underwater sounds generated by vibratory pile driving and removal, impact pile driving, and DTH drilling. Potential takes could occur if marine mammals are present in zones ensounded above the thresholds for Level A harassment or Level B harassment, identified above, while specified activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. The potential for harassment would be minimized through the implementation of planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for three species (humpback whale, Steller sea lion, and harbor seal) as there is potential for them to remain within the Level A harassment zone for a duration long enough to incur AUD INJ. However, given the nature of activity and that the calculated Level A harassment zone represents a long duration (*i.e.*, hours of drilling), any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by DTH drilling such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are

expected to occur here in order to incur any more than a small degree of AUD INJ. QTU would also delay or shut down activities if marine mammals enter the shutdown zones (table 11), further minimizing the likelihood and degree of AUD INJ that would be incurred. Further, as described above, NMFS expects that marine mammals would likely move away from an aversive stimulus, especially at levels that would be expected to result in AUD INJ, given sufficient notice through use of soft start.

Given the small degree anticipated, any AUD INJ potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

Effects on individuals that are taken by Level B harassment in the form of behavioral disruption, on the basis of reports in the literature as well as monitoring from other similar activities, would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (e.g., Thorson and Reyff, 2006). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving and DTH drilling is occurring. If sound produced by vibratory pile driving and removal, impact pile driving, and DTH drilling activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. We expect that any avoidance of the project area by marine mammals would be temporary in nature and that any marine mammals that avoid the project area during vibratory pile driving and removal, impact pile driving, and DTH drilling activities would not be permanently displaced. Short-term avoidance of the project area and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

As described in the Description of Marine Mammals in the Area of Specified Activities section, there are several haulouts and rookeries in the Aleutian Islands. The ensonified area from vibratory pile driving and removal, impact pile driving, and DTH drilling activities that would occur from this project overlaps with the 20 nautical miles (37 km) zone for the rookery at Cape Morgan on Akutan Island and the

major haulouts at Old Man Rocks and Unalaska/Cape Sedanka. The ensonified area overlaps ESA-designated critical habitat for Mexico DPS and Western North Pacific DPS of humpback whale and western DPS of Steller sea lion. It is also in the Bogoslof feeding area for the western DPS of Steller sea lions. Specifically, the Level B harassment ensonified area overlaps with the aquatic zones of designated major haulouts. The ensonified area Level B harassment zone related to implementation of the proposed North Barge Expansion Project, described in the Estimated Take of Marine Mammals section, overlaps with the designated aquatic zone of the designated major haulouts. No terrestrial or in-air critical habitat of any major haulout overlaps with the project area. The effects from the vibratory pile driving and removal, impact pile driving, and DTH drilling activities would be insignificant and temporary to designated critical habitat for Mexico DPS and Western North Pacific DPS of humpback whales and Steller sea lions.

The North Barge Expansion Project is also not expected to have significant adverse effects on affected marine mammal habitat. The underwater sound from vibratory pile driving and removal, impact pile driving, and DTH drilling activities would not modify existing marine mammal habitat for a significant amount of time. A small amount of marine mammal habitat would be permanently modified due to fill placement. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range. We do not expect vibratory pile driving and removal, impact pile driving, and DTH drilling activities to have significant consequences to marine invertebrate populations. Given the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat, including fish and marine invertebrates, are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury, or mortality is anticipated or authorized;
- Any Level A harassment is anticipated to cause only slight auditory injury, including PTS of a few decibels within the lower frequencies associated

with DTH drilling and not encompass a species' full hearing range;

- The anticipated incidents of Level B harassment would result in temporary behavior modifications or a small degree of TTS that would resume to baseline at the cessation of activities or as animals move away from the source;

- The project area is industrialized; therefore, individuals taken are likely habituated to anthropogenic activities and behavioral reactions are expected to be minor and temporary;

- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations; and

- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The instances of take NMFS proposes to authorize are below one-third of the estimated stock abundance for all stocks (table 10). For those stocks with unknown abundance, the number of takes are very low; therefore, it is reasonable that the number of

individuals taken relative to the population is small.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an “unmitigable adverse impact” on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined “unmitigable adverse impact” in 50 CFR 216.103 as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by, (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Alaskan Natives have hunted marine mammals in the Aleutian Islands of Alaska for subsistence uses for hundreds of years (ADF&G, 1997). Residents of Unalaska report the average annual harvest of five Steller sea lions and three harbor seals. It is possible that the local annual culture camp, which includes harvesting one pinniped in the outer limits of Unalaska Bay approximately 5–6 km from the project site during late July or early August, may occur during the project (D. Robinson personal communication with C. Hoffman, October 1, 2025). However, terrain is expected to acoustically shadow project noise where harvest may occur (C. Hoffman, personal communication). Marine mammals could be harvested outside of Unalaska Bay at any other time of the year. No other species of marine mammals (except northern sea otters) are hunted in Unalaska.

The North Barge Expansion Project is located in an already developed area where commercial and human activities occur. Due to extensive contamination, the Unangan people do not harvest food for subsistence within Dutch Harbor (D. Robinson personal communication with C. Hoffman, October 1, 2025). The availability of marine mammals for subsistence in nearby waters is not

expected to be adversely affected by the project.

Based on the description of the specified activity, the measures described to minimize adverse effects on the availability of marine mammals for subsistence purposes, and the proposed mitigation measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from QTU's proposed specified activities.

Endangered Species Act

Section 7(a)(2) of the ESA (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the Alaska Regional Office.

NMFS OPR is proposing to authorize take of Mexico DPS of humpback whale, Western North Pacific DPS of humpback whale, and Western DPS of Steller sea lion, which are listed under the ESA. NMFS OPR has requested initiation of section 7 consultation with the NMFS Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to QTU authorizing the take of marine mammals incidental to the North Barge Expansion Project at Dutch Harbor, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>.

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the North Barge Expansion Project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take); and,

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: August 6, 2026.

Kimberly Damon-Randall,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

[FR Doc. 2026–16316 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XF928]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, August 25, 2026 at 9:30 a.m. EDT. Webinar registration URL information: <https://nefmc-org.zoom.us/j/7pSbK5LbvyxdDkIQ>.

ADDRESSES: This meeting will be held at the Sheraton Harborside Hotel, 250 Market Street, Portsmouth, NH 03801; Phone (603) 431–2300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Cate O’Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:**Agenda**

The Groundfish Committee will meet to discuss Framework 68/Acceptable Biological Catch (ABC) Control Rules—progress report, including update on contract work to evaluate integration of risk policy with ABC control rules. The Committee will also have a follow-up discussion on final report on the Amendment 23 Monitoring Review. They will also discuss Framework 74/Specifications and Management Measures that include a progress report on development of the action. They will discuss other business, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-

Stevens Act, provided the public has been notified of the Council’s intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cate O’Keefe, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: August 7, 2026.

Anna Michelle Harrison,

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

[FR Doc. 2026–16342 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**Patent and Trademark Office**

[Docket No. PTO–C–2026–0364; XRIN 0651–XA007]

Administrative Updates to the General Requirements Bulletin for Admission to the Examination for Registration To Practice in Patent Cases Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) announces that, after reviewing and evaluating the scientific and technical criteria for admission to practice in all patent matters, it is moving one Category B degree, Biomedical Science, to Category A, thereby expanding the admission criteria of the patent bar. In keeping pace with ever-evolving technology and related teachings that qualify someone to practice before the USPTO, this update will encourage broader participation of prospective patent practitioners. This action is being taken pursuant to the USPTO’s periodic review of Category B degrees and the transition of commonly accepted Category B degrees to Category A on a predetermined timeframe, namely every three years.

DATES: The General Requirements Bulletin for Admission to the Examination for Registration to Practice

in Patent Cases Before the United States Patent and Trademark Office incorporating the proposed updates will be published and become effective as of August 11, 2026.

FOR FURTHER INFORMATION CONTACT:

Kimberly C. Kelleher, Deputy General Counsel for Enrollment and Discipline and Director of the Office of Enrollment and Discipline, by telephone at 571–272–4097 or by email at oed@uspto.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Director of the USPTO has statutory authority to require a showing by patent practitioners that they possess “the necessary qualifications to render applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.” 35 U.S.C. 2(b)(2)(D). The courts have determined that the USPTO Director bears primary responsibility for protecting the public from unqualified practitioners.

Pursuant to that responsibility, USPTO regulations provide that registration to practice in patent matters before the USPTO requires a practitioner to, *inter alia*, demonstrate possession of scientific and technical qualifications.¹ The role of patent practitioners with scientific and technical backgrounds in providing full and clear patent specifications and claims has long been acknowledged. The USPTO publishes the General Requirements Bulletin (GRB) that sets forth guidance for establishing possession of scientific and technical qualifications. The GRB also provides applicants with instructions on how to apply to become a patent practitioner. The GRB is available at: www.uspto.gov/sites/default/files/documents/OED_GRB.pdf.

As established in the GRB, prospective patent practitioners must, among other things, successfully complete the registration examination in order to practice before the Office in all patent matters. The GRB lists three categories of scientific and technical qualifications that typically make one eligible for admission to the registration examination: (1) Category A for specified bachelor’s, master’s, and doctor of philosophy degrees, (2) Category B for other degrees with technical and scientific training, and (3)

¹ Legal representation before Federal agencies is generally governed by the provisions of 5 U.S.C. 500. That statute, however, provides a specific exception for representation in patent matters before the USPTO. 5 U.S.C. 500(e). See 35 U.S.C. 2(b)(2)(D) [formerly 35 U.S.C. 31].

Category C for individuals who rely on practical engineering or scientific experience by demonstrating that they have passed the Fundamentals of Engineering test.² If a candidate for registration does not qualify under any of the categories listed in the GRB, the USPTO will conduct an independent review for compliance with the scientific and technical qualifications pursuant to 37 CFR 11.7(a)(2)(ii).

The USPTO continues to evaluate the list of typically qualifying training set forth in the GRB. These evaluations seek to clarify guidance on what will satisfy the scientific and technical qualifications requirement, to identify possible areas of improved administrative efficiency, and to clarify instructions where warranted. To that end, in 2021 the USPTO published a notice of administrative updates to the GRB including moving then commonly accepted Category B degrees to Category A. *See Administrative Updates to the General Requirements Bulletin for Admission to the Examination for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office*, 86 FR 52652 (September 22, 2021).

Further, in 2022 the USPTO published a notice requesting comments on proposed updates to the GRB, including moving commonly accepted Category B degrees to Category A on a routine basis, namely every three years. *See Request for Comments on Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office*, 87 FR 63044 (October 18, 2022). The USPTO received supportive comments from intellectual property organizations, industry, individual patent practitioners, and the general public. The USPTO implemented the proposals, including to review and evaluate Category B degrees and move commonly accepted Category B degrees to Category A every three years. *See Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office*, 88 FR 31249 (May 16, 2023).

It has been three years since the USPTO implemented that proposal. Thus, the USPTO has reviewed and evaluated Category B degrees from the last three years and is moving one additional Category B degree, Biomedical Science, to Category A. This

notice provides clarity to the public and does not have the force and effect of law. While the criteria for admission to practice in patent matters is generally described in 37 CFR 11.7, that provision does not set forth the specific scientific and technical criteria for admission.

Review of Commonly Accepted Category B Degrees and Transition to Category A

In early 2020, the Office undertook a review of Category B applications to identify bachelor's degrees that are routinely accepted as demonstrating the requisite scientific and technical qualifications. In September 2021, the Office added 14 of these degrees, which were previously evaluated under the criteria listed in Category B, to Category A. In May 2023, the Office determined to undertake a review of Category B applications to identify bachelor's, master's, and Ph.D. degrees that are routinely accepted as demonstrating the requisite scientific and technical qualifications on a routine basis, namely every three years.

The review of degrees is ongoing and is currently based on applicant data from those applying for the registration exam and data about degree categories that is publicly available. Category A is not an exhaustive list of all degrees that would qualify an individual to take the registration exam, and the USPTO's practice is to accept degrees when the accompanying transcript demonstrates equivalence to a Category A degree (for example, molecular cell biology may be equivalent to biology). *See* OED Frequently Asked Questions (FAQs), available at: <https://www.uspto.gov/learning-and-resources/patent-and-trademark-practitioners/oed-frequently-asked-questions-faqs>.

A determination of equivalency does not mean that the degrees are the same. Rather, the determination is a conclusion that the degrees have the same or similar scientific and technical rigor required to provide patent applicants valuable service.

Given the fast pace at which technology and related teachings evolve, the USPTO is reviewing commonly accepted Category B degrees and moving them to Category A on a three-year timeframe, beginning from the publication date of the May 16, 2023 Notice. *See Expanding Admission Criteria for Registration to Practice in Patent Cases Before the United States Patent and Trademark Office*, 88 FR 31249 (May 16, 2023). Conducting such reviews on a three-year cycle provides adequate time for the USPTO to gather, review, and analyze the degree data from a sufficient number of applicants

for the registration exam. Once the potential degrees that may be transferred from Category B to Category A are ascertained based on applicant data, the degrees are assessed to determine whether they present sufficient technical and scientific qualifications necessary to render patent applicants valuable service. *See Premysler v. Lehman*, 71 F.3d 387, 389 (Fed. Cir. 1995).

In early 2026, a review of applicants with Category B degrees was conducted. With the understanding that Category A cannot be an exhaustive list of all degrees that would qualify an individual to take the registration exam, the Office is expanding the list of Category A degrees to expressly include the following degree that is routinely accepted under Category B: Biomedical Science. Listing this Category B degree under Category A will improve operational efficiency, streamline the application process for prospective patent practitioners, and encourage broader participation of prospective patent practitioners.

Other degree categories were considered but are not being included under Category A at this time to allow for the additional collection and evaluation of data. For example, the addition of degrees in Artificial Intelligence (AI) was considered. In the past three calendar years, however, there has only been one applicant with an Applied AI degree and no applicants with AI degrees. Further, the degree category of AI is not one that is currently awarded by most institutions or that many applicants have. While AI degrees are starting to be developed and implemented at universities, more data is needed for review and analysis. The AI degrees being implemented at universities currently vary in curriculum scope and complexity, with programs including many non-technical courses. As the AI degrees develop at universities, if the USPTO determines that an AI degree is equivalent to a Bachelor of Science in Computer Science degree, it may then be considered under Category A. The USPTO will continue to monitor, collect and analyze data on degrees, including AI degrees.

John A. Squires,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2026–16315 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–16–P

² The GRB also includes Category D for specified bachelor's, master's, and doctor of philosophy degrees in a recognized design subject, which typically makes one eligible for admission to the registration examination in order to practice before the Office in design patent matters only.

COMMODITY FUTURES TRADING COMMISSION**Innovation Advisory Committee**

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on August 20, 2026, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time, the Innovation Advisory Committee (IAC or Committee) will hold an in-person meeting for IAC members, with options for the public to attend virtually. At this meeting, the IAC will discuss topics including crypto assets, artificial intelligence, and prediction markets, along with recent CFTC activity in these markets.

DATES: The meeting will be held virtually for the public on August 20, 2026, from 1 p.m. to 4 p.m. Eastern Daylight Time. Please note that the meeting may end early if the IAC has completed its business. Members of the public who wish to submit written statements in connection with the meeting should submit them by Thursday, August 27, 2026.

ADDRESSES: The meeting will take place virtually. Information to access the meeting is provided below. You may submit comments, specifically referencing “Innovation Advisory Committee,” by any of the following methods:

- *Regulations.gov:* Go to <https://www.regulations.gov> and press the “Search” button, then proceed as follows:

1. Under Refine Documents Results—check the box to “Only show documents open for comment”;
2. Under Agency—select “See More” and check the box for “Commodity Futures Trading Commission,” then press the Apply button; and
3. Identify the IAC meeting in the list of CFTC documents open for comment, press the “Comment” button to open the submission form, and follow the instructions on the form.

Alternatively, if you are viewing this proposal on www.federalregister.gov, click the “Submit A Public Comment” button at the top of the page to open the comment form. Follow the instructions on the form to submit your comment to Regulations.gov.

- *Mail:* Send to—Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- *Hand Delivery/Courier:* Address to—CFTC Comment Submission, Attn: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

Please submit your comments using only one of these methods. To avoid possible delays with mail or in-person deliveries, submissions through Regulations.gov are encouraged. All comments must be submitted in English or, if not, accompanied by an English translation. Do not include in your comment text or attachments any personal identifying information or business information that you do not want published online. Comments (regardless of submission method) will be published without review for, and without removal of, any personal identifying information or information your business may consider confidential.

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, or redact all or any part of your comment submission. The CFTC also reserves the right, without further notification, to refuse to publish or to remove from public view all or any part of your submission to the extent it contains content inappropriate for publication in a comment file, such as—without limitation—obscene language, threats of violence, solicitations for commercial sales or illegal activity, or obvious spam. If a submission that is refused for or withdrawn from publication because of inappropriate content also contains comments regarding the IAC meeting, such submission will be retained in the record for the matter and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Michael J. Passalacqua, Senior Advisor to Chairman Michael S. Selig and IAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC; (771) 241–2301; or IAC@CFTC.gov.

SUPPLEMENTARY INFORMATION:

Registration for the meeting is not required. Members of the public may listen to the meeting by calling a domestic or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll-Free Numbers: (833) 435–1820 or (833) 568–8864.

Domestic Toll Number: +1 (646) 828–7666 US (New York).

International Toll- and Toll-Free Numbers: Will be posted on the CFTC’s website, <https://cftc.gov.zoomgov.com/join/aeJQZlvbCg>.

Call-In/Webinar ID: 165 371 7748.

Pass Code/Pin Code: 172798.

Members of the public may also view a live webcast of the meeting via the www.cftc.gov website. The meeting agenda may change to accommodate other Committee priorities. For agenda updates, please visit <https://www.cftc.gov/About/AdvisoryCommittees/IAC>.

After the meeting, a transcript of the meeting will be published through a link on the CFTC’s website, <https://www.cftc.gov>. Persons requiring special accommodations to attend the virtual meeting because of a disability should notify the contact person above.

(Authority: 5 U.S.C. 1009(a)(2).)

Dated: August 7, 2026.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2026–16328 Filed 8–10–26; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG26–287–000.

Applicants: Dolet Hills Solar, LLC.

Description: Dolet Hills Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/5/26.

Accession Number: 20260805–5239.

Comment Date: 5 p.m. ET 8/26/26.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL14–12–016; ER17–215–000.

Applicants: Midcontinent Independent System Operator, Inc., Great River Energy, South Mississippi Electric Power Association, Association of Businesses Advocating Tariff Equity, et al. v. Midcontinent Independent System Operator, Inc., et al.

Description: Refund Report of Midcontinent Independent System Operator, Inc. under ER17–215, et al.

Filed Date: 7/24/26.

Accession Number: 20260724–5432.

Comment Date: 5 p.m. ET 8/14/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2128–006; ER21–2129–006; ER22–529–007; ER12–21–032; ER11–2211–020; ER11–2209–020; ER11–2210–020; ER11–2206–020; ER11–2207–020; ER13–1150–018; ER13–1151–018; ER23–2406–005; ER11–2855–034; ER21–1923–007; ER12–1238–014; ER16–2527–011; ER18–814–011; ER13–1562–015; ER24–139–004; ER19–1200–018; ER16–355–014; ER16–141–017; ER12–1239–014; ER23–200–003; ER23–1577–006; ER23–175–008; ER24–3059–005; ER13–1991–042; ER13–1992–042; ER10–2385–017; ER11–3727–026; ER16–853–010; ER25–3426–003; ER25–3144–003; ER16–855–010; ER16–856–010; ER16–857–010; ER10–2346–017; ER10–2812–023; ER10–1291–030; ER10–2843–022; ER20–486–011; ER25–1220–004; ER25–3427–003; ER16–858–010; ER16–860–010; ER12–1711–026; ER25–2809–003; ER16–861–010; ER10–2368–014; ER10–2353–017; ER25–1316–003; ER19–672–011; ER10–2383–017; ER10–2384–015; ER25–2977–003; ER11–4351–019; ER17–361–011; ER20–2014–006; ER17–360–011; ER17–362–011; ER10–2382–015; ER11–2856–034; ER16–61–011; ER16–63–010; ER17–2336–014; ER10–2357–015; ER19–1061–011; ER19–1062–007; ER19–843–011; ER19–1063–011; ER19–844–007; ER14–2820–015; ER14–2821–015; ER11–2857–034; ER16–64–011; ER10–2369–014; ER23–2403–005; ER10–2381–019; ER25–687–003; ER10–2361–016; ER17–539–010; ER17–540–010; ER18–2033–007; ER21–963–008; ER10–1625–012.

Applicants: Tenaska Georgia Partners, L.P., Silverstrand Grid, LLC, Saavi Energy Solutions, LLC, Wildwood Solar II, LLC, Wildwood Solar I, LLC, Wildorado Wind, LLC, Washington Wind LLC, Walnut Creek Energy, LLC, Victory Pass I, LLC, Taloga Wind, LLC, Tallbear Seville LLC, Sun City Project LLC, Spring Canyon Energy III LLC, Spring Canyon Energy II LLC, Solar Roadrunner LLC, Solar Borrego I LLC, Solar Blythe LLC, Solar Avra Valley LLC, Solar Alpine LLC, Sleeping Bear, LLC, Shoreham Solar Commons LLC, Seville Solar Two, LLC, Seville Solar One LLC, Sand Drag LLC, San Juan Mesa Wind Project, LLC, Rio Bravo Solar II, LLC, Rio Bravo Solar I, LLC, Rattlesnake Flat, LLC, Pumpjack Solar I, LLC, Pinnacle Wind, LLC, Mount Storm Wind LLC, Mountain Wind Power, LLC, Mountain Wind Power II LLC, Marsh Landing LLC, Luna Valley Solar I, LLC, Lookout WindPower LLC, Laredo Ridge Wind, LLC, Iron Springs Solar, LLC, Iron Springs BESS LLC, High Plains

Ranch II, LLC, Granite Mountain Solar West, LLC, Granite Mountain Solar East, LLC, Granite Mountain BESS East LLC, Golden Fields Solar IV Bess LLC, Golden Fields Solar III, LLC, GenConn Middletown LLC, GenConn Energy LLC, GenConn Devon LLC, Forward WindPower LLC, Escalante Solar III, LLC, Escalante Solar II, LLC, Escalante Solar I, LLC, Escalante BESS I LLC, Enterprise Storage LLC, Enterprise Solar, LLC, El Segundo Energy Center LLC, Elkhorn Ridge Wind, LLC, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Dan's Mountain Wind Force, LLC, Daggett Solar Power 3 LLC, Daggett Solar Power 2 LLC, Daggett Solar Power 1 LLC, Crofton Bluffs Wind, LLC, Conetoe II Solar, LLC, Colonial Eagle Solar, LLC, Clearway Power Marketing LLC, Cedar Creek Wind, LLC, Catalina Solar Lessee, LLC, Carlsbad Energy Center LLC, Caprock Solar I LLC, Broken Bow Wind, LLC, Black Rock Wind Force, LLC, Avenal Park LLC, Arica Solar, LLC, Alta Wind XI, LLC, Alta Wind X, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Alta Wind III, LLC, Alta Wind II, LLC, Alta Wind I, LLC, Agua Caliente Solar, LLC, 299F2M WHAM8 SOLAR, LLC, 276FED WHAM8 SOLAR, LLC, OHAM WHAM8 SOLAR, LLC.

Description: Notice of Change in Status of OHAM WHAM8 SOLAR, LLC, et al.

Filed Date: 7/28/26.

Accession Number: 20260728–5177.

Comment Date: 5 p.m. ET 8/18/26.

Docket Numbers: ER26–2318–000.

Applicants: Alcoa Power Generating Inc., Bracewell LLP.

Description: Refund Report: Alcoa Power Generating Inc. submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 8/5/26.

Accession Number: 20260805–5205.

Comment Date: 5 p.m. ET 8/26/26.

Docket Numbers: ER26–2781–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment: 4193R3 City of Paris NITSA NOA to be effective 9/1/2026.

Filed Date: 8/6/26.

Accession Number: 20260806–5079.

Comment Date: 5 p.m. ET 8/27/26.

Docket Numbers: ER26–3431–000.

Applicants: Lost Island Wind Energy, LLC.

Description: Request for Prospective Tariff Waiver, et al. of Lost Island Wind Energy, LLC.

Filed Date: 7/31/26.

Accession Number: 20260731–5306.

Comment Date: 5 p.m. ET 8/21/26.

Docket Numbers: ER26–3441–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule FERC No. 443 to be effective 10/5/2026.

Filed Date: 8/5/26.

Accession Number: 20260805–5215.

Comment Date: 5 p.m. ET 8/26/26.

Docket Numbers: ER26–3442–000.

Applicants: Camp Creek Wind, LLC.

Description: Initial Rate Filing: Camp Creek Wind, LLC—Baseline Filing to be effective 8/6/2026.

Filed Date: 8/5/26.

Accession Number: 20260805–5218.

Comment Date: 5 p.m. ET 8/26/26.

Docket Numbers: ER26–3443–000.

Applicants: Dolet Hills Solar, LLC.

Description: § 205(d) Rate Filing: Application for Market-Based Rate Authority to be effective 8/21/2026.

Filed Date: 8/5/26.

Accession Number: 20260805–5224.

Comment Date: 5 p.m. ET 8/26/26.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: August 6, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–16321 Filed 8–10–26; 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 exempt wholesale generator filings:

Docket Numbers: EG26–288–000.
Applicants: Canal Generating LLC.
Description: Canal Generating LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 8/6/26.
Accession Number: 20260806–5113.
Comment Date: 5 p.m. ET 8/27/26.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1742–013; ER21–2406–010; ER20–2510–011; ER13–2490–017; ER24–1282–002; ER22–734–009; ER19–2671–012; ER20–2512–011; ER22–2427–007; ER22–2425–007; ER22–2421–007; ER22–2423–007; ER23–2186–004; ER23–2190–004; ER23–2188–004; ER21–2407–010; ER22–2028–008; ER19–2595–012; ER21–2408–010; ER19–2670–012; ER21–2638–010; ER20–2663–011; ER21–2409–010; ER23–1237–005; ER17–311–013; ER20–1073–011; ER24–1284–003; ER24–1285–003.

Applicants: SR Toombs Lessee, LLC, SR Toombs, LLC, SR Terrell, LLC, SR South Loving LLC, SR Snipesville III, LLC, SR Snipesville II, LLC, SR Snipesville, LLC, SR Perry, LLC, SR Meridian III, LLC, SR Lumpkin, LLC, SR Hazlehurst III, LLC, SR Hazlehurst, LLC, SR Georgia Portfolio II Lessee, LLC, SR DeSoto III Lessee, LLC, SR DeSoto III, LLC, SR DeSoto II, LLC, SR DeSoto I Lessee, LLC, SR DeSoto I, LLC, SR Clay, LLC, SR Cedar Springs, LLC, SR Baxley, LLC, SR Arlington II, LLC, SR Arlington, LLC, SR Ailey, LLC, Simon Solar, LLC, Odom Solar LLC, Lancaster Solar LLC, Hattiesburg Farm, LLC.

Description: Notice of Non-Material Change in Status of Hattiesburg Farm, LLC, et al.

Filed Date: 7/29/26.
Accession Number: 20260729–5187.
Comment Date: 5 p.m. ET 8/19/26.

Docket Numbers: ER26–3444–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Goley Energy Center LGIA Filing to be effective 7/28/2026.

Filed Date: 8/6/26.
Accession Number: 20260806–5081.
Comment Date: 5 p.m. ET 8/27/26.

Docket Numbers: ER26–3445–000.
Applicants: NSTAR Electric Company.

Description: § 205(d) Rate Filing: NSTAR–HQUS Transfer Agreement (MMWEC Use Rights) to be effective 10/31/2026.

Filed Date: 8/6/26.
Accession Number: 20260806–5116.

Comment Date: 5 p.m. ET 8/27/26.
Docket Numbers: ER26–3447–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions for FERC Order No. 831 Offer Caps and Specified GHG Adder Updates to be effective 12/31/9998.

Filed Date: 8/6/26.
Accession Number: 20260806–5118.
Comment Date: 5 p.m. ET 8/27/26.

Docket Numbers: ER26–3448–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Update SHOC Multiplier and Conduct Threshold to be effective 12/31/9998.

Filed Date: 8/6/26.
Accession Number: 20260806–5121.
Comment Date: 5 p.m. ET 8/27/26.

Docket Numbers: ER26–3449–000.
Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Markets+ Tariff for the Business Day Definition to be effective 12/31/9998.

Filed Date: 8/6/26.
Accession Number: 20260806–5122.
Comment Date: 5 p.m. ET 8/27/26.

Docket Numbers: ER26–3450–000.
Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 346 to be effective 10/6/2026.

Filed Date: 8/6/26.
Accession Number: 20260806–5124.
Comment Date: 5 p.m. ET 8/27/26.

The filings are accessible in the Commission's eLibrary system by clicking on the links or 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: August 6, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026–16322 Filed 8–10–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15331–001]

Marlow Hydro, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 3, 2026, the New Hampshire Department of Environmental Services (New Hampshire DES) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Marlow Hydro, LLC, in conjunction with the above captioned project on June 15, 2026. Pursuant to the Commission's regulations,¹ we hereby notify New Hampshire DES of the following dates.

Date of Receipt of the Certification Request: June 15, 2026.

Reasonable Period of Time to Act on the Certification Request: One year, June 15, 2027.

If New Hampshire DES fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

(Authority: 18 CFR 2.1.)

Dated: August 6, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026–16327 Filed 8–10–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210–275]

Appalachian Power Company; Notice of Effectiveness of Withdrawal of Application for Amendment to Water Management Plan

On June 1, 2026, and supplemented July 13, 2026, the Appalachian Power Company, filed an application to amend the Water Management Plan for the

¹ 18 CFR 4.34(b)(5)(iii).

Smith Mountain Project No. 2210. On July 21, 2026, the Appalachian Power Company filed a request to withdraw its request to amend the Water Management Plan application.

No motion in opposition to the request for withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the application became effective on August 5, 2026, and this proceeding is hereby terminated.

(Authority: 18 CFR 2.1)

Dated: August 6, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-16324 Filed 8-10-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP26-1040-000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20260805 Negotiated Rate Filing to be effective 8/6/2026.

Filed Date: 8/5/26.

Accession Number: 20260805-5135.

Comment Date: 5 p.m. ET 8/17/26.

Docket Numbers: RP26-1041-000.

Applicants: Talos Ocho Energy LLC, RE Fund V Holdco II Infrastructure, LLC, Shell Offshore Inc.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al. of Shell Offshore Inc., et al.

Filed Date: 8/5/26.

Accession Number: 20260805-5240.

Comment Date: 5 p.m. ET 8/17/26.

Docket Numbers: RP26-1042-000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Compliance filing: NAESB Version 4.0 Revisions Compliance to be effective 1/1/2027.

Filed Date: 8/6/26.

Accession Number: 20260806-5045.

Comment Date: 5 p.m. ET 8/18/26.

Docket Numbers: RP26-1043-000.

Applicants: Columbia Gulf Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Amendment—VG

Plaquemines 265290-3 to be effective 8/6/2026.

Filed Date: 8/6/26.

Accession Number: 20260806-5050.

Comment Date: 5 p.m. ET 8/18/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: PR26-61-001.

Applicants: DCP Guadalupe Pipeline, LLC.

Description: Amendment Filing: Transmittal letter and clean SOC to be effective 7/1/2026.

Filed Date: 8/5/26.

Accession Number: 20260805-5093.

Comment Date: 5 p.m. ET 8/26/26.

Protest Date: 5 p.m. ET 10/5/26.

Docket Numbers: RP26-939-002.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: Compliance filing: EGTS—2026 Rate Case Compliance Filing to be effective 8/1/2026.

Filed Date: 8/6/26.

Accession Number: 20260806-5038.

Comment Date: 5 p.m. ET 8/18/26.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: August 6, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-16323 Filed 8-10-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2724-035]

City of Hamilton, Ohio; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2724-035.

c. *Dated Filed:* June 26, 2026.

d. *Submitted By:* City of Hamilton, Ohio (City).

e. *Name of Project:* Hamilton Hydroelectric Project (project).

f. *Location:* The project is located on the Great Miami River, Butler County, Ohio.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Kevin Kessler, City of Hamilton, Ohio, Department of Infrastructure—Utility Operations, 345 High Street, 3rd Floor, Hamilton, Ohio 45011; (513) 785-7281; or email at kevin.kessler@hamilton-oh.gov.

i. *FERC Contact:* Casey Knight at (202) 502-8519; or email at amelia.knight@ferc.gov.

j. The City filed its request to use the Traditional Licensing Process on June 26, 2026, and provided public notice of its request on June 28, 2026. In a letter dated August 6, 2026, the Acting Director of the Division of Hydropower Licensing approved the City's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 C.F.R. Part 402. We are also initiating consultation with the Ohio State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The City filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

¹ 18 CFR 385.216(b) (2022).

n. A copy of the PAD may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY).

You may register online at <https://ferconline.ferc.gov/FERConline.aspx> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2724. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2029.

p. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

(Authority: 18 CFR 2.1)

Dated: August 6, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-16325 Filed 8-10-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3255-016]

Lyonsdale Associates, LLC; Notice of Reasonable Period of Time for Water Quality Certification Application

On August 5, 2026, the New York State Department of Environmental Conservation (New York DEC) submitted to the Federal Energy Regulatory Commission (Commission) notice that it received a request for a Clean Water Act section 401(a)(1) water quality certification as defined in 40 CFR 121.5, from Lyonsdale Associates, LLC, in conjunction with the above captioned project on July 31, 2026. Pursuant to the Commission's regulations,¹ we hereby notify New York DEC of the following dates.

Date of Receipt of the Certification Request: July 31, 2026.

Reasonable Period of Time to Act on the Certification Request: One year, July 31, 2027.

If New York DEC fails or refuses to act on the water quality certification request on or before the above date, then the certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

(Authority: 18 CFR 2.1.)

Dated: August 6, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-16326 Filed 8-10-26; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2015-0436; FRL-13286-01-OCSPP]

Agency Information Collection Activities; Proposed Renewal Collection and Request for Comment; Generic Clearance for TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions From Testing Requirement (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces the availability of and solicits public comment on the following Information Collection Request (ICR) that EPA is planning to submit to the Office of Management and Budget (OMB): Generic Clearance for TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions from Testing Requirement (Renewal) (EPA ICR No. 1139.52 and OMB Control No. 2070-0033). This ICR represents a renewal of an existing ICR that is currently approved through March 31, 2027. Before submitting the ICR to OMB for review and approval under the PRA, EPA is soliciting comments on specific aspects of the information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before October 13, 2026.

ADDRESSES: Submit your comments, identified by docket identification (ID)

number Docket ID No. EPA-HQ-OPPT-2015-0436, online at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT:

Katherine Sleasman, Office of Mission Critical Operations (Mail Code 7602M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: 2025661204; email address: Sleasman.Katherine@epa.gov. For general information contact: The TSCA Assistance Information Service Hotline, Goodwill of the Finger Lakes, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

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 estimates of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

¹ 18 CFR 4.34(b)(5)(iii).

II. What information collection activity or ICR does this action apply to?

Title: Generic Clearance for TSCA Section 4 Test Rules, Test Orders, Enforceable Consent Agreements (ECAs), Voluntary Data Submissions, and Exemptions from Testing Requirement (Renewal).

EPA ICR No.: 1139.52.

OMB Control No.: 2070–0033.

ICR Status: This ICR is currently approved through March 31, 2027. Under the PRA, 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 OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR covers the information collection activities associated with the submission of information to EPA pursuant to TSCA section 4 regulatory actions. (15 U.S.C. 2603). Under TSCA, EPA has the authority to issue regulatory actions designed to gather or develop health and safety information and exposure information on chemical substances and mixtures, and to control unreasonable risks associated with new and existing chemical substances. TSCA section 4 authorities allow EPA to require the development of information related to chemicals and the use of prescribed “protocols and methodologies” in order to inform EPA and other federal agencies about chemical risks, which in turn will inform decision makers for purposes of prioritization for risk evaluation, risk evaluation and risk management of those chemicals as necessary.

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Form number(s): 9600–034.

Respondents/affected entities: Entities potentially affected by this ICR are manufacturers (including imports) or processors of chemical substances of mixtures, e.g., entities identified by North American Industrial Classification System Codes 325 and 324.

Respondent's obligation to respond: Mandatory, per 15 U.S.C. 2603.

Estimated number of potential respondents: 353.

Frequency of response: On occasion.

Total estimated average number of responses for each respondent: 1.5.

Total estimated burden: 119,546 hours (three-year total). Burden is defined at 5 CFR 1320.3(b).

Total estimated costs: \$10,802,906 (three-year total), includes \$202,722,312 annualized capital investment or maintenance and operational costs.

III. Are there changes in the estimates from the last approval?

There is an increase of 7,451 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This change, reflects EPA's updating of number of actions per year using the assumptions in the 2024 TSCA Fees Rule (89 FR 12961 February 21, 2024 (FRL–79110–05–OCSP)). Based upon revised estimates, the estimated number of test orders initiated per year increased from 10 to 14, while both the number of test rules and enforceable consent agreements decreased from 0.5 to 0.33 per year. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 5, 2026.

Douglas M. Troutman,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2026–16311 Filed 8–10–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 361583]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and 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 October 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–XXXX.

Title: Upper C-band Clearinghouse and Relocation Coordinator Real-Time Disclosure of Communications Required

by Sections 27.1413(c)(10) and 27.1414(c)(4)(i).

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 2 respondents and up to 12 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 2, 4(i), 4(j), 5(c), 201, 302, 303, 304, 307(e), and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 201, 302, 303, 304, 307(e), 309.

Total Annual Burden: 12 hours.

Total Annual Cost: No cost.

Needs and Uses: Pursuant to Congress' directive in Public Law 119–21, 40002(b)(2), 139 Stat. 72 (2025), that it grant licenses for spectrum in the 3.98–4.2 GHz band (Upper C-band) through a system of competitive bidding no later than July 4, 2027, on July 22, 2026, the Commission adopted the *Upper C-band Report and Order*, FCC 26–46, in which it reconfigured 160 megahertz of spectrum in the 3.98–4.14 GHz portion of the Upper C-band in order to make new flexible-use licenses in that band available in a Commission auction that is tentatively scheduled to begin in April 2027.

Prior to the Commission's adoption of the *Upper C-Band Report and Order*, the 4.0–4.2 GHz portion of the Upper C-band was allocated for non-Federal use on a primary basis for Fixed Satellite Service (FSS) and Fixed Service (FS) links throughout the United States, although FS operations were sunset in the contiguous United States across the entire C-band as part of the Lower C-band transition. Space station operators use 4.0–4.2 GHz nationwide to provide space-to-Earth (*i.e.*, downlink) signals of various bandwidths to licensed transmit-receive, registered receive-only, and unregistered receive-only earth stations throughout the United States. In addition, the 3.98–4.0 GHz portion of the Upper C-band in the contiguous United States was reserved as a guard band to protect operations in the Upper C-band from potential harmful interference. In the *Upper C-band Report and Order*, the Commission modified the licenses and market access authorizations of incumbent FSS operators to clear the Upper C-band for new flexible-use terrestrial wireless

operations in the contiguous United States.

The Commission established a framework in the *Upper C-band Report and Order* for relocating impacted incumbent FSS operations within the contiguous United States and for requiring that new Upper C-band licensees reimburse eligible FSS incumbents' reasonable and necessary transition costs. To facilitate a rapid and predictable transition of incumbent FSS services in the Upper C-band, the *Upper C-band Report and Order* establishes a Primary Transition Deadline of December 30, 2030 for the relocation of all incumbent FSS operations in the top 75 Partial Economic Areas (PEAs) in the contiguous United States, and a Final Transition Deadline of June 30, 2031 for the entire 160 megahertz in all remaining PEAs in the contiguous United States. Terrestrial wireless operations may begin in PEAs subject to the Final Transition Deadline as of July 1, 2031 or once all eligible space station operators have had their Certifications of Completion for those PEAs validated and the associated incentive payments have been made by the new Upper C-band wireless licensees.

In keeping with the approach used to relocate incumbents in the Lower C-band, the Commission concluded in the *Upper C-band Report and Order* that an independent third-party clearinghouse (Upper C-band Clearinghouse) should be used to oversee the cost-related aspects of the FSS transition, and that the logistics of clearing FSS operations from 4.0–4.16 GHz should be structured around an eligible space station operator-led process facilitated by a Relocation Coordinator (RC) that will use its expertise to track and supplement transition efforts across all eligible space station operators to ensure a timely and coordinated relocation process.

To protect the fair and level playing field for applicants to participate in the Commission's auction for licenses in the Upper C-band, the Upper C-band Clearinghouse and the RC are each required to make real-time disclosures of the content and timing of and the parties to communications, if any, from or to such applicants, as applicants are defined by the Commission's rule prohibiting certain auction-related communications, 47 CFR 1.2105(c)(5)(i), whenever the prohibition in 47 CFR 1.2105(c) applies to competitive bidding for licenses in the Upper C-band. See 47 CFR 27.1413(c)(10), 27.1414(c)(4)(i) (as adopted in the *Upper C-band Report and Order*). The Commission is seeking approval for a new information collection to permit

the Upper C-band Clearinghouse and the RC to make the required real-time disclosure of any such communications, as necessary.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–16298 Filed 8–10–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0501; FR ID 361611]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice; 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 September 10, 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: 3060–0501.

Title: Section 73.1942 Candidates Rates; Section 76.206 Candidate Rates; Section 76.1611, Political Cable Rates and Classes of Time.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 17,561 respondents; 403,610 responses.

Estimated Time per Response: 0.5 hours to 20 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Semi-annual requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 927,269 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 315 of the Communications Act directs broadcast stations and cable operators to charge political candidates the "lowest unit charge of the station" for the same class and amount of time for the same period, during the 45 days preceding a primary or runoff election and the 60 days preceding a general or special election.

The information collection requirements contained in 47 CFR 73.1942 require broadcast licensees and the requirements contained in 47 CFR 76.206 require cable television systems to disclose any station practices offered to commercial advertisers that enhance the value of advertising spots and different classes of time (immediately preemptible, preemptible with notice, fixed, fire sale, and make good). These rule sections also require licensees and cable TV systems to calculate the lowest unit charge. Broadcast stations and cable systems are also required to review their advertising records throughout the election period to determine whether compliance with these rule sections require that candidates receive rebates or credits.

The information collection requirements contained in 47 CFR 76.1611 require cable systems to disclose to candidates information about rates, terms, conditions and all value-enhancing discount privileges offered to commercial advertisers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–16299 Filed 8–10–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 361222]

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a modified system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to modify an existing system of records, FCC/CGB–1, Informal Complaints, Inquiries, and Requests for Dispute Assistance, subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency. The Commission uses records in this system to handle and process informal complaints, inquiries, and requests for dispute assistance received from individuals, groups, and other entities. This modification makes various necessary changes and updates to accommodate new uses of the system to share certain anonymized or de-identified complaint data with the Federal Trade Commission's (FTC) Consumer Sentinel Network.

DATES: This modified system of records will become effective on August 11, 2026. Written comments on the routine uses are due by September 10, 2026. The routine uses in this action will become effective on September 10, 2026, unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Shana Yates, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or privacy@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Shana Yates, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, or privacy@fcc.gov.

SUPPLEMENTARY INFORMATION: This notice serves to update and modify the FCC/CGB–1 system of records as a result of necessary changes and updates. The substantive changes and modifications to the previously published version of the FCC/CGB–1 system of records include:

1. Updating the authorities listed in Authority for Maintenance of the System;
2. Updating and/or revising language in the following routine use (listed by the routine use number provided in this notice): (9) Congressional Inquiries; and

3. Adding one new routine use: (3) Complaint Data about Robocalling, which will accommodate the disclosure of certain complaint data (anonymized and de-identified to the extent practical) with the FTC's Consumer Sentinel Network (Sentinel).

SYSTEM NAME AND NUMBER:

FCC/CGB-1, Informal Complaints, Inquiries, and Requests for Dispute Assistance.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Consumer and Governmental Affairs Bureau (CGB), Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554.

SYSTEM MANAGER:

CGB, FCC, 45 L Street NE, Washington, DC 20554.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 1, 4, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 403, 507, 710, 713, 716, 717, 718, and 1754 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 206, 208, 225, 226, 227, 228, 255, 258, 301, 303, 309(e), 312, 362, 364, 386, 403, 507, 610, 613, 617, 618, 619, and 1754; and Sections 504 and 508 of the Rehabilitation Act, 29 U.S.C. 794 and 794d.

PURPOSES OF THE SYSTEM:

This system will collect from individuals, groups, and other entities informal complaints, inquiries, and requests for dispute assistance and related supporting materials; company replies to informal consumer complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries; and other submissions made by individuals, groups, or other entities. Collecting and maintaining these types of information allows staff access to documents necessary for key activities discussed in this SORN, including processing informal complaints, inquiries, and requests for dispute assistance; analyzing effectiveness and efficiency of related FCC programs and informing future rule- and policy-making activity; and improving staff efficiency. Records in this system are available for public inspection, after redaction of information that could identify the complainant or correspondent, including the complainant's name, address, telephone number, fax number, and/or email address.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and individual representatives of groups or other entities who make or have made, or are responding to, informal consumer complaints, inquiries, or requests for dispute assistance, as well as Commission letters regarding such complaints, requests, and inquiries on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized information contained in the system including inquiries, requests for dispute assistance, informal consumer complaints, and related supporting information, including personal contact information or other identifying information provided by individuals, groups, or other entities, which may include voluntarily provided demographic information; company replies, including contact information, to informal consumer complaints, requests, inquiries, and Commission letters regarding such complaints, requests, and inquiries; and submissions that individuals, groups, or other entities make, including, but not limited to, submissions made by letter, fax, telephone, email, and via the FCC web portal for consumer complaints.

RECORD SOURCE CATEGORIES:

Information in this system is provided by individuals, groups, and other entities who make or have made, or are responding to, informal consumer complaints, inquiries, or requests for dispute assistance, as well as Commission letters regarding such complaints, requests, and inquiries on matters arising under the Communications Act of 1934, as amended, and the Rehabilitation Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside of the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Informal Consumer Complaints—When a record in this system involves an informal consumer complaint filed against a service provider (e.g., broadband, telecommunications, broadcast, multi-channel video program, Voice over Internet-Protocol (VoIP),

etc.), the complaint may be forwarded to the subject company for a response, pursuant to Sections 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

2. Informal Complaints, Inquiries, and Requests for Dispute Assistance about Accessibility for Individuals with Disabilities—When a record in this system involves an informal complaint, inquiry, or request for dispute assistance involving or filed against a company about accessibility for individuals with disabilities, the inquiry, request, or informal complaint may be forwarded to the subject company for a response, pursuant to Section 4(i), 208, and 303(r) of the Communications Act of 1934, as amended.

3. Complaint Data about Robocalling—When a record in this system involves an informal complaint or inquiry involving a robocall, the complaint data (excluding to the extent practical complainant name, contact information, and other PII) may be uploaded to the FTC's Consumer Sentinel Network to promote Federal, State, local, Tribal law, or international (i.e., non-domestic) law enforcement efforts to combat illegal robocalling, pursuant to Sections 227 and 403 of the Communications Act of 1934, as amended.

4. Public Disclosure—When an order or other published Bureau- or Commission-level action (including Notices of Proposed Rulemaking, Reports and Orders, Notices of Apparent Liability, Forfeiture Orders, Consent Agreements, Notice Letters, or all other actions released by a Bureau or the Commission) includes consideration of informal complaints (including informal complaints related to accessibility for individuals with disabilities) filed against a company, the complainant's name may be made public in that order or Commission action. Where a complainant in filing his or her complaint explicitly requests confidentiality of his or her name from public disclosure, the Commission will endeavor to protect such information from public disclosure. Complaints that contain requests for confidentiality may be dismissed if the Commission determines that the request impedes the Commission's ability to investigate and/or resolve the complaint.

5. Public Disclosure of Anonymized Complaint Data—The Commission will make publicly available anonymized or otherwise de-identified complaint data in order to promote transparency and empower third parties to assist the Commission in identifying trends.

6. Law Enforcement and Investigation—Records may be

disclosed to the appropriate Federal, State, local, Tribal agency, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

7. Litigation—Records may be disclosed to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and the use of such records by the DOJ is for a purpose that is compatible with the purpose for which the FCC collected the records.

8. Adjudication—Records may be disclosed in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation, and that the use of such records is for a purpose that is compatible with the purpose for which the agency collected the records.

9. Congressional Inquiries—Records may be provided to a Congressional office in response to an inquiry from that Congressional office made at the written request of the individual to whom the records pertain.

10. Government-wide Program Management and Oversight—Records may be disclosed to the DOJ to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

11. Breach Notification—Records may be disclosed to appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to individuals,

the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

12. Assistance to Federal Agencies and Entities Related to Breaches—Records may be disclosed to another Federal agency or Federal entity when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

13. Non-Federal Personnel—Records may be disclosed to non-Federal personnel, including contractors, FCC program administrators (including USAC), other vendors (e.g., identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a contract, service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This is a cloud-based computing system that utilizes the provider-supported application on the provider's cloud network (Software as a Service or SaaS). Any paper documents that CGB receives are scanned into the system upon receipt, and then the paper documents are destroyed.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, e.g., first or last name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is maintained and disposed of in accordance with the NARA General Records Schedule 6.5, Item 020 (DAA–0173–2019–0002).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within the FCC's or a

vendor's accreditation boundaries and maintained in a database housed in the FCC's or vendor's computer network databases. Access to the electronic files is restricted to authorized employees and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC's and third-party's privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), OMB, and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedures below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to privacy@fcc.gov. Individuals requesting access or amendment of records must also comply with the FCC's Privacy Act regulations regarding verification of identity as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY: 89 FR 20203 (MARCH 21, 2024).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2026–16294 Filed 8–10–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 26–820; FR ID 361582]

Consumer Protection and Accessibility Advisory Committee; Announcement of Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission announces the next meeting of its Consumer Protection and Accessibility Advisory Committee (CPAAC or Committee).

DATES: Wednesday, September 16, 2026. The meeting will come to order at 9:00 a.m. Eastern Time.

ADDRESSES: The meeting will be held in person at the Federal Communications Commission, Commission Meeting Room, 45 L Street NE, Washington, DC. The meeting will also be streamed online at www.fcc.gov/live.

FOR FURTHER INFORMATION CONTACT: David M. Pérez or Joshua Mendelsohn, Designated Federal Officers, Federal Communications Commission, via email at CPAAC@fcc.gov.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. The meeting will be webcast with sign language interpreters and open captioning at www.fcc.gov/live. Members of the public may submit comments and questions during the meeting either in person if they are attending the meeting or by emailing livequestions@fcc.gov. These comments or questions may be addressed during the public comment period.

Requests for reasonable accommodations or accessible materials for people with disabilities should be submitted via email to fcc504@fcc.gov or by calling the Consumer and Governmental Affairs Bureau at (202) 418-0530. Please provide at least five business days' advance notice; last-minute requests will be accepted but may not be possible to accommodate.

Proposed Agenda: The Committee members are expected to (i) receive updates or reports from the Advancements in Accessible Communications Technologies Working Group (AACTWG) and the Protecting Consumers through Advancements in Robocall Mitigation Efforts Working Group (RMWG); (ii) consider and may vote on recommendations presented by the RMWG; and (iii) discuss any other topics relevant to the CPAAC's work. The meeting agenda will be available at www.fcc.gov/cpaac and may be modified at the discretion of the CPAAC Co-Chairs and Designated Federal Officers.

Federal Communications Commission.

Robert Garza,

Legal Advisor, Consumer and Governmental Affairs Bureau.

[FR Doc. 2026-16273 Filed 8-10-26; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL MARITIME COMMISSION

[FMC-2026-0298]

Renewal of Agency Information Collections; Ocean Transportation Intermediaries; 3072-0018; 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Sixty-day notice; request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the information collection related to Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms. This notice announces a renewal of an existing collection and includes updates to the collection based on reduction in burden hours due to a new electronic platform and an increase in the number of entities required to respond.

DATES: Comments must be submitted on or before October 13, 2026.

ADDRESSES: The Commission is accepting comments using the Federal eRulemaking Portal at www.regulations.gov. The docket for this notice, which includes copies of applicable forms, and submitted comments, can be found at www.regulations.gov/ under FMC-2026-0298. Follow the instructions provided for submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. India Wright, (202) 523-5787, bcl@fmc.gov.

SUPPLEMENTARY INFORMATION: The Commission invites the general public and other Federal agencies to comment on any aspect of the continuing information collection listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We are particularly interested in receiving comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB)

approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

Information Collections Open for Comment

Title: 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

OMB Control Number: 3072-0018.

Form Numbers: FMC-18, FMC-48, FMC-48A, FMC-65, FMC-67, FMC-68, FMC-69, FMC-69A.

Abstract: Sections 40101-41309 of title 46 of the United States Code, as amended, provide that no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the legislative requirements in regulations contained in 46 CFR part 515, including in financial responsibility Forms FMC-48, FMC-67, FMC-68, and FMC-69, Optional Rider Forms FMC-48A and FMC-69A, its related license application Form FMC-18, and the related foreign-based unlicensed non-vessel-operating common carriers (NVOCCs) registration/renewal Form FMC-65.

Type of Review: Extension with change.

Current Actions: There are no changes to the questions asked or the type of information collected. The FMC-18 will remain an electronic form. The current electronic Form FMC-18 is a legacy system that requires the use of Microsoft Internet Explorer. In 2022, Microsoft ended support for Internet Explorer and has since directed users to Microsoft Edge, which offers a built-in "IE mode" for legacy site compatibility but requires the end user to go through a lengthy and sometimes confusing process to enable the feature. The new FMC systems will be implemented utilizing Microsoft Entra ID (Microsoft Entra) and ServiceNow PSDS (ServiceNow). Microsoft Entra is used to securely create and manage ID logins and ServiceNow will be the platform

through which the external user will submit the data collected. Both Microsoft Entra and ServiceNow will also allow the use of modern, Chromium-based browsers like Google Chrome, Microsoft Edge, Firefox, and Safari. Forms FMC-48, FMC-48A, FMC-65, FMC-69 and FMC-69A will be accessed through ServiceNow and primarily be submitted through the automated electronic system but will remain as PDF forms available on the Commission's website. Forms FMC-67 and FMC-68 will continue to be available on the Commission's website as PDF forms and continue to be accepted through email or mail. To further reduce the burden, on amendment applications for Form FMC-18, the form will auto populate with the entity information previously submitted and vetted to reduce the burden of data input and human error from the external user. This same auto populate information will be available to external users that submit Forms FMC-48, FMC-48A, FMC-69 and FMC-69A to reduce the human error commonly associated with the submission of those forms.

Total estimated burden has been amended to reflect changes in Commission estimates.

Needs and Uses: The Commission uses information obtained under part 515 and through Form FMC-18 to determine the qualifications of OTIs and their compliance with 46 U.S.C. subtitle IV and FMC regulations, and to enable the Commission to discharge its duties under 46 U.S.C. subtitle IV by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing. The Commission would also not be able to effectively assess the compliance of foreign-based, unlicensed NVOCCs without the required registration information.

Frequency: This information will be collected on an ad hoc basis. This information is collected when applicants apply for a license or submit a registration, complete the triennial renewal, or when existing licensees or registrants change their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain or maintain a license or registration to advertise, hold themselves out as, or act as an OTI. Under 46 U.S.C. subtitle IV, OTIs may be either an ocean freight forwarder, an NVOCC, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 9,611 entities. Due to an increase in the number of OTIs, the inclusion of Form FMC-65 Change submissions and recordkeeping requirements, the Commission estimates the number of responses as 19,046. The distribution of responses is as follows: 360 New FMC-18 filings; 280 FMC-18 Amendment filings; 1,780 OTI License Renewals; 6,406 FMC-48 and FMC-69 filings; 3 FMC-48A and FMC-69A filings, 744 FMC-65 registration filings; 1,531 FMC-65 Renewal filings; 471 FMC-65 Organizational Change filings; and 9,611 recordkeeping requirements. The Commission does not anticipate receiving any filings of Forms FMC-67 or FMC-68 based on experience in recent years and so the estimate for these forms is zero. These forms are included in this renewal to remain available to respondents when applicable.

Estimated Time per Response: The time per response to complete application Form FMC-18 New filings averages two (2) hours, Form FMC-18 Amendment filings averages one (1) hour, and to complete the triennial renewal is ten (10) minutes. The time to complete a financial responsibility form (FMC-48, FMC-48A, FMC-69, or FMC-69A) is ten (10) minutes. The time to complete a financial responsibility form (FMC-67, FMC-68) averages 20 minutes. The time to complete Form FMC-65 to submit, renew or report changes to a registration as a foreign-based, unlicensed NVOCC averages ten (10) minutes.

Total Annual Burden: 720 person-hours (Form FMC-18, New) + 280 person-hours (Form FMC-18, Amended/Change in Organization) + 303 person-hours (OTI License Renewal) + 2,114 person-hours (Forms FMC-48, 67, 68, 69) + .51 person-hours (Forms FMC 48A, 69A) + 126 person-hours (Form FMC-65) + 260 (Form FMC-65 Renewal) + 80 (Form FMC-65, Organizational Changes) + 2,403 person-hours (Recordkeeping). Total burden equals 6,286.51 hours.

For the Commission,

David Eng,

Secretary.

[FR Doc. 2026-16271 Filed 8-10-26; 8:45 am]

BILLING CODE 6730-02-P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements

under the Shipping Act of 1984.

Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at Secretary@fmc.gov, or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (www.fmc.gov) or by contacting the Office of General Counsel at (202) 523-5740 or GeneralCounsel@fmc.gov.

Agreement No.: 201464-001.

Agreement Name: CMA CGM/NEOLINE North Europe—USEC Service Space Charter Agreement.

Parties: CMA CGM S.A.; and Neoline Armateur.

Filing Party: Draughn Arbona, CMA CGM (America) LLC.

Synopsis: The Amendment adds Belgium and the Netherlands to the geographic scope of the Agreement.

Proposed Effective Date: 9/18/2026.

Location: <https://www2.fmc.gov/eAgreementsSP/Public/AgreementHistory/91649>.

Agreement No.: 201476.

Agreement Name: Terminal

Emissions Sustainability Agreement.

Parties: Everport Terminal Services, Inc.; International Transportation Services, LLC; LBCT LLC; Pacific Terminal Services Company, LLC; SSA Marine, Inc.; TrapPac LLC; West Basin Container Terminal; and Yusen Terminals, LLC.

Filing Party: Gerald Morrissey, Holland & Knight LLP.

Synopsis: The Agreement permits the Parties to discuss impacts and implementation of environmental sustainability requirements and initiatives impacting marine terminals mandated or established by one or more ports, federal, state, or local governments, or other governmental agencies or authorities, including air quality standards and requirements of the California Air Resources Board, local Air Districts and other entities establishing mandates affecting marine terminals (Sustainability Costs), as well as discussion and potential implementation of fees or charges on users of marine terminals in connection with Sustainability Costs as well as discussion and potential implementation of rules, practices and procedures for assessment, collection, and allocation of fees or charges in connection with Sustainability Costs.

The geographic scope of the Agreement applies to marine terminal operators in ports or other locations within the state of California.

Proposed Effective Date: 9/17/2026.

Location: <https://www2.fmc.gov/eAgreementsSP/Public/AgreementHistory/93687>.

Dated: August 7, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026–16345 Filed 8–10–26; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue

NW, Washington, DC 20551–0001, not later than September 10, 2026.

A. Federal Reserve Bank of Chicago (Christopher Koopmans, Senior Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414.

Comments can also be sent electronically to

Comments.applications@chi.frb.org:

1. *Hoosier Heartland State Bancorp Employee Stock Ownership and Savings Plan Trust, Crawfordsville, Indiana*; to acquire additional voting shares up to 25.93 percent of Heartland State Bancorp, and thereby indirectly acquire additional voting shares of Hoosier Heartland State Bank, both of Crawfordsville, Indiana.

Board of Governors of the Federal Reserve System.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2026–16310 Filed 8–10–26; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2026–01; Docket No. 2026–0002, Sequence No. 6]

Midyear Adjustment to the Calendar Year (CY) 2026 Privately Owned Vehicle (POV) Mileage Reimbursement Rates and Standard Mileage Rate for Moving Purposes (Relocation Allowances)

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is making a midyear adjustment to the mileage reimbursement rates for privately owned automobiles (POA), airplanes, and motorcycles as required by statute. GSA is also adjusting the POV mileage rate for moving purposes and the POA rate when a Government-furnished automobile is available and authorized. This information will be available in FTR Bulletin 26–03, which can be found on GSA's website at <https://www.gsa.gov/policy-regulations/regulations/federal-travel-regulation/ftr-and-related-files>.

DATES: *Applicability date:* This notice applies to travel and relocation performed on or after July 1, 2026, through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Mr. William Garrett, Acting Deputy Associate Administrator, Office of Government-wide Policy, at 202–368–8163, or by email at travelpolicy@gsa.gov.

[gsa.gov](https://www.gsa.gov). Please cite Notice of FTR Bulletin 26–03.

SUPPLEMENTARY INFORMATION: GSA is required by statute to set the mileage reimbursement rate for privately owned automobiles (POA) as the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS mileage rate for medical or moving purposes is used to determine the POA rate when a Government-furnished automobile is available and authorized and also represents the privately owned vehicle (POV) standard mileage reimbursement rate for official relocation. On July 13, 2026, the IRS announced a midyear mileage rate adjustment. Therefore, in line with the IRS, GSA is adjusting these rates.

GSA also conducts periodic independent reviews of the cost of travel and the operation of privately owned airplanes and motorcycles to ensure that mileage reimbursement rates reflect current costs. Prompted in part by the IRS midyear rate modifications, GSA has completed new investigations to reflect the current cost of operating privately owned airplanes and motorcycles. GSA is adjusting these rates in line with the results of its investigations.

FTR Bulletin 26–03 establishes and announces the new CY 2026 POV mileage reimbursement rates for official temporary duty and relocation travel effective July 1, 2026, through the remainder of calendar year (CY) 2026. This notice is the only notification to agencies of revisions to the POV mileage rates for official travel and relocation, in addition to the changes posted on GSA's website at <https://www.gsa.gov/policy-regulations/regulations/federal-travel-regulation/ftr-and-related-files> and <https://www.gsa.gov/travel/plan-a-trip/transportation-airfare-rates-pov-rates/private-owned-vehicle-pov-mileage-reimbursement>.

Matthew Batzel,

Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2026–16306 Filed 8–10–26; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-3487-NC]

Medicare Program; Regulatory Alignment for Predictable and Immediate Device (RAPID) Coverage Pathway

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: This notice with comment period provides information to the public on the process CMS will use to provide accelerated Medicare coverage through the Regulatory Alignment for Predictable and Immediate Device (RAPID) coverage pathway for new innovative technologies. The RAPID coverage pathway leverages existing processes to provide expedited national Medicare coverage for eligible technologies. This notice with comment period solicits public comment on the proposed RAPID coverage pathway.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by October 13, 2026.

ADDRESSES: In commenting, refer to file code CMS-3487-NC.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <https://www.regulations.gov/docket/CMS-2026-2674>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3487-NC, P.O. Box 8010, Baltimore, MD 21244-8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-3487-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lori Ashby, (410) 786-6322.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

This notice with comment period describes the process we will use to provide national coverage for eligible technologies under the Regulatory Alignment for Predictable and Immediate Device (RAPID) coverage pathway. The RAPID coverage pathway will provide accelerated Medicare beneficiary access to certain eligible Class II and Class III U.S. Food and Drug Administration (FDA) Breakthrough-designated Devices. CMS will work with FDA to leverage current processes to provide predictable and timely coverage for devices that demonstrate positive clinical health outcomes for the Medicare population in the premarket phase. For these devices, a proposed National Coverage Determination (NCD) will be released on the same day as FDA market authorization. The timing of the release of the proposed NCD will coincide with both FDA market authorization and public availability of the relevant FDA Decision Summary or Summary of Safety and Effectiveness Data (SSED). A final NCD will be issued approximately 60 days later for Class II devices and 90 days later for Class III devices.

The RAPID coverage pathway is designed to align with existing programs and coverage frameworks. Specifically, the RAPID coverage pathway leverages FDA’s existing process to assess clinical outcomes (direct measures of how a patient feels, functions or survives) in proposed investigational device exemption (IDE) studies to facilitate a more efficient and streamlined process for manufacturers seeking Medicare

coverage post-FDA market authorization.

In developing the RAPID coverage pathway, we reflected on the feedback received from interested parties including beneficiaries, advocacy organizations, medical professionals and societies, medical device manufacturers, Federal partners, and others involved in developing innovative medical devices. The RAPID coverage pathway reflects feedback that CMS sought after the November 15, 2021 repeal of the January 2021 Medicare Coverage of Innovative Technology (MCIT) final rule (86 FR 62944).¹ The RAPID coverage pathway also reflects feedback gathered during the MCIT rulemaking process and during the establishment of the Transitional Coverage for Emerging Technologies (TCET) pathway on August 12, 2024 (89 FR 65724).²

The Medicare program serves nearly 70 million beneficiaries and is the largest single health care purchaser in the U.S. As of 2025, approximately 51 percent of the total Medicare beneficiary population, or 34 million Medicare beneficiaries, receive coverage through Original Medicare.³ More than 1.1 billion Original Medicare claims were processed in fiscal year (FY) 2023, comprised of approximately 192 million Part A claims (such as inpatient care in hospitals, skilled nursing facility care, hospice care, and home health care) and 950 million Part B claims (such as doctor and other health care services and outpatient care, durable medical equipment, and some preventive services), providing approximately \$431.5 billion in Original Medicare benefits.⁴

Medicare covers a wide range of items and services. To qualify for Medicare coverage, an item or service generally must fall within a Medicare benefit category and meet one of the standards specified in section 1862(a)(1)(A) through (P) of the Social Security Act (Act). CMS uses several coverage pathways, such as national coverage determinations (NCDs), to determine whether these standards are met and to facilitate timely beneficiary access to eligible items and services. Many NCDs are made under section 1862(a)(1)(A) of

¹ <https://www.federalregister.gov/documents/2021/11/15/2021-24916/medicare-program-medicare-coverage-of-innovative-technology-mcit-and-definition-of-reasonable-and>.

² <https://www.federalregister.gov/documents/2024/08/12/2024-17603/medicare-program-transitional-coverage-for-emerging-technologies>.

³ https://data.cms.gov/sites/default/files/2026-04/CMSFastFacts2026_508.pdf.

⁴ <https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/What-is-a-MAC>.

the Act, which states that an item covered under this standard must be reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

Over the last several years, interested parties have expressed support for coverage process improvements and an accelerated pathway that is more flexible, transparent, predictable, and collaborative. Additionally, we have heard concerns from interested parties that medical device coverage lags behind that of drugs and biologics and that devices are in need of an accelerated Medicare coverage pathway like RAPID.

A. Current Medicare Coverage Mechanisms

Items and services, including medical devices, are currently covered in Medicare in one of three ways, presented here for context. We note that the RAPID coverage pathway will not alter the existing standards for these coverage mechanisms.

1. Claim-by-Claim Adjudication

In the absence of an NCD or a local coverage determination (LCD), Medicare Administrative Contractors (MACs) make coverage decisions under section 1862(a)(1)(A) of the Act on a claim-by-claim basis. The MAC reviews the claim to determine if the item or service is reasonable and necessary for the individual patient. The majority of all Medicare Parts A and B claims have coverage determined through the claim-by-claim adjudication process.

2. Local Coverage Determinations (LCDs)

In accordance with section 1869(f)(2)(B) of the Act, LCDs are MAC determinations regarding whether or not a particular item or service is covered on a contractor-wide basis in accordance with the “reasonable and necessary” standard in section 1862(a)(1)(A) of the Act. LCDs govern only the issuing MAC’s claims adjudication and are not binding controlling authorities for qualified independent contractors or administrative law judges in the claims adjudication process.

The MACs follow specific instructions and guidance for developing LCDs for Medicare coverage as outlined in section 1862(l)(5)(D) of the Act and in the CMS Program Integrity Manual (PIM), Chapter 13. MACs usually finalize proposed LCDs no more than a year after publishing the

proposed LCD, per Chapter 13, Section 13.5.1 of the PIM.⁵

3. National Coverage Determinations (NCDs)

The term “national coverage determination” is defined in sections 1862(l)(6)(A) and 1869(f)(1)(B) of the Act and means a determination by the Secretary of the Department of Health and Human Services (the Secretary) as to whether or not a particular item or service is covered nationally under Title XVIII of the Act. NCDs serve as generally applicable rules to ensure that similar claims for items or services are covered in the same manner. Often an NCD is written in terms of defined clinical characteristics that identify a population that may or may not receive Medicare coverage for a particular item or service. Traditionally, CMS relies heavily on health outcomes data to make NCDs. The NCD process, which has statutorily prescribed timeframes, generally takes 9 to 12 months to complete.⁶

In general, NCDs have involved determinations under section 1862(a)(1)(A) of the Act. However, NCDs can be made based on other provisions of the Act such as section 1862(a)(1)(E) of the Act, which is the statutory authority that supports the “Coverage with Evidence Development” (CED) pathway. Under the CED pathway, Medicare provides coverage for certain promising technologies that have limited supporting evidence. This can occur if CMS determines coverage is reasonable and necessary to carry out research conducted in collaboration with the Agency for Healthcare Research and Quality (AHRQ) pursuant to section 1142 of the Act.⁷ CMS has used section 1862(a)(1)(E) of the Act to support CED policy since July 12, 2006, and the most recent CED policy is described in our August 7, 2024 guidance document.⁸ In general, the

⁵ CMS Program Integrity Manual, Chapter 13 Local Coverage Determinations, available at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/pim83c13.pdf>.

⁶ Section 1869(f)(4) of the Act.

⁷ Section 1142 of the Act describes the authority of AHRQ to conduct and support research on outcomes, effectiveness, and appropriateness of services and procedures to identify the most effective and appropriate means to prevent, diagnose, treat, and manage disorders and other health conditions. That section includes a requirement that the Secretary assure that AHRQ research priorities under Section 1142 appropriately reflect the needs and priorities of the Medicare program. See the August 2024 CED guidance document: <https://www.cms.gov/Medicare/Coverage/Coverage-with-Evidence-Development>.

⁸ The 2024 guidance document is available at <https://www.cms.gov/medicare-coverage-database/view/medicare-coverage-document.aspx?mcdid=38>.

CED pathway provides Medicare coverage while providers and suppliers perform high-quality studies that are expected to produce additional evidence that may lead to positive NCDs under section 1862(a)(1)(A) of the Act.

Consistent with section 1142 of the Act, the Agency for Healthcare Research and Quality (AHRQ) reviews all CED NCDs established under section 1862(a)(1)(E) of the Act, and collaborates with CMS to define general standards for clinical research studies that address the CED questions and support and endorse the general standards for CED.

NCDs also include a determination regarding whether the item or service is not excluded from coverage by statute or our regulations at 42 CFR part 411, subpart A and whether the item or service under consideration fits within a Medicare benefit category under Part A or Part B,⁹ such as inpatient hospital services, physician services, durable medical equipment, or others. All items and services coverable by Medicare must fall within the scope of a statutory benefit category and many of these specific terms are defined under section 1861 of the Act and in implementing regulations.

In addition to these coverage pathways, CMS established the Parallel Review program. In the September 17, 2010 **Federal Register** (75 FR 57045), FDA and CMS announced their intention to initiate a Parallel Review pilot program in an effort to increase quality of patient health care by facilitating earlier access to innovative medical technologies for Medicare beneficiaries. In the October 24, 2016 **Federal Register** (81 FR 73113), FDA and CMS published a joint notice that announced and described the processes for the fully implemented Program for Parallel Review of Medical Devices.

Parallel Review is a mechanism for FDA and CMS to simultaneously review the clinical data submitted by a manufacturer about a medical device to decrease the time between FDA’s approval of an original or supplemental premarket approval (PMA) application or granting of a de novo classification request (De Novo request) and the subsequent CMS proposed NCD. Parallel Review has two stages: (1) FDA and CMS meet with the manufacturer to provide feedback on the proposed pivotal clinical trial; and (2) FDA and CMS concurrently review (“in parallel”) the clinical trial results submitted in the PMA application, or De Novo request. FDA and CMS independently review

⁹ Note: Medicare does not develop NCDs for Part D.

the data to determine whether it meets their respective Agency's standards and communicate with the manufacturer during their respective reviews. This program relies upon the technology under review having a quality evidence base to support the clinical analysis for the NCD.

Lastly, in the August 12, 2024, **Federal Register** (89 FR 65724), CMS published a final procedural notice establishing the Transitional Coverage for Emerging Technologies (TCET) pathway to achieve more timely and predictable access to new medical technologies for Medicare beneficiaries. The TCET pathway was designed to use current NCD and CED processes to expedite Medicare coverage determinations of certain Breakthrough Devices that are innovative technologies with limited or developing evidence for Medicare coverage purposes. TCET is voluntary and aims to reduce uncertainty about coverage options through a pre-market evaluation of potential harms and benefits of technologies while identifying any important evidence gaps. Additionally, the TCET pathway includes an extensive evidence development framework that provides manufacturers with opportunities for increased pre-market engagement with CMS, and helps to coordinate benefit category determination, coding, and payment reviews.

B. Differences Between FDA and CMS Review

While FDA and CMS have a well-established history of collaboration in the review of evidence for emerging medical technologies, FDA and CMS must consider different legal authorities and apply different statutory standards when making marketing authorization and coverage decisions, respectively, for devices. Generally, FDA makes marketing authorization decisions based on whether the relevant statutory standard for safety and effectiveness is met, while CMS generally makes coverage determinations based on whether an item or service is reasonable and necessary for the diagnosis or treatment of an illness or injury for individuals in the Medicare population under section 1862(a)(1)(A) of the Act. These two reviews have historically been separate and are conducted independently by the two agencies. The FDA review of devices does not require a focus specifically on the Medicare population.

Among other objectives, FDA conducts a premarket review of certain devices to evaluate their safety and effectiveness and determine if they meet

the applicable standard to be marketed in the United States. FDA market authorization alone does not entitle that technology to Medicare coverage. While FDA reviews devices to ensure they meet applicable safety and effectiveness standards, there may be varying amounts of evidence regarding whether the device is clinically beneficial for Medicare patients. Of note, individuals representative of the Medicare population may not be sufficiently represented in studies used to generate the evidence reviewed by FDA. This is an important consideration for manufacturers and other interested parties seeking the most appropriate coverage pathway under Medicare. When there is limited evidence as to the health outcomes for individuals in the Medicare population, there may be insufficient evidence to support a full coverage NCD under section 1862(a)(1)(A) of the Act.

In general, as discussed, under section 1862(a)(1)(A) of the Act, Congress requires CMS to determine whether items and services are reasonable and necessary to diagnose or treat an illness or injury or to improve the functioning of a malformed body member for an individual with Medicare. For CMS, the evidence base underlying FDA's decision to approve or clear a device for particular indications for use has often been crucial for determining Medicare coverage through the NCD process. CMS reviews evidence as to the Medicare population, data on improvement in health outcomes, and the durability of those outcomes. If there is no data on those elements in the Medicare population, it is difficult for CMS to make an evidence-based decision on whether the device is reasonable and necessary.

CMS considers whether the evidence shows that the item or service will improve the health of Medicare beneficiaries, recognizing that Medicare beneficiaries are often older and have multiple comorbidities.¹⁰ Consequently, they are underrepresented or not represented in many clinical studies. According to two recent studies,^{11 12}

¹⁰ Davide L. Vetrano, MD, Katie Palmer, Ph.D., Alessandra Marengoni, MD, Ph.D., Emanuele Marzetti, MD, Ph.D., Fabrizia Lattanzio, MD, Ph.D., Regina Roller-Wirnsberger, MD, MME, Luz Lopez Samaniego, Ph.D., Leocadio Rodríguez-Mañas, MD, Ph.D., Roberto Bernabei, MD, Graziano Onder, MD, Ph.D., Frailty and Multimorbidity: A Systematic Review and Meta-analysis, *The Journals of Gerontology: Series A*, Volume 74, Issue 5, May 2019, Pages 659–666, <https://doi.org/10.1093/gerona/gly110>.

¹¹ Tan, Y.Y., Papez, V., Chang, W.H., Mueller, S.H., Denaxas, S., & Lai, A.G. (2022). Comparing clinical trial population representativeness to real-world populations: an external validity analysis

approximately 50 percent of Medicare patients have two or more diseases. Clinical studies that are conducted to gain FDA market authorization are not necessarily required to include participants with similar demographics and characteristics of the Medicare population. To demonstrate the safety and effectiveness of a device as clearly as possible, studies may have exclusion criteria that disqualify individuals with characteristics that may make it harder to ascertain a device's effects on populations with multiple comorbidities, such as Medicare beneficiaries. Consequently, a device's potential benefits and harms for older beneficiaries with multiple comorbidities may not be well understood at the time of FDA market authorization.

C. FDA Breakthrough Devices Program

Under the RAPID coverage pathway, CMS will coordinate with FDA and manufacturers of certain Class II and Class III Breakthrough Devices as those devices move through the FDA premarket review processes to ensure accelerated Medicare coverage decisions following any FDA market authorization, as described in detail later in this section. The FDA Breakthrough Devices Program is an evolution of the Expedited Access Pathway Program and the Priority Review Program. See section 515B of the Federal Food, Drug, and Cosmetic (FD&C) Act, 21 U.S.C. 360e–3; see also final guidance for industry entitled, “Breakthrough Devices Program.”¹³

FDA's Breakthrough Devices Program is not for all new medical devices; rather, it is only for those that FDA determines meet the standards for Breakthrough Device designation. In accordance with section 515B of the FD&C Act (21 U.S.C. 360e–3), the Breakthrough Devices Program is for medical devices and device-led combination products¹⁴ that meet two criteria. The first criterion is that the device provides for more effective treatment or diagnosis of life-threatening or irreversibly debilitating

encompassing 43, 895 trials and 5, 685, 738 individuals across 989 unique drugs and 286 conditions in England. *The Lancet Healthy Longevity*, 3(10), e674–e689.

¹² Varma T, Mello M, Ross JS, et al Metrics, baseline scores, and a tool to improve sponsor performance on clinical trial diversity: retrospective cross-sectional study *BMJ Medicine* 2023;2:e000395. doi: 10.1136/bmjmed-2022-000395.

¹³ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/breakthrough-devices-program>.

¹⁴ Information on device-led combination products can be accessed at <https://www.fda.gov/media/119958/download>.

human disease or conditions. The second criterion is that the device must satisfy one of the following elements: It represents a breakthrough technology; no approved or cleared alternatives exist; it offers significant advantages over existing approved or cleared alternatives, including the potential, compared to existing approved alternatives, to reduce or eliminate the need for hospitalization, improve patient quality of life, facilitate patients' ability to manage their own care (such as through self-directed personal assistance), or establish long-term clinical efficiencies; or device availability is in the best interest of patients (see 21 U.S.C. 360e–3(b)(2)). These criteria make Breakthrough designated devices unique.

FDA has explained in guidance that because decisions on requests for Breakthrough designation will be made prior to marketing authorization, FDA considers whether there is a "reasonable expectation that a device could provide for more effective treatment or diagnosis relative to the current standard of care (SOC) in the U.S." for purposes of the designation. This reasonable expectation can be supported by sources including "literature or preliminary data (bench, animal, or clinical)".¹⁵

D. FDA Total Product Life Cycle Advisory Program (TAP)

FDA launched TAP to help spur more rapid development of high-quality, safe, effective, and innovative medical devices that are critical to public health. TAP's primary goal is to expedite patient access to innovative medical devices by providing developers of such devices early, frequent, and strategic communications with FDA via TAP advisors and FDA review teams and by facilitating engagement with other key parties. The relevant enrollment criteria for TAP requires that a device has been granted a Breakthrough Device designation. In this context, devices coming through the RAPID coverage pathway will be facilitated by their FDA review team and TAP advisers.

E. Investigational Device Exemptions (IDEs)

An investigational device exemption (IDE) allows the investigational device to be distributed and used in a clinical study to collect safety and effectiveness data. Medicare may provide coverage for certain items and services in FDA-

approved IDE studies¹⁶ if certain requirements are met (see section 1862(m) of the Act, and 42 CFR Subpart B). CMS introduced the centralized IDE process in 2015 to permit coverage in Category A (Experimental) and Category B (Nonexperimental/investigational) IDE studies that have been approved by FDA. While coverage for Category A IDE studies is limited to routine care items and services furnished in the study, CMS approval of a Category B IDE study also allows premarket coverage for the Category B device. CMS reviews each study to ensure the Medicare IDE coverage criteria (42 CFR 405.212) have been satisfied, which includes the assessment of Medicare health outcomes in the study. Additional information on CMS' IDE process is available at <https://www.cms.gov/medicare/coverage/investigational-device-exemption-ide-studies>.

II. Provisions of the Notice With Comment Period

This notice with comment period proposes to establish the RAPID coverage pathway, which, as described further in this notice, establishes a voluntary, accelerated NCD process for certain Class II FDA designated Breakthrough Devices enrolled in FDA's TAP and Class III FDA designated Breakthrough Devices, regardless of whether they are participating in TAP, that intend to engage in clinical studies under an IDE that enrolls Medicare beneficiaries and studies clinical health outcomes agreed upon by the FDA and CMS. We describe the procedures for how interested parties and the public at large may engage with CMS to facilitate the RAPID coverage pathway. The topics addressed in the notice with comment period include the following: (1) RAPID coverage pathway general principles; (2) appropriate candidates for the RAPID coverage pathway; (3) procedures FDA and CMS intend to follow for the RAPID coverage pathway; and (4) general roles and responsibilities of the manufacturer, FDA, CMS, and AHRQ.

A. RAPID Coverage Pathway—An Opportunity To Accelerate Patient Access to Beneficial Medical Products

Over the past few years, innovative technologies have come on the market earlier in the technology development lifecycle and reached the market with limited or developing evidence for Medicare coverage purposes. CMS has

received inquiries for coverage of new technologies that are early in the product lifecycle, the point at which manufacturers are beginning to develop clinical evidence supporting the product's safety and effectiveness. In general, CMS relies heavily on health outcomes data, especially as it relates to the Medicare population, when determining whether to issue an NCD for a particular item or service.

If there is health outcome evidence for a new technology, it may not be generalizable to the Medicare population if Medicare beneficiaries are insufficiently represented in pivotal clinical studies.¹⁷ When there is limited evidence, CMS may not have sufficient information to assess a device's potential benefits and harms to make a NCD due to gaps in research about health outcomes specific to the Medicare population.

We recognize that many emerging technologies are likely to have limited or developing bodies of clinical evidence that may not have sufficiently included the Medicare population (that is, individuals over age 65, people with disabilities, and those with end-stage renal disease). Many Medicare beneficiaries have comorbid medical conditions, and those factors may have limited their participation in certain clinical trials.

We believe that the RAPID coverage pathway can address that gap by providing manufacturers with information on the specific health outcomes needed to support Medicare NCDs much earlier in the process.

A manufacturer seeking coverage for a device that meets the eligibility requirements under the RAPID coverage pathway will need to test, as part of an IDE study, whether the device improves health outcomes for Medicare beneficiaries that FDA determines are appropriate for the device and that CMS confirms would qualify as health outcomes relevant to Medicare beneficiaries.

Though including an assessment of health outcomes for Medicare beneficiaries in an IDE study is not always a requirement for FDA market authorization, these are the assessments needed for CMS to determine if the device is reasonable and necessary for the diagnosis or treatment of illness and injury and if the device is therefore eligible for coverage under Part A or Part B pursuant to section 1862(a)(1)(A) of the Act. Under the RAPID coverage

¹⁵ Food and Drug Administration, Breakthrough Devices Program Guidance for Industry and Food and Drug Administration Staff, available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/breakthrough-devices-program>.

¹⁶ Information on FDA's IDE process is available at <https://www.fda.gov/medical-devices/premarket-submissions-selecting-and-preparing-correct-submission/investigational-device-exemption-ide>.

¹⁷ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/design-considerations-pivotal-clinical-investigations-medical-devices>.

pathway, CMS and FDA will work together, along with manufacturers, earlier in the technology development lifecycle so that evidence generated for FDA review can also support Medicare coverage decisions. By aligning regulatory and coverage expectations in advance, the RAPID coverage pathway is designed to significantly reduce delays that have historically occurred between FDA market authorization and Medicare national coverage determinations. Under the RAPID coverage pathway, if the results of the IDE study demonstrate an improvement in health outcomes in the Medicare population, a proposed NCD will be issued on the same day as FDA market authorization and finalized as early as 60 days later. Interested parties have communicated that a short delay (60 to 90 days) between FDA market authorization and a final NCD is advantageous as it allows manufacturers to prepare for device distribution into the marketplace.

B. RAPID Coverage Pathway General Principles

CMS is committed to ensuring Medicare beneficiaries have accelerated access to new technologies that meet the statutory requirements for coverage. Under the RAPID coverage pathway, if a device under the pathway receives FDA marketing authorization and if CMS and FDA determine there is sufficient clinical evidence demonstrating the device meets the health outcomes for Medicare beneficiaries identified by FDA and CMS, CMS will post a proposed NCD on the day of FDA market authorization with the goal of finalizing the NCD as soon as 60 days later for Class II devices and 90 days later for Class III devices. To accomplish these accelerated timelines, the RAPID coverage pathway leverages the existing IDE process and streamlines aspects of the NCD process. The following principles are intended to create a common understanding among manufacturers, FDA, and CMS about the goals and parameters of the RAPID coverage pathway:

- Participation in the RAPID coverage pathway is voluntary.
- Devices eligible for the RAPID coverage pathway are limited to certain Class II FDA designated Breakthrough Devices enrolled in FDA's TAP and Class III FDA designated Breakthrough Devices planning to submit a PMA application regardless of whether they are participating in TAP. The device must also be at the IDE presubmission stage and be the subject of an IDE study that enrolls Medicare beneficiaries and studies clinical health outcomes that

FDA and CMS have agreed are appropriate to assess the health benefits to the Medicare beneficiary population. Additional information regarding appropriate candidates for the RAPID coverage pathway can be found in section II.C., "Appropriate Candidates" of this notice with comment period.

- FDA and CMS will provide information to manufacturers on appropriate clinical health outcomes applicable to Medicare beneficiaries to include in the IDE protocol.
- After completion of all applicable IDE studies, if the clinical evidence demonstrates sufficient evidence that the device meets the applicable health outcomes, CMS will issue a proposed NCD upon FDA market authorization.
- The improvement in health outcomes and the relative risk of the device will determine if further evidence development (that is, CED) will be part of the NCD. Lower risk devices are more likely to have generated sufficient evidence at the time of FDA market authorization to demonstrate they are reasonable and necessary under 1862(a)(1)(A) of the Act, while higher risk devices are more likely to have remaining evidence gaps, need additional evidence generation and qualify for coverage under 1862(a)(1)(E) of the Act. If CED is expected, CMS will engage with FDA and manufacturers prior to FDA market authorization to align potential CED requirements with any FDA-required post-approval studies. (A more detailed description of this engagement process can be found at II.D.3.d. of this notice with comment period).

- Manufacturers may withdraw from the RAPID coverage pathway, up until CMS issues a proposed NCD, for various reasons. For example, withdrawal may be appropriate if there is incomplete or insufficient data. As another example, the manufacturer could decide that pursuing coverage at the local level (LCD or claim by claim) may be more advantageous. Additionally, FDA and CMS may make a determination that the RAPID coverage pathway is not appropriate for a specific manufacturer in instances where a manufacturer is not providing the requested information needed to satisfy pathway requirements or is found to be falsifying or omitting pertinent information.

C. Appropriate Candidates

Only devices that meet all the following requirements are eligible for entry into the RAPID coverage pathway:

- Presumptive Class II FDA Breakthrough-designated Devices participating in TAP planning to submit

a De Novo request to FDA;¹⁸ or Class III FDA Breakthrough-designated Devices planning to submit a PMA application regardless of whether they are participating in TAP;

- Devices in the IDE pre-submission stage, and the manufacturer plans to conduct an IDE study that enrolls Medicare beneficiaries and evaluates clinical outcomes that FDA determines are appropriate for the device and that CMS confirms evidence showing that the device achieves those outcomes in the Medicare beneficiary population would demonstrate that the device improves health outcomes for Medicare beneficiaries;

- Based on the information available, there is no evidence that immediately makes clear that the device will not fall under a Medicare benefit category;¹⁹

- Not already the subject of a controlling Medicare NCD;
- Separately payable devices that can, if approved, be billed to Medicare; and
- Not otherwise excluded from coverage through law or regulation.²⁰

In section 201(h)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)(1)), the definition of device includes in vitro diagnostic (IVD) products, such as diagnostic laboratory tests. (See also 21 CFR 809.3). IVDs, including diagnostic laboratory tests, are a highly specific area of coverage policy development, and CMS has historically delegated the review of many of these products to specialized MACs. We believe that the majority of coverage determinations for IVDs which have been granted Breakthrough Device designation should continue to be determined by the MACs through existing pathways. Therefore, IVD products will not be accepted into the RAPID coverage pathway. In the rare case where manufacturers and CMS agree that an NCD is appropriate for an IVD product, manufacturers may submit an NCD request as outlined in 78 FR 48164.

Devices that are beyond the IDE presubmission stage (such as those that are market authorized or already being studied under an IDE) are not

¹⁸Includes 510(k) cleared devices where the primary predicate was authorized via the De Novo classification pathway no earlier than 18 months prior to acceptance into the RAPID coverage pathway.

¹⁹For more information on benefit category determinations, see the CMS Guide for Medical Technology Companies and Other Interested Parties at <https://www.cms.gov/medicare/coding-billing/guide-medical-technology-companies-other-interested-parties>.

²⁰Information on coverage exclusions can be accessed at <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/bp102c16.pdf>.

appropriate for the RAPID coverage pathway. Under the RAPID coverage pathway, CMS and FDA will leverage early coordination during IDE presubmission and the existing IDE and NCD processes to provide predictable and timely coverage upon FDA market authorization for eligible devices that demonstrate positive clinical health outcomes in the Medicare population during the premarket phase. Devices that are FDA market authorized or those already the subject of an IDE are more appropriate for an NCD outside the RAPID coverage pathway or coverage at the local level through an LCD or claim by claim adjudication.

We solicit public comments on this approach. In addition, we are also interested in feedback on whether we should establish a temporary process under which devices that have progressed beyond the IDE presubmission stage and are currently being studied under an IDE could become eligible for the RAPID coverage pathway. As part of this eligibility determination, CMS and FDA would assess whether ongoing IDE studies evaluate the clinical health outcomes that FDA and CMS have agreed are appropriate to assess the health benefits to the Medicare beneficiary population or whether modifications to those studies would be needed to support such assessment. The purpose of this process would be to enable manufacturers of otherwise eligible devices that had already initiated IDE studies, but that otherwise would have elected to participate in the RAPID coverage pathway, to remain eligible for participation. We solicit comment on whether such process should be established, and if so, the appropriate duration of such process.

D. Procedures for the RAPID Coverage Pathway

The RAPID coverage pathway has three stages: (1) IDE Presubmission; (2) Formal IDE Submission to FDA and CMS; and (3) Transition from IDE to Coverage. (A graphic providing a high-level overview of the RAPID coverage pathway can be found in II.D.3.f. of this notice with comment period.)

1. IDE Presubmission

a. Entry Into the RAPID Coverage Pathway

The RAPID coverage pathway is voluntary. If interested in the RAPID coverage pathway, manufacturers will express their interest in the pathway (after receiving Breakthrough Device designation and being accepted into TAP, as applicable) to FDA by sending

an email to TPLC-Advisory-Program@fda.hhs.gov in advance of an IDE presubmission. An FDA TAP Advisor will provide the relevant information to manufacturers to facilitate entry into the RAPID coverage pathway.

b. Consideration of Candidates

FDA will assess each candidate expressing interest in the RAPID coverage pathway to determine if the device may be appropriate for the pathway based on the criteria outlined in Section II.C. of this notice with comment period. If a device is determined by FDA to meet initial eligibility for the RAPID coverage pathway, FDA will share the relevant information and consult CMS.

FDA will confirm with CMS that, based on the information available, the information does not immediately make clear that the device will not fall under a benefit category (further discussed in section II.D.1.c. of this notice with comment period), that the device will not be excluded from coverage by statute or our regulations at 42 CFR part 411, Subpart A, and that the device is not subject to a controlling NCD.

FDA and CMS will communicate this determination to the manufacturer, informing them of any potential exclusions that would prevent them from pursuing the RAPID coverage pathway. If the manufacturer wishes to continue, FDA will work with the manufacturer to develop a clinical study synopsis for discussion at a RAPID kickoff meeting, which will include FDA, the manufacturer, and CMS. During this meeting, the manufacturer will walk through their study synopsis explaining how they intend to address FDA and CMS regulatory requirements. CMS and/or FDA may provide real-time comments to help the manufacturer develop the complete IDE study protocol.

If the manufacturer continues to pursue the RAPID coverage pathway, the manufacturer will submit a request for written feedback²¹ to FDA for CMS and FDA to review the IDE study protocol.

During the review, FDA will consult with CMS to discuss the protocol and any concerns. CMS will provide FDA with written feedback regarding whether the health outcomes to be evaluated in the study are sufficient to support an NCD, satisfy the CMS IDE criteria and any other feedback CMS would require to be addressed. FDA will

²¹ The request for written feedback would be via a TAP Amendment or Sprint Discussion as applicable. Manufacturers are encouraged to contact their TAP advisor for more information on the applicable process and timelines.

provide feedback to the manufacturer via FDA's normal process that includes written comments from FDA and CMS regarding any feedback relevant to their respective statutory authorities. CMS and FDA will also provide feedback regarding potential evidence gaps that manufacturers can choose to address in their planned pivotal IDE study or can begin planning to address in potential postmarket studies, including FDA post-approval studies (if applicable).

The manufacturer must agree that information will be shared between FDA and CMS. As noted in the Memorandum of Understanding²² between FDA and CMS, the Agencies recognize that the following types of information transmitted between them in any medium and from any source must be protected from unauthorized disclosure: (1) trade secret and other confidential commercial information that would be protected from public disclosure pursuant to Exemption 4 of the Freedom of Information Act (FOIA); (2) personal privacy information, such as the information that would be protected from public disclosure pursuant to Exemption 6 or 7(c) of the FOIA; or (3) information that is otherwise protected from public disclosure by Federal statutes and their implementing regulations (for example, the Trade Secrets Act (18 U.S.C. 1905), the Privacy Act (5 U.S.C. 552a), the Freedom of Information Act (5 U.S.C. 552), the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*), and the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104–191).

c. Medicare Benefit Category Review

Prior to the RAPID kickoff meeting, CMS will initiate a preliminary benefit category assessment if all other pathway criteria have been met. Under this analysis, CMS will evaluate whether information exists that immediately makes clear that the device will not fall under a benefit category. If, based on the available information CMS has, it does not appear that the device cannot fit within a Medicare benefit category, the device may be accepted into the RAPID coverage pathway. This is an interim step that is subject to change upon FDA's decision regarding market authorization of the device. Participation in the RAPID coverage pathway should not be viewed as a final benefit category determination.

²² <https://www.fda.gov/about-fda/domestic-mous/mou-225-10-0010>.

2. Formal IDE Submission to FDA and CMS

a. FDA Review

The manufacturer will submit the IDE application to FDA if applicable. FDA will review the IDE application per the normal IDE review process. FDA's IDE decision letter will inform the manufacturer about any study design considerations (SDCs). In order to continue to participate in the voluntary RAPID coverage pathway, the manufacturer will be expected to satisfactorily address any SDCs necessary to enable the study to support a future marketing application to FDA.

b. CMS Review

At the time FDA's IDE decision letter is issued to the manufacturer, FDA will also share the decision letter, including the SDCs, with CMS. CMS will communicate directly with the manufacturer regarding the SDCs that must be addressed to continue participation in the RAPID coverage pathway. This is a key step in the process that provides an opportunity for the manufacturer to address CMS concerns during the premarket phase. Once the manufacturer addresses any SDCs, and FDA has approved a revised protocol if needed, manufacturers will then submit their IDE protocol to CMS for approval using the existing CMS IDE review process. If all CMS IDE requirements and RAPID eligibility criteria have been met, CMS will provide the manufacturer with an approval letter including the intent to issue a proposed NCD concurrently with FDA market authorization. We note that approved IDE studies are listed on the CMS website at <https://www.cms.gov/medicare/coverage/investigational-device-exemption-ide-studies/approved>.

As stated in section II.I. of this notice with comment period, CMS intends to indicate which approved IDEs are also RAPID participants. If a manufacturer wishes to make any changes to the IDE study protocol after CMS approval, these changes must be reviewed and agreed upon by FDA and CMS to continue participation in the RAPID coverage pathway.

3. Transition From IDE to Coverage

a. IDE Completion and Manufacturer Next Steps

After completion of the IDE study, if the manufacturer continues to want to participate in the RAPID coverage pathway, FDA will share the IDE final report with CMS.

When the manufacturer submits the marketing submission to FDA, and FDA accepts it for review, CMS will be

notified and provided with the clinical study report and any other relevant information needed for CMS to confirm if the device has demonstrated an improvement in the clinical outcomes that FDA has determined are appropriate for the device and which CMS has confirmed is a qualifying health outcome for purposes of Medicare coverage. At this time, if the manufacturer decides to pursue national coverage through the RAPID coverage pathway, the manufacturer will submit a formal NCD request cover letter expressing the manufacturer's desire for CMS to open a RAPID NCD analysis.

Most, if not all, of the clinical evidence needed to conduct the RAPID NCD analysis would be included in the IDE final report and other information FDA shares with CMS. However, CMS invites the manufacturer to submit any additional materials along with the NCD request cover letter they believe would support the RAPID NCD request, noting that CMS must use publicly available information to inform the NCD. The manufacturer may alternatively request that their device be withdrawn from the RAPID coverage pathway, in which case CMS would not proceed with the NCD analysis described in this section.

b. CMS NCD Analysis and Timing

The process for Medicare coverage under the RAPID coverage pathway will generally follow the NCD statutory timeframes in section 1862(l) of the Act. If a device continuing in the RAPID coverage pathway submits an NCD request cover letter, receives FDA market authorization, and has satisfactorily demonstrated improvement in a clinical outcome that FDA has determined is appropriate for the device and that CMS has confirmed would qualify as a health outcome, CMS will initiate the NCD process by posting a tracking sheet and proposed NCD on the CMS website on the same day as FDA market authorization.

We note the timing of the proposed NCD is contingent upon the relevant FDA Decision Summary or SSED being made publicly available on the day of FDA market authorization. CMS will include the link to the relevant FDA Decision Summary or SSED on the NCD tracking sheet. RAPID national coverage will be limited to the FDA authorized indication(s) for use of the device. There will be a 30-day public comment period on the proposed NCD. CMS' goal is to release the final NCD approximately 60 days after FDA market authorization for Class II devices and 90 days after for Class III devices. More information on the NCD process is set forth in the August 7, 2013, **Federal Register** notice

(78 FR 48164) (hereafter referred to as the August 2013 notice).

c. RAPID NCD Format

To provide accelerated Medicare coverage upon FDA market authorization, RAPID NCDs may be more streamlined than conventional NCDs. Because the RAPID coverage pathway leverages FDA's and CMS' existing IDE processes to provide information on important clinical outcomes much earlier in the process, and manufacturers will need to satisfactorily show an improvement in a clinical outcome that FDA has determined is appropriate for the device and CMS has confirmed would qualify as a health outcome, we anticipate that RAPID NCDs may include more concise evidence summaries than have typically been included in conventional NCDs. New evidence to inform these NCDs will come from the results of the pivotal IDE studies that FDA makes publicly available in the Decision Summary for Class II devices or the SSED for Class III devices.

d. Evidence Development for RAPID NCDs

Participation in the RAPID coverage pathway is voluntary, and we believe that any new coverage pathway for emerging technologies should facilitate evidence development when evidence gaps exist for coverage purposes to ensure that Medicare beneficiaries have access to new technologies that will improve health outcomes. If there is insufficient evidence to support Medicare coverage under section 1862(a)(1)(A) of the Act, CMS may issue a proposed NCD under the CED framework.

Manufacturers are strongly encouraged to remain engaged with their FDA TAP advisor and CMS point of contact throughout their IDE study to ensure that CMS can discuss any evidence gaps while the manufacturer is designing any applicable FDA-required post-approval or other postmarket study. We note that post-approval studies are not always required. CMS will collaborate with FDA and manufacturers during the development of these studies to ensure that CMS evidence development requirements pose minimal burden and do not duplicate or conflict with any FDA postmarket requirements for the device.

The RAPID coverage pathway will not alter the existing standards for the NCD process or CED (for example, CMS' process for clinical study protocol review and approval) and the established processes and procedures for these coverage mechanisms will be

followed to provide coverage under the RAPID coverage pathway. Coverage of services related to the NCD can begin once a CED study is approved. For NCDs with CED requirements, approved CED studies will appear on CMS' CED web page upon CMS approval.²³

e. Duration of Coverage Under the RAPID Coverage Pathway

RAPID NCDs will remain in effect until they are reconsidered (see August 2013 notice). As it may pertain to

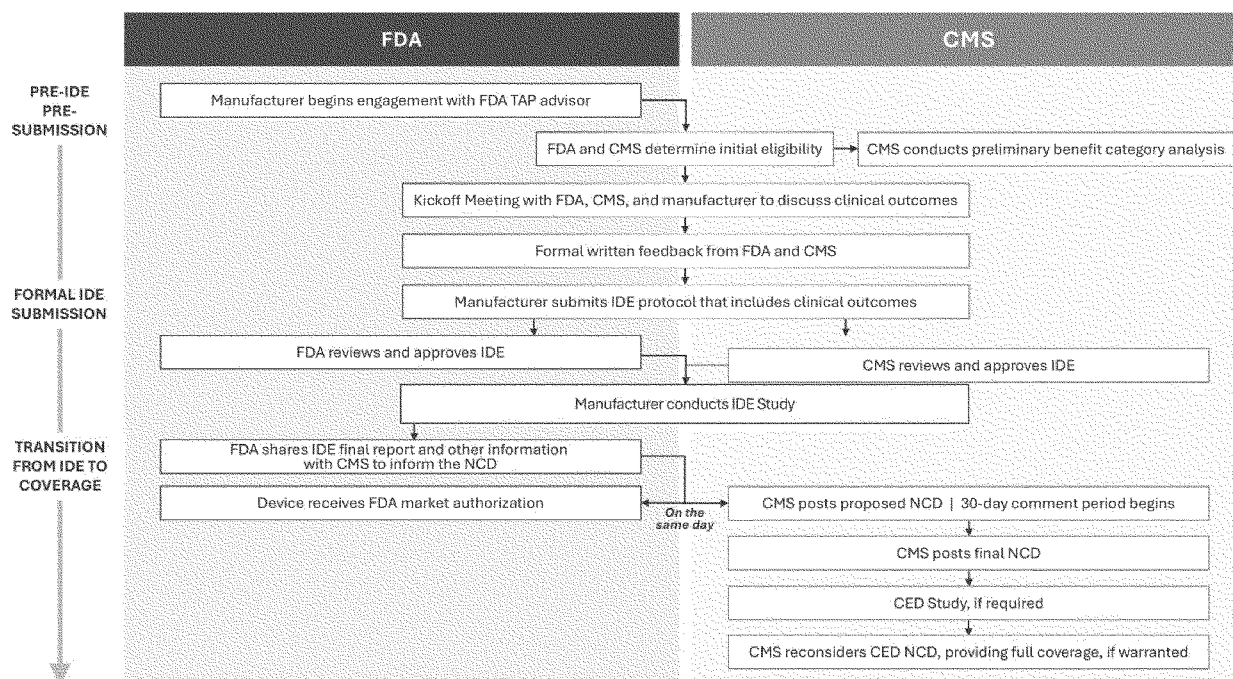
RAPID NCDs issued under the CED framework, we emphasize that CED NCDs are not meant to last indefinitely. The 2024 CED guidance document states that coverage under CED should be time-limited to facilitate the timely generation of sufficient evidence to inform patient and clinician decision making and to support a Medicare coverage determination under section 1862(a)(1)(A) of the Act. A CED cycle is considered completed when CMS completes a reconsideration of the CED

coverage decision and removes the requirement for study participation as a condition of coverage. As with any NCD, any member of the public may request to reopen the NCD that requires CED.

f. RAPID Coverage Pathway Overview

The steps described in section II.D. of this notice with comment period for the RAPID process and for obtaining a CMS coverage determination are illustrated in Figure 1.

FIGURE 1: Rapid Coverage Pathway



E. Roles

CMS has outlined the general roles of each participant in the RAPID coverage pathway.

1. Manufacturer

If interested in the RAPID coverage pathway, manufacturers need to express their interest in the pathway (after receiving Breakthrough Device designation and being accepted into TAP, as applicable) prior to their IDE presubmission to FDA. The manufacturer will be expected to be collaborative throughout the RAPID coverage pathway process, and comply with all existing FDA and CMS requirements related to the IDE and NCD processes, including any CED study requirements when applicable.

2. CMS

CMS will collaborate with FDA to identify eligible candidates for the RAPID coverage pathway and will provide timely feedback to manufacturers to ensure that the clinical outcomes (direct measures of how a patient feels, functions, or survives) that FDA has agreed are appropriate for the device would qualify as health outcomes for CMS. The requirement to evaluate whether the device improves such health outcomes must be included in the IDE protocol to facilitate Medicare coverage following FDA market authorization. Additionally, CMS will work with manufacturers to leverage FDA-required postmarket studies, if any, to address specific evidence gaps for Medicare

beneficiaries. Throughout all stages of the RAPID coverage pathway, CMS will maintain open communication channels with FDA, AHRQ, and manufacturers and fulfill all statutory and regulatory obligations concerning the IDE and NCD processes.

3. FDA

FDA will assess each candidate expressing interest in the RAPID coverage pathway to determine if the device is appropriate for the pathway. FDA will keep open lines of communication with CMS regarding the Breakthrough Devices seeking to participate in the RAPID coverage pathway and will provide relevant information and expertise during the premarket phase to facilitate timely

²³ <https://www.cms.gov/medicare/coverage/evidence>.

Medicare coverage upon FDA market authorization. Participation in the RAPID coverage pathway does not change the review standards for FDA market authorization of a device, which are separate and distinct from the standards governing a CMS NCD.

4. AHRQ

Currently, AHRQ reviews all CED NCDs established under section 1862(a)(1)(E) of the Act. Consistent with section 1142 of the Act, AHRQ collaborates with CMS to define standards for clinical research studies to address the CED questions and meet the general standards for CED studies (<https://www.cms.gov/medicare/coverage/evidence>). Since we anticipate that a subset of NCDs conducted under the RAPID coverage pathway could result in CED decisions, AHRQ will continue to review all CED NCDs consistent with current practice.

F. RAPID Coverage Pathway and Parallel Review

While the RAPID coverage pathway will be limited to Breakthrough Devices, other potential expedited coverage mechanisms, such as Parallel Review, remain available. Eligibility for the Parallel Review program is broader than for the RAPID pathway and could facilitate expedited CMS review of non-Breakthrough Devices. To achieve greater efficiency and to simplify the coverage process generally, CMS intends to work with FDA to consider updates to the Parallel Review program and other initiatives to align procedures, as appropriate.

G. RAPID Coverage Pathway and TCET

The TCET pathway will be paused for new candidates upon publication of this notice with comment period as CMS focuses on the successful implementation of the RAPID coverage pathway. Upon the announcement of the RAPID coverage pathway on April 23, 2026, FDA and CMS began engaging with manufacturers of devices potentially eligible for the RAPID coverage pathway so these manufacturers can be positioned to benefit from the efficiencies that RAPID is intended to provide. For manufacturers who are past the point of initiating their IDE study and believe there is sufficient evidence to support national coverage of their device, we recommend that they contact CMS to discuss available coverage mechanisms, including a potential NCD request submission as outlined in 78 FR 48164. CMS will apply lessons learned across coverage pathways to strengthen and

improve Medicare coverage processes over time.

H. RAPID Coverage Pathway Prioritization

Due to CMS' commitment to issue proposed NCDs for devices in the RAPID coverage pathway on the same day as FDA market authorization, CMS proposes to prioritize the opening of RAPID NCDs over non-RAPID NCDs from the NCD Wait List if we are unable to address the total volume of NCDs within our available resources at any given time.

When we consider opening or reconsidering non-RAPID NCDs, we will continue to apply the circumstances described in the August 2013 notice as we prioritize topics. The circumstances described in the August 2013 notice are relevant to how we prioritize internally generated and externally requested NCDs. We consider when, practitioners, patients, or other members of the public have raised significant questions about the health outcomes attributable to the use of the items or services for the Medicare beneficiary population; new evidence or reasonable reinterpretation of previously available evidence indicates that a national coverage review may be warranted; local coverage policies on a particular item or service may vary in language or implementation; the health technology represents a substantial clinical advance and is likely to result in a significant improvement in patient health outcomes or positive impact on the Medicare program; rapid diffusion of an item or service is anticipated, if the evidence may inadequately address questions regarding impact on the Medicare population, target subgroup populations, practitioner or facility qualifications, etc., or on beneficiary health outcomes; or any combination thereto.

Also, given that we currently have topics on the NCD Wait List, we reiterate from the August 2013 notice that "[i]n the event that we have a large volume of NCD requests for simultaneous review, we prioritize these requests based on the magnitude of the potential impact on the Medicare program and its beneficiaries and staffing resources."

I. RAPID Coverage Pathway Transparency

We believe it is important to provide maximum transparency regarding the devices accepted into the RAPID coverage pathway. CMS proposes to make the identity of specific manufacturers and devices in the RAPID coverage pathway publicly available.

Examples of where this information could be made publicly available include the respective device's listing on the CMS Approved IDE Studies web page and the NCD Dashboard.²⁴

III. Collection of Information Requirements

This notice with comment period refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). Applicable collections of information include: (1) Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies (OMB 0938–1250); (2) Medicare Program Revised Procedures for Making National Coverage Determinations (OMB 0938–0776); (3) Medicare Coverage of Items and Services for Coverage with Evidence Development (CMS–OMB 0938–1387); and (4) Q-Submissions and Early Payor Feedback Request Programs and Medical Device Development Tools (FDA–OMB 0910–0756).

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Mehmet Oz, Administrator of the Centers for Medicare & Medicaid Services, approved this document on August 7, 2026.

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–16368 Filed 8–7–26; 4:15 pm]

BILLING CODE 4169–69–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2025–N–0873]

Reauthorization of the Generic Drug User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

²⁴ The NCD Dashboard can be found here: <https://www.cms.gov/files/document/ncddashboard.pdf>.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is hosting a public meeting to discuss proposed recommendations for the reauthorization of the Generic Drug User Fee Amendments (GDUFA) for fiscal years (FYs) 2028 to 2032. GDUFA amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to authorize FDA to assess and collect fees to support human generic drug activities. The current legislative authority for GDUFA expires at the end of September 2027. At that time, new legislation will be required for FDA to continue to assess and collect generic drug user fees for future fiscal years. The FD&C Act directs FDA, following negotiations with the regulated industry and periodic consultations with other stakeholders, to present recommendations for reauthorization of the GDUFA program to the relevant Congressional committees, publish the recommendations in the **Federal Register**, provide for a period of 30 days for the public to provide written comments on such recommendations, and hold a meeting at which the public may present its views on such recommendations. FDA will then consider such public views and comments and revise such recommendations as necessary.

DATES: The hybrid public meeting will be held on September 17, 2026, from 9:00 a.m. to 2:00 p.m. Either electronic or written comments on this public meeting must be submitted by October 17, 2026.

ADDRESSES: The public meeting will be held in person at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room, Silver Spring, MD 20993-0002 and virtually using the Microsoft Teams platform. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to <https://www.fda.gov/about-fda/visitor-information>.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern on October 17, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2025-N-0873 for "Reauthorization of the Generic Drug User Fee Amendments; Public Meeting; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

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

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

FOR FURTHER INFORMATION CONTACT: Anastazia Ray, Food and Drug Administration, GDUFAreauthorization@fda.hhs.gov, 301-796-0541.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a hybrid public meeting to discuss proposed recommendations for the reauthorization of GDUFA, which authorizes FDA to assess and collect user fees to support human generic drug activities, which are defined under the FD&C Act¹ to include the activities necessary for the review (also called "assessment") of generic human drug applications and Type II active pharmaceutical ingredient (API) drug master files (DMFs),² and for conducting

¹ See sec. 744A(9) (21 U.S.C. 379j-41(9)).

² Type II active pharmaceutical ingredient drug master file means a submission of information to the Secretary by a person that intends to authorize the FDA to reference the information to support approval of a generic drug submission without the submitter having to disclose the information to the

inspections related to generic drugs, and to engage in other related activities. The current authorization of the program (GDUFA III) expires at the end of September 2027. Without new legislation, FDA will no longer be able to assess and collect user fees to help fund human generic drug activities for future fiscal years.

Section 744C(f)(5) of the FD&C Act (21 U.S.C. 379j–43(f)(5)) requires that after FDA negotiates with the regulated industry,³ we do the following:

(1) Present recommendations to the relevant Congressional committees, (2) publish such recommendations in the **Federal Register**, (3) provide for a period of 30 days for the public to provide written comments on such recommendations, (4) hold a meeting at which the public may present its views on such recommendations, and (5) after consideration of such public views and comments, revise such recommendations as necessary.

This notice, the 30-day comment period, and the public meeting described in this notice will satisfy certain of these statutory requirements. After the public meeting, we will revise the recommendations as necessary and present the proposed recommendations to the appropriate Congressional committees.

The purpose of the public meeting announced in this **Federal Register** notice is to obtain the public's views on the proposed recommendations for the reauthorized program (GDUFA IV). The following information is provided to help potential meeting participants better understand the history and evolution of the GDUFA program and the proposed GDUFA IV recommendations.

II. What is GDUFA and what does it do?

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act, which included GDUFA (Pub. L. 112–144, Title III), was signed into law by the President. The GDUFA program was reauthorized two times since then, most recently in the Generic Drug User Fee Amendments of 2022 (GDUFA III), which authorizes FDA to collect fees with respect to certain generic human drug applications, drug master files, and drug manufacturing facilities for fiscal years 2023 through 2027. GDUFA fees support the Agency's human generic drug activities and facilitate timely

access to safe and effective generic drugs for the public. As described in the GDUFA III Commitment Letter, FDA committed to achieve certain performance goals and measurable generic drug program enhancements designed to maximize the efficiency and utility of each assessment cycle, with the intent to reduce the number of assessment cycles for abbreviated new drug applications, and to foster the development, assessment, and approval of complex generic products.

Additional information concerning GDUFA, including the text of the law, the GDUFA III Commitment Letter, key **Federal Register** documents, GDUFA-related guidances, performance reports, and financial reports may be found on the FDA website at <https://www.fda.gov/gdufa>.

III. Proposed GDUFA IV Recommendations

In preparing the proposed recommendations to Congress for GDUFA reauthorization for GDUFA IV, FDA conducted discussions with the regulated industry and consulted with patient and consumer advocacy groups, as required by the law, among other stakeholders. FDA began the GDUFA reauthorization process by publishing a notice in the **Federal Register** requesting public input on the reauthorization and announcing a public meeting, which was held on July 11, 2025 (90 FR 21313, May 19, 2025). The meeting included presentations by FDA and different stakeholder groups, including patient and consumer advocacy groups, health professionals, and academic researchers. The materials from the meeting, including the agenda, presentations, and transcript can be found at <https://www.fda.gov/drugs/news-events-human-drugs/public-meeting-reauthorization-generic-drug-user-fee-amendments-gdufa-07112025>.

Following the July 2025 public meeting, FDA conducted negotiations with the regulated industry and held monthly consultations with other stakeholders from October 2025 through March 2026. As directed by Congress, FDA posted minutes of these meetings on its website “GDUFA IV: Fiscal Years 2028–2032”, available at <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>. The proposed enhancements for GDUFA IV address many of the top priorities identified by FDA, the regulated industry, and other stakeholders.

These include proposed program enhancements to stabilize fee revenue, advance approvals in fewer review cycles, improve program efficiency,

enhance processes around complex data issues, and provide mechanisms to facilitate onshoring of generic drug manufacturing. The full descriptions of these proposed recommendations can be found in the proposed GDUFA IV Commitment Letter (Proposed Commitment Letter), which will be posted prior to the public meeting on FDA's website “GDUFA IV: Fiscal Years 2028–2032, available at <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>.”

Each significant new or modified enhancement is described briefly below with references to the relevant section of the Proposed Commitment Letter where more detailed information can be found.

A. Controlled Correspondence

FDA proposes that Abbreviated New Drug Application (ANDA) applicants will use a pre-assigned ANDA number or ANDA number when submitting controlled correspondences to allow linkages between ANDA applications and these communications. FDA also proposes a new 90-day timeline for controlled correspondences for specific topics. Details can be found in the Proposed Commitment Letter, section I.E.

B. ANDA Assessment Transparency and Communications Enhancements

FDA proposes updates to review timelines and other efficiency enhancements for some steps of the ANDA assessment process and increased communications throughout the process, including inclusion of a new goal date extension option for applicants to select at the time of application submission. FDA proposes a new 120-day goal extension for a Potential Official Action Indicated (pOAI) alert, in certain circumstances, to allow time for FDA to finalize the inspection classification and take appropriate action within the same review cycle. Details can be found in the Proposed Commitment Letter, section II.A and B.

FDA proposes a new post pre-approval inspection meeting, when needed, to discuss inspection findings that may impact application approval and corrective actions that may address issues identified. Details can be found in the Proposed Commitment Letter, Section II.B. and section VI.D.

Lastly, FDA proposes improved management of applications with complex data issues, to help ensure efficient use of review resources. FDA proposes that if FDA identifies a complex data issue which cannot be fully assessed and resolved for

generic drug submission applicant. Section 744A(13) of the FD&C Act (21 U.S.C. 379j–41(13)).

³ Section 744C(f)(3) of the FD&C Act requires periodic consultation with representatives of patient and consumer advocacy groups during negotiations with the generic drug industry.

appropriate action by the goal date, FDA will assign a new goal date of 6 months after the original goal date. FDA proposes that if the new goal date is not met, FDA will contact the applicant and the relevant site or facility for which a complex data issue has been identified and offer an opportunity for a meeting with the agency. Details can be found in the Proposed Commitment Letter, sections II and IX. FDA proposes similar enhancements for original applications for which the goal date will be missed by more than 60 days due to a complex regulatory issue or other reason. For these applications FDA proposes assigning a new goal date of 6 months after the original goal date, and proposes that if the new goal date is not met, FDA will contact the applicant and offer an opportunity for a meeting with the agency. Details can be found in the Proposed Commitment Letter, section II.B.9.

C. Application-Related Meetings

FDA proposes a new more streamlined and efficient meeting structure for application-related meetings, specifies the types of questions to be addressed and outlines processes for each of the updated meeting types. These proposed enhancements will also support complex generic development by facilitating new or faster meeting opportunities for companies developing complex generics. Details can be found in the Proposed Commitment Letter, section III.C.

D. Additional Program Enhancements

FDA proposes continuing to update the Inactive Ingredient Database (IID) on an ongoing basis and posting quarterly notices of such updates made. Proposed new updates include adding inactive ingredients newly and accurately identified in labeling approved by FDA on or after October 1, 2027, or adding upon request ingredients accurately identified in labeling approved by FDA before October 1, 2027. FDA also proposes to continue the transition in the IID from providing maximum potency to maximum daily exposure (MDE) information. Details can be found in the Proposed Commitment Letter, section IV.A.

FDA proposes to establish a public Maximum Daily Dose (MDD) database populated with at least 500 MDD values for reference listed drugs (RLDs) by the end of FY 2028 and to continue to populate that database with MDD values. FDA also proposes seeking public input on the utility of the MDD database. Details can be found in the

Proposed Commitment Letter, section IV.B.

FDA proposes providing or updating standard tables and format information for applicants to use when submitting certain data in ANDAs and providing external training on best practices. Once updated, industry would aspire to provide data in the updated formats. Details can be found in the Proposed Commitment Letter, section IV.C.

E. DMF Assessment Program

FDA proposes expanding the eligibility criteria for DMF prior assessments to include complex API and prior approval supplements seeking to add a new API source located in the U.S., and to expand eligibility for DMF prior assessment requests related to ANDAs submitted within a certain timeframe of the date all patents and exclusivities for the RLD will expire. FDA also proposes enhancing submission procedures for these DMF assessment requests to add a cover letter template signed by the ANDA applicant and Form FDA 3938. Details can be found in the Proposed Commitment Letter, section V.E.

F. Supporting Domestic Manufacturing

FDA is committed to encouraging domestic manufacturing to reduce supply chain risk. FDA proposes statutory changes to increase the foreign fee differential from \$15,000 to \$25,000 starting in FY 2028 for all foreign Active Pharmaceutical Ingredient (API), Finished Dosage Form (FDF) and Contract Manufacturing Organization (CMO) facilities. FDA also proposes statutory amendments for a one-time application fee waiver for an original ANDA submission fee if a domestic applicant satisfies the proposed requirements of having the application identify only facilities located in the U.S. as both the FDF manufacturer(s) and the API supplier(s). In addition to these statutory changes, FDA proposes an opportunity for existing U.S. generic API and FDF facilities without recent inspection history the opportunity to request an inspection in advance of a planned DMF or ANDA submission that will include the facility. Details can be found in the Proposed Commitment Letter, section VI.E.

G. User Fee Resource Management

FDA is committed to ensuring the sustainability of GDUFA program resources and to enhancing the operational agility of the generic drugs program. FDA will continue activities to promote transparency of the use of GDUFA financial resources in support of the generic drugs program through

publication of a GDUFA 5-year financial plan (along with annual updates). FDA proposes to update the topics included in the financial plan, as well as in the annual GDUFA Financial Report submitted to Congress. FDA will also offer one technical staff meeting per year with industry focused on program finances, and FDA will publish minutes from these meetings on its public website. FDA also proposes to make cover sheets for annual fees available on August 15th or the following business day of each year and to add language to the GDUFA website explaining payment timelines. Details can be found in the Proposed Commitment Letter, section VII.C.

In addition, FDA proposes to amend the statute to modify the date used to establish liability for annual fees for the upcoming fiscal year, to improve predictability. FDA also proposes statutory language for GDUFA IV to change the percentage of total fee revenues to be derived from ANDA submission fees to 26% (from 33%) and shift allocation of the difference to the percentage derived from program fees. FDA also proposes allocating a portion of fees for restaffing the generic drugs program.

IV. Public Meeting Information

A. Purpose and Scope of the Meeting

The meeting will include presentations by FDA and a series of panels with FDA and regulated industry representatives to present and discuss the agreed-upon proposed enhancements. The meeting will also include verbal comments on the proposed enhancements from other interested parties, which may include scientific and academic experts, healthcare professionals, representatives of patient and consumer advocacy groups, and the general public. A draft agenda and other background information for the public meeting will be posted at: <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>.

B. Participating in the Public Meeting

Registration: Information about how to register for the public meeting is available on FDA's web page for this public meeting: <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>. Registration is free for both in person and virtual attendance. In person attendance is based on space availability, with priority given to early registrants. Early registration is recommended because seating is

limited; therefore, FDA may limit the number of in person participants from each organization. If you need special accommodation due to a disability, please contact GDUFAReauthorization@fda.hhs.gov no later than September 3, 2026.

Opportunity for Public Comment: If you wish to speak during the public comment session, complete the request form on <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032> and identify which topic(s) you wish to address. All requests to make a public comment during the meeting must be received by September 3, 2026, 11:59 p.m. Eastern Time. We will do our best to accommodate requests to make public comments. Individuals and organizations with common interests are urged to consolidate or coordinate their comments and request time jointly. FDA we will determine the amount of time allotted to each commenter, the approximate time each comment is to begin, and will select and notify participants by September 10, 2026. No commercial or promotional material will be permitted to be presented at the public meeting.

Streaming Webcast of the Public Meeting: When available, the virtual link to the hybrid public meeting will be posted on FDA's public web page at <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>. FDA will also distribute the link via email to registered attendees.

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at <https://www.regulations.gov>. It may be viewed at the Dockets Management Staff (see **ADDRESSES**). A link to the transcript will also be available on the internet at <https://www.fda.gov/industry/generic-drug-user-fee-amendments/gdufa-iv-fiscal-years-2028-2032>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-16353 Filed 8-10-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Final Health Center Program Scope of Project Policy Manual Guidance

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Health Center Program Scope of Project Policy Manual (Scope Manual) is program guidance to assist health centers in understanding what constitutes the Health Center Program scope of project under section 330 of the Public Health Service (PHS) Act.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, contact HRSA through the HRSA Bureau of Primary Health Care Contact Form: <https://hrsa.my.site.com/support/s/> and select "Scope Manual General Inquiry" under "Health Center Program Policy and Information" or call Lauren Spears, Bureau of Primary Health Care, HRSA, at 301-594-4300.

SUPPLEMENTARY INFORMATION: This final Scope Manual update provides program guidance for all health centers that apply for and receive a federal award under the Health Center Program, as authorized by section 330 of the PHS Act, as well as section 330 subrecipient organizations, and health centers designated as Health Center Program look-alikes.

HRSA released a Notice of Availability for the draft Scope Manual (89 FR 97629) on December 9, 2024, for a 60-day public comment period. The Notice of Availability of Draft Health Center Program Scope Manual Guidance is available online at <https://www.federalregister.gov/documents/2024/12/09/2024-28748/notice-of-availability-of-draft-health-center-program-scope-policy-manual-guidance>. HRSA's "Summary of Comments and HRSA Responses" is also available online at: <https://bphc.hrsa.gov/sites/default/files/bphc/compliance/scopemanual-comments.pdf>. HRSA received a total of 2,767 comments from 135 organizations and individuals on the draft Scope Manual. After thorough review and consideration of all comments received, HRSA made a substantial number of updates to the Scope Manual to incorporate suggestions and requests for further clarification. The final Scope Manual takes effect upon release and is available online at: <https://bphc.hrsa.gov/sites/>

[default/files/bphc/compliance/scopemanual.pdf](https://bphc.hrsa.gov/sites/default/files/bphc/compliance/scopemanual.pdf).

HRSA provides grants to eligible applicants authorized under section 330 of the PHS Act (42 U.S.C. 254b), to support the delivery of preventive and primary care services to the nation's medically underserved individuals and families. HRSA also designates eligible entities as look-alikes under the Health Center Program under sections 1861(aa)(4)(B) and 1905(l)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395x(aa)(4)(B) and 42 U.S.C. 1396d(l)(2)(B)(iii)) respectively. Look-alikes do not receive Health Center Program funding but must meet the Health Center Program requirements. Health centers are local organizations that provide comprehensive, high-quality preventive and primary health care services tailored to their communities regardless of their ability to pay. HRSA's Health Center Program is a cornerstone of our country's health care system, especially for individuals and families who are uninsured; enrolled in Medicaid; or living in rural, remote, or medically underserved areas. Nearly 1,400 HRSA-funded health centers and more than 150 HRSA-designated look-alikes operate more than 16,200 service delivery sites that provide care to more than 33.9 million patients in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. Note that for the purposes of this document, the term "health center" refers to entities that are authorized to receive a federal award under section 330 of the PHS Act, as well as subrecipients and organizations designated as look-alikes, unless otherwise stated.

Organizations receiving Health Center Program federal awards, including subrecipients, and organizations designated as Health Center Program look-alikes, continue to be subject to all requirements stated in Notices of Funding Opportunity, Notices of Award, Look-Alike Initial Designation and Redesignation Instructions, Notices of Look-Alike Designation, as well as other applicable laws, regulations, and policies. Organizations are also subject to the distinct statutory, regulatory, and program requirements of other federal programs in which they participate.

Margaret M. Bush,

Deputy Administrator.

[FR Doc. 2026-16348 Filed 8-10-26; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Proposed Collection; 60-Day Comment Request Generic Clearance for the Collection of Customer Participation and Performance Management With NIH Programs, Products, and Services (Office of the Director)****AGENCY:** National Institutes of Health, HHS.**ACTION:** Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide an opportunity for public comment on proposed data collection projects, the National Institutes of Health, National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received by September 7, 2026.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Diane Kreinbrink, Program Manager, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Room 2W446, Bethesda, Maryland 20892 or call non-toll-free number (240) 276-7283 or email your request, including your address to: diane.kreinbrink@nih.gov. Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 requires: written comments and/or suggestions from the public, and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Generic Clearance for the Collection of Customer Participation and Performance Management with NIH Programs, Products, and Services (NIH), 0925-0778; Expiration Date 9/30/2026, Extension, National Institutes of Health (NIH).

Need and Use of Information Collection: Evaluating the effectiveness of leadership, programs, and services is essential for the vitality of any institution. Leadership review at NIH focuses on the productivity of the IC, management of resources and budget allocations, training activities, and influence on dimensions of diversity, inclusion, promotion of investigators and staff (including NIH Equity Committee (NEC) reports), and positive workforce culture.

Program and service reviews may focus on operational performance; outputs, outcomes, and impacts; policy compliance, stewardship, diversity, equity, and inclusion. Both types of

reviews and evaluations may solicit input from IC staff and leadership (IC Director, Deputy Director, E.O.) and relevant program participants and stakeholders about the program's effectiveness, leader, or process. They may include comparisons with other ICs or programs, external benchmarks, and outcome metrics where appropriate and applicable. This input should provide meaningful information that can be used to identify strengths and areas that need improvement. Reports developed from the review or evaluation may be presented by the IC Director to the IC's Advisory Council or Board, to other IC or NIH leadership (such as the Deputy Director for Intramural Research and the NIH Director), or to program participants or the broader public. Such reports may include recommendations and proposed actions to address areas for improvement. In public or broadly shared reports, any sensitive information in the reviews or evaluations will be summarized and presented in aggregate.

This clearance will allow direct assessment and measurement of the customer/respondent base for participation in and satisfaction with NIH programs, products, and services. The clearance will also enable offices to assess participants' experience and accomplishments during or since participation and their preferences for existing and future programming, products, and services. The information collected using these tools informs and supports budgeting, program management and design, program planning, results reporting, information dissemination, and outreach initiatives.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,375.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden Hour
Individuals, Households, Private Sector, State Government, Local Government, Tribal Government, or Federal Government.	Performance Measurement.	500	1	30/60	250
	Interviews	1,000	1	1	1,000
	Program Reviews	500	1	45/60	375
	Surveys	5,000	1	15/60	1,250
	Focus Groups	500	1	1	500
Totals			7,500		3,375

The Deputy Director for Extramural Research, Jon Lorsch, having reviewed and approved this document, authorizes Alycia Booth, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: July 6, 2026.

Alycia Booth,

Federal Register Liaison, National Institutes of Health.

[FR Doc. 2026–16300 Filed 8–10–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2026–0133]

Infrastructure Security Division, Cybersecurity and Infrastructure Security Agency, Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Cybersecurity and Infrastructure Security Agency Vulnerability Assessments

AGENCY: Cybersecurity and Infrastructure Security Agency, U.S. Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Cybersecurity and Infrastructure Security Agency VULNERABILITY ASSESSMENTS, 1670–0035.

SUMMARY: The Infrastructure Security Division, an office within Cybersecurity and Infrastructure Security Agency submits the following information collection request) to the Office of

Management and Budget for review and clearance. The is an extension of a previously cleared information collection request on November 15, 2023, with an expiration date of November 30, 2026. The purpose of this notice is to allow additional 60 days for public comments.

DATES: Comments are encouraged and will be accepted until September 10, 2026. Submissions received after the deadline for receiving comments may not be considered.

ADDRESSES: You may submit comments, identified by docket number Docket # CISA–2026–0133, by following the instructions below for submitting comment via the Federal eRulemaking Portal at <http://www.regulations.gov>.

Instructions: All comments received must include the agency name and docket number Docket # CISA–2026–0133. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: If additional information is required contact: Iesha Alexander, 202–440–0834, iesha.alexander@cisa.gov.

SUPPLEMENTARY INFORMATION: On April 30, 2024, the White House National Security Council published the National Security Memorandum 22 (NSM–22) on Critical Infrastructure Security and Resilience, which builds on the important work that the Cybersecurity and Infrastructure Security Agency has been undertaking in partnership with

America's critical infrastructure communities. Replacing the previous Presidential Policy Directive 21 (PPD–21) on Critical Infrastructure Security and Resilience, is the National Security Memorandum will help ensure U.S. critical infrastructure can provide the nation a strong and innovative economy, protect American families, and enhance our collective resilience to disasters before they happen, strengthening the nation for generations to come. This National Security Memorandum specifically:

- Task the U.S. Department of Homeland Security to coordinate the national effort to enhance the security and resilience of United States critical infrastructure and provide strategic guidance on this national effort, with Cybersecurity and Infrastructure Security Agency acting as the National Coordinator for the Security and Resilience of U.S. Critical Infrastructure. The Secretary of Homeland Security will be required to submit to the President a biennial National Risk Management Plan that summarizes U.S. government efforts to mitigate risk to the nation's critical infrastructure.

- Reaffirms the designation of 16 critical infrastructure sectors and establishes a federal department or agency responsible for managing risk within each of these sectors.

- Elevates the importance of minimum security and resilience requirements within and across critical infrastructure sectors, consistent with the National Cyber Strategy, which recognizes the limits of a voluntary approach to risk management in the current threat environment.

The Cybersecurity and Infrastructure Security Agency Act of 2018 provides the Cybersecurity and Infrastructure Security Agency with a mission, mandate, and responsibility to take various measures and lead various efforts to help secure the nation's critical infrastructure. To support this mission, Cybersecurity and Infrastructure Security Agency's Infrastructure Security Division conducts voluntary on-site security and resiliency assessments for various critical infrastructure entities, which requires Cybersecurity and Infrastructure Security Agency to voluntarily collect certain information about an entity's security posture, for example; the alignment of their security with business objectives, provide a baseline against which improvements can be measured, and by helping demonstrate due diligence to regulators, customers, and stakeholders. These assessments are web-based and are used to collect an organization's basic high-level information and its dependencies. This data is then used to determine a Protective Measures Index and a Resilience Measure Index for the assessed organization. In turn, the Protective Measures Index and the Resilience Measure Index allow the organization to see how it compares to other organizations within the same sector as well as allows them to see how adjusting certain aspects would change their protection and resiliency readiness. This allows the organization to then determine where best to allocate funding and perform other high-level decision-making processes pertaining to the security and resilience of the organization.

The information will be voluntarily provided by the organizations to Cybersecurity and Infrastructure Security Agency Protective Security Advisors and Cybersecurity Security Advisors. The Protective Security Advisors and Cybersecurity Advisors will then visit the site and perform the assessment, as requested. They then return to complete the vulnerability assessment and input the data into the

system where the data is then accessible by the system users. Once available, the organization and other relevant system users can then review the data and use it for planning, risk identification, mitigation, and decision making.

All data captured is electronically by the Protective Security Advisors, Cybersecurity Advisors or by the organization as a self-assessment. Participation in the vulnerability assessments is voluntary but full completion of the assessment data collection is required if the organization desires to receive a complete evaluation of their security posture.

After assessments are input into the system, the user is prompted to participate in a feedback questionnaire called the Post Assessment questionnaire. Participation in the Post Assessment questionnaire is voluntary. The Post Assessment Questionnaires are designed to capture feedback about a vulnerability assessment and the system. There are three different questionnaires correlated and prompted after entering a particular assessment into the database. The results are used internally within the U.S. Department of Homeland Security to make programmatic improvements. After assessments are input into the system, the user is prompted to participate in a feedback questionnaire.

The collection of information uses automated electronic vulnerability assessments and questionnaires. The vulnerability assessments and questionnaires are electronic in nature and include questions that measure the security, resiliency and dependencies of an organization. The vulnerability assessments are arranged at the request of an organization and are then scheduled and performed by Protective Security Advisors.

The changes to the collection since the previous OMB approval includes the transition of three cyber-centric questionnaires customer feedback questionnaires (Cybersecurity Infrastructure Survey, Cyber Resilience Review, and External Dependency Management) to a disparate system, and

the decommissioning of the Stakeholder Risk Assessment and Mitigation. These actions reflect a strategic consolidation of assessment functions and the migration of questionnaire content and capabilities to an alternative system. Collectively, these modifications have resulted in reduced respondent burden and associated cost estimates, as the retired questionnaires and system components are no longer part of the information collection framework.

The removal of the three questionnaires has decreased the burden estimates by \$1,264,787. The annual burden cost for the collection has decreased by \$1,267,072, from \$1,907,757 to \$640,685, due to the removal of the Post Assessment Questionnaires and updated wage rates. The annual government cost for the collection has decreased by \$1,478,073, from \$2,220,152 to \$742,079, due to the removal of the three Post Assessment Questionnaires and updated wage rates. The information collected is also shared with the Federal Emergency Management Agency and is utilized to make determinations for Public Assistance grants based on the information supplied by the respondents.

Cybersecurity and Infrastructure Security Agency is authorized by the Cybersecurity and Infrastructure Security Agency Act of 2018 to collect this information codified under the authorities provided by 6 United States Code, section 652, including subsection (c)(5) (authorizing the Cybersecurity and Infrastructure Security Agency to "upon request, provide analyses, expertise, and other technical assistance to critical infrastructure owners and operators and, where appropriate, provide those analyses, expertise, and other technical assistance in coordination with Sector-Specific Agencies and other Federal departments and agencies"); and (e)(1)(B) (authorizing the Cybersecurity and Infrastructure Security Agency to "carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States").

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency, U.S. Department of Homeland Security.

Title: Cybersecurity and Infrastructure Security Agency Vulnerability Assessments.

OMB Number: 1670-0035.

Frequency: Annually.

Affected Public: State, Local, Tribal, and Territorial Governments, and Private Sector Individuals.

Number of Respondents: 1,100.

Estimated Time per Respondent: 7.5 hours and 0.17 hours depending on response element.

Total Burden Hours: 7,150.5.
Total Annual Burden Cost: \$661,475.
Total Annual Government Burden Cost: \$883,064.

Winfield P. Werntz,

Acting Chief Information Officer, U.S. Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2026-16270 Filed 8-10-26; 8:45 am]

BILLING CODE 9111-LF-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS-HQ-IA-2026-2476; FXIA16710900000-267-FF09A30000]

Endangered Species; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species. We issue these permits under the Endangered Species Act (ESA).

ADDRESSES: Information about the applications for the permits listed in this notice is available online at <https://www.regulations.gov>. See **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Timothy MacDonald, by phone at 703-358-2185 or via email at DMAFR@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: We, the Service, have issued permits to conduct certain activities with endangered and threatened species in response to permit applications that we received under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

After considering the information submitted with each permit application and the public comments received, we issued the requested permits subject to certain conditions set forth in each permit. For each application for an endangered species, pursuant to section 10(d) of the ESA we found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Availability of Documents

The permittees' original permit application materials, along with public comments we received during public comment periods for the applications, are available for review. To locate the application materials and received comments, go to <https://www.regulations.gov> and search for the appropriate permit number (e.g., 12345C) provided in the following table:

ePermits No.	Applicant	Permit issuance date
PER17540092	Erich Jarvis c/o Rockefeller University	01/16/2026
PER11734478	Cincinnati Zoo & Botanical Garden	02/12/2026
PER14967461	University of Cincinnati	02/19/2026
PER20976961	Columbus Zoo and Aquarium	02/26/2026
PER19410330	Saint Louis Zoo	03/03/2026
PER18014545	Fresno Chaffee Zoo	3/10/2026
PER20155869	USFWS Texas Coastal Ecological Services Field Office	3/27/2026
PER22029243	Michael Arthur Sumner	3/30/2026
PER22030519	Shaun Michael Kogut	3/30/2026
PER19561034	Los Angeles Zoo	04/01/2026
PER22041006	Benjamin Solum	04/01/2026
PER22057213	Mark D. Farnam	04/01/2026
PER22057217	Michael Logue	04/01/2026
PER22057254	James McKenzie Sims	04/01/2026
PER22043413	Lisa Arnold	04/01/2026
PER22702471	James Cannella	04/03/2026
PER22571162	Russell Lee Brines	04/03/2026
PER22722124	Marla Dobson	04/03/2026
PER22740555	Stephanie Howard McGarrh	04/06/2026
PER22993975	Ronald Browning	04/06/2026
PER22723099	Adam Nietsche	04/06/2026
PER23002769	Benjamin Norris	04/07/2026
PER23001703	Dustin Knutson	04/07/2026
PER23002846	Ryan Allowitz	04/07/2026
PER23023066	Vanessa Lindner	04/07/2026
PER23023968	Leonard Wood	04/07/2026
PER22042437	Todd Hodson	04/07/2026
PER23053747	Amanda Bentley	04/07/2026
PER23188968	Sheldon McVay	04/08/2026
PER23588522	Scott Alan Limmer	04/09/2026
PER22876538	Memphis Zoo	04/09/2026
PER22579904	Pinola Conservancy	04/09/2026
PER23468176	Ennio Staffini	04/14/2026
PER23591126	David Joseph Angel	04/14/2026
PER23601436	Troy P. Clark	04/14/2016
PER24440607	Benedikt Ibing	04/14/2026
PER24510992	Lon Edward Rehkop	04/14/2026
PER24424540	Peter M. Strobe	04/14/2026
PER24520998	Ethan R. Stafford	04/20/2026
PER24522111	Gary P. Stafford	04/20/2026
PER24522416	Robert C. Stafford	04/20/2026
PER24537331	Daniel Boddy	04/20/2026
PER23456382	Drake Dawson	04/20/2026
PER24546879	Charles Gurkin	04/20/2026
PER24864730	James Lynn Matthews Jr	04/20/2026
PER24570242	David Rider	04/20/2026
PER24869767	David Uehling	04/20/2026
PER24618904	John Timothy Foster Jr	04/20/2026
PER24543896	Scott Mahone	04/22/2026
PER13406047	Christopher E. O'Connor	05/04/2026
PER21349374	Carolina Tiger Rescue	07/25/2025
PER20524437	Stevens Ranch Enterprises dba 6S River Ranch	11/06/2025
PER12034353	Michael Damron	5/15/2026
PER12034355	Tucker Spence Knight	5/15/2026

Authorities

We issue this notice under the authority of the Endangered Species Act

of 1973, as amended (16 U.S.C. 1531 *et seq.*), implementing regulations.

Scott Carleton,

*Acting Branch Chief, Branch of Permits,
Division of Management Authority, U.S. Fish
and Wildlife Service.*

[FR Doc. 2026-16291 Filed 8-10-26; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service**

[Docket No. FWS-R7-ES-2026-2576;
FXES111607MRG01-267-FF07CMM00]

**Marine Mammals; Incidental Take
During Specified Activities; Proposed
Incidental Harassment Authorization
for Southwest Alaska Stock of
Northern Sea Otters in Unalaska,
Alaska**

AGENCY: Fish and Wildlife Service,
Interior.

ACTION: Notice of receipt of application;
proposed incidental harassment
authorization; draft environmental
assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), in response to a request under the Marine Mammal Protection Act of 1972, as amended, from the City of Unalaska, propose to authorize incidental take by harassment of small numbers of Southwest Alaska stock northern sea otters (*Enhydra lutris kenyoni*) for a period of up to 1 year from the date of issuance. The applicant has requested this authorization for take by harassment that may result from activities associated with pile driving and marine construction at the Robert Storrs Harbor in Unalaska, Alaska. This proposed authorization, if finalized, would be for incidental take by Level A harassment and Level B harassment of northern sea otters from the Southwest Alaska stock. We invite comments on the proposed incidental harassment authorization and the accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by September 10, 2026.

ADDRESSES:

Document availability: You may view the application package, the draft environmental assessment, and other supporting material at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2026-2576, or you may request these documents from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Comment submission: All submissions must include the docket number [FWS-R7-ES-2026-2576] for this document. You must submit comments using one of the following methods:

- *Electronic submission:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R7-ES-2026-2576, which is the docket number for this rulemaking action. Then, click on the "Search"

button. On the resulting page, in the panel on the left side of the screen under the "Document Type" heading, check the Notice box to locate this document. You may submit a comment by clicking on "Comment." Comments must be submitted to <https://www.regulations.gov> before 11:59 p.m. (Eastern Time) on the date specified in **DATES**.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R7-ES-2026-2576, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041-3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

We request that you send comments only by the methods described above. We will post all comments at <https://www.regulations.gov>. You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

FOR FURTHER INFORMATION CONTACT:

Stephanie Burgess, by email at r7mmmregulatory@fws.gov, by telephone at 907-786-3800, or by U.S. mail at U.S. Fish and Wildlife Service, MS 341, 1011 East Tudor Road, Anchorage, AK 99503. 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:**Background**

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of certain marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal

Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS, or we). According to the MMPA, the FWS shall allow this incidental taking by harassment if we find that the total of such taking for the 1-year period:

1. Will affect only small numbers of individuals of the species or stock;
2. Will have no more than a negligible impact on the species or stock; and
3. Will not have an unmitigable adverse impact on the availability of these species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

1. Permissible methods of taking;
2. Means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and
3. Requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term "take" means to "harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. 1362(13)). Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as "Level A harassment"), or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as "Level B harassment") (16 U.S.C. 1362(18)).

The terms "negligible impact" and "unmitigable adverse impact" are defined in 50 CFR 18.27(c) as follows: "Negligible impact" is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. "Unmitigable adverse impact" means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level

insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term “small numbers” is also defined in 50 CFR 18.27(c). However, we do not rely on that definition here as it conflates “small numbers” with “negligible impacts.” We recognize “small numbers” and “negligible impacts” as two separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Natural Res. Def. Council, Inc. v. Evans*, 232 F. Supp. 2d 1003, 1025 (N.D. Cal. 2003)). Instead, for our small numbers

determination, we estimate the likely number of marine mammals to be taken and evaluate if that take is small relative to the size of the species or stock.

The term “least practicable adverse impact” is not defined in the MMPA or its enacting regulations. In processing requests for IHAs, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of specified activities, but they are not so restrictive as to make specified activities unduly burdensome or impossible to undertake and complete.

Summary of Request

On June 25, 2025, the FWS received a request prepared by PND Engineers, Inc. on behalf of the City of Unalaska (hereafter, COU or the applicant) for an authorization to take by harassment northern sea otters (*Enhydra lutris kenyoni*) (hereafter, sea otters unless another sea otter subspecies is specified)

from the Southwest Alaska stock. The applicant expects take by harassment may occur during their replacement and improvement of the existing Robert Storrs Harbor infrastructure in Unalaska, Alaska. FWS requested additional information on project activities, geospatial files of the project impact area, and mitigation measures, and the COU provided the requested information. We received a revised request on April 2, 2026, and we determined the revised request to be adequate and complete.

Description of Specified Geographic Region and Specified Activities

The specified geographic region is the nearshore waters surrounding Robert Storrs Harbor (hereafter project location) located in Unalaska, Alaska. The project location is within Expedition Inlet, which is adjacent to Expedition Island, in Iliuliuk Harbor (figure 1 below).

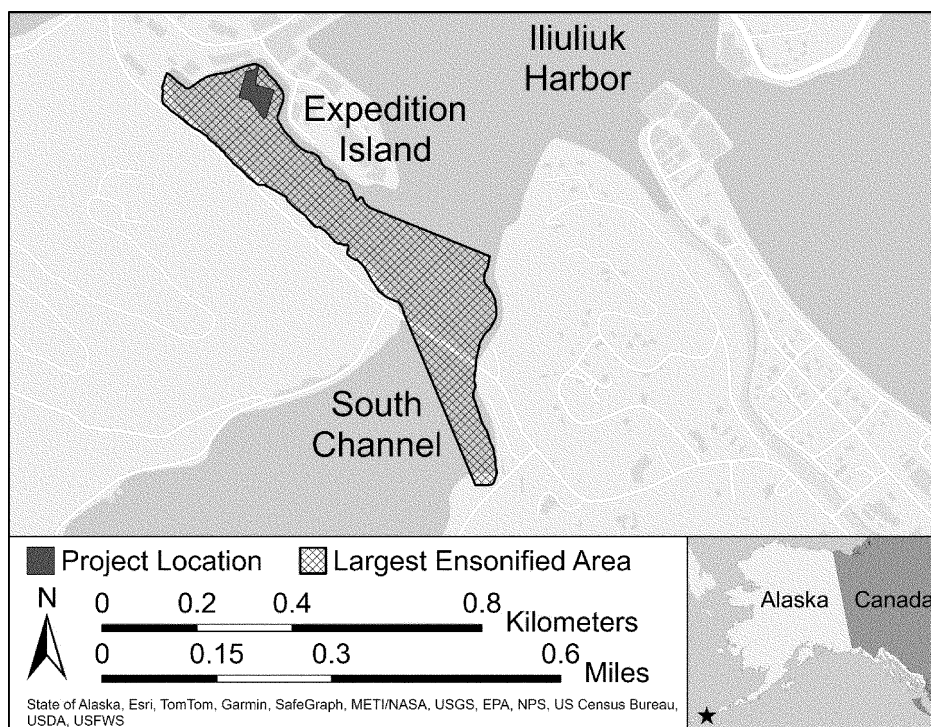


Figure 1. Specified geographic region of the project.

The specified activity (hereafter referred to as project) will include demolishing the existing moorage structures; installing new high-density polyethylene (HDPE) floats; upgrading access and utilities; and expanding upland parking facilities to improve accessibility, public safety and services, and vessel mooring for local recreational vessels at the Robert Storrs Harbor. The applicant, COU, plans to remove a total

of 33 steel piles that are no greater than 40.6 centimeters (cm) (16 inches [in]) in diameter using vibratory pile driving methods. A total of 5 temporary steel piles, each 61.0 cm (24 in) in diameter, will be installed and removed using vibratory pile driving to guide permanent piles into place. The applicant plans to install a total of 44 permanent steel piles no greater than 61.0 cm (24 in) in diameter using a

combination of vibratory pile driving, impact pile driving, and down-the-hole (DTH) drilling of rock sockets. Hereafter (unless otherwise specified), the terms “pile driving” and “pile-driving activities” are used to refer to both pile installation and pile removal. Table 1 below summarizes in-water project activities.

TABLE 1—COU ROBERT STORRS HARBOR PROJECT ACTIVITIES, PILES INSTALLED OR REMOVED, AND DAYS OF ACTIVITY

Project component	Pile size and material	Activity	Total number of piles	Maximum number of piles per day	Maximum number of activity days
Demolition	40.6-cm (16-in) steel	Removal—vibratory	33	15	7
Construction	61.0-cm (24-in) steel	Temporary installation—vibratory.	5	4	2
		Temporary removal—vibratory.		4	3
	61.0-cm (24-in) steel	Installation—vibratory	44	4	22
		Installation—impact		4	22
		Installation—rock socket DTH.		2	44

Pile-driving activities will occur up to 100 non-consecutive days during the 1 year from the date of issuance of the IHA, if finalized. Materials and equipment will be transported via barges to the project location. The applicant will also use a crane barge and one or more small skiffs to support construction operations. Shot rock fill and base course will be placed below the high tide line to create the embankment to support the upland parking facility expansion. Geotextile fabric and armor rock will be placed to protect the upland parking facility and keep the shot rock fill in place. Additional project details may be reviewed in the application materials available as described under **ADDRESSES** or may also be requested as described under **FOR FURTHER INFORMATION CONTACT**.

Description of Marine Mammals in the Specified Geographic Region

The sea otter is the only marine mammal species under the FWS's jurisdiction likely to be found within the specified geographic region. Information on the range, stocks, and biology of sea otters is included in supplemental information, which can be found as described above in **ADDRESSES**.

Potential Impacts of the Specified Activities on Marine Mammals

Effects of Noise on Sea Otters

We characterize “noise” as sound released into the environment from human activities that exceeds ambient levels or interferes with normal sound production or reception by sea otters. The terms “acoustic disturbance” and “acoustic harassment” are disturbances or harassment events resulting from noise exposure. Potential effects of noise exposure are likely to depend on the sea otter's distance from the sound source, the sound level and intensity the sea otter receives, background noise levels, noise frequency, noise duration, and whether the noise is pulsed or

continuous. The actual noise level perceived by individual sea otters will also depend on whether the sea otter is above or below water and on atmospheric and environmental conditions. Temporary disturbance of sea otters or localized displacement reactions are the most likely effects to occur from noise exposure.

Sea Otter Hearing

Pile driving and marine construction activities produce sound within sea otters' hearing range. Controlled sound exposure trials on southern sea otters (*Enhydra lutris nereis*) indicate that sea otters can hear frequencies between 125 hertz (Hz) and 38 kilohertz (kHz), with best sensitivity between 1.2 and 27 kHz (Ghoul and Reichmuth 2014). Sea otters are more adept at aerial hearing and their sensitivity is similar to that of terrestrial carnivores (Reichmuth and Ghoul 2012; Ghoul and Reichmuth 2016; Zellmer et al. 2021).

Aerial and underwater audiograms for a captive adult male southern sea otter in the presence of ambient noise suggest the sea otter's hearing was less sensitive to high-frequency (greater than 22 kHz) and low-frequency (less than 2 kHz) sound than that of terrestrial mustelids, but similar to that of a California sea lion (*Zalophus californianus*). However, the sea otter was still able to hear low-frequency sounds, and the detection thresholds for sounds between 0.125 and 1 kHz were between 116 and 101 decibels (dB), respectively. Dominant frequencies of southern sea otter vocalizations are between 3 and 8 kHz, with some energy extending above 60 kHz (McShane et al. 1995; Ghoul and Reichmuth 2012).

Exposure to high levels of sound may cause changes in behavior, masking of communications, temporary or permanent changes in hearing sensitivity, discomfort, and injury to marine mammals. Sea otters do not rely on sound to orient themselves, locate prey, or communicate under water; therefore, masking of communications

by anthropogenic noise is less of a concern for sea otters than for other marine mammals. However, sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987).

Exposure Thresholds

Underwater Sounds

Noise exposure criteria for identifying underwater noise levels capable of causing Level A harassment (injury) to marine mammal species, including sea otters, have been established using the same methods as those used by the National Marine Fisheries Service (NMFS) (Southall et al. 2019). These criteria are based on estimated levels of sound exposure capable of causing a permanent shift in hearing sensitivity that is, a permanent threshold shift (PTS) (NMFS 2018). A PTS occurs when noise exposure causes damage to hair cells within the inner ear system (Ketten 2012). A sea otter that experiences PTS would be permanently unable to hear certain sounds at frequencies similar to those that caused the initial injury. Although the effects of PTS are, by definition, permanent, PTS does not equate to total hearing loss.

Sound exposure thresholds incorporate two metrics of exposure: the peak level of instantaneous exposure likely to cause PTS, and the cumulative sound exposure level (SEL_{CUM}) during a 24-hour period. They also include weighting adjustments for the sensitivity of different species to varying frequencies. The PTS-based injury criteria were developed from theoretical extrapolation of observations of temporary threshold shifts (TTS) detected in lab settings during sound exposure trials (Finneran 2015). A TTS is a noise-induced threshold shift in hearing sensitivity that fully recovers over time (Finneran 2015). Southall et al. (2019) developed TTS thresholds for sea otters, which are included in the

“other marine carnivores” category, of 188 dB SEL_{CUM} re 1 micropascal (μPa) for impulsive underwater sound and 199 dB SEL_{CUM} for nonimpulsive underwater sound. Based on these analyses, Southall et al. (2019) predict that PTS for sea otters will occur at 232 dB peak sound pressure level (SPL) or 203 dB SEL_{CUM} for impulsive underwater sound and 219 dB SEL_{CUM} for nonimpulsive underwater sound.

The NMFS has revised its sound exposure criteria to include thresholds for auditory injury (NMFS 2024). We are evaluating the auditory injury criteria to determine whether they are appropriate for FWS trust species, as sea otters in particular are not exposed to in-water noise for an entire 24-hour period.

The NMFS (2018) sound exposure criteria do not identify thresholds for avoidance of Level B harassment. For pinnipeds (seals and sea lions), NMFS has adopted a 160-dB threshold for Level B harassment from exposure to impulsive noise and a 120-dB threshold for nonimpulsive noise (High Energy Seismic Survey Team 1999; NMFS 2018). These thresholds were developed from observations of mysticete (baleen) whales responding to airgun operations (e.g., Malme et al. 1983; Malme and Miles 1983; Richardson et al. 1986, 1995). Southall et al. (2007, 2019) assessed behavioral response studies and found considerable variability among pinnipeds. The authors determined that exposures between approximately 90 to 140 dB generally do not appear to induce strong behavioral responses from pinnipeds in water. However, they found behavioral effects, including avoidance, became more likely in the range between 120 and 160 dB, and most marine mammals showed some, albeit variable, responses to sound between 140 and 180 dB. Wood

et al. (2012) adapted the approach identified in Southall et al. (2007) to develop a probabilistic scale for marine mammal taxa at which 10 percent, 50 percent, and 90 percent of individuals exposed are assumed to produce a behavioral response. For many marine mammals, including pinnipeds, these response rates were set at 140, 160, and 180 dB SPLs, respectively.

We have evaluated these thresholds and determined that the Level B harassment threshold of 120 dB for nonimpulsive noise is not applicable to sea otters. The 120-dB threshold is based on studies in which gray whales (*Eschrichtius robustus*) were exposed to experimental playbacks of industrial noise (Malme et al. 1983; Malme and Miles 1983). During these playback studies, southern sea otter responses to industrial noise were also monitored (Riedman 1983, 1984). While gray whales exhibited avoidance to industrial noise at the 120-dB threshold, there was no evidence of disturbance reactions or avoidance in southern sea otters. Thus, given the differences in hearing and behavior between sea otters and gray whales, the NMFS 120-dB threshold based on gray whale behavior is not appropriate for predicting sea otter behavioral responses.

Based on the lack of sea otter disturbance response or any other reaction to the 1980s playback studies, as well as the absence of a clear pattern of disturbance or avoidance behaviors attributable to underwater sound levels up to about 160 dB resulting from low-frequency broadband noise, we assume 120 dB is not an appropriate behavioral response threshold for sea otters exposed to nonimpulsive underwater noise.

Based on the best available scientific information about sea otters and closely

related marine mammals where sea otter data are limited, the FWS has set 160 dB of received underwater sound as a threshold for take by Level B harassment of sea otters in this proposed IHA. Exposure to in-water noise levels between 125 Hz and 38 kHz that are greater than 160 dB—for both impulsive and nonimpulsive sound sources—will be considered by the FWS as Level B harassment. Thresholds for Level A harassment (which entails the potential for injury) for in-water noise levels between 125 Hz and 38 kHz are 232 dB peak SPL or 203 dB SEL_{CUM} for impulsive sounds and 219 dB SEL_{CUM} for nonimpulsive sounds (table 2 below).

Airborne Sounds

Thresholds for Level A harassment for in-air noise levels are 176 dB peak SPL re 20 μPa or 161 dB SEL_{CUM} for impulsive sounds and 177 dB SEL_{CUM} for nonimpulsive sounds (table 2 below). The NMFS (2018) guidance neither addresses thresholds for preventing injury or disturbance from airborne noise, nor provides thresholds for avoidance of Level B harassment. The NMFS currently recommends 100 dB for all pinnipeds, excluding harbor seals, as the Level B harassment threshold for in-air noise (NMFS 2025). Conveyance of underwater noise into the air is of little concern since the effects of pressure release and interference at the water's surface reduce underwater noise transmission into the air. For activities that create both in-air and underwater noise, we will estimate take based on parameters for underwater noise transmission. Considering sound energy travels more efficiently through water than through air, this estimation will also account for exposures to sea otters at the surface.

TABLE 2—TEMPORARY THRESHOLD SHIFT (TTS) AND PERMANENT THRESHOLD SHIFT (PTS) THRESHOLDS

[Established by Southall et al. (2019) through modeling and extrapolation for “Other Marine Carnivores”, which include sea otters.*]

	TTS			PTS		
	nonimpulsive	impulsive		nonimpulsive	impulsive	
	SEL _{CUM}	SEL _{CUM}	Peak SPL	SEL _{CUM}	SEL _{CUM}	Peak SPL
Air	157	146	170	177	161	176
Water	199	188	226	219	203	232

* Values are weighted for other marine carnivores' hearing thresholds and given in cumulative sound exposure level (SEL_{CUM} dB re (20 micropascal [μPa] in air and SEL_{CUM} dB re 1 μPa in water) for impulsive and nonimpulsive sounds, and unweighted peak sound pressure level (SPL) in air (dB re 20μPa) and water (dB 1μPa) (impulsive sounds only)).

Evidence From Sea Otter Studies

Individual sea otters near the project location would likely show a range of responses to noise from pile-driving activities. Some sea otters would likely

dive, show startle responses, change direction of travel, or prematurely surface. Sea otters reacting to pile-driving activities may divert time and attention from biologically important

behaviors, such as feeding and nursing pups. Sea otter responses to disturbance can result in energetic costs. For example, sea otters spend more time traveling in areas with high levels of

disturbance (Curland 1997). Higher energetic costs require increased amounts of prey consumption (Barrett 2019). This increased prey consumption may impact sea otter prey availability and cause sea otters to spend more time foraging and less time resting (Barrett 2019). Some sea otters may abandon the project location and return when the disturbance has ceased. Based on the observed movement patterns of sea otters (Lensink 1962; Kenyon 1969, 1981; Garshelis and Garshelis 1984; Riedman and Estes 1990), we expect some sea otters would respond to pile-driving activities by dispersing to nearby areas of suitable habitat; however, other sea otters, especially territorial adult males, would not be displaced.

Additional information on the evidence from studies about how sea otters may be affected by noise can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Permanent Threshold Shift

Sea otters exposed to noise levels above Level A harassment threshold criteria may experience a permanent shift in the sensitivity of their hearing. Information on the consequences of a PTS in sea otter hearing due to noise exposure can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Consequences of Disturbance

Information on the consequences of disturbance to sea otters can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Vessel Activities

Vessel activity during the project includes the use of barges and skiffs to transport and stage equipment and materials to support construction operations. Vessels will not be used extensively or over a long duration during project activities. We do not anticipate that sea otters would experience changes in behavior indicative of harassment during vessel operations. Additionally, vessel operators would take every precaution to avoid harassment of sea otters when operating a vessel near sea otters and implement mitigation measures described in the COU's request and below in this proposed IHA, which include maintaining a minimum distance of 100 meters (m) (328 feet [ft]) from all sea otters.

Additional information on vessel activities can be found in the supplemental information to this document (available as described above in **ADDRESSES**).

Effects on Sea Otter Habitat and Prey

Information on the potential impacts of the specified activities on sea otter habitat and prey species can be found in the supplemental information to this document (available as described above in **ADDRESSES**). Based on this information, we do not anticipate any harassment to sea otters due to effects on sea otter habitat or prey from the specified activities.

Potential Impacts of the Specified Activities on Subsistence Uses

The specified activities will occur near marine subsistence harvest areas used by Alaska Natives from Unalaska and the surrounding areas. The majority of sea otter harvest in this area occurs in Captains Bay near Unalaska. Since 2015, there have been five sea otters harvested in the Captains Bay area. Four sea otters were harvested in 2015, and one sea otter was harvested in 2020.

The planned project will occur within the Unalaska city limits, where firearm use is prohibited. The area potentially affected by the planned project does not significantly overlap with current subsistence harvest areas. Construction activities will not preclude access to hunting areas or interfere in any way with individuals wishing to hunt. Despite no conflict with subsistence use being anticipated, the FWS will conduct outreach with potentially affected communities to see whether there are any questions, concerns, or potential conflicts regarding subsistence use in those areas. If any conflicts are identified in the future, the COU will develop a plan of cooperation (POC) specifying the steps necessary to minimize any effects the project may have on subsistence harvest.

Estimated Take

Definitions of Incidental Take Under the MMPA

Under the MMPA, "take" means "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal" (16 U.S.C. 1362(13)). Below we provide definitions of three types of take of sea otters. This discussion is provided for context and background and does not necessarily reflect what is anticipated to result from the specified activities.

Lethal Take

In the most serious interactions, human actions can result in the

mortality of sea otters, which we define here as lethal take.

Level A Harassment

The MMPA defines Level A harassment, for nonmilitary readiness activities, as "any act of pursuit, torment, or annoyance which . . . has the potential to injure a marine mammal or marine mammal stock in the wild" (16 U.S.C. 1362(18)(A)(i), (C)). We interpret this definition to include human activity that may result in PTS in a sea otter's hearing sensitivity or injury to sea otters.

Level B Harassment

The MMPA defines Level B harassment for nonmilitary readiness activities as "any act of pursuit, torment, or annoyance which . . . has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering" (16 U.S.C. 1362(18)(A)(ii), (D)). We interpret this definition to include human-caused reactions that disrupt biologically significant behaviors or activities for the affected animal. Such reactions include, but are not limited to, the following:

- Swimming away at a fast pace on belly (*i.e.*, porpoising);
- Repeatedly raising the head vertically above the water to get a better view (spyhopping) while apparently agitated or while swimming away;
- In the case of a pup, repeatedly spyhopping while hiding behind and holding onto its mother's head;
- Abandoning prey or feeding area;
- Ceasing to nurse and/or rest (applies to dependent pups);
- Ceasing to rest (applies to independent animals);
- Ceasing to use movement corridors;
- Ceasing mating behaviors;
- Shifting/jostling/agitation in a raft (*i.e.*, group of 10 or more sea otters) so that the raft disperses;
- Sudden diving of an entire raft;
- Flushing animals off a haulout; or
- TTS in a sea otter's hearing sensitivity.

This list does not encompass all possible behaviors that indicate Level B harassment; other behavioral responses may be indicative of take by Level B harassment. In some circumstances, eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important

behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment.

Calculating Take

Sea Otter Density

We assumed all sea otters exposed to underwater sound levels that meet the acoustic exposure criteria defined above in *Exposure Thresholds* would experience take by Level A harassment or Level B harassment. We refer to the area in which sound levels meet or exceed the acoustic exposure criteria defined for either Level A harassment or Level B harassment as the ensonification area. Spatially explicit ensonification areas were established around the planned construction location to estimate the number of sea otters that may be exposed to these sound levels.

We estimated sea otter density using the estimated number of sea otters in the project location derived from a spatially explicit hierarchical distance sampling model (Wilson et al. 2021). Sea otter density ranged from 13.413 to 22.745 sea otters per square kilometer (km²) inside the project's largest ensonification area (Wilson et al. 2021). We used the maximum estimated sea otter density of 22.745 sea otters/km² in our analysis to estimate the number of sea otters potentially affected by the project activities.

Sound Levels for the Specified Activities

The project activities consist of vibratory pile extraction and multiple pile installation methods (vibratory pile driving, impact pile driving, and DTH drilling of rock sockets). Each method generates a different type of in-water noise. Vibratory pile extraction and installation produces nonimpulsive noise; impact pile installation produces impulsive noise; and DTH drilling of rock sockets is considered to produce both impulsive and nonimpulsive noise (NMFS 2020).

The level of sound anticipated from each project activity was established using data from several sources in addition to guidance from NMFS. We used the empirical data from those proxy projects and sound levels provided by NMFS with the NMFS Technical Guidance and User Spreadsheet (NMFS 2018, 2020) to determine the distance at which sound levels would attenuate to Level A harassment thresholds (table 2 above). To estimate the distance at which sound levels would attenuate to Level B harassment thresholds, we used the data from the proxy projects and the sound levels provided by NMFS to determine the distance at which sound levels would attenuate to 160 dB. We used the NMFS-recommended transmission loss coefficient of 15 for coastal pile-driving activities in a practical spreading loss

model (NMFS 2020) to estimate distances at which sounds would attenuate to Level A harassment and Level B harassment thresholds. The weighting factor adjustment included in the NMFS user spreadsheet accounts for sounds experienced in less sensitive portions of an animal's hearing range. We used the weighting factor adjustment for otariid pinnipeds as they are the closest available physiological and anatomical proxy for sea otters. We acknowledge that NMFS has revised their user spreadsheet to include thresholds for auditory injury (NMFS 2024). As discussed in *Exposure Thresholds*, we are evaluating the auditory injury criteria to determine whether they are appropriate for FWS trust species, and we will continue to use the previous version of the user spreadsheet (NMFS 2018, 2020) to estimate harassment of sea otters from in-water noise exposure during our evaluation.

Sound levels for all sources are unweighted and given in dB re 1 μ Pa. For nonimpulsive sound sources, sound levels are shown in the form of mean maximum root mean square (RMS) SPL. For impulsive sound sources, sound levels are shown in the forms of peak SPL (peak) and sound exposure level for a single strike (SELss). Sound levels for project activities are listed in table 3 below.

TABLE 3—COU ROBERT STORRS HARBOR SOUND TYPES, LEVELS, AND TIMING

Project component	Pile size and material	Activity	Type of sound	Sound levels	Source	Timing per pile (nonimpulsive sound sources) or strikes per pile (impulsive sound sources)
Demolition	40.6-cm (16-in) steel.	Removal—vibratory.	Nonimpulsive	163 dB RMS	NMFS 2026	15 minutes
Construction	61.0-cm (24-in) steel.	Temporary installation—vibratory.	Nonimpulsive	163 dB RMS	NMFS 2026	20 minutes
		Temporary removal—vibratory.		163 dB RMS	NMFS 2026	15 minutes
	61.0-cm (24-in) steel.	Installation—vibratory.	Nonimpulsive	163 dB RMS	NMFS 2026	20 minutes.
		Installation—impact	Impulsive	190 dB RMS; 177 dB SELss; 203 dB peak.	Caltrans 2015; NMFS 2026	1,000 strikes
		Installation—rock socket DTH.	Impulsive and nonimpulsive.	167 dB RMS; 159 dB SELss; 184 dB peak.	Heyvaert & Reyff 2021;. NMFS 2022	180 minutes/ 108,000 strikes

Ensonification Areas

Distances to below Level A harassment and Level B harassment thresholds were calculated for each project activity to determine the ensonification area for that activity. The

COU would implement a 10-m (33-ft) physical interaction shutdown zone, regardless of predicted sound levels, to minimize the potential for physical impacts to sea otters. Additionally, this 10-m (33-ft) physical interaction shutdown zone would reduce the

number of sea otters exposed to in-water noise levels at or above Level A harassment thresholds. The 10-m (33-ft) physical interaction shutdown zone would encompass the majority of the Level A harassment zones (table 4 below).

TABLE 4—COU ROBERT STORRS HARBOR DISTANCES TO BELOW LEVEL A HARASSMENT AND LEVEL B HARASSMENT ZONES AND PROPOSED PHYSICAL INTERACTION SHUTDOWN ZONES

Project component	Pile size and material	Activity	Distance to below Level A harassment threshold (m)	Distance to below Level B harassment threshold (m)	Distance to below physical interaction shutdown zone (m)
Demolition	40.6-cm (16-in) steel	Removal—vibratory	1.0	15.9	10.0
Construction	61.0-cm (24-in) steel	Temporary installation—vibratory.	0.5	15.9	10.0
		Temporary removal—vibratory	0.4	15.9	10.0
	61.0-cm (24-in) steel	Installation—vibratory	0.5	15.9	10.0
		Installation—impact	39.0	1,000.0	10.0
		Installation—rock socket DTH	35.2	29.3 ^a	10.0

^aThe Level B harassment distance threshold is smaller than the Level A harassment distance threshold for these activities; therefore, the Level A harassment distance threshold will be used rather than the Level B harassment distance threshold for monitoring of takes.

We calculated the area ensonified to >232 dB peak SPL or >203 dB SEL_{CUM} re 1μPa for impulsive underwater sound and >219 dB SEL_{CUM} re 1μPa for nonimpulsive underwater sound to determine the area in which sea otters may experience Level A harassment for each of the COU's project activities. Our ensonification area calculations showed that the project activity sound levels would not reach the 232 dB peak SPL threshold for causing instantaneous PTS in sea otter hearing sensitivity. We multiplied the ensonification area for Level A harassment by the density of sea otters for the project location (see *Sea Otter Density*) and the number of project activity days to determine the

number of Level A harassment events for each project activity.

To estimate the number of Level B harassment events during the COU's project activities, we subtracted the area of the Level A harassment zone from the area ensonified to >160 dB re 1μPa to determine the area in which sea otters may experience Level B harassment for each project activity. Our ensonification area calculations showed that the project activity sound levels would not reach the 226 dB peak SPL threshold for causing instantaneous TTS in sea otter hearing sensitivity outside the 10-m (33-ft) physical interaction shutdown zone. We multiplied the remaining ensonified area for Level B harassment by the

density of sea otters for the project location (see *Sea Otter Density*) and the number of project activity days to determine the number of Level B harassment events for each project activity. The COU provided geospatial files representing the area where pile driving and construction activities will occur and the ensonified water around the construction area. These geospatial files were clipped by land boundaries; therefore, only the area of ensonified water was provided by the applicant. The numbers of Level A harassment and Level B harassment events estimated during project activities can be found in tables 5 and 6 below, respectively.

TABLE 5—COU ROBERT STORRS HARBOR LEVEL A HARASSMENT EVENTS ESTIMATED

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density	Level A area (km ²)	Estimated sea otters affected by Level A sound per day	Total estimated Level A harassment events (unrounded)	Total estimated Level A harassment events (rounded)
Demolition	40.6-cm (16-in) steel.	Removal—vibratory.	7	22.745 sea otters/km ² .	0.005	0.119	0.830	^a 2
Construction	61.0-cm (24-in) steel.	Temporary installation—vibratory.	2		0.005	0.115	0.230	^a 2
		Temporary removal—vibratory.	3		0.005	0.114	0.342	^a 2
	61.0-cm (24-in) steel.	Installation—vibratory.	22		0.005	0.115	2.525	3
		Installation—impact.	22		0.015	0.340	7.487	8
		Installation—rock socket DTH.	44		0.014	0.321	14.105	15

^aWhere the estimated total number of harassment events expected was equal to or greater than 0.001, we rounded to 2 instead to accommodate potential mother and pup pairs of sea otters for project activities.

TABLE 6—COU ROBERT STORRS HARBOR LEVEL B HARASSMENT EVENTS ESTIMATED

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density	Level B area (km ²)	Level B area minus Level A area (km ²)	Estimated sea otters affected by Level B sound per day	Total estimated Level B harassment events (unrounded)	Total estimated Level B harassment events (rounded)
Demolition	40.6-cm (16-in) steel.	Removal—vibratory.	7	22.745 sea otters/km ² .	0.010	0.004	0.099	0.696	^a 2

TABLE 6—COU ROBERT STORRS HARBOR LEVEL B HARASSMENT EVENTS ESTIMATED—Continued

Project component	Pile size and material	Activity	Maximum number of activity days	Sea otter density	Level B area (km ²)	Level B area minus Level A area (km ²)	Estimated sea otters affected by Level B sound per day	Total estimated Level B harassment events (unrounded)	Total estimated Level B harassment events (rounded)
Construction	61.0-cm (24-in) steel.	Temporary installation—vibratory.	2	0.010	0.010	0.005	0.103	0.207	^a 2
		Temporary removal—vibratory.	3		0.010	0.005	0.104	0.312	^a 2
61.0-cm (24-in) steel.	Installation—vibratory.	22		0.010	0.005	0.103	2.272	3	
		Installation—impact.	22		0.140	0.125	2.854	62.785	^b 264
		Installation—rock socket DTH.	44		0.013	0 ^c	0	0	0

^aWhere the estimated total number of harassment events expected was equal to or greater than 0.001, we rounded to 2 instead to accommodate potential mother and pup pairs of sea otters for project activities.

^bThe ensonification area for this activity overlaps with a channel that serves as a sea otter travel corridor. We estimated up to 12 sea otters may travel through this channel on a given day. Therefore, we multiplied 12 sea otters by the number of activity days to estimate the number of harassment events.

^cThe Level B harassment distance threshold is smaller than the Level A harassment distance threshold for these activities; in these instances, we estimated take of sea otters by Level A harassment only.

Critical Assumptions

In order to conduct this analysis and estimate the potential amount of take by Level A harassment and Level B harassment, several critical assumptions were made.

Sound level information from pile-driving activities in several locations was used to generate sound level estimates for the specified activities (see sources in table 3 above). Environmental conditions in these locations, including water depth, substrate, and ambient sound levels may be similar to those in the project location, but are not identical. Further, ensonification area estimates were based on sound attenuation models using a practical spreading loss model. These factors may lead to actual sound values differing slightly from those estimated here.

We assumed that the different types of pile-driving activities will occur sequentially and that the total number of activity days will equal the sum of the number of days required to complete each type of pile-driving activity. While more than one type of activity will take place on some days, which would reduce the number of days of exposure, we cannot know this information in advance. As such, the estimated number of activity days is the maximum possible for the planned work.

The pile-driving activities described here will also create in-air noise. Because sea otters spend over half of their day with their heads above water (Esslinger et al. 2014), they will be exposed to the in-air noise produced by construction equipment. However, we have calculated Level A harassment and Level B harassment with the assumption that a sea otter may be harassed only

one time per 24-hour period, and in-water noise levels would be more disturbing and extend farther than in-air noise. Thus, while sea otters may be disturbed by noise both in-air and in-water, we have relied on the more conservative in-water estimates.

Level B harassment is equated herein with behavioral responses that indicate harassment or disturbance. There is likely a portion of animals that respond in ways that indicate some level of disturbance but do not experience biologically significant consequences. Our estimates do not account for variable responses by sea otter age and sex.

The behavioral response estimates presented here do not account for the individual movements of animals in response to the specified activities. Our assessment assumes animals remain stationary (that is, the density does not change) for a 24-hour period, and animals do not move out of ensonification areas in response to noise. Not enough information is available about the movement of sea otters in response to specific disturbances to refine this assumption.

We reviewed multiple sea otter observation datasets to determine sea otter density within the COU's project location. We used the maximum estimated sea otter density of 22.745 sea otters/km² for our analysis to estimate the number of sea otters potentially harassed by in-water noise during the project activities. This estimated sea otter density was calculated using a spatially explicit hierarchical distance sampling model (Wilson et al. 2021). Methods and assumptions for these surveys can be found in the original

publication. We also considered sea otter observations recorded during a dock construction project in Iliuliuk Harbor (see figure 1 above), which is adjacent to the COU's project location (PND Engineers, Inc. 2017). Based on these sea otter observations, we estimated that up to 12 sea otters may travel through the channels leading into Iliuliuk Harbor on a given day, indicating the channels provide a travel corridor for sea otters. The ensonification area for impact pile driving activities overlaps with one of the channels. We assumed that up to 12 sea otters may travel through the channel and be exposed to in-water noise during each day of impact pile driving activities. Therefore, we multiplied the number of days in which impact pile driving activities will occur by 12 sea otters to estimate the number of harassment events for impact pile driving activities.

A limited number of individual sea otters occupy the project location depending on multiple factors such as habitat suitability, prey availability, environmental stressors, predation, subsistence harvest levels, and human activity (Tinker et al. 2019; Eisaguirre et al. 2021). Although sea otters are nonmigratory, they typically move amongst focal areas within their home ranges to rest and forage (Garshelis and Garshelis 1984; Laidre et al. 2009). We used the best available scientific information to estimate the maximum number of individual sea otters that may be exposed to the COU's project activities. The largest sea otter group size observed during the most recent abundance surveys of the Eastern Aleutians management unit was approximately 112 sea otters, and this

group was observed approximately 8 kilometers (km) (5 miles [mi]) from the COU’s project location (Wilson et al. 2021). Based on this information and our assumptions, we estimate that a maximum of 112 individual sea otters may be exposed to the COU’s project activities. It is possible that, given the large variability in individual sea otter home range sizes and the potential for daily movement in and out of foraging or resting areas, different individual sea otters could be found within the ensonification area each day of the project. Thus, we assumed that the estimated harassment events may

impact different sea otters up to the maximum number of individual sea otters estimated to be exposed to the COU’s project activities. For our take estimate analysis, we subtracted the Level A harassment ensonification area from the Level B harassment ensonification area for each project activity to estimate the total number of Level B harassment events. This approach avoids overestimating the number of Level B harassment events. We rounded the total numbers of Level A harassment and Level B harassment events up to the nearest whole number considering that harassment events are

not fractional units. Where the estimated total number of harassment events was between 0.001 and 1, we rounded up to 2 harassment events to account for the potential of mother and pup pairs of sea otters encountering project activities. *Sum of Harassment From All Sources* The COU will conduct pile driving and marine construction activities in Unalaska for up to a 1-year period. A summary of total estimated takes by Level A harassment and Level B harassment during the project is provided in table 7 below.

TABLE 7—SEA OTTERS EXPECTED TO BE HARASSED; LEVEL A HARASSMENT AND LEVEL B HARASSMENT EVENTS

Location	Number of sea otters exposed to Level A harassment	Total number of Level A harassment events	Number of sea otters exposed to Level B harassment	Total number of Level B harassment events
Unalaska (Southwest Alaska stock)	32	32	^a 112	273

^a It is possible that an individual sea otter may experience both Level A harassment and Level B harassment. We anticipate up to 112 sea otters may experience harassment during the project activities.

Over the course of the project, we estimate up to 32 instances of take by Level A harassment of 32 sea otters from the Southwest Alaska stock due to PTS associated with in-water noise exposure during project activities. We anticipate that sea otters may experience PTS as a result of cumulative in-water noise exposure. Project activity sound levels would not reach the 232 dB peak SPL threshold for causing instantaneous PTS in sea otter hearing sensitivity based on our ensonification area calculations. Using soft-start procedures, zone clearance prior to activity startup, and shutdown zones is likely to decrease both the number of sea otters exposed to noise above Level A harassment thresholds and the exposure time of any sea otters entering the Level A harassment zone. This reduces the likelihood of hearing sensitivity losses that might impact the health, reproduction, or survival of affected sea otters. Despite the implementation of mitigation measures, it is anticipated that some sea otters may experience Level A harassment via exposure to in-water noise above threshold criteria during pile-driving activities. Over the course of the project, we estimate up to 273 instances of take by Level B harassment of up to 112 sea otters from the Southwest Alaska stock due to behavioral responses to in-water noise exposure during project activities. Although multiple instances of Level B harassment of individual sea otters are possible, these events are unlikely to have significant consequences for the

health, reproduction, or survival of affected sea otters. The potential effects of multiple Level B harassment noise exposures may include short-term behavioral reactions, displacement of sea otters near active operations, and, in rare cases, potential temporary shifts in hearing thresholds. We anticipate that the likelihood of sea otters experiencing a TTS is low during the project. Project activity sound levels would not reach the peak SPL threshold for causing instantaneous TTS in sea otter hearing sensitivity outside of the 10-m (33-ft) physical interaction shutdown zone based on our ensonification area calculations. Therefore, sea otters would experience TTS as a result of cumulative in-water noise exposure, which is unlikely due to sea otter behavioral patterns. Sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014), and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears would not be exposed to underwater noise for a prolonged time period, thereby reducing their likelihood to experience TTS. Considering the sound levels of the specified activities, the limited amount of time over non-consecutive days in which the specified activities will occur, and the localized area to be impacted by the specified activities; we do not anticipate that the effects of multiple Level B harassment noise exposures would rise to the level of TTS, an injury, or Level A harassment.

Determinations and Findings

Sea otters exposed to noise from the specified activities are likely to respond with temporary behavioral modification or displacement. The specified activities could temporarily interrupt the feeding, resting, and movement of sea otters. The activities will occur during a limited amount of time and in a localized area, and the impacts associated with the project are likewise temporary and localized. The anticipated effects are short-term behavioral reactions, displacement of sea otters near active operations, and potential shifts in hearing thresholds. Sea otters that encounter the specified activities may exert more energy than they would otherwise due to temporary cessation of feeding, increased vigilance (for example, repeatedly spyhopping), and retreating from the project location. We expect that affected sea otters would tolerate this exertion without measurable effects on health or reproduction. Most of the anticipated takes would be due to short-term Level B harassment in the form of startling reactions, interruption of feeding, resting, and movement, or temporary displacement. We anticipate that the likelihood of sea otters experiencing a TTS due to in-water noise exposure is low during the project based on the project activity sound levels and sea otter behavioral patterns. While mitigation measures incorporated into the COU’s request would reduce occurrences of Level A harassment to the extent practicable, a small number

of takes by Level A harassment would be authorized for the specified activities, which have Level A harassment zone radii ranging up to 39.0 m (128.0 ft).

Small Numbers

For our small numbers determination, we consider whether the estimated number of sea otters to be subjected to incidental take is small relative to the population size of the species or stock. More specifically, the FWS compares the number of sea otters anticipated to be taken in the year contemplated by the proposed IHA with the population estimate applicable for the year. Here, predicted numbers of sea otters to be taken were determined based on the estimated density of sea otters in the project location and ensonification areas developed using empirical evidence from similar geographic areas. We estimate that the COU's specified activities in the specified geographic region would take no more than 112 Southwest Alaska stock sea otters by Level A harassment and Level B harassment during the 1-year period of this proposed IHA (see *Sum of Harassment from All Sources*). Take of 112 sea otters is 0.22 percent of the best available estimate of the current annual Southwest Alaska stock size of 51,935 animals (88 FR 53510, August 8, 2023) ($[112 \div 51,935] \times 100 \approx 0.22$), and represents a "small number" of sea otters of that stock.

Further, the specified activity area is small relative to the range of the Southwest Alaska stock of sea otters. The Southwest Alaska stock of sea otters ranges well beyond the nearshore waters surrounding the Robert Storrs Harbor in Unalaska, meaning this specified geographic region represents only a small subset of the potential area in which this population may occur.

Therefore, we propose a finding that the COU's specified activities would take only small numbers of sea otters because: (1) Only a small proportion of sea otters would overlap with the areas where the specified activities will occur; and (2) the estimated number of Southwest Alaska stock sea otters to be taken would be limited to a total of 112 sea otters over the duration of the proposed IHA, which represents a small proportion (0.22 percent) of the stock of sea otters.

Negligible Impact

We propose a finding that any incidental take by harassment resulting from the specified activities cannot be reasonably expected to, and is not reasonably likely to, adversely affect sea otters through effects on annual rates of

recruitment or survival and would, therefore, have no more than a negligible impact on the Southwest Alaska stock of sea otters. In making this finding, we considered the best available scientific information including the biological and behavioral characteristics of the species, the most recent information on species distribution and abundance within the specified geographic region, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential disturbance sources caused by the specified activities, and the potential sea otter responses to this disturbance. In addition, we reviewed applicant-provided materials, our own files and datasets, published reference materials, and input from species experts. We propose this finding based on the following: (1) we anticipate that the impacts on sea otters potentially resulting from the specified activities are limited to short-term behavioral reactions, displacement near active operations and, in rare cases, hearing threshold shifts; (2) the potential impacts from the specified activities would not have long-term consequences to a sea otter's survival and reproduction; (3) the total number of sea otters affected and the impact severity are not expected to affect annual rates of recruitment or survival or result in adverse effects on the stock; and (4) we propose mitigation measures that are designed to minimize interactions with and impacts on sea otters.

We anticipate that the impacts on sea otters potentially resulting from the specified activities are limited to short-term behavioral reactions, displacement near active operations, and, in rare cases, hearing threshold shifts. Most sea otters would respond to disturbance by moving away from the source, which may cause temporary interruption of foraging, resting, or other natural behaviors. Affected sea otters are expected to resume normal behaviors soon after exposure with no lasting consequences to their survival or reproduction. While Level A harassment has the potential to result in the injury (hearing threshold shift) of up to 32 sea otters during the IHA period, this type of harassment would be a result of cumulative in-water noise exposure. We anticipate a low likelihood of sea otters experiencing hearing thresholds shifts due to cumulative in-water noise exposure based on the project activity sound levels and sea otter behavioral patterns. Sea otters spend over half of their time above the surface during the summer months (Esslinger et al. 2014),

and likely no more than 70 percent of their time foraging during winter months (Gelatt et al. 2002); thus, their ears would not be exposed to underwater noise for a prolonged time period, thereby reducing their likelihood of experiencing hearing threshold shifts. Based on this information, we anticipate that the vast majority of harassment events will be limited to short-term behavioral reactions and displacement near active operations. These behavioral responses could have temporary biological impacts for affected sea otters but are not anticipated to result in measurable changes in survival or reproduction. Should individual sea otters remain in the immediate project location and be repeatedly harassed, the most biologically consequential repeated behavioral responses would be cessation of nursing or changes to foraging, grooming, or resting. However, the project location is surrounded by suitable sea otter habitat, providing ample opportunity for undisturbed nursing, foraging, grooming, or resting in nearby coves.

We anticipate that the potential impacts from the specified activities would not have long-term consequences to a sea otter's survival and reproduction. The most severe impact on sea otters potentially resulting from the specified activities is multiple Level A harassment noise exposures. The potential effects of multiple Level A harassment noise exposures may include a greater reduction in a sea otter's hearing sensitivity, but this reduction in hearing sensitivity does not equate to total hearing loss. The reduction in sea otter hearing sensitivity caused by PTS would align with the energy produced by pile-driving activities (for example, low-frequency less than 2 kHz), which would not impair the majority of a sea otter's hearing range. Sea otters do not rely on sound to orient themselves, locate prey, or communicate under water. Therefore, we do not anticipate PTS from multiple Level A harassment noise exposures would impact sea otters' ability to move, forage, or communicate. Sea otters, especially mothers and pups, do use sound for communication in air (McShane et al. 1995), and sea otters may monitor underwater sound to avoid predators (Davis et al. 1987). However, we anticipate that a sea otter would retain the majority of its hearing range if it experiences PTS from multiple Level A harassment noise exposures and that impacts from PTS would not have long-term consequences to a sea otter's survival and reproduction.

The total number of sea otters affected and the impact severity are not sufficient to change the current population dynamics at the stock scale. Although the specified activities may result in a maximum of 305 incidental takes of up to 112 sea otters from the Southwest Alaska stock, we do not expect this level of harassment to affect annual rates of recruitment or survival or result in adverse effects on the stock.

Our proposed finding of negligible impact applies to incidental take associated with the specified activities as mitigated by the avoidance and minimization measures identified in the COU's mitigation and monitoring plan. These mitigation measures are designed to minimize interactions with and impacts on sea otters. These mitigation measures and the monitoring and reporting procedures are required for the validity of our finding and are a necessary component of the proposed IHA. For these reasons, we propose a finding that the specified project would have a negligible impact on the Southwest Alaska stock of sea otters.

Least Practicable Adverse Impact

We propose a finding that the mitigation measures required by this proposed IHA would effect the least practicable adverse impact on the Southwest Alaska stock of sea otters from any incidental take likely to occur in association with the specified activities. In making this finding, we considered the biological characteristics of sea otters, the nature of the specified activities, the potential effects of the activities on sea otters, the documented impacts of similar activities on sea otters, and alternative mitigation measures. After reviewing the original request (submitted June 25, 2025), the FWS discussed additional mitigation measures with the COU to reduce potential impacts of the specified activities. These additional mitigation measures included maintaining a minimum avoidance distance between sea otters and vessels supporting the project activities and revising sea otter monitoring zones, shutdown zones, and shutdown periods. The applicant incorporated these additional mitigation measures in their revised request and supporting documentation.

In evaluating what mitigation measures are appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses, we considered the manner and degree to which the successful implementation of the measures is expected to achieve this goal. We considered the nature of the potential adverse impact being

mitigated (likelihood, scope, range), the likelihood that the measures would be effective if implemented, and the likelihood of effective implementation. We also considered the practicability of the measures for applicant implementation (for example, the cost and impact on operations).

To reduce the potential for disturbance associated with the activities, the COU would implement mitigation measures, including the following:

- Using the smallest diameter piles practicable while minimizing the overall number of piles;
- Using a project design that does not include dredging or blasting;
- Minimizing the use of the impact hammer to the extent possible by using a vibratory hammer to advance piles as deeply as possible;
- Development of a marine mammal monitoring and mitigation plan;
- Visual mitigation monitoring by designated protected species observers (PSOs);
- Halting or delaying activity during environmental conditions that may hinder sea otter detection, such as darkness, adverse weather conditions, high sea states, and other times of limited visibility;
- Maintaining the maximum distance practicable between a vessel and raft of sea otters;
- Operating vessels in such a way as to avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m [66 ft]) whenever practicable;
- Establishment of shutdown and monitoring zones;
- Site clearance before activity startup;
- Soft-start procedures; and
- Shutdown procedures.

A number of additional potential mitigation measures were considered but determined to be not practicable and/or not effective. These measures are listed below:

- *Require use of bubble curtains and other noise-dampening methods*—The applicant indicated that implementation of bubble curtains and other noise-dampening methods such as cofferdams, pile-surrounding casings, sound mitigation screens, and nets around piles would require additional barges and equipment that would further restrict the limited workspace available in the harbor for construction activities and create navigational and safety hazards during operations. The FWS determined the required use of bubble curtains and other noise-dampening methods was not practicable because

these mitigation measures were unduly burdensome to undertake for the project activities.

- *Require use of alternate detection methods*—The FWS determined that the required use of alternate detection methods such as infrared sensors; thermal imaging; or surveys conducted by aircraft, unmanned aircraft system, or vessel was not practicable considering that these alternate detection methods would be less effective than PSOs in reducing impacts on sea otters due to the limited number of project activities and small spatial extent of ensonification areas. The applicant would employ PSOs to monitor the project location for sea otters to reduce impacts on sea otters.

- *Require pile-driving activities be conducted at lower tidal heights*—The applicant indicated that conducting pile-driving activities at lower tidal heights to reduce transmission of sound into the water column would restrict the available time to conduct activities safely each day and add delays to the project schedule. The FWS determined that requiring pile-driving activities to be conducted at lower tidal heights was not practicable because this mitigation measure would be less effective in reducing impacts on sea otters if the implementation of this mitigation measure extended the project duration.

- *Require use of silt curtains during DTH drilling activities*—The applicant indicated that the maintenance and repairs to the silt curtain would not be easily accessible due to the remote project location. The FWS determined that the required use of silt curtains during DTH drilling activities was unduly burdensome to undertake for the project activities.

Impact on Subsistence Use

The anticipated harassment will not preclude access to harvest areas or interfere with the availability of sea otters for harvest by Alaska Native Peoples. Additionally, the existing vessel harbor and associated facilities are located within the City of Unalaska, where firearm use is prohibited. We therefore propose a finding that the COU's anticipated harassment would not have an unmitigable adverse impact on the availability of any stock of sea otters for taking for subsistence uses by Alaska Native Peoples during the specified timeframe. In making this proposed finding, we considered the timing and location of the planned activities and the timing and location of subsistence harvest activities in the project location.

The harvest of sea otters is important to Alaska Native Peoples in the

communities surrounding Unalaska. The COU would be required to contact subsistence communities that may be affected by the pile driving and marine construction activities to discuss potential conflicts caused by location, timing, and methods of the specified activities. The COU must make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of sea otters are minimized. No concerns have been voiced by the Alaska Native communities regarding the specified activities limiting availability of sea otters for subsistence uses. However, should such a concern be voiced, a POC, which identifies measures to minimize any adverse effects, would be implemented. The POC would ensure that the COU would not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC would provide the procedures addressing how the COU would work with the affected Alaska Native communities and what actions would be taken to avoid interference with subsistence hunting of sea otters, as warranted.

The FWS has not received any reports and is not aware of information that indicates that sea otters are being or would be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by the expected level of pile driving and marine construction activity. If there is evidence that these pile driving and marine construction activities are affecting the availability of sea otters for subsistence uses, we would reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring requirements is to assess the effects of specified activities on sea otters; to ensure that take is consistent with that anticipated in the small numbers, negligible impact, and subsistence use analyses; and to detect any unanticipated effects on the species or stock. Monitoring plans document when and how sea otters are observed, the number of sea otters, and their behaviors during the observation. This information allows the FWS to measure encounter rates, examine trends in sea otter activity and distribution in the project location, and estimate the number of sea otters potentially affected by the specified activities. The COU is required to report all observations of sea otters. To the extent possible, PSOs

would record group size, age, sex, behavior, duration of observation, and closest approach to the project activity.

As proposed, monitoring activities would be summarized and reported in formal reports. The COU must submit monthly reports for all months during which noise-generating work takes place as well as a final monitoring report that must be submitted no later than 90 days after the expiration of the IHA. We would require approval of the monitoring results for continued operation under the IHA.

We propose a finding that these monitoring and reporting requirements to evaluate the potential impacts of planned activities would ensure that the effects of the activities remain consistent with the rest of the findings.

References Cited

A list of the references cited in this notice may be found at <https://www.regulations.gov> under Docket No. FWS-R7-ES-2026-2576.

Required Determinations

National Environmental Policy Act

We have prepared a draft environmental assessment in accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that the proposed action of issuing a final IHA would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this IHA, if finalized, is not required by section 102(2) of NEPA or the Department's NEPA handbook. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA; 16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. The specified activities will occur entirely within the range of the Southwest Alaska stock of sea otters, which is listed as threatened under the ESA. Before issuance of this IHA, the FWS will conduct intra-service consultation under section 7 of the ESA on our issuance of an IHA. These evaluations and findings may be requested from the FWS.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture, and to make information available to Alaska Natives. Our efforts are guided by *Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*, 512 DM 5—*Procedures for Consultation with Indian Tribes*, 512 DM 6—*Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations*, 510 FW 1, *The Service's Native American Policy*, and 510 FW 2, *The Service's Alaska Native Relations Policy*.

The FWS has evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and Alaska Native Claims Settlement Act Corporations. The applicant has presented a communication process, culminating in a POC if needed, with the Alaska Native organizations and communities most likely to be affected by their work. We have evaluated the potential effects of the proposed action and determined that it would not have substantial direct effects on any federally recognized Tribes or Alaska Native Claims Settlement Act Corporations. However, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC process.

Paperwork Reduction Act

This authorization does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018-0194 (expires August 31, 2026). 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.

Proposed Authorization

We propose to authorize the incidental take by Level A harassment

and Level B harassment of sea otters from the Southwest Alaska stock. Authorized take would be limited to disruption of behavioral patterns, displacement of sea otters near active operations, or hearing threshold shifts that may be caused by pile driving and marine construction activities conducted by the COU in Unalaska, Alaska, for a period of up to one year from the date of finalization.

A. General Conditions for this IHA

(1) Activities must be conducted in the manner described in the revised request dated April 2, 2026, from the COU for an IHA and in accordance with all applicable conditions and mitigations measures. The taking of sea otters whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

(2) If project activities cause a form of take other than Level A harassment or Level B harassment or take of one or more sea otters through methods not described in the IHA, the COU must take the following actions:

(i) Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

(ii) Report the details of the incident to the FWS within 24 hours; and

(iii) Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

(3) All operation managers, vehicle operators, and machine operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

(4) This IHA will apply to activities associated with the specified project as described in this document and in the COU's revised request. Changes to the specified project without prior authorization may invalidate the IHA.

(5) The COU's revised request is approved and fully incorporated into this IHA unless exceptions are specifically noted herein. The request includes:

(i) The COU's revised request for an IHA, dated April 2, 2026; and

(ii) The COU's revised Protected Species Monitoring and Mitigation Plan, dated April 2, 2026.

(6) Operators will allow FWS personnel or the FWS's designated representative to visit project worksites to monitor for impacts on sea otters and subsistence uses of sea otters at any time throughout project activities so long as it is safe to do so. "Operators" are all personnel operating under the COU's authority, including all contractors and subcontractors.

B. Avoidance and Minimization

(7) Construction activities must be conducted using equipment that generates the lowest practicable levels of in-water noise within the range of frequencies audible to sea otters.

(8) If a sea otter enters or appears likely to enter the shutdown zone, in-water activities must be shut down until either the sea otter has been visually observed outside the shutdown zone or at least 15 minutes have elapsed since the last observation time without redetection of the sea otter.

(i) During all in-water activities, regardless of predicted sound levels, a physical interaction shutdown zone of at least 10 m (33 ft) must be enforced.

(ii) During rock fill placement activities, a physical interaction shutdown zone of at least 30 m (98 ft) must be enforced.

(9) For impact pile driving activities, a soft-start procedure must be implemented at the start of each day's impact pile driving activities and at any time following cessation of impact pile driving for more than 30 minutes without monitoring by PSOs. The soft-start procedure requires an initial set of three strikes from the impact driver at reduced energy if possible, followed by a 30-second waiting period. This procedure must be conducted a total of three times before full-powered strikes if practicable.

(10) For DTH drilling activities, a soft-start procedure must be implemented at the start of each day's DTH drilling activities and at any time following cessation of DTH drilling for more than 30 minutes without monitoring by PSOs. The soft-start procedure requires the equipment operators to activate the drilling equipment at reduced energy if possible for several seconds, followed by a 30-second waiting period. This procedure must be conducted a total of three times before full-powered operations if practicable.

(11) In-water activity must be conducted in daylight. If environmental conditions prevent visual detection of sea otters approaching the shutdown

zone, in-water activities must be stopped until visibility is regained.

C. Mitigation Measures for Vessel Operations

Vessel operators must take every precaution to avoid harassment of sea otters during vessel operations. The applicant must carry out the following measures:

(12) Vessels must maintain a minimum distance of 500 m (0.3 mi) from rafts of 10 or more sea otters unless otherwise needed for safety. If a vessel must transit within 500 m (0.3 mi) from rafts of sea otters, the vessel must travel at a reduced speed and maintain the maximum distance practicable between the vessel and raft of sea otters. Vessels must reduce speed and maintain a minimum distance of 100 m (328 ft) from all sea otters unless otherwise needed for safety.

(13) Vessels must not be operated in such a way as to separate members of a group of sea otters (two or more sea otters) from other members of the group, encircle sea otters, or impede movement of sea otters. Vessels must use established navigation channels or commonly recognized vessel traffic corridors and avoid approaching sea otters or impeding sea otter movements when traveling near the shoreline in shallow water (<20 m or <66 ft) whenever practicable.

(14) When weather conditions require, such as when visibility drops, vessels must adjust speed accordingly to reduce the likelihood of injury to sea otters.

(15) Vessel operators must be provided written guidance for avoiding collisions and minimizing disturbances to sea otters. Guidance will include all measures identified in this section.

D. Monitoring

(16) Operators shall work with PSOs to apply mitigation measures and shall recognize the authority of PSOs up to and including stopping work, except in situations where doing so poses a significant safety risk to personnel.

(17) Duties of the PSOs include watching for and identifying sea otters, recording observation details, documenting presence in any applicable monitoring zone, identifying and documenting potential harassment, and working with operators to implement all appropriate mitigation measures.

(18) A sufficient number of PSOs will be available to meet the following criteria: 100 percent monitoring of shutdown zones during all daytime periods of in-water noise-generating work; a maximum of 4 consecutive

hours on watch per PSO; a maximum of 12 hours on watch per day per PSO.

(19) All PSOs will complete training on the project's Protected Species Monitoring and Mitigation Plan designed to familiarize individuals with monitoring and data collection procedures. This training will be completed prior to starting work. A field crew leader with prior experience as a sea otter observer will supervise the PSO team. Initially, new or inexperienced PSOs will be paired with experienced PSOs so that the quality of marine mammal observations and data recording is kept consistent. Resumes for candidate PSOs will be made available to the FWS prior to the start of the project.

(20) The PSOs will be provided with reticule binoculars (7×50 or better), big-eye binoculars or spotting scopes (30×), inclinometers, and range finders. Field guides, instructional handbooks, maps, and a contact list will also be made available.

(21) The PSOs will monitor a pre-clearance zone for 30 minutes prior to the commencement of in-water noise-generating activities and following periods of inactivity of more than 30 minutes to ensure no sea otters are within the shutdown zone prior to initiating or resuming in-water noise-generating activities.

(22) The PSOs will collect data using the following procedures:

(i) All data will be recorded onto a field form or database.

(ii) Global positioning system data, sea state, tidal state, wind force, visibility, and weather condition will be recorded at the beginning and end of a monitoring period; at least every hour in between, at the change of a PSO, and upon observation of sea otters.

(iii) Observation records of sea otters will include date, time, the PSOs' locations, sea otter's heading (if moving), weather condition, visibility, number of sea otters, group composition (adults/juveniles), and the location of the sea otters (or distance and direction from the PSO).

(iv) Observation records will also include initial behaviors of the sea otters, descriptions of project activities and in-water noise levels being generated, the position of sea otters relative to applicable monitoring and Level A harassment or Level B harassment zones, any mitigation measures applied, and any apparent reactions to the project activities before and after mitigation.

(v) For all sea otters in or near a Level A harassment or Level B harassment zone, the PSOs will record the distance from the sound source to the sea otter

upon initial observation, the duration of the encounter, and the distance at last observation in order to monitor cumulative sound exposures.

(vi) The PSOs will note any instances of sea otters lingering close to or traveling with vessels for prolonged periods of time.

(23) Monitoring of the shutdown zone must continue for 30 minutes following completion of in-water noise-generating activities.

E. Measures To Reduce Impacts to Subsistence Users

(24) Prior to conducting the work, the COU will take the following steps to reduce potential effects on subsistence harvest of sea otters:

(i) Avoid work in areas of known sea otter subsistence harvest;

(ii) Discuss the planned activities with subsistence stakeholders including Southwest Alaska villages and traditional councils;

(iii) Identify and work to resolve concerns of stakeholders regarding the project's effects on subsistence hunting of sea otters; and

(iv) If any concerns remain, develop a POC in consultation with the FWS and subsistence stakeholders to address these concerns.

F. Reporting Requirements

(25) The applicant, COU, must notify the FWS at least 48 hours prior to commencement of activities.

(26) Monthly reports will be submitted to the FWS's Marine Mammals Management office (MMM) for all months during which noise-generating work takes place. The monthly report will contain and summarize the following information: dates, times, weather, and sea conditions (including the Beaufort Scale sea state and wind force conditions) when sea otters were observed; the number, location, distance from the sound source, and behavior of the sea otters; the associated project activities; and a description of the implementation and effectiveness of mitigation measures with a discussion of any specific behaviors the sea otters exhibited in response to mitigation.

(27) A final report will be submitted to the FWS's MMM within 90 days after completion of work or expiration of the IHA. The report will include:

(i) A summary of monitoring efforts (hours of monitoring, activities monitored, number of PSOs, and, if requested by the FWS, the daily monitoring logs).

(ii) A description of all project activities, any additional work yet to be done, factors influencing visibility and

detectability of marine mammals (e.g., sea state, fog, glare, and number of PSOs), and factors correlated with the presence and distribution of sea otters (e.g., weather, sea state, and project activities).

(iii) An estimate of the number of sea otters exposed to noise at received levels greater than or equal to Level A harassment and Level B harassment (based on visual observation).

(iv) A description of changes in sea otter behavior resulting from project activities and any specific behaviors of interest.

(v) A discussion of the mitigation measures implemented during project activities and their observed effectiveness for minimizing impacts on sea otters. Sea otter observation records will be provided to the FWS in the form of electronic database or spreadsheet files.

(28) Injured, dead, or distressed sea otters that are not associated with project activities (e.g., animals known to be from outside the project location, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must be reported to the FWS within 24 hours of the discovery to either the FWS's MMM (907-786-3800, business hours); or the Alaska SeaLife Center in Seward (1-888-774-7325, 24 hours a day), or both. Photographs, video, location information, or any other available documentation must be provided to the FWS.

(29) All reports shall be submitted by email to fw7_mmm_reports@fws.gov.

(30) The COU must notify the FWS upon project completion or end of the work season.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or related documents, you may submit your comments by either of the methods described above in **ADDRESSES**. Please identify the document(s) to which your comments pertain, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES** above). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director for Fisheries and Ecological Services, Alaska Region, U.S. Fish and Wildlife Service.

[FR Doc. 2026-16367 Filed 8-10-26; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407-014-004-065515; O2509-014-004-125222; LLESJ0000; LAES-106743780]

Public Land Order No. 7969; Withdrawal Revocation Calcasieu Radio Beacon Station, Calcasieu, Cameron Parish, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a withdrawal created by an Executive Order dated November 22, 1875, which reserved land at the mouth of the Calcasieu River in Louisiana for lighthouse purposes. The approximately 2.97-acres identified for return to the public domain has been managed for lighthouse purposes since 1875. The public land was closed to the general land laws and location and entry under the United States mining laws. The Bureau of Land Management (BLM) has evaluated the land and determined it is suitable for return to the public domain.

DATES: This Public Land Order takes effect on August 11, 2026.

FOR FURTHER INFORMATION CONTACT: Shayne Banks, BLM Southeastern States District Manager, telephone: 601-919-4652; address: 273 Market Street, Flowood, MS 39232; or email sbanks@blm.gov during regular business hours 8 a.m. to 4:30 p.m. Central Time (CT), Monday through Friday, except holidays. 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 for contacting Ms. Banks. 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: The land has been managed for lighthouse purposes since 1875 and is located at Calcasieu Radio Beacon Station, Calcasieu, Cameron Parish, Louisiana. The BLM evaluated the land and determined it to be suitable for return to the public domain. The land will remain closed to the United States mining laws.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. The withdrawal created by Executive Order dated November 22, 1875, is hereby revoked as to the following described lands:

A parcel of land situated in lot 4 of section 32, township 15 south, range 10 west, Louisiana Meridian, Cameron Parish, Louisiana, being the parcel of land described as an exception to lot 4 in file no. 235028, recorded March 25, 1994, in the official records of Cameron Parish and more particularly described as follows:

Beginning at the position of a 2 ins. diam. pipe set in concrete on the west bank of Calcasieu Pass on the line between irregular sections 31 and 32, township 15 south, range 10 west, Louisiana Meridian, which point bears S 75°09' E, 6834.4 ft., more or less, from the "old monument" which is the most westerly point of the irregular section 32, said *point of beginning* also being S 75°09' E, 143.0 ft. from a 4 ins. diam. transite pipe with a brass cap set in concrete; *thence*, N 75°09' W, on the line between sections 31 and 32, a distance of 350.0 ft. to a point; *thence*, N 2°58' W, a distance of 240.0 ft. to a point; *thence*, N 36°45' E, a distance of 128.7 ft. to a point; *thence*, S 59°24' E, a distance of 505.0 ft., more or less, to the west bank of Calcasieu Pass; *thence*, southwesterly along the right descending bank of Calcasieu Pass, the general course beginning S 42°32' W, a distance of 238.0 ft. to the *point of beginning*, containing 2.97 acres of land.

Basis of bearings refer to True North.

2. At 8 a.m. CT on 10 days from publication of this Order, the lands described in Paragraph 1 shall be open to appropriation under the general land laws, including but not limited to sale under the provisions of section 203 of the Federal Land Policy and

Management Act of 1976, 43 U.S.C. 1713, subject to any segregations of record.

(Authority: 43 U.S.C. 1714.)

Doug Burgum,

Secretary of the Interior.

[FR Doc. 2026-16295 Filed 8-10-26; 8:45 am]

BILLING CODE 4331-18-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1459]

Certain Child Car Seats; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("Commission") has determined not to review an initial determination ("ID") (Order No. 21) of the presiding administrative law judge ("ALJ"), granting a joint motion to terminate the investigation based on settlement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On August 28, 2025, the Commission instituted this investigation based on a complaint filed by Wonderland Switzerland AG of Switzerland; Iron Mountains, LLC of Morgantown, Pennsylvania; Nuna International B.V. of the Netherlands; Nuna Baby Essentials, Inc. of Morgantown, Pennsylvania; Joie International Co., Ltd. of Hong Kong; Joie Children's Products, Inc. of Morgantown, Pennsylvania; and Graco

Children's Products Inc. of Atlanta, Georgia (collectively, "Complainants"). 90 FR 42032–33 (Aug. 28, 2025). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain child car seats by reason of the infringement of certain claims of U.S. Patent No. 7,625,043 ("the '043 patent") and U.S. Patent No. 10,457,168. The complaint further alleged that an industry in the United States exists or is in the process of being established. The Commission's notice of investigation named Dorel Juvenile Group, Inc. of Foxboro, Massachusetts; Dorel Industries Inc. of Westmount, Canada; Guangdong Roadmate Group Co., Ltd. of Zhongshan, China; Roadmate Trading (Hong Kong) Limited of Hong Kong; and Zhongshan Roadmate Juvenile Products Co. of Zhongshan, China as the respondents. *Id.* The Office of Unfair Import Investigations was not participating in the investigation. *Id.* at 42033.

On November 17, 2025, the ALJ issued an initial determination (Order No. 9) extending the target date for completion of the investigation to January 28, 2027. Order No. 9 (Nov. 17, 2025), *unreviewed by Comm'n Notice* (Dec. 5, 2025).

The investigation was terminated as to the '043 patent based on withdrawal of the complaint as to that patent. Order No. 12 (Feb. 18, 2026), *unreviewed by Comm'n Notice* (Mar. 19, 2026).

On July 2, 2026, the parties filed a joint motion to terminate the investigation based on settlement. Public and confidential versions of the settlement agreement were provided with the motion.

On July 7, 2026, the ALJ issued the subject ID (Order No. 21) granting the joint motion to terminate the investigation based on settlement. The ID found the motion with the public version of the settlement agreement complies with the Commission Rules (19 CFR 210.21(b)). ID at 1. The ID also found that "termination of the investigation will preserve Commission resources and avoid unnecessary litigation" and there is no evidence indicating that terminating this investigation based on the agreement would be contrary to the public interest. *Id.* at 2. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on August 6, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–16304 Filed 8–10–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1457]

Certain Pre-Stretched Synthetic Braiding Hair and Packaging Thereof (II); Notice of the Commission's Determination To Review in Part, and, on Review, To Affirm in Part and Take No Position in Part on a Final Initial Determination Finding No Violation of Section 337; 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, and on review, to affirm in part and take no position in part on a final initial determination ("Final ID") issued by the presiding administrative law judge ("ALJ") finding no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Joelle Justus, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2593. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation

on August 7, 2025, based on a complaint filed by JBS Hair, Inc. ("Complainant") of Atlanta, Georgia. 90 FR 38178–79 (Aug. 7, 2025). The complaint alleges violations of section 337 based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pre-stretched synthetic braiding hair and packaging thereof that infringe one or more of claims 1 and 9–11 of U.S. Patent No. 10,786,026 ("the '026 patent"); claims 1, 4–9, and 11 of U.S. Patent No. 10,980,301 ("the '301 patent"); claim 20 of U.S. Patent No. 10,945,478 ("the '478 patent"); and claims 11–13 of U.S. Patent No. 12,127,616 ("the '616 patent"). *Id.* at 38178. The Commission's notice of investigation named the following entities as respondents: Sun Taiyang Co., Ltd. (d/b/a Outre), Hair Zone, Inc. (d/b/a Sensationnel) ("Hair Zone"), Beauty Essence, Inc. (d/b/a Supreme Hair US), SLI Production Corp. (d/b/a It's a Wig!), Mane Concept Inc., and Beauty Plus Trading Co., Inc. (d/b/a Janet Collection) of Moonachie, New Jersey; Beauty Elements Corporation (d/b/a Bijouz) of Miami Gardens, Florida; Royal Imex, Inc. (d/b/a Zury Hollywood) of Santa Fe Springs, California; GS Imports, Inc. (d/b/a Golden State Imports, Inc.) of Paramount, California; Eve Hair, Inc. of Lakewood, California; Midway International, Inc. (d/b/a BOBBI BOSS) of Cerritos, California; Mayde Beauty Inc., Model Model Hair Fashion, Inc., New Jigu Trading Corp. (d/b/a Harlem 125), and Shake N Go Fashion, Inc. of Port Washington, New York; Hair Plus Trading Co., Inc. (d/b/a Femi Collection) of Suwanee, Georgia; Optimum Solution Group LLC (d/b/a Oh Yes Hair) of Duluth, Georgia; Chade Fashions, Inc. of Niles, Illinois; and Amekor Industries, Inc. (d/b/a Vivica A. Fox Hair Collection) of Conshohocken, Pennsylvania (collectively, "Respondents"). *Id.* at 38179. The complaint further alleges that a domestic industry exists. *Id.* The Office of Unfair Import Investigations ("OUII") is a party to the investigation. *Id.*

The Commission previously determined not to review an initial determination granting Complainant's motion to terminate from the investigation claims 9–11 of the '026 patent, claims 4–7, 9, and 11 of the '301 patent, and claims 12 and 13 of the '616 patent based on withdrawal of the complaint as to those claims. *See* Order No. 11 (Dec. 11, 2025), *unreviewed by Comm'n Notice* (Jan. 6, 2026).

The ALJ issued the Final ID on June 5, 2026, finding no violation of section

337. The Final ID found, *inter alia*: (1) the asserted claims of the '026, '301, and '616 patents infringed and practiced by the domestic industry products, but invalid as anticipated; (2) the asserted claim of the '478 patent is practiced by the domestic industry products, but not infringed and invalid as anticipated; and (3) Complainant satisfied the economic prong of the domestic industry requirement as to all asserted patents.

The ALJ also issued a Recommended Determination on remedy and bonding ("RD"). The RD recommended that, if the Commission finds a violation, it should issue a limited exclusion order but not a general exclusion order as requested by Complainant. The RD further recommended the issuance of a cease and desist order only as to Respondent Hair Zone, and a bond of zero percent (*i.e.*, no bond) for all infringing products during the period of Presidential review. The Commission did not instruct the ALJ to make findings and recommendations concerning the public interest.

On June 17, 2026, Complainant filed a petition for review of the Final ID's finding of no violation. On June 22, 2026, Respondents filed a contingent petition for review of certain of the Final ID's findings. Also on June 22, 2026, OUII filed a petition for review of certain of the Final ID's findings regarding the '478 patent. The parties filed responses to the various petitions.

Having reviewed the record of the investigation, including the Final ID, the parties' submissions to the ALJ, the petitions, and the responses thereto, the Commission has determined to review the Final ID in part. As to the '026, '301, and '616 patents, the Commission has determined to review the Final ID's finding that the asserted claims are anticipated by the Asante Short Braid and Abuja Short Braid prior art references, and on review, take no position regarding anticipation by those references. As to the '478 patent, the Commission has determined to review the Final ID's analysis and findings regarding the construction of the claim term "pre-stretched," the technical prong of the domestic industry requirement, and invalidity. On review, as set forth in the accompanying Commission opinion, the Commission has determined to affirm the Final ID's claim construction with supplemental reasoning, affirm-in-part the Final ID's invalidity findings as to certain grounds with supplemental reasoning and take no position on the remaining grounds of invalidity, and take no position regarding the technical prong. Finally, the Commission has determined to

review, and on review, take no position regarding the Final ID's economic prong findings. The Commission has determined not to review the remainder of the Final ID. The Commission adopts the Final ID's findings to the extent that they are not inconsistent with these findings and the Commission's opinion issued concurrently herewith. This investigation is terminated with a finding of no violation of section 337.

The Commission vote for this determination took place on August 6, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-16303 Filed 8-10-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1441]

Certain Glass Substrates for Liquid Crystal Displays, Products Containing the Same, and Methods for Manufacturing the Same II; Notice of the Commission's Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Order; 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 found a violation of section 337 in the above-captioned investigation. The Commission has determined to issue: (1) a limited exclusion order ("LEO") prohibiting the unlicensed entry of infringing glass substrates for liquid crystal displays, products containing the same, and methods for manufacturing the same that are manufactured by or on behalf of, or imported by or on behalf of, the respondents and (2) a cease and desist orders ("CDO") against respondent TTE Technology, Inc., d/b/a a TCL North America of Irvine, California. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: B. Rashmi Borah, Esq., Office of the

General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205-2518. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 7, 2025, based on a complaint filed by Corning Incorporated of Corning, New York ("Complainant"). 90 FR 11549-50 (Mar. 7, 2025). The complaint, as supplemented, 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 glass substrates for liquid crystal displays, products containing the same, and methods for manufacturing the same by reason of the infringement of certain claims of U.S. Patent No. 8,642,491 ("the '491 patent"), U.S. Patent No. 8,640,498 (together, "the Asserted Patents"), and U.S. Patent No. 7,851,394 ("the '394 patent"). *Id.* at 11549. The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names nine respondents: (1) Caihong Display Devices Co., Ltd., d/b/a Irico Display Devices Co., Ltd. of Xianyang City, Shaanxi Province, China ("Caihong"); (2) Hisense USA Corporation of Suwanee, Georgia; (3) HKC Corporation Ltd. of Shenzhen City, Guangdong Province, China; (4) HKC Overseas Ltd. of Hong Kong; (5) LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; (6) TCL China Star Optoelectronics Technology Co., Ltd. of Shenzhen City, Guangdong Province, China ("CSOT"); (7) TTE Technology, Inc., d/b/a TCL North America of Irvine, California ("TCL"); (8) VIZIO, Inc. of Irvine, California; and (9) Xianyang CaiHong Optoelectronics Technology Co., Ltd. of Xianyang City, Shaanxi Province, China ("CHOT"). *Id.* The Office of Unfair Import Investigations is not named as a party to this investigation. *Id.*

The Commission previously terminated several respondents from the investigation based on settlement

agreements. Order No. 24 (July 15, 2025), *unreviewed by* Comm'n Notice (Aug. 6, 2025) (HKC Corporation Ltd. and HKC Overseas Ltd.); Order No. 28 (Sept. 10, 2025), *unreviewed by* Comm'n Notice (Sept. 30, 2025) (VIZIO, Inc.); Order No. 29 (Sept. 30, 2025), *unreviewed by* Comm'n Notice (Dec. 8, 2025) (LG Electronics U.S.A., Inc.); Order No. 57 (Mar. 24, 2026), *unreviewed by* Comm'n Notice (Apr. 20, 2026) (Hisense USA Corporation). Accordingly, four respondents remain in the investigation: Caihong, CSOT, CHOT, and TCL (collectively, "Respondents").

On December 22, 2025, the Commission terminated the investigation as to the '394 patent and claim 2 of the '491 patent. Order No. 35 (Dec. 2, 2025), *unreviewed by* Comm'n Notice (Dec. 22, 2025).

On April 7, 2026, the presiding administrative law judge ("ALJ") issued a final initial determination ("FID"), finding a violation of section 337 with respect to each of the remaining asserted claims of the Asserted Patents. The FID also includes the ALJ's Recommended Determination ("RD") on remedy and bond, should the Commission find a violation of section 337.

On May 7 and 8, 2026, Complainant and Respondents filed, respectively, a public interest statement pursuant to Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4). No submissions were filed in response to the post-RD **Federal Register** notice. See 91 FR 18478–79 (Apr. 10, 2026).

On June 8, 2026, the Commission determined to review the FID in part. 91 FR 35555–56 (June 11, 2026). Specifically, the Commission determined to review the FID's findings that: (1) the claim term "mole percent on an oxide basis" is not indefinite and (2) Complainant has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B). *Id.* at 35556. The Commission also requested submissions on remedy, the public interest, and bonding. *Id.*

On June 22, 2026, Complainant filed its opening submission on remedy, the public interest, and bonding. On that same date, respondents Caihong and CHOT filed a brief, including a discussion of the issues under review in addition to their view on remedy, the public interest, and bonding. Also on that date, respondents TCL and CSOT filed a separate submission on remedy, the public interest, and bonding.

On July 6, 2026, the Commission granted in part Complainant's motion to strike the portions of respondents Caihong's and CHOT's opening brief on

remedy, the public interest, and bonding that contain arguments regarding the two issues under review, as the Commission did not request additional briefing on those issues. Comm'n Order at 5–6 (July 6, 2026). Specifically, the Commission struck Sections II.A, II.B, and all arguments in the Introduction and Conclusion sections of the brief that are directed to the issues under review.

On July 13, 2026, the parties submitted their responsive briefs on remedy, the public interest, and bonding. See Order Granting In Part Complainant's Request For An Expedited Response To Motion To Strike; Extension Of Deadline For Responsive Briefing On Issues Of Remedy, The Public Interest, And Bonding (June 24, 2026).

Having examined the record in this investigation, including the FID, the parties' petitions for review and responses thereto and the submissions regarding remedy, the public interest, and bonding, the Commission has determined to find a violation of section 337 as to both Asserted Patents. As set forth in the simultaneously-issued Commission opinion, the Commission affirms with additional reasoning the FID's finding that the claim term "mole percent on an oxide basis" is not indefinite. The Commission also affirms with additional reasoning the FID's finding that Complainant has satisfied the economic prong of the domestic industry requirement under section 337(a)(3)(B).

The Commission has determined that the appropriate form of relief is an LEO prohibiting the unlicensed entry of infringing glass substrates for liquid crystal displays, products containing the same, and methods for manufacturing the same that are manufactured by or on behalf of Respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission has also determined to issue a CDO against TCL.

The Commission has further determined that the public interest factors enumerated in subsections (d)(1) and (f)(1) (19 U.S.C. 1337(d)(1), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined to impose a bond in the amount of zero percent (0%) of the infringing products imported during the period of Presidential review (19 U.S.C. 1337(j)).

The investigation is terminated.

The Commission vote for this determination took place on August 6, 2026.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: August 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–16305 Filed 8–10–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–645 and 731–TA–1495 and 1497–1501 (Review)]

Mattresses From Cambodia, China, Malaysia, Serbia, Thailand, Turkey, and Vietnam; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the countervailing duty order on mattresses from China and antidumping duty orders on mattresses from Cambodia, Malaysia, Serbia, Thailand, Turkey, and Vietnam would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: July 6, 2026.

FOR FURTHER INFORMATION CONTACT:

Alejandro Orozco (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On July 6, 2026, the Commission determined that the domestic interested party group response to its notice of institution (91 FR 16229, April 1, 2026) of the subject

five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on September 22, 2026. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before 5:15 p.m. September 29, 2026 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 29, 2026. However, should the Department of Commerce ("Commerce") extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If

comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission's procedures with respect to filings.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–16301 Filed 8–10–26; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1454]

Certain Wi-Fi Routers, Wi-Fi Devices, Mesh Wi-Fi Network Devices and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on August 6, 2026, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from

the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order directed to certain Wi-Fi routers, Wi-Fi devices, mesh Wi-Fi network devices and components thereof imported, sold for importation, and/or sold after importation by respondents ASUSTek Computer Inc. of Taipei City, Taiwan; ASUS Computer International of Fremont, CA; and Plume Design Inc. of Palo Alto, CA; and cease and desist orders directed to Plume Design Inc. and ASUS Computer International. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

² The Commission has found the responses submitted on behalf of Brooklyn Bedding LLC; Carpenter Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Tempur Sealy International, Inc.; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Remedy and Bonding issued in this investigation on August 6, 2026. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on Tuesday, September 8, 2026.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number ("Inv. No. 337-TA-1454") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing

confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 7, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-16363 Filed 8-10-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-637 and 731-TA-1471 (Review)]

Large Vertical Shaft Engines 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 large vertical shaft engines from China would be likely to lead to continuation or recurrence of material injury to an industry in the United

¹ The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

States within a reasonably foreseeable time.^{2,3}

Background

The Commission instituted these reviews on February 2, 2026 (91 FR 4625) and determined on May 8, 2026, that it would conduct expedited reviews (91 FR 35705, June 12, 2026).

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 August 6, 2026. The views of the Commission are contained in USITC Publication 5771 (August 2026), entitled *Large Vertical Shaft Engines from China: Investigation Nos. 701-TA-637 and 731-TA-1471 (Review)*.

By order of the Commission.

Issued: August 6, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-16302 Filed 8-10-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1433]

Certain Glass Substrates for Liquid Crystal Displays, Products Containing the Same, and Methods for Manufacturing the Same; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on July 23, 2026, the presiding administrative law judge ("ALJ") issued an Initial Determination on Violation of Section 337. On August 6, 2026, the ALJ issued a Recommended Determination on Remedy and Bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Lisa A. Murray, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202)

² Chairman Brett Doyle did not participate in the adequacy vote.

³ Commissioner Peter-Anthony Pappas did not participate in these determinations.

205–2781. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order for a period of 5–6 years, directed to certain glass substrates for liquid crystal displays and products containing the same that are imported, sold for importation, and/or sold after importation by respondents Caihong Display Devices Co., Ltd. d/b/a Irico Display Devices Co., Ltd. of Xianyang City, China (“Caihong Display”); TCL China Star Optoelectronics, Technology Co., Ltd. of Shenzhen City, China (“CSOT”); Xianyang CaiHong Optoelectronics, Technology Co., Ltd. of Xianyang City, China (“CHOT”); and TTE Technology, Inc., d/b/a TCL North America of Irvine, California (“TCL”); and a cease and desist order directed to TCL. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this

investigation on August 6, 2026. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

- (i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;
- (ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;
- (iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;
- (iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and
- (v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on September 8, 2026.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above pursuant to 19 CFR 210.4(f). Submissions should refer to the investigation number (“Inv. No. 337–TA–1433”) in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b), 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve

those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 7, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026–16332 Filed 8–10–26; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2026–034]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: We have submitted a request to the Office of Management and Budget (OMB) for approval to continue to use two information collections. The first information collection is prepared by companies and organizations to request to digitize archival holdings with privately-owned equipment. The second information collection is used when veterans, dependents, and other authorized individuals request

information from or copies of documents in military personnel, military medical, and dependent medical records. We invite you to comment on the proposed information collections. There have been no changes made to these collections.

DATES: OMB must receive written comments on or before September 10, 2026.

ADDRESSES: Send any comments and recommendations on the proposed information collection in writing to www.reginfo.gov/public/do/PRAMain. You can find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Kristin Phillips, Paperwork Reduction Act Officer, by email at kristin.phillips@nara.gov or by telephone at 616–254–0405 with any requests for additional information.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we invite the public and other Federal agencies to comment on proposed information collections. We published a notice of proposed collection for these information collections on June 1, 2026 (91 FR 32455) and we received no comments. We are therefore submitting the described information collections to OMB for approval.

If you have comments or suggestions, they should address one or more of the following points: (a) whether the proposed information collections are necessary for NARA to properly perform its functions; (b) our estimate of the burden of the proposed information collections and its accuracy; (c) ways we could enhance the quality, utility, and clarity of the information we collect; (d) ways we could minimize the burden on respondents of collecting the information, including through information technology; and (e) whether these collections affect small businesses.

In this notice, we solicit comments concerning the following information collections:

1. *Title:* Request to Digitize Records.

OMB number: 3095–0017.

Agency form number: None.

Type of review: Regular.

Affected public: Companies and organizations that wish to digitize archival holdings in the National Archives of the United States or a Presidential library for micropublication.

Estimated number of respondents: 10.

Estimated time per response: 5 hours.

Frequency of response: On occasion (when respondent wishes to request permission to digitize records).

Estimated total annual burden hours: 50.

Abstract: The information collection is prescribed by 36 CFR 1254.92. The collection is prepared by companies and organizations that wish to digitize archival holdings with privately-owned equipment. NARA uses the information to determine whether the request meets the criteria in 36 CFR 1254.100, to evaluate the records for digitization, and to schedule use of the limited space available for digitizing.

2. *Title:* Forms Relating to Military Service Records.

OMB number: 3095–0039.

Agency form number: NA Forms 13036, 13042, 13055, 13075, and 13177.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: In accordance with rules issued by the Department of Defense (DOD) and the Department of Homeland Security (DHS, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NPRC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals' requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters

who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record. For those who have already made a request, and want to check the status, they can use NA Form 13177, Check the Status of a Clinical & Medical Treatment Records Request.

Gulam Shakir,

Executive for Information Services/CIO.

[FR Doc. 2026–16352 Filed 8–10–26; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–3730]

Draft Regulatory Guide: Release of Patients Administered Radioactive Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft Regulatory Guide (DG), DG–8070, “Release of Patients Administered Radioactive Material.” This DG is proposed Revision 2 of Regulatory Guide (RG) 8.39 of the same name. The proposed revision provides methods that are acceptable to the NRC staff for the release of individuals, referred to as patients in this revision, after a medical procedure involving the administration of unsealed byproduct material, such as radiopharmaceuticals, or implants that contain radioactive material.

DATES: Comments must be submitted electronically using <https://www.regulations.gov> by 11:59 p.m. Eastern Time on September 10, 2026.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2026–3730, at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or

email the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

- Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously.

- Follow the search instructions on <https://www.regulations.gov> to view public comments.

- For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Sarah Spence, telephone: 301-415-3697; email: Sarah.Spence@nrc.gov, and Amir Mobasheran, telephone: 301-415-8112; email: Amir.Mobasheran@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards, at the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC-2026-3730 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2026-3730.

- NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin ADAMS Public Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. The Release of Patients Administered Radioactive Material is available in ADAMS under Accession No. ML26092A365.

- NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-

4737, between 8 a.m. and 4 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Comments must be submitted electronically using <https://www.regulations.gov> no later than 11:59 p.m. ET on September 10, 2026. Please include Docket ID NRC-2026-3730 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Additional Information

The NRC is issuing for public comment a DG in the NRC's “Regulatory Guide” series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

Proposed RG 8.39 Revision 2, entitled “Release of Patients Administered Radioactive Material,” is temporarily identified by its task number, DG-8070.

The existing version of RG 8.39 (Revision 1) was published in April 2020. The NRC previously published for comment a draft update of RG 8.39 (DG-8061), in April 2024, received comments relating to the technical complexity and requests for more examples to be included, and did not thereafter finalize that update. The NRC has now refined a draft revision to RG 8.39 and has included draft revisions in DG-8070 to align with proposed revisions to section 35.75 of title 10 of the *Code of Federal Regulations* (10 CFR) as part of a proposed rule, “Reforming and Modernizing the NRC's

Radiation Protection Framework” (91 FR 43456; July 15, 2026), that addresses section 5(b) of Executive Order 14300.

The proposed revision provides methods that are acceptable to the NRC staff for the release of individuals, referred to as patients in this revision, after a medical procedure involving the administration of unsealed byproduct material, such as radiopharmaceuticals, or implants that contain radioactive material. More specifically, DG-8070 provides guidance and examples for application of new definitions and dose limits related to medical uses of byproduct material that would be introduced by the referenced proposed rule, including guidance related to doses to caregivers.

Additionally, DG-8070 incorporates up-to-date methodologies based on National Council on Radiation Protection and Measurements (NCRP) Report No. 155, “Management of Radionuclide Therapy Patients,” fundamentals for calculating the radiation dose received by members of the public from a patient containing byproduct material. DG-8070 also includes updates to reflect the evolution of the medical use of byproduct material since the last revision of RG 8.39 (Revision 1) was issued. This DG is intended to enable licensees to make more accurate estimates of the timing, circumstances, and risks associated with patient release; public doses from the released patients; and when instructions or records are required.

The staff is not issuing for public comment a separate draft regulatory analysis for this draft regulatory guide. The draft regulatory analysis associated with this draft regulatory guide was issued for public comment with the proposed rule, “Reforming and Modernizing the NRC's Radiation Protection Framework” (91 FR 43456). That draft regulatory analysis assesses the value associated with issuing or revising regulatory guides as well as alternative courses of action (ADAMS Accession No. ML26180A025).

III. Backfitting, Forward Fitting, and Issue Finality

The NRC staff may use this RG as a reference in its regulatory processes, such as licensing, inspection, or enforcement. Backfitting, forward fitting, and issue finality considerations do not apply to 10 CFR part 35 licensees and applicants because 10 CFR part 35 does not include backfitting or issue finality provisions, and the forward fitting policy in Management Directive 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and

Information Requests,” does not apply to these licensees.

IV. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC’s public website at <https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html>. Suggestions will be considered in future updates and enhancements to the “Regulatory Guide” series.

V. Executive Order (E.O.) 12866

The Office of Information and Regulatory Affairs determined that this DG is not a significant regulatory action under E.O. 12866.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: August 7, 2026.

For the Nuclear Regulatory Commission.

Nicholee Valentine,

Chief, Guidance and Publication Branch, Division of Guidance, Rulemaking, Economic Analysis, and Technical Editing, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026–16344 Filed 8–10–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of August 10, 17, 24, 31, and September 7, 14, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please contact the Reasonable Accommodations Resource by email at ReasonableAccommodations.Resource@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact

the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of August 10, 2026

There are no meetings scheduled for the week of August 10, 2026.

Week of August 17, 2026—Tentative

There are no meetings scheduled for the week of August 17, 2026.

Week of August 24, 2026—Tentative

There are no meetings scheduled for the week of August 24, 2026.

Week of August 31, 2026—Tentative

There are no meetings scheduled for the week of August 31, 2026.

Week of September 7, 2026—Tentative

There are no meetings scheduled for the week of September 7, 2026.

Week of September 14, 2026—Tentative

There are no meetings scheduled for the week of September 14, 2026.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: August 7, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–16364 Filed 8–7–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–3400]

Application for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Consideration Determination and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC, the Commission) received, and is considering approval of, one request to amend two licenses. The license amendment request is for St. Lucie Plant, Unit Nos. 1 and 2. For the license amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because the amendment request contains sensitive unclassified non-safeguards information (SUNSI), the NRC is issuing an order imposing procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

DATES: Comments must be filed by September 10, 2026. A request for a hearing or petitions for leave to intervene must be filed by October 13, 2026. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by August 21, 2026.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–3400. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301–415–1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section of this document.

- *Mail comments to:* Office of Nuclear Material Safety and Safeguards, Mail Stop: TWFN–5–A85, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2242; email: Paula.Blechman@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2026–3400, facility name, unit number(s),

docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website*: Go to <https://www.regulations.gov> and search for Docket ID NRC–2026–3400.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

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

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2026–3400, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment

submissions available to the public or entering the comment into ADAMS.

II. Background

Pursuant to section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes a notice of amendments containing SUNSI.

III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment request involves NSHC. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for the amendment request is shown as follows.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action

on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final NSHC determination for any of these amendments, any hearing on those amendments will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the "Electronic Submissions (E-Filing)" section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of NSHC, which will serve to establish when the hearing is held. If the final determination is that the license amendment request involves NSHC, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendments. If the final determination is that the license amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendments unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or

designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice.

Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (<https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053>) and the NRC's public website (<https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>).

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the "Guidance for Electronic Submissions to the NRC" (ADAMS Accession No. ML13031A056), and on the NRC's public website (<https://www.nrc.gov/site-help/e-submittals.html>).

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at Hearing.Docket@nrc.gov, or by telephone at 301-415-1677, to: (1) request a digital identification (ID) certificate which allows the participant (or their counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its

counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website (<https://www.nrc.gov/site-help/e-submittals/getting-started.html>). After a digital ID certificate is obtained and a docket is created, the participant must submit adjudicatory documents in the Portable Document Format. Guidance on submissions is available on the NRC's public website (<https://www.nrc.gov/site-help/electronic-sub-ref-mat.html>). A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed in order to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the "Contact Us" link located on the NRC's public website (<https://www.nrc.gov/site-help/e-submittals.html>), by email to MSHD.Resource@nrc.gov, or by a toll-free call at 1-866-672-7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with

10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available on the NRC's public website (<https://ehd.nrc.gov>), unless otherwise excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click "cancel" when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket numbers, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to this license amendment application, see the application for amendment, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the "Obtaining Information and Submitting Comments" section of this document.

Florida Power & Light Company, et al.; St. Lucie Plant, Unit Nos. 1 and 2; St. Lucie County, FL

Docket Nos	50-335, 50-389.
Application Date	April 13, 2026.
ADAMS Accession No	ML26104A090.
Location in Application of NSHC	Pages 8–9 of Enclosure 1.

Brief Description of Amendment(s)	The proposed license amendments would modify the design and licensing bases for St. Lucie Plant, Unit Nos. 1 and 2, to exclude the dynamic effects associated with postulated pipe ruptures in Class 1 auxiliary systems connected to reactor coolant system piping. Specifically, the proposed license amendments would expand the applicability of the leak-before-break methodology to the pressurizer surge, shutdown cooling, and safety injection tank system piping.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Steven Hamrick, Managing Attorney—Nuclear, Florida Power and Light Company, 801 Pennsylvania Avenue NW, Suite 220, Washington, DC 20004.
NRC Project Manager, Telephone Number.	Blake Purnell, 301-415-1380.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards

Information for Contention Preparation

Florida Power & Light Company, et al.; St. Lucie Plant, Unit Nos. 1 and 2; St. Lucie County, FL

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A "potential party" is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are Hearing.Docket@nrc.gov and RidsOgcMailCenter.Resource@nrc.gov, respectively.¹ The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order² setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that

procedures should be submitted as described in this paragraph.

² Any motion for Protective Order or proposed Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within five days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR

¹ While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's "E-Filing Rule," the initial request to access SUNSI under these

2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.³

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule

for processing and resolving requests under these procedures.

It is so ordered.

(Authority: 42 U.S.C. 2011 *et seq.*)

Dated: August 7, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding

Day	Event/activity
0	Publication of Federal Register notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: (i) supporting the standing of a potential party identified by name and address; and (ii) describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and proposed Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file proposed Non-Disclosure Agreement or Affidavit for SUNSI.
A	If access is granted: issuance of presiding officer or other designated officer decision on motion for Protective Order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the Protective Order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. 2026-16309 Filed 8-10-26; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026-334 and K2026-329; MC2026-335 and K2026-330; MC2026-337 and K2026-331]

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.

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:

46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer

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.

or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

³ Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR

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)

None. See Section III for summary proceedings.

III. Summary Proceeding(s)

1. *Docket No(s)*: MC2026–334 and K2026–329; *Filing Title*: USPS Request to Add New Mid-Market Standardized Distinct Product, PM–GA Contract 1060, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 6, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

2. *Docket No(s)*: MC2026–335 and K2026–330; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1061, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 6, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

3. *Docket No(s)*: MC2026–337 and K2026–331; *Filing Title*: USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 1062, and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: August 6, 2026; *Filing Authority*: 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–16320 Filed 8–10–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106044; File No. SR–TXSE–2026–018]

Self-Regulatory Organizations; Texas Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Offer Additional Tickets Under the Exchange's Rodeo Program and Re-Open the Application Window for the Rodeo Program; and Permit Sponsored Participants To Participate in the Rodeo Program Together With a Sponsoring Member of the Exchange as Joint Participants

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,²

notice is hereby given that on August 3, 2026, Texas Stock Exchange LLC (the “Exchange” or “TXSE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to: (i) offer up to an additional four tickets under the Program and re-open the application window for the Rodeo Program so that additional applicants may join the Program following the close of the initial application window; and (ii) permit Sponsored Participants to participate in the Program together with a Sponsoring Member of the Exchange as joint Participants. The text of the proposed rule change is available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>) at the Exchange's website (<https://www.txse.com/regulations/rules-filings>), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) offer up to an additional four tickets under the Program and re-open the application window for the Rodeo Program so that additional applicants may join the Program following the close of the initial application window; and (ii) permit Sponsored Participants, as

¹ See Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

defined in TXSE Rule 1.005(dd),³ to participate in the Program together with a Sponsoring Member, as defined in TXSE Rule 1.005(cc),⁴ of the Exchange as joint participants in the Program (“Participants”).

The Exchange previously adopted the Rodeo Program to provide Members⁵ of the Exchange that submit an initial prepayment fee (the “Prepayment Fee”) with a ticket redeemable for warrants that provide the right to purchase equity in the Exchange’s parent holding company, TXSE Group Inc. (“TXSE Group”). As described in the Rodeo Program Release, such warrants vest upon the achievement of certain liquidity volume thresholds on the Exchange. The Rodeo Program commences on September 1, 2026 and

runs for one year, concluding at the end of the business day on August 31, 2027 (the “Rodeo Period”), subject to Exchange notice.⁶

Each Member of the Exchange was eligible to become a Participant on a first-come first-served basis by submitting all required documentation for participation by May 1, 2026 and paying a \$250,000 Prepayment Fee by May 15, 2026. In order to be a Participant, a Member was required to: (i) be an approved Member of the Exchange in good standing;⁷ (ii) be a registered broker-dealer pursuant to Section 15 of the Exchange Act; (iii) qualify as an “accredited investor” as that term is defined in Regulation D under the Securities Act of 1933; (iv) have executed all required

documentation for participation in the Rodeo Program by May 1, 2026, *i.e.*, the warrant agreement and confidentiality agreement; and (v) have tendered the Prepayment Fee no later than May 15, 2026. A Participant is issued a “ticket,” which is redeemable in exchange for warrants representing 100,000 shares of TXSE Group Voting Common Stock (“TXSE Group Stock”),⁸ a portion of which is eligible to vest at the end of each three-month period during the Rodeo Period (each, a “Measurement Period”) based on the Participant’s achievement of a specified percentage of Total Consolidated Volume⁹ (“TCV”) on the Exchange (the “Target Performance”). As provided in the Rodeo Program Release, the vesting requirements are as follows:¹⁰

Measurement period	Target performance	Shares available for vesting
1 (9/1/26–11/30/26)	0.025% TCV	10,000
2 (12/1/26–2/26/27)	0.05% TCV	20,000
3 (3/1/27–5/31/27)	0.075% TCV	30,000
4 (6/1/27–8/31/27)	0.125% TCV	40,000

The warrants of Participants that achieve Target Performance for a Measurement Period will be assigned an exercise price through the Exercise Price Competition which is based on the Participant’s Multiplier Adjusted Volume during the Measurement Period.¹¹ Participants that do not achieve the Target Performance but achieve at least 50% of the Target Performance are eligible for partial vesting, as described in the Rodeo Program Release.¹² The total number of tickets available under the Program was originally between three and 20 among all Participants and each Participant may receive up to three tickets, in each case subject to the Exchange’s discretion

to allocate tickets as described in the Rodeo Program Release.¹³

Re-Opening of the Application Window

First, the Exchange proposes to re-open the application window for the Rodeo Program. Following the close of the initial application window, the Exchange has continued to receive interest from potential Participants that wish to participate in the Program but did not join during the initial application window. In order to expand access to and further the objectives of the Program, the Exchange proposes to permit eligible applicants to join the Program such that an eligible applicant may join the Program by executing all

required documentation by August 14, 2026, and tendering the Prepayment Fee no later than August 24, 2026, in order to participate in the Program. The Exchange may extend either of these deadlines by up to 45 days upon notice to Members. Once an eligible applicant has executed all required documentation and tendered the Prepayment Fee in accordance with the foregoing, the applicant would be accepted into the Program and issued a ticket, subject to the cap described below.

A Participant that joins the Program as of the commencement of the Rodeo Period would have the opportunity to vest warrants and participate in the

³ As defined in TXSE Rule 1.005(dd), the term “Sponsored Participant” means a person that has entered into a sponsorship arrangement with a Sponsoring Member or Members pursuant to TXSE Rule 11.003.

⁴ As defined in TXSE Rule 1.005(cc), the term “Sponsoring Member” means a Member that is a registered broker or dealer and that has been designated by a Sponsored Participant to execute, clear, and settle transactions resulting from the System, as defined in TXSE’s Rules.

⁵ As defined in TXSE Rule 1.005(q), the term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. A Member has the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act.

⁶ As provided in the Rodeo Program Release, the Exchange may, in its sole discretion, delay the beginning of the Rodeo Period by issuing a circular to Participants notifying them of such delay at least two weeks in advance of September 1, 2026. Any such delay would push back the dates of the beginning and end of each of the Measurement

Periods by the amount of the delay. Each Measurement Period would continue to be a three-month period and the Rodeo Period would remain a one-year period. The Exchange will not delay the beginning of the Rodeo Period by more than six months. *See* Rodeo Program Release at 16045.

⁷ For purposes of the Program, the term “good standing” means that a Member is not delinquent with respect to Exchange fees or other charges and is not suspended or barred from being a Member.

⁸ Shares are subject to the Eighth Amended and Restated Stockholders’ Agreement of TXSE Group Inc. as amended and of the Certificate of Formation of TXSE Group Inc.

⁹ As described in the Rodeo Program Release, “Total Consolidated Volume” or “TCV” is calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan during the applicable Measurement Period, subject to certain exclusions. *See* Rodeo Program Release at 16046.

¹⁰ *See* Rodeo Program Release at 16047.

¹¹ For each Measurement Period, all Participants that meet the Target Performance for a ticket (“Fully

Vesting Participants”) will also be assigned the exercise price of their warrants based on the Participant’s ranking in total adjusted volume (“Multiplier Adjusted Volume”), calculated as total shares traded on the Exchange with certain types of transactions being subject to volume multipliers and thus counted as a multiple of the shares actually traded, as applicable, among other Fully Vesting Participants during that Measurement Period. The higher the rank of a Fully Vesting Participant’s Multiplier Adjusted Volume, the lower their exercise price will be. Fully Vesting Participants will be assigned an exercise price for their warrants based on the Fully Vesting Participant’s ranking in the Multiplier Adjusted Volume among all Fully Vesting Participants during a Measurement Period. Multiplier Adjusted Volume applies only to exercise price assignment and does not have any impact on vesting or the Target Performance for any Measurement Period. *See* Rodeo Program Release at 16047–16048.

¹² *See* Rodeo Program Release at 16045.

¹³ *Id.*

Exercise Price Competition with respect to each of the four Measurement Periods, on the same terms as Participants that joined during the initial application window. The Target Performance and the number of shares eligible to vest per ticket for each Measurement Period would remain as set forth in Rodeo Program Release.¹⁴

The Exchange is also proposing to offer an additional four tickets under the Program representing 400,000 shares of TXSE Group Stock. The Rodeo Program Release provided that there was a 20 ticket cap and the Exchange retained discretion under certain circumstances to increase or reallocate for Members requesting multiple tickets. Under this new application window, the Exchange will not offer more than 4 additional tickets regardless of demand and tickets will be allocated on a first-come first-served basis based on when a firm submits all required documentation. Under the amended Program, no Participant may receive more than three tickets, inclusive of any tickets issued during the initial application window. Tickets and warrants will be non-transferable except to an affiliate of the Participant, subject to certain restrictions and conditions. The Prepayment Fee for a Participant that joins the Program under the re-opened application window would begin to apply to the Participant's Rodeo Exchange Fees¹⁵ upon the Participant joining the Program, and the expiration provisions applicable to any unused portion of the Prepayment Fee described in the Rodeo Program Release would be measured in the same manner described in the Rodeo Program Release. To the extent that the Exchange extends the deadline to participate in the Rodeo Program as provided above and a Participant joins the Rodeo Program after the beginning of the Rodeo Period (September 1, 2026), the Participant's trading activity would only begin to be attributed to the Rodeo Program after such firm becomes a Participant (*i.e.*, submits all required documentation and payment to the Exchange).

Participation by Sponsored Participants as Joint Participants

Second, the Exchange proposes to amend the Program to permit Sponsored Participants to participate in the Program together with a Sponsoring Member (together, a "Joint Participant").

For purposes of applying the Program to a Joint Participant, references to a Participant would apply to the Sponsored Participant, except where the context specifically refers to the obligations or status of the Sponsoring Member.¹⁶ A Sponsoring Member and its corresponding Sponsored Participant would together participate in the Program as follows.

A Sponsoring Member and the corresponding Sponsored Participant would together be deemed a Joint Participant in the Program for so long as the Sponsoring Member: (i) is an approved Member of the Exchange in good standing;¹⁷ (ii) is a registered broker-dealer pursuant to Section 15 of the Exchange Act; and (iii) qualifies as an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933; and for so long as the Sponsored Participant: (i) has entered into a sponsorship arrangement with the Sponsoring Member pursuant to TXSE Rule 11.003; (ii) qualifies as an "accredited investor" as that term is defined in Regulation D under the Securities Act of 1933; (iii) has executed all required documentation for participation in the Program (the warrant agreement and confidentiality agreement, each between the Sponsored Participant and the Exchange); (iv) has caused the Prepayment Fee for each ticket to be tendered on its behalf (by the Sponsoring Member); and (v) has identifiable trading volume on the Exchange that is directly attributable to the Sponsored Participant.

Even though the Sponsoring Member and the Sponsored Participant would together constitute a Joint Participant, the Target Performance and any other volume thresholds under the Program would be required to be met exclusively by the Sponsored Participant, and any ticket and warrants granted in connection with the Sponsored Participant's participation in the Program would be issued only to the Sponsored Participant. For the same reason, the Sponsored Participant's ranking in the Exercise Price

Competition would be based on the Multiplier Adjusted Volume attributable to the Sponsored Participant. Where multiple Sponsored Participants seek to participate in the Program together with the same Sponsoring Member, each of the foregoing requirements would be required to be satisfied by each such Sponsored Participant, and each such Sponsored Participant would be treated as a separate Participant for purposes of the issuance of tickets and warrants and for purposes of the three-ticket cap, subject to the four ticket cap that the Exchange is making available under the Program.

A Sponsoring Member that chooses to participate in the Program together with a Sponsored Participant would not be precluded from also participating in the Program on its own as a Participant, provided that it satisfies the eligibility requirements applicable to Participants described above, including the tendering of a Prepayment Fee on its own behalf. Where a Sponsoring Member has tendered a Prepayment Fee on its own behalf in the process of becoming a Participant, that Prepayment Fee would be attributed only to the Sponsoring Member and not to any Sponsored Participant that wishes to participate in the Program together with the Sponsoring Member. Where a Sponsoring Member that is already a Participant wishes to additionally participate in the Program together with a Sponsored Participant, the Sponsoring Member would be required to cause an additional Prepayment Fee to be tendered for each such Sponsored Participant.

Sponsored Participants would be permitted to join the Program under the re-opened application window described above, on the same timing and terms applicable to other applicants. Accordingly, a Joint Participant may join the Program by executing all required documentation by August 14, 2026, and causing the Prepayment Fee to be tendered no later than August 24, 2026 in order to participate as of the commencement of the Rodeo Period, including with respect to vesting and the Exercise Price Competition, unless such deadlines are extended as described above.

As with all TXSE Group Stock issued in connection with the Program, the total equity ownership of TXSE Group Stock, including any TXSE Group Stock purchased by a Sponsored Participant through the exercise of vested warrants, would remain subject to the ownership limitations of the Eighth Amended and Restated Stockholders' Agreement of TXSE Group Inc., as amended (the "TXSE Group Stockholders'

¹⁴ See Rodeo Program Release at 16047.

¹⁵ As described in the Rodeo Program Release, the Prepayment Fee may be applied to various Exchange fees, including connectivity fees, market data fees, and membership fees (collectively, "Rodeo Exchange Fees"), and excludes transaction fees. See Rodeo Program Release at 16045.

¹⁶ This aspect of the proposal is modeled on a recent proposed rule change by 24X National Exchange LLC that similarly permits sponsored participants to be joint participants in that exchange's warrant performance incentive program together with a sponsoring member. See Securities Exchange Act Release No. 105481 (May 13, 2026), 91 FR 28695 (May 18, 2026) (SR-24X-2026-16) (proposed rule change to amend the warrant performance incentive program of 24X National Exchange LLC to allow sponsored participants to be joint participants together with a sponsoring member).

¹⁷ For purposes of the Program, the term "good standing" means that a Member is not delinquent with respect to Exchange fees or other charges and is not suspended or barred from being a Member.

Agreement”), and the Certificate of Formation of TXSE Group Inc., as amended (the “TXSE Group Certificate of Formation”), which limitations apply to a person together with its related persons.¹⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the requirement in Section 6(b)(5) of the Act²¹ that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,²² which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that offering up to an additional four tickets and re-opening the application window is fair, reasonable, and not unfairly discriminatory because the re-opened window is available on the same terms and conditions to all eligible applicants, including Members seeking to participate directly and Sponsored Participants seeking to participate together with a Sponsoring Member as Joint Participants, and because it expands access to the Program to eligible applicants that did not join during the initial application window. The eligibility criteria for participation

would remain objective and uniformly applied, and each applicant that joins under the re-opened window would participate in the Program on the same terms, conditions, and restrictions as other Participants, including the same Target Performance thresholds and the same number of shares eligible to vest per ticket for each Measurement Period.

The Exchange believes that permitting Sponsored Participants to participate in the Program together with a Sponsoring Member is fair, reasonable, and not unfairly discriminatory because it would be offered to all Sponsoring Members of the Exchange and their corresponding Sponsored Participants on the same terms and conditions. Permitting Sponsored Participants to participate would expand access to the Program to persons that could not otherwise participate in the Program on their own, which the Exchange believes would benefit all market participants by providing greater liquidity on the Exchange and thereby perfecting the mechanism of a free and open market and a national market system. Because the Target Performance and other volume thresholds must be met exclusively by the Sponsored Participant based on volume that is identifiable and directly attributable to the Sponsored Participant, and because any ticket and warrants would be issued only to the Sponsored Participant, the Exchange believes that the participation of Sponsored Participants is consistent with the objective, volume-based structure of the Program that applies to all Participants.

In addition, the Exchange believes that the Program, as amended by the proposed rule change, would promote the long-term interests of the Exchange by providing incentives designed to encourage market participants to contribute to the growth and success of the Exchange by actively providing liquidity on the Exchange, and by providing additional investment and funding that could be used for the regulation and operation of the Exchange. The Exchange believes that the additional funds provided through the participation of additional Participants and Sponsored Participants would enable the Exchange to have greater capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, which, in turn, would protect investors and the public interest. The ownership limitations of the TXSE Group Stockholders' Agreement and the TXSE Group Certificate of Formation would continue to apply to all TXSE

Group Stock issued in connection with the Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the proposed rule change would increase both intermarket and intramarket competition by incentivizing both Participants and the new category of Joint Participants to direct their orders to the Exchange, which would enhance the quality of quoting and increase the volume of securities traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity, tighter quoting, and better prices that would result from the anticipated increase in order flow directed to the Exchange.

The Exchange also believes that any competitive burden on persons that do not participate in the Program is appropriate because the Program is designed to attract additional order flow to the Exchange, which would provide additional liquidity that enhances the quality of the Exchange's market and increases the volume of securities traded on the Exchange, to the benefit of all market participants. As a relatively new exchange competing for volume with much larger, established exchanges, the Exchange is likely to represent a nominal percentage of the average daily trading volume in equities in the near term. Accordingly, the Exchange does not believe that the Program, as amended by the proposed rule change, could impose any competitive harm on the equities markets or on market participants; rather, the proposed rule change represents an effort to attract order flow through an innovative pricing strategy and expands access to the Program to additional Participants and to Sponsored Participants, which would further competition by providing market participants with an additional option in determining where to execute orders and post liquidity.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

¹⁸ See, e.g., Article Seventh(b) of the TXSE Group Certificate of Formation, which provides that no person, either alone or together with its related persons, may beneficially own, directly or indirectly, shares of stock of TXSE Group representing in the aggregate more than 40% of the then-outstanding shares of stock, and no Member, either alone or together with its related persons, may beneficially own, directly or indirectly, shares representing in the aggregate more than 20% of the then-outstanding shares. See also Section 14 of the TXSE Group Stockholders' Agreement.

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and paragraph (f) of Rule 19b-4²⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-TXSE-2026-018 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 No. SR-TXSE-2026-018. 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 (<http://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-TXSE-2026-018 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-16278 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106049; File No. SR-PEARL-2026-37]

Self-Regulatory Organizations; MIAx PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 3100, Interpretation and Policy .06, To Reduce the Waiting Periods for Retaking FINRA Qualification Examinations

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2026, MIAx PEARL, LLC ("MIAx Pearl" 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 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 Exchange Rule 3100, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings>, and at Exchange's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 3100, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

In general, the Exchange's current rules require that persons engaged in a Member's³ securities business who are to function as representatives⁴ or principals⁵ register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations⁶ and exempt specified associated persons from the registration requirements.⁷

Current Exchange Rule 3100, Interpretation and Policy .06, provides that "[a]ny person who fails to pass a qualification examination prescribed by the Exchange shall be permitted to take that examination again after a period of 30 calendar days has elapsed from the

³ The term "Member" means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an "Electronic Exchange Member" or "Market Maker." Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁴ A "representative" is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. See Exchange Rule 3101.

⁵ A "principal" is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). A "principal" also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. See Exchange Rule 3101.

⁶ See Exchange Rule 3101, Registration Categories, and Exchange Rule 1302, Registration of Representatives. The Exchange notes that the rules contained in Chapter XIII of the rulebook of Miami International Securities Exchange, LLC, including Rule 1302, are incorporated by reference into MIAx Pearl Chapter XIII, and are thus MIAx Pearl Rules and thereby applicable to MIAx Pearl Members.

⁷ See Exchange Rule 3102, Associated Persons Exempt from Registration.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

date of such person's last attempt to pass that examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking that examination until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass that examination. The waiting periods for retaking a failed examination shall apply to the SIE and the representative and principal examinations specified under Rule 3101." In 2020, the Exchange adopted current Exchange Rule 3100, Interpretation and Policy .06, in response to the FINRA rule changes.⁸ The Exchange notes that current Exchange Rule 3100, Interpretation and Policy .06, is substantively similar to FINRA Rule 1210.06.⁹

On June 29, 2026, FINRA filed to shorten the required qualification examination retake waiting periods to 15 days after the first and second failed attempts, and 60 days after the third and all subsequent failed attempts that occur within a two-year period.¹⁰ The Exchange proposes to align the Exchange's requirement with FINRA's

by establishing uniform qualification examination retake waiting periods.

The Exchange believes that as a result of the changes to the qualification program that have occurred since the implementation of the current retake waiting periods provided in the FINRA filing, shortening the waiting periods in this manner would lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the rule applies uniformly to all Members and does not unfairly discriminate against any Member or type of market participant. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁴ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change to shorten the waiting periods for retaking FINRA qualification examinations will lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity. The

proposal would align the Exchange's requirement with FINRA's by establishing uniform qualification examination retake waiting periods.¹⁵ This proposal would avoid potentially different requirements for members of both FINRA and the Exchange with respect to qualification examination retake waiting periods.

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, the proposed rule text is substantially similar to FINRA's rule text. The proposal is based on a proposal that FINRA filed with the Commission for immediate effectiveness, and therefore, does not raise any new or novel issues, not already considered by the Commission.¹⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for qualification examination retake waiting periods, resulting in less burdensome and more efficient regulatory compliance for dual members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁸

At any time within 60 days of the filing of such proposed rule change, the

⁸ See Securities Exchange Act Release No. 87941 (January 10, 2020), 85 FR 2784 (January 16, 2020) (SR-PEARL-2020-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XXXI Registration, Qualification and Continuing Education); see also Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA-2017-007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements); see also FINRA Regulatory Notice 17-30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person's activities and compensation.

⁹ See FINRA Rule 1210, Registration Requirements, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/1210>.

¹⁰ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR-FINRA-2026-014) (the "FINRA Filing").

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(1).

¹⁵ See *supra* note 10.

¹⁶ See *id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2026-37 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-PEARL-2026-37. 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-PEARL-2026-37 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16286 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106053; File No. SR-FICC-2026-008]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change, as Modified by Partial Amendment No. 1, To Establish a Guaranty Fund at the Government Securities Division

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") ¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 24, 2026, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-FICC-2026-008. On August 4, 2026, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the proposed rule change.³ The proposed rule change, as modified by Partial Amendment No. 1 (hereinafter, the "Proposed Rule Change"), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the Proposed Rule Change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The Proposed Rule Change consists of modifications to FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules") ⁴ in connection with the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Partial Amendment No. 1 made certain changes to the description of the proposed rule change. Specifically, Partial Amendment No. 1 corrects certain figures in the description of the proposed rule change regarding the anticipated impact on FICC's Members for the average overall Guaranty Fund size. Additionally, Partial Amendment No. 1 clarifies certain statements regarding the effects on Member Backtesting Charges had the proposed changes been in place during the period of the Backtesting Study. These clarifications and corrections have been incorporated, as appropriate, into the description of the proposed rule change in Item II below. FICC filed the proposed rule change as an advance notice (SR-FICC-2026-802) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act") and Rule 19b-4 under the Act, 17 CFR 240.19b-4. A copy of the advance notice is available at www.dtcc.com/legal/sec-rule-filings. On August 4, 2026, FICC filed Partial Amendment No. 1 to the advance notice to make the same clarifications and corrections to the advance notice as Partial Amendment No. 1 to the proposed rule change.

⁴ Capitalized terms not defined herein shall have the meaning assigned to such terms in the GSD

proposed establishment of a guaranty fund designed to cover losses that may arise due to a Member default or a non-default loss event ("Guaranty Fund").

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Executive Summary

FICC, through GSD and the Mortgage-Backed Securities Division ("MBS") (each a "Division" and together the "Divisions"), serves as a central counterparty ("CCP") and provider of clearance and settlement services for fixed income transactions. FICC-GSD, specifically, provides CCP services in U.S. government securities, as well as repurchase and reverse repurchase transactions involving U.S. government securities.⁵

FICC proposes to establish a Guaranty Fund at GSD, which would be designed to cover and mutualize the risk of losses that may occur as a result of (i) a Defaulting Member Event ⁶ under a wide range of foreseeable stress scenarios or (ii) a Declared Non-Default Loss Event.⁷

Rules, available at www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁵ GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

⁶ A "Defaulting Member Event" is defined in the GSD Rules as a determination by FICC to cease to act for a Member pursuant to GSD Rule 21 or Rule 22. See Section 7 of GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. These GSD Rules provide that FICC's Board of Directors may suspend a Member or prohibit or limit a Member's access to FICC's services in enumerated circumstances; this includes, among other things, a default in delivering funds or securities to FICC, a Member insolvency or a Member experiencing such financial or operational difficulties that FICC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its membership. See GSD Rule 21 (Restrictions on Access to Services) and GSD Rule 22 (Insolvency of a Member), *supra* note 4.

⁷ A "Declared Non-Default Loss Event" is a determination by the FICC Board of Directors that a loss or liability incident to the clearance and settlement business of FICC may be a significant

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

The Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's "default fund"⁸ and enable FICC to treat its Member's Clearing Fund deposits as "initial margin,"⁹ excluding the Clearing Fund from loss mutualization and supporting bankruptcy remote treatment for Clearing Fund deposits at GSD.

As part of the proposal, FICC would make the following changes to the GSD Rules:

- Adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund each month at an amount sufficient to cover the stress test deficiency (*i.e.*, losses observed in daily stress testing over required Clearing Fund deposits) that may arise as a result of the default of the two Netting Member Affiliated Families¹⁰ that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (a "Cover 2 Standard" or "Cover 2 Requirement"); (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain established thresholds;
- Modify GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined

and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Members in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner. See Section 7 of Rule 4 of the GSD Rules, *supra* note 4.

⁸ A CCP's default fund is typically used to mutualize certain risks, such as losses that may occur under extreme but plausible stress scenarios that exceed a defaulting member's initial margin.

⁹ Initial margin is collateral collected by a CCP to cover its current and potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin is generally not mutualized and used only to cover the losses of the participant posting such initial margin.

¹⁰ "Affiliated Family" is defined in the GSD Rules as a group of Members, excluding from the group any Member that is a securities clearinghouse, depository, exchange or other market infrastructure, in which each Member in the group is an Affiliate of at least one other Member in the group. See Section 1 of GSD Rule 1 (Definitions), *supra* note 4.

thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to "borrow" Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.

- Relocate the loss allocation rules in Section 7 (Loss Allocation Waterfall, Off-the-Market Transactions) of GSD Rule 4 to new proposed Rule 4C (Loss Allocation) and modify those rules to (i) incorporate the proposed Guaranty Fund into the GSD loss allocation waterfall and exclude the Clearing Fund from the calculation of loss allocation obligations; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day "cooling-off period" for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an "Event Period"); and (iv) impose an assessment cap on loss allocation during each Event Period equal to two times (or 200 percent of) the Member's Guaranty Fund requirement for any Event Period in lieu of the existing loss allocation rounds system.

- Make other conforming changes throughout the GSD Rules to reflect the adoption of the Guaranty Fund as described herein.

FICC has discussed this proposal with Members, who generally expressed support for the proposed changes. By establishing a separate Guaranty Fund for loss mutualization and capping each Netting Member's loss allocation in Defaulting Member Events and Declared Non-Default Loss Events that occur during an Event Period at 200 percent of the Netting Member's Guaranty Fund requirement, FICC would provide greater transparency around each Member's potential exposures to FICC. The proposed Guaranty Fund, which would be sized and allocated based on the results of daily stress testing under a wide range of foreseeable historical and hypothetical scenarios, would also provide a more risk sensitive measure of

FICC's stress exposures. FICC also notes that by establishing a Guaranty Fund and sizing it to a Cover 2 Standard, the proposal would align FICC's risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market's systemically important infrastructures.¹¹

The proposal also includes changes to the GSD Rules to make it clear that Members' Clearing Fund deposits represent initial margin, excluding the Clearing Fund from the loss allocation calculation, and to facilitate the ability of Members to conclude that Clearing Fund deposits are bankruptcy remote¹² from FICC within the meaning of the Basel capital framework. The proposed changes would protect the Clearing Fund deposits of all Members from loss mutualization in the event of a Member default scenario where the losses incurred by FICC exceed the resources of the defaulting Member. The proposed changes would protect non-defaulting Members' Clearing Fund deposits from an FICC insolvency and thereby facilitate the ability of Clearing Members to conclude they do not need to hold regulatory capital against such deposits, providing additional capital relief to such Members, as discussed in further detail below.

Background

FICC–GSD maintains financial resources in the form of its Clearing Fund designed to enable it to cover potential losses resulting from the failure of the Member or Member family to which it has the largest credit exposure. FICC–GSD collects Clearing Fund deposits from its Members using a risk-based margin methodology. These amounts operate, individually, as the Member's initial margin, and the aggregate of all such Members' deposits is referred to collectively as the Clearing Fund, which operates as GSD's default fund. This risk-based methodology enables FICC to identify the risks posed by a Member's unsettled portfolio and to quickly adjust and collect additional deposits as needed to cover those risks.

¹¹ For example, CME Securities Clearing Inc. and ICE Clear Credit LLC maintain default funds that are separate from initial margin and sized to a Cover 2 Standard. See Chapter 4 of the Rules of CME Securities Clearing Inc., available at www.cmegroup.com/rulebook/cmesc/, and Chapter 8 of the Treasury Clearing Rules of ICE Clear Credit LLC, available at www.ice.com/clear-credit/us-treasury-clearing.

¹² FICC would obtain a legal memorandum from outside counsel regarding the bankruptcy remote treatment of the Clearing Fund.

Each Member's required Clearing Fund deposit (or Required Fund Deposit) is calculated at least twice daily for GSD Members pursuant to a formula set forth in GSD Rule 4 and the Margin Component Schedule of the GSD Rules.¹³ The Clearing Fund is sized to an amount sufficient to cover a wide range of potential stress scenarios, including the default of the Member and its affiliated Members that would cause the largest aggregate credit exposure to GSD in extreme but plausible market conditions (that is, to a "Cover 1 Standard").

Currently, under GSD Rule 4, if there is a loss (i) as a result of an obligation of a defaulting Member to FICC that was not fully satisfied by the application of its resources or the proceeds from the liquidation of its portfolio, or (ii) due to an event other than a Member default (i.e., a Declared Non-Default Loss Event), FICC has recourse to the loss allocation waterfall. FICC allocates losses differently between Tier One Netting Members, which generally include all Netting Members unless otherwise specified by FICC, and Tier Two Members, which include CCIT Members and Registered Investment Company Netting Members.¹⁴

Under the current GSD Rules, triggering events for loss allocation purposes, which may include both Member defaults and non-default events, are grouped together chronologically into discrete "Event Periods" of ten business days.¹⁵ Losses arising from a group of events that occurred within the same Event Period, whether a default loss or a non-default loss, would be allocated as follows:

- Before the allocation of losses to Members, FICC would apply 50 percent of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the applicable event period (referred to as the "Corporate Contribution"), or such greater amount as the Board of Directors may determine to satisfy the losses.¹⁶

- If a loss is related to a Defaulting Member Event, FICC would allocate the loss between the Tier One Netting Members and the Tier Two Members, and the loss allocation process applicable to Tier One Netting Members and Tier Two Members would proceed via two separate, parallel, and simultaneous streams. If a loss is related to a Declared Non-Default Loss Event, FICC would allocate the loss to Tier One Netting Members. Tier Two Members are not subject to loss allocation with respect to Declared Non-Default Loss Events.¹⁷

- With respect to Tier One Netting Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount among Tier One Netting Members that were Tier One Netting Members on the first day of the applicable Event Period, ratably in accordance with their average daily Required Fund Deposit over the prior 70 business days or such shorter period of time that the Tier One Netting Member has been a Tier One Netting Member, divided by the sum of the average Required Fund Deposit amounts of all Tier One Netting Members subject to loss allocation in such round. Each Tier One Netting Member must pay its allocation amount within two business days of receiving notice of the amount.¹⁸

- With respect to Tier Two Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount to Tier Two Members to the extent they traded with the defaulting Member and their trades resulted in the loss. FICC would assess Tier Two Members ratably based on their loss as a percentage of the entire amount of the remaining loss attributable to Tier Two Members. Tier Two Members are required to pay their loss allocation obligation in full.¹⁹

The GSD Clearing Fund also acts as a source of liquidity for FICC. FICC's qualifying liquid resources²⁰ are

¹⁷ See Section 7 of GSD Rule 4, *supra* note 4. Losses relating to the events within the same Event Period may be allocated iteratively.

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ "Qualifying liquid resources," as defined by Rule 17ad-22(a) under the Act, include three types of assets: (i) cash held either at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements, such as: (A) committed arrangements without material adverse change provisions, including (1) lines of credit, (2) foreign exchange swaps and (3) repurchase agreements, or (B) other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) other

described in the Clearing Agency Liquidity Risk Management Framework ("LRM Framework")²¹ and include (i) cash deposits to the respective Clearing Funds²² of GSD and MBSD and (ii) the Capped Contingency Liquidity Facility ("CCLF") for each of GSD and MBSD. Collectively, these resources provide FICC with liquidity to complete end-of-day settlement in the event of the default of a GSD Netting Member.²³

The Clearing Agencies also maintain a Clearing Agency Stress Testing Framework ("ST Framework"), which sets forth the manner in which FICC (i) performs stress testing of the sufficiency of its prefunded financial resources and (ii) determines the amount and regularly tests the sufficiency of FICC's liquidity resources.²⁴ FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, to size and test the sufficiency of the proposed Guaranty Fund.

Description of Proposed Change

FICC proposes to establish a Guaranty Fund for GSD, which is designed to

assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency. See 17 CFR 240.17ad-22(a).

²¹ FICC and its affiliate clearing agencies, The Depository Trust Company and National Securities Clearing Corporation (together, the "Clearing Agencies"), have adopted the LRM Framework, which sets forth the manner in which FICC measures, monitors and manages the liquidity risks that arise in or are borne by it. See Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (SR-DTC-2017-004; SR-FICC-2017-008; SR-NSCC-2017-005). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the LRM Framework to include the Guaranty Fund and the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC as sources of qualifying liquid resources for FICC-GSD.

²² Cash deposits to the Clearing Funds are held either at a Federal Reserve Bank or creditworthy commercial banks that provide same-day access to funds.

²³ The Commission also recently issued a Notice of No Objection to FICC's proposal to establish a commercial paper program in order to raise prefunded default liquidity ("Commercial Paper Program"). The Commercial Paper Program, once implemented, would also constitute an additional source of qualifying liquid resources for FICC. See Securities Exchange Act Release No. 105319 (Apr. 27, 2026), 91 FR 23318 (Apr. 30, 2026) (SR-FICC-2026-801).

²⁴ See Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR-DTC-2017-005; SR-FICC-2017-009; SR-NSCC-2017-006). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the ST Framework to make conforming changes to reflect the utilization of FICC's stress testing methodology and scenarios in sizing and testing the sufficiency of the Guaranty Fund.

¹³ See Rule 4 and Margin Component Schedule of the GSD Rules, *supra* note 4.

¹⁴ See Section 7 of GSD Rule 4, *supra* note 4.

¹⁵ See *id.*

¹⁶ The amount of the Corporate Contribution to be applied to any losses arising from events that may occur in subsequent event periods during the next 250 business days would be reduced to the remaining unused portion of the Corporate Contribution amount, if any. If the losses are attributable to only one Division, the Corporate Contribution to the losses would be up to the amount then available. If the losses occur simultaneously at both Divisions, the Corporate Contribution to the losses would be applied ratably between the Divisions. See Section 7a of GSD Rule 4, *supra* note 4.

cover losses that may arise due to a Member default or a non-default loss event and enable FICC to support bankruptcy remote treatment for its Clearing Fund deposits. The proposed changes would include, among other things:

- Adopting new GSD Rule 4A (Guaranty Fund) to set forth requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund at an amount sufficient to meet a Cover 2 Requirement; (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain thresholds.
- Modifying GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to “borrow” Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.
- Relocating the loss allocation rules in Section 7 of GSD Rule 4 to a new Rule 4C (Loss Allocation) and modifying the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day “cooling off period” for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an “Event Period”); and (iv) impose an assessment cap on

loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member’s Guaranty Fund requirement for each Event Period in lieu of the existing loss allocation rounds system.

- Make other conforming changes throughout the GSD Rules to reflect the adoption of the Guaranty Fund as described herein.

The proposed changes are discussed in detail below.

1. Proposed Establishment of a Guaranty Fund

FICC proposes to adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the proposed Guaranty Fund. The proposed rules would describe (i) general terms and requirements applicable to the Guaranty Fund; (ii) the maintenance of the Guaranty Fund; (iii) the form and investment of Guaranty Fund deposits; (iv) daily stress testing requirements for the Guaranty Fund; (v) the monthly sizing of the Guaranty Fund; (vi) intramonth resizing of the Guaranty Fund; (vii) the allocation of Guaranty Fund requirements among Netting Members; (viii) the setting of initial Guaranty Fund Requirements for new Netting Members and adjustments to Guaranty Fund Requirements due to certain business activities of Netting Members; (ix) the purpose and use of Guaranty Fund; and (x) the withdrawal of excess Guaranty Fund deposits, replenishing of any deficits in Guaranty Fund, and return of Guaranty Fund deposits after a Member withdraws from membership at GSD.

The term “Guaranty Fund” would be defined in GSD Rule 1 to mean the Guaranty Fund established by FICC pursuant to Rule 4A (as proposed herein), which shall be comprised of the aggregate of all contributions of Netting Members, excluding Registered Investment Company Netting Members. The proposed definition would further provide that the Guaranty Fund may be used to cover losses incurred by FICC as a result of a Defaulting Member Event or Declared Non-Default Loss Event. The term “Guaranty Fund Deposit” would also be defined in GSD Rule 1 as the deposit to the Guaranty Fund made by a Netting Member pursuant to Rule 4A (as proposed herein).

The proposed Guaranty Fund would be sized to a Cover 2 Requirement based on the results of daily stress testing using a range of historical and hypothetical scenarios. FICC would size the Guaranty Fund on a monthly basis; however, FICC would retain authority to resize the Guaranty Fund on an intramonth basis if it observes stress test

deficiencies that breach certain established thresholds. Each Netting Member’s required Guaranty Fund contribution would be determined as their pro rata share of the Cover 2 Requirement based on average daily largest stress test deficiencies. FICC would also have the authority to impose additional margin charges on a Netting Member or Affiliated Family whose Stress Test Deficiencies (as defined in Section 1.d. below) either (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause either the monthly or intramonth size of the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund.

The proposed Guaranty Fund and associated GSD Rules are discussed in detail below.

a. General Rules

Section 1 of proposed Rule 4A would set forth general provisions applicable to the Guaranty Fund and proposed Rule 4A. Specifically, Section 1 of proposed Rule 4A would clarify that, for purposes of proposed Rule 4A, the term Netting Member shall not include Registered Investment Company Netting Members, except for purposes of determining the total size of the Guaranty Fund or the application of any potential Stress Test Deficiency Charge, as defined below.²⁵ The proposed rule is intended to reflect the elimination of the concept of Tier Two Members and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members, to which proposed Rule 4A would not apply) from Guaranty Fund requirements and the calculation of loss allocation obligations, which are discussed in further detail below.

In addition, Section 1 of proposed Rule 4A would provide that FICC shall maintain on its public website information regarding the stress test scenarios, Guaranty Fund sizing parameters, and intramonth resizing thresholds used to determine the size of the Guaranty Fund. FICC believes that making these key details available on its public website would promote clarity and transparency for its Members, market participants, and the general public.

²⁵ For example, a Registered Investment Company Netting Member’s Stress Test Deficiencies would be included in stress testing for purposes of determining the overall Cover 2 Requirement for the Guaranty Fund. However, Registered Investment Company Netting Member stress test exposures would not be considered in the Guaranty Fund allocation process.

b. Maintenance of Guaranty Fund

Section 2 of proposed Rule 4A would require each Netting Member to make and maintain on an ongoing basis a contribution to the Guaranty Fund. The proposed rule would further provide that the amount of each Netting Member's required Guaranty Fund contribution (referred to as the "Guaranty Fund Requirement") as well as the timing of payment of the Guaranty Fund Requirement shall be determined by FICC in accordance with the terms of proposed Rule 4A, as further discussed below.

In addition, FICC would update GSD Rule 1 to include a definition for Guaranty Fund Requirement to mean a Netting Member's required Guaranty Fund contribution as determined in accordance with proposed Rule 4A.

c. Form and Investment of Guaranty Fund

Section 3 of proposed Rule 4A would require that each Netting Member's Guaranty Fund Requirement be made in the form of cash in immediately-available funds and would permit FICC to invest cash in the Guaranty Fund in accordance with the Clearing Agency Investment Policy.²⁶ Under the proposed rule, each Netting Member would be entitled to such interest earned or paid on Guaranty Fund Cash deposits as FICC may determine from time to time. FICC believes that requiring Guaranty Fund contributions to be provided in cash would provide an important source of qualifying liquid resources for FICC.

d. Daily Stress Testing

Section 4(a) of proposed Rule 4A would require that FICC perform daily stress testing of its total financial resources at least once each day using a wide range of foreseeable scenarios, including both historical and hypothetical scenarios. Such daily stress testing would be used to determine "Stress Test Deficiencies" for purposes of sizing the Guaranty Fund. The term "Stress Test Deficiency" would be defined in GSD Rule 1 to mean the losses observed in FICC's daily stress testing in excess of applicable Required Fund Deposits of Netting Members or an Affiliated Family of Netting Members.

As proposed herein, the Required Fund Deposits of Netting Members would be treated as initial margin at GSD. As a result, FICC believes the proposed approach for determining Stress Test Deficiencies would be consistent with practices of other CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, utilizing a "stress loss over initial margin" approach to sizing and testing the sufficiency of CCP default funds.²⁷ As noted above, FICC would leverage its stress testing methodology and inventory of stress scenarios, as described in the ST Framework, for its daily stress testing for the Guaranty Fund.²⁸

e. Monthly Sizing of Guaranty Fund

Section 4(b) of proposed Rule 4A would describe the monthly sizing of the Guaranty Fund. Specifically, the proposed rule would provide that the size of the Guaranty Fund would be established on a monthly basis at an amount determined by FICC to be sufficient to cover the Stress Test Deficiency that may arise as a result of the default of the two Netting Member Affiliated Families that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (*i.e.*, the Cover 2 Requirement). The proposed rule would further provide that FICC may maintain the Guaranty Fund size at an amount larger than the Cover 2 Requirement (*e.g.*, by applying an additional buffer amount) based on FICC's assessment of historical or recently observed Stress Test Deficiencies, fluctuations in Member portfolios, fluctuations in volatility or market conditions, or to prevent significant fluctuations in Guaranty Fund Requirements that may result in a deficiency in the Cover 2 Requirement or the need for imminent or frequent intramonth resizing. In addition, the proposed rule would provide that FICC may establish parameters (or "collars") to limit monthly fluctuations in the size of the Guaranty Fund, which would

apply to both increases or decreases in the size of the overall Guaranty Fund.²⁹

Section 4(b) of proposed Rule 4A would further provide that, if FICC observes Stress Test Deficiencies for a Netting Member or Affiliated Family that (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, FICC may impose a "Stress Test Deficiency Charge" on the Netting Members driving such stress test exposures. The proposed Stress Test Deficiency Charge is designed to enable FICC to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or cap. The proposed Stress Test Deficiency Charge would be set forth in the Margin Component Schedule of the GSD Rules, as described in Section 2.c. below.

FICC believes that the proposed approach would help FICC to limit significant month-over-month changes in the size of the Guaranty Fund and align with a "defaulter pays" approach to addressing the additional risk presented by those Members driving significant stress test exposures, providing important stability and predictability for monthly changes in the Guaranty Fund and Netting Members' individual contribution requirements.

Section 4(b) of proposed Rule 4A would also require that, unless otherwise notified by FICC that it will receive such information at a different time, FICC shall inform each Netting Member of its monthly Guaranty Fund

²⁹ FICC would initially establish parameter values of (i) 20 percent to limit month-over-month increases such that the size of the Guaranty Fund cannot increase by more than 20 percent from the beginning of one month to the beginning of the subsequent month and (ii) 15 percent to limit month-over-month decreases such that the size of the Guaranty Fund cannot decrease by more than 15 percent from the beginning of one month to the beginning of the subsequent month. These parameter values would be subject to periodic review and adjustment and would be subject to the governance process set forth in the Clearing Agency Model Risk Management Framework ("MRM Framework"). The Clearing Agencies have adopted and maintain the MRM Framework, which sets forth the model risk management practices that the Clearing Agencies follow to identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. *See* Securities Exchange Act Release No. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR-DTC-2017-008; SR-FICC-2017-014; SR-NSCC-2017-008).

²⁶ *See* Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003). FICC would file a separate proposed rule change with the Commission to update the Clearing Agency Investment Policy to permit the overnight investment of Guaranty Fund cash in either commercial bank deposits or its FRBNY account (similar to the Clearing Fund).

²⁷ For example, CME Securities Clearing Inc. sizes its guaranty fund to a cover two standard that measures the shortfall between the stress loss and collateral on deposit for initial margin. *See* Rule 402(a) of the Rules of CME Securities Clearing Inc., *supra* note 11. ICE Clear Credit LLC also determines the amount of required contributions to its Treasury Guaranty Fund based on stress loss over initial margin concepts. *See* Rule 801(a) of the Treasury Clearing Rules of ICE Clear Credit LLC, *supra* note 11.

²⁸ *See supra* note 24.

Requirement no later than the first Business Day of each month. Pursuant to the proposed rule, any deficit in a Netting Member's Guaranty Fund Requirement must be funded by the Monthly Guaranty Fund Deposit Deadline on the first Business Day of each month unless otherwise determined by FICC. The term "Monthly Guaranty Fund Deposit Deadline" would be defined in GSD Rule 1 to mean the deadline set forth by FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.³⁰

In addition, Section 4(b) of proposed Rule 4A would state that the Guaranty Fund Requirement of each Netting Member to the Guaranty Fund would be determined pursuant to the allocation calculation set forth in the proposed rules, as discussed in Section 1.g. below.

Section 4(b) of proposed Rule 4A would also permit FICC to recalculate the size of the Guaranty Fund more frequently than monthly or reestablish the monthly size of the Guaranty Fund under certain circumstances set forth in the proposed rules, as discussed in Section 1.f. below.

In connection with these proposed changes, FICC would also update GSD Rule 1 to include a definition for "Cover 2 Requirement" that refers to the meaning given to that term in Section 4 of proposed Rule 4A.

f. Intramonth Resizing of Guaranty Fund

Section 4(c) of proposed Rule 4A would set forth requirements for any intramonth resizing of the Guaranty Fund. Under the proposed rule, if at any time FICC observes a daily Stress Test Deficiency that exceeds certain thresholds established by FICC ("Intramonth Resizing Threshold"), FICC would have the authority to reestablish the size of the Guaranty Fund on an intramonth basis ("Intramonth Resizing") at an amount determined by FICC to reduce such Stress Test Deficiency below the Intramonth Resizing Threshold ("Adjusted Guaranty Fund Size"). The proposed rule would also provide that FICC may establish parameters to limit intramonth fluctuations in the size of the Guaranty Fund, similar to the collars established for monthly sizing of the Guaranty Fund discussed above. Pursuant to the proposed rule, the re-

allocation of Guaranty Fund Requirements due to any Intramonth Resizing would be done based on the Adjusted Guaranty Fund Size pursuant to the standard allocation formula used for monthly Guaranty Fund sizing discussed in Section 1.g. below.

Under the proposed rule, FICC would notify each Netting Member of any Intramonth Resizing of the Guaranty Fund, and any deficit due to an Intramonth Resizing of the Guaranty Fund must be funded by the Intramonth Guaranty Fund Deposit Deadline on the same Business Day of notification unless otherwise determined by FICC. The term "Intramonth Guaranty Fund Deposit Deadline" would be defined in GSD Rule 1 as the deadline set forth by FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.³¹ The terms "Intramonth Resizing Threshold" and "Intramonth Resizing" would also be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

In addition to resizing the Guaranty Fund, FICC would also propose rules to allow FICC to collect Stress Test Deficiency Charges directly from those Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for any intramonth resizing of the Guaranty Fund. FICC believes that the proposed approach would align with a "defaulter pays" approach to addressing the additional risk presented by those Members whose Stress Test Deficiencies drive significant stress test exposures at FICC on an intramonth basis and also help to provide important stability and predictability for potential intramonth changes in the Guaranty Fund. The proposed Stress Test Deficiency Charge is discussed in further detail in Section 2.c. below.

g. Allocation of Guaranty Fund Requirements

Section 4(d) of proposed Rule 4A would set forth the allocation calculation used to determine each Netting Member's Guaranty Fund Requirement. Pursuant to the proposed rule, each Netting Member's Guaranty Fund Requirement shall be calculated as

the greater of (i) the Netting Member's pro rata share of the largest Cover 2 Requirement observed over a designated lookback period or (ii) the minimum Guaranty Fund Requirement as determined by FICC from time to time ("Minimum Guaranty Fund Requirement"). The Minimum Guaranty Fund Requirement for each Netting Member would be set by FICC at an amount no less than \$100,000 and no greater than \$5 million,³² and each Netting Member's pro rata share of the largest Cover 2 Requirement would be determined using each Netting Member's average daily largest Stress Test Deficiencies as compared to the sum of all Netting Members' average daily largest Stress Test Deficiencies over a designated lookback period.³³ In addition, the term Minimum Guaranty Fund Requirement would be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

FICC believes that the proposed allocation methodology would appropriately allocate each Netting Member's contribution to the Guaranty Fund, and their associated loss allocation obligations, in direct proportion to the risk presented by each Netting Member's contribution to Stress Test Deficiencies observed by FICC under its daily stress testing.

h. Initial and Adjusted Guaranty Fund Requirements

Sections 4(e) and 4(f) of proposed Rule 4A would describe initial Guaranty Fund Requirements for new Netting Members and FICC's authority to adjust Guaranty Fund Requirements in the event of actions such as mergers, consolidations, position transfers, and business expansions.

Section 4(e) of proposed Rule 4A would state that the initial Guaranty Fund Requirement of each new Netting Member would be equal to the Minimum Guaranty Fund Requirement established by FICC pursuant to Section 4(d) of proposed Rule 4A.

³² FICC would initially set the Minimum Guaranty Fund Requirement at \$1 million, subject to adjustment pursuant to FICC's internal market risk management procedures. FICC would review the Minimum Guaranty Fund Requirement on at least an annual basis to ensure that it is calibrated to an amount that is consistent with achieving FICC's targets for the sufficiency of total prefunded financial resources. Netting Members would be notified of any changes to the Minimum Guaranty Fund Requirement via Important Notice and update to the FICC website at least one business day in advance.

³³ FICC would initially establish this lookback period as a rolling 12-month period, which may be subject to periodic adjustment under the governance process set forth in the MRM Framework. See *supra* note 29.

³⁰ FICC generally expects to notify Members of their monthly contribution requirement by no later than 11:00 a.m. Eastern Time on the first business day of each month and would require all deficits to be satisfied by 2:45 p.m. Eastern Time on the first business day of the month.

³¹ FICC generally expects to notify Members of any intra-month collection by no later than 11:00 a.m. Eastern Time and would require any deficits to be satisfied by 2:45 p.m. Eastern Time.

In addition, proposed Section 4(e) would permit FICC to adjust the Guaranty Fund Requirement of a Netting Member, until such time as FICC determines, to address any change in the risk profile of such Netting Member due to mergers, consolidations, position transfers, business expansions, membership approval or other similar events.

FICC believes that the proposed initial and adjusted Guaranty Fund Requirement processes are appropriate to allocate the expected risks that may be presented by Netting Members until such time as those risks can be incorporated into FICC's stress test results over the applicable lookback period.

i. Purpose and Use of Guaranty Fund; Replenishing Deficits in the Guaranty Fund

Section 5 of proposed Rule 4A would describe the intended purpose and use of the Guaranty Fund. Pursuant to the proposed rule, each Netting Member's deposit to the Guaranty Fund may be used by FICC (i) to secure each Netting Member's performance of obligations to FICC, including, without limitation, each Netting Member's obligations with respect to any loss allocations as set forth in proposed Rule 4C (discussed below) and any obligations arising from a Cross-Guaranty Agreement pursuant to GSD Rule 41 (Cross Guaranty Agreements) or a Cross-Margining Agreement pursuant to GSD Rule 43 (Cross-Margining Arrangements); (ii) to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Guaranty Fund; and (iii) for investment as set forth in Section 3 of proposed Rule 4A (as discussed above).

The proposed rule would further provide that, upon the occurrence of a Defaulting Member Event with respect to a Netting Member, FICC shall, after appropriate application of such Netting Member's Clearing Fund and other funds in the accounts of such Netting Member, apply such Netting Member's Guaranty Fund Deposit to satisfy any loss, liability, or the performance of any obligations to FICC prior to applying the Corporate Contribution or allocating losses pursuant to proposed Rule 4C.

The proposed rule would also clarify that each time FICC uses any part of the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations for more than 30 calendar days, FICC, at the Close of Business on such 30th calendar day (or, if such day is not a Business Day, on the first Business Day thereafter) from the day of such use,

shall consider the amount used but not yet replenished by FICC as a loss to the Guaranty Fund and immediately allocate such loss in accordance with proposed Rule 4C.

Section 7 of proposed Rule 4A would then describe the requirements for Netting Members to replenish any deficits in the Guaranty Fund. Specifically, the proposed rule would state that, if FICC's application or use of a Netting Member's Guaranty Fund Deposit as permitted pursuant to proposed Rule 4C results in any deficiency in the Netting Member's Guaranty Fund Requirement, the Netting Member shall, upon FICC's demand, satisfy the deficit in its Guaranty Fund Requirement, immediately or within such time as FICC shall require, subject to the Loss Allocation Caps set forth in proposed Rule 4C (as described in Section 3 below). The proposed rule would further state that if the Netting Member fails to do so, FICC may take disciplinary action against such Netting Member pursuant to Rule 21 or Rule 48, and any such disciplinary action that FICC takes or the voluntary or involuntary cessation of membership shall not affect the Netting Member's obligations to FICC or any remedy to which FICC may be entitled under applicable law.

j. Withdraw of Excess and Return of Guaranty Fund Deposits

Sections 6 and 8 of proposed Rule 4A would describe the withdrawal of excess Guaranty Fund Deposits and the return of a Netting Member's Guaranty Fund Requirement after their withdrawal from membership at GSD. Section 6 of proposed Rule 4A would provide that, following the completion of any resizing of the Guaranty Fund, FICC would determine whether the amount deposited by a Member in the Guaranty Fund is in excess of its Guaranty Fund Requirement ("Excess Guaranty Fund Deposit"). If FICC has determined that an Excess Guaranty Fund Deposit exists, FICC would notify each such Member of such excess and return the Member's Excess Guaranty Fund Deposit in accordance with such procedures as FICC may set forth from time to time, subject to FICC's rights to require additional amounts to be deposited by a Member. However, the proposed rule would further provide that Excess Guaranty Fund Deposits shall not be returned to a Member to the extent that such return would (i) reduce the amount of the Member's Cross-Guaranty Repayment Deposit to the Guaranty Fund below the amount

Section 4 of Rule 41 or (ii) reduce the amount of the Member's Cross-Margining Repayment Deposit to the Guaranty Fund below the amount required to be maintained pursuant to Section 6 of Rule 43 (as described in further detail in Section 4.a. below).³⁴ The proposed rule would, however, also provide FICC with the discretion to retain some or all of a Member's Excess Guaranty Fund Deposit if the Member has an outstanding payment or margin obligation to FICC, including but not limited to outstanding deficits in such Member's Required Fund Deposit or unpaid Funds-Only Settlement Amounts. FICC notes that the proposed rule is generally similar to the GSD Rules concerning withdrawal of excess Clearing Fund deposits, with certain modifications intended to reflect the differing treatment between Clearing Fund as initial margin and the Guaranty Fund as a default fund.³⁵

Pursuant to Section 8 of proposed Rule 4A, if a Member gives notice to FICC of its election to withdraw from membership, the Member's Guaranty Fund Deposit would be returned to it within thirty (30) calendar days after all of its transactions have settled and all matured and contingent obligations to FICC for which the Member was responsible while a Member have been satisfied. Additionally, FICC would have the discretion to retain an amount equal to any Cross-Guaranty Repayment Deposit and/or Cross-Margining Repayment Deposit of any Member until such time as FICC determines that such Member is no longer liable to FICC under Rule 41 and/or Rule 43 to reimburse FICC for any Cross-Guaranty Repayment or Cross-Margining Repayment, respectively, that it may be obligated to make under any relevant Cross-Guaranty Agreement or Cross-Margining Agreement. FICC notes that this authority is generally consistent with the GSD Rules concerning the return of a Member's Clearing Fund deposits.³⁶ Furthermore, the proposed rule would clarify that, if FICC ceases to act for a Member, FICC would return any excess Guaranty Fund Deposit to it within thirty (30) calendar days after all of its obligations have been satisfied, and until such time, FICC may use such Guaranty Fund Deposit to the same

³⁴ FICC notes that the proposed limitations on withdrawing Excess Guaranty Fund Deposits below the Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit amounts is consistent with existing limitations on the withdrawal of Excess Clearing Fund Deposits in Section 10 of GSD Rule 4, which would be removed from the GSD Rules and replaced with the proposed rule described above.

³⁵ See Section 10 of GSD Rule 4, *supra* note 4.

³⁶ See Section 8 of GSD Rule 4, *supra* note 4.

extent as would be permissible had FICC not ceased to act for the Defaulting Member.

2. Proposed Changes to the Clearing Fund

FICC proposes to modify GSD Rule 4 and the Margin Component Schedule of the GSD Rules and make other conforming changes throughout the GSD Rules to (i) support bankruptcy remote treatment for Clearing Fund deposits as initial margin; (ii) exclude Clearing Fund deposits from the loss allocation calculation; (iii) adopt a new Stress Test Deficiency Charge that would be imposed on Netting Members or Affiliated Families whose Stress Test Deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund; (iv) eliminate fixed minimum Required Fund Deposit amounts and minimum charges for Segregated Indirect Participants Accounts and for Cross-Margining Customers Accounts; (v) modify the associated minimum cash requirements for Required Fund Deposits; (vi) modify the GSD Rules concerning the use of Clearing Fund for liquidity risk management purposes; and (vii) make other clean up changes to Rule 4 concerning Clearing Fund requirements.

a. Bankruptcy Remoteness of Clearing Fund

FICC proposes to modify GSD Rule 4 to provide for Clearing Fund deposits at GSD to be bankruptcy remote from FICC. FICC understands that many Members are subject to regulatory capital rules (either directly or on a consolidated basis) that require such Members to hold capital against margin they post to a CCP unless such margin is “bankruptcy remote” from the CCP. The U.S. regulatory capital rules define “bankruptcy remote” as, “with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity’s estate in receivership, insolvency, liquidation, or similar proceeding.”³⁷ FICC understands that market participants generally view this definition as being satisfied if the institution “can conclude that the margin is subject to arrangements that would prevent the margin from being subject to (1) competing claims of (and, thus, distribution to) a CCP’s creditors generally or (2) loss due to the CCP’s

default, including insolvency (e.g., as a result of the CCP’s exercise of re-use, repledge, rehypothecation or other transfer rights), such that, in either case, the margin (or its liquidation value) would be unavailable for return to the [institution] in the CCP’s [i]nsolvency.”³⁸

The proposed changes to the GSD Rules include a number of provisions designed to facilitate Members’ ability to conclude that Clearing Fund posted to FICC is bankruptcy remote from FICC for purposes of the regulatory capital rules. In particular, FICC proposes changes to Section 1 (Required Fund Deposit) of GSD Rule 4 to provide for FICC to credit all Clearing Fund it collects to a “securities account” on FICC’s books and records (i.e., the Netting Member Clearing Fund Custody Account) and to treat such Clearing Fund as “financial assets” within the meaning of the Uniform Commercial Code as in effect in the State of New York (“NYUCC”). The proposed changes would further provide that New York would be the “securities intermediary’s jurisdiction” for purposes of the NYUCC and New York law would govern all issues specified in Article 2(1) of the Hague Securities Convention. These would ensure that New York law would be the “otherwise applicable non-bankruptcy law” for purposes of ascertaining which assets constitute property of FICC’s estate in the event of FICC’s insolvency, as discussed in more detail below.

In addition, the proposed changes to Section 1 of GSD Rule 4 would require FICC to hold Clearing Fund either (i) in an account at a commercial bank, which must be a “bank” within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation and is a qualified custodian under the Investment Company Act of 1940, as amended or (ii) in an account at the Federal Reserve Bank of New York (“FRBNY”). In the case of the former, the proposed rules would require that the account be segregated from any other account of FICC, used exclusively to hold Clearing Fund, and be subject to a written agreement that Clearing Fund in such account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. In

the case of the latter, the proposed changes would provide that the account may not be subject to any lien or security interest other than such as is required by FRBNY. In order to ensure that such lien is never operative, the proposed rules would require FICC to maintain sufficient funds within the account at all times to satisfy all fees or costs incurred and owed to the FRBNY and would prohibit FICC from taking any action that would result in overdrafting or a negative balance or otherwise give rise to any obligation (other than for fees) secured by any lien on the account. FICC also proposes other changes throughout GSD Rule 4 to prohibit FICC from using Clearing Fund other than to secure the posting Member’s performance of obligations to FICC (Section 5 of GSD Rule 4), to allow for investment in accordance with FICC’s Investment Policy (Section 5 of GSD Rule 4), and to grant the security interest in any FRBNY account required by FRBNY (Sections 1 and 11 of GSD Rule 4).

The foregoing changes would ensure that, in the event of FICC’s insolvency, the Clearing Fund would not form part of FICC’s estate or be available to FICC’s general creditors, and that, instead, the Netting Members who posted the Clearing Fund would have the right to its return.

The only insolvency or resolution regimes to which FICC could be subject are the U.S. Bankruptcy Code or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Orderly Liquidation Authority,” or “OLA”). In any such proceeding, the question of whether a given asset, such as Clearing Fund, constitutes property of FICC’s estate would be a question of otherwise applicable non-bankruptcy law. This is because neither the U.S. Bankruptcy Code nor OLA specifies the assets in which a debtor has a legal or equitable interest³⁹ (and because FICC

³⁹ See 11 U.S.C. 541(a)(1) (defining a Bankruptcy Code debtor’s estate as generally including “all legal or equitable interest of the debtor in property”); *Butner v. United States*, 440 U.S. 48, 54–55 (“The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors. Apart from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt’s estate to state law”); *In re FCX, Inc.*, 853 F.2d 1149, 1153 (4th Cir. 1988) (“[N]either 541(a), nor any other Bankruptcy Code provision, answers the threshold questions of whether a debtor has an interest in a particular item of property and, if so, what the nature of that interest is. . . . The existence and nature of a debtor’s, and hence the estate’s, interest in property must be determined by resort to nonbankruptcy law.”). OLA is heavily modeled on the Federal Deposit Insurance Act (the “FDIA”), under which it is well established that the “rights,

³⁸ Futures Industry Association, Arrangements Necessary to Support a Positive Bankruptcy Remoteness Conclusion Under the Cleared Transaction Rules of U.S. Basel III With Respect to Collateral Posted by a Clearing Member to a Central Counterparty (Oct. 31, 2013), available at www.fia.org/sites/default/files/2019-05/FIA%20Guidance%20on%20CCP%20Bankruptcy%20Remote%20Requirements.pdf.

³⁷ 12 CFR 217.2 “Bankruptcy remote.”

is not eligible for the special distributional rules applicable to “commodity brokers”⁴⁰ and “stockbrokers”⁴¹).

As discussed above, New York law would be the “otherwise applicable non-bankruptcy law” that determines whether FICC has any interest in the Clearing Fund. Because the proposed changes to the GSD Rules would provide for FICC to credit the Clearing Fund to a “securities account” and to treat such Clearing Fund as “financial assets” within the meaning of the NYUCC, each Netting Member would be an “entitlement holder” and have a “security entitlement” against FICC with respect to the Clearing Fund it posts, and FICC would be a “securities intermediary,” within the meaning of the NYUCC.⁴² NYUCC Section 8–503(a) provides:

To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the

titles, powers, and privileges” acquired by the FDIC as receiver are generally to be determined pursuant to applicable state law. See *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 86–87 (1994) (“It is hard to avoid the conclusion that [12 U.S.C.] 1821(d)(2)(A) places the FDIC in the shoes of the insolvent S & L, to work out its claims under state law”); 12 U.S.C. 5390(a)(1)(i) (containing substantially similar language to 12 U.S.C. 1821(d)(2)(A)). While the Bankruptcy Code sets forth certain special distributional rules for commodity brokers and stockbrokers, these rules would not be applicable to FICC. See 11 U.S.C. 101(6) (defining “commodity broker” to mean “futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title”); 11 U.S.C. 761(8) (defining “futures commission merchant” by reference to the Commodity Exchange Act); 11 U.S.C. 761(2) (defining “clearing organization” as a registered derivatives clearing organization); 17 CFR 190.00(c) (limiting the scope of the Commission’s Part 190 Rules to futures commission merchants and registered derivatives clearing organizations); 11 U.S.C. 101(53A) (defining “stockbroker” as a person with respect to which there is a customer as defined in 11 U.S.C. 741 and that is engaged in the business of effecting transactions in securities for the account of others or with members of the general public, from or for such person’s own account).

⁴⁰ See 11 U.S.C. 761, *et seq.*

⁴¹ See 11 U.S.C. 741, *et seq.*

⁴² See NYUCC § 8–102(a)(14)(ii) (defining “securities intermediary” as “a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity”). As a registered clearing agency, FICC is also automatically a securities intermediary within the meaning of the NYUCC. See NYUCC § 8–102(a)(14)(i) (defining “securities intermediary” to include a “clearing corporation”); NYUCC § 8–102(a)(5) (defining clearing corporation as a person that is registered as a clearing agency under the Securities Exchange Act).

securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8–511 [of the NYUCC].

Accordingly, in the event of FICC’s insolvency, the Clearing Fund that FICC holds for Members would not be part of FICC’s estate and would be reserved for its entitlement holders, *i.e.*, the Members, except as provided in NYUCC Section 8–511. That provision states, in relevant part, that, with limited exceptions:

if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

The exceptions to the foregoing rule only apply in the event that the securities intermediary has pledged the financial assets underlying the security entitlements to creditors. As described above, the proposed rules would affirmatively prohibit FICC from pledging any Clearing Fund it holds, with the exception of the lien that FRBNY may require on the Clearing Fund held in an account at FRBNY. Because the proposed rules would require FICC to maintain at all times sufficient funds within such account to satisfy all fees or costs incurred and owed to the FRBNY and prohibit FICC from taking any action that would give rise to any obligation (other than for fees) secured by such lien, the FRBNY’s lien would never be operative. As a result, it would not interfere with the operation of NYUCC Section 8–503.

Accordingly, the proposed changes to the GSD Rules would serve to render Clearing Fund bankruptcy remote from FICC by ensuring that such Clearing Fund does not form part of FICC’s estate, is not available to any competing creditors of FICC, and is available for distribution to Members in an FICC insolvency.

In connection with the foregoing changes, FICC also proposes to delete rule text in Section 1 of GSD Rule 4 stating that FICC shall not be required to segregate each Netting Member’s Actual Deposit, but shall maintain books and records concerning the assets that constitute each Netting Member’s Actual Deposit, as this rule would be replaced and superseded by the proposed rules concerning the treatment of the Netting Member Clearing Fund Custody Account discussed above.

FICC would also define the term “Netting Member Clearing Fund

Custody Account” in GSD Rule 1 to mean a securities account within the meaning of the NYUCC maintained by FICC, in its capacity as securities intermediary as such term is used in the NYUCC, for the benefit of such Netting Member.

FICC also proposes additional clarifying and conforming changes throughout the GSD Rules in connection with the proposed changes to support the bankruptcy remote treatment of Clearing Fund deposits. Specifically, FICC would modify Section 11 (Corporation’s Authority to Pledge and Assign) of GSD Rule 4 concerning its authority to pledge and assign Clearing Fund to reflect that, under the proposed changes, FICC would no longer have broad authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing loans made to FICC. Rather, the proposed rule would only provide that FICC would, solely to the extent and for the purpose of satisfying any requirement imposed by the Federal Reserve Bank of New York in connection with any account maintained by it, have full power and authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing FICC’s obligation to the Federal Reserve Bank of New York.

FICC would also make changes throughout GSD Rule 4 to remove language describing Clearing Fund securities as pledged or used to secure open account indebtedness at FICC and make clear that such securities, as well as all Clearing Fund consisting of cash, constitute Clearing Fund deposits credited to the relevant Netting Member’s Netting Member Clearing Fund Custody Account. Considering that all Clearing Fund posted by a Netting Member, whether in the form of cash or securities, would remain property of the Netting Member pledged to FICC to secure all obligations of the Netting Member under the Rules, there would be no need for the Rules to refer to open account indebtedness or to suggest that only Clearing Fund securities are pledged.

FICC would also modify Section 4 (Lien) of GSD Rule 4 to include the proposed Guaranty Fund deposits in the list of Netting Member assets in which a Netting Member grants to FICC a first priority perfected security interest in its right, title and interest in and to. This language would make clear that Guaranty Fund deposits posted by a

Netting Member to FICC, like all Clearing Fund deposits, would secure all of the obligations of the Netting Member under the Rules.

b. Exclusion of Clearing Fund From the Calculation of Loss Allocation Obligations

In connection with proposed changes to support the bankruptcy remote treatment of Clearing Fund, FICC proposes to modify Rule 4 of the GSD Rules to exclude non-defaulting Members' Clearing Fund deposits from the calculation of loss allocation obligations at GSD.

FICC would remove the majority of the rules in Section 7 of GSD Rule 4 concerning the loss allocation waterfall from GSD Rule 4, and relocate those rules to new proposed Rule 4C (as discussed in Section 3 below), with substantial modifications to reflect the exclusion of non-defaulting Members' Required Fund Deposits from the calculation of loss allocation obligations and the replacement thereof with the 200 percent of a Member's Guaranty Fund Requirement discussed above. Section 7 of GSD Rule 4 would be renamed to "Off-the-Market Transactions" and would retain only those rules related to the direct allocation of losses to the specific Member that was the counterparty to any Off-the-Market Transactions.⁴³

FICC also proposes to modify Section 5 (Use of Clearing Fund and Segregated Customer Margin) of GSD Rule 4 to remove language stating that the obligations of each Member to FICC the performance of which FICC may secure using Clearing Fund include each Member's obligations to FICC with respect to any loss allocations as set forth in Section 7 of GSD Rule 4. Such language is not necessary and may cause confusion considering there are a number of other obligations a Member has to FICC. FICC also proposes to add language to clarify that the Clearing Fund could be used to satisfy any loss or liability incurred by FICC as the result of the failure of a specific Defaulting Member to fulfill its obligations to FICC as set forth in Section 6 of GSD Rule 4.

Additionally, FICC would update Section 6 (Application of Clearing Fund Deposits and Other Amounts to

Defaulting Members' Obligations) of GSD Rule 4 to reflect that any loss or liability incurred by FICC as the result of the failure of a Defaulting Member to fulfill its obligations shall "first" be satisfied as set forth in Section 6 "prior to the application of the resources pursuant to proposed Rule 4C." FICC would also update Section 6 of GSD Rule 4 to reflect that the collateral and other assets held by FICC securing a Defaulting Member's obligations include such Defaulting Member's Guaranty Fund Deposits.

c. Stress Test Deficiency Charge

FICC proposes to adopt a new "Stress Test Deficiency Charge" to address changes in stress test exposures and significant increases in Netting Member Stress Test Deficiencies. The Stress Test Deficiency Charge would be defined in the Margin Component Schedule of the GSD Rules as an additional charge that may be added to a Netting Member's Required Fund Deposit to address Stress Test Deficiencies for any Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family)⁴⁴ or (ii) exceed the upper bound parameter established for monthly or intramonth resizing of the Guaranty Fund.⁴⁵ FICC would also update GSD Rule 1 to include a definition for "Stress Test Deficiency Charge" to have the meaning given that term in the Margin Component Schedule.

With respect to Stress Test Deficiencies exceeding the predetermined thresholds in relation to the total Required Fund Deposits of all other Members (or the Required Fund Deposit "ratio"), the Stress Test Deficiency Charge would be determined as an amount needed to reduce the ratio below the Required Fund Deposit ratio threshold. For Stress Test Deficiencies exceeding the upper bound parameter for changes in the Guaranty Fund size, the Stress Test Deficiency Charge would be determined as the amount needed to reduce the allocation (to all Netting Members) of any resized Guaranty Fund in excess of the upper bound parameter or "collar."

The proposed rule would also provide FICC with the authority to maintain any Stress Test Deficiency Charge until the

next monthly sizing of the Guaranty Fund. Accordingly, upon the application of a Stress Test Deficiency Charge, FICC would generally maintain the charge for the remainder of the month and review the charge prior to the next monthly reset of the Guaranty Fund to determine if the charge should remain based on the application of these predefined thresholds and parameters.

The Stress Test Deficiency initial margin add-on would be imposed to collect additional initial margin resources to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or collar established for limiting increases in the size of the Guaranty Fund, as discussed above. The proposed Stress Test Deficiency charge would serve two purposes. First, it would allow FICC to preemptively address Stress Test Deficiencies to reduce the likelihood of an intramonth resizing and avoid the allocation of such risks to Members that are not driving those exposures. Second, to the extent that a Member incurs a Stress Test Deficiency that exceeds the collar established for limiting increases in the Guaranty Fund, the Stress Test Deficiency initial margin add-on charge would also be applied to mitigate or reduce amount of the Guaranty Fund increase that is allocated to Members that are not driving those exposures.

As described in Section 1.a. above, while Registered Investment Company Netting Members are generally excluded from Guaranty Fund Requirements, Registered Investment Company Netting Members may be subject to Stress Test Deficiency Charges to address additional risk exposures that may arise if their Stress Test Deficiencies exceed the applicable thresholds and parameters discussed above. FICC notes that any resources collected in the form of a Stress Test Deficiency Charge would be part of the Registered Investment Company Netting Member's initial margin and would therefore be consistent with the exclusion of Registered Investment Company Netting Members from loss mutualization.

FICC believes that the Stress Test Deficiency Charge is necessary and appropriate to address increases in stress test exposures so that FICC is able to collect sufficient financial resources from its Members prior to exceeding the Cover 2 Requirement, and to allocate those charges to the Netting Members driving those increased exposures. FICC believes that the proposed Stress Test Deficiency Charge would align with a "defaulter pays" approach to addressing

⁴³ Section 7 of GSD Rule 4 provides, in part, that to the extent that a loss or liability of FICC is determined to arise in connection with the close-out or liquidation of an Off-the-Market Transaction in the portfolio of a Defaulting Member, it shall be allocated directly and entirely to the Member that was the counterparty to such Off-the-Market Transaction. See Section 7 of GSD Rule 4, *supra* note 4. This part of the GSD Rules would remain unchanged.

⁴⁴ FICC would initially establish this threshold as a ratio of 30 percent, which is aligned to its existing Cover 1 stress testing ratio thresholds for monitoring a Member's stress deficiency in relation to the total Required Fund Deposits of all other Members (excluding such Member).

⁴⁵ See *supra* note 29 and associated text.

FICC's stress test exposures and associated risks and help to provide important stability and predictability for Guaranty Fund sizing and associated requirements for its Netting Members.

d. Elimination of Fixed Minimum Required Fund Deposit Amounts

FICC proposes to modify the Margin Component Schedule of the GSD Rules to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers.

Section 2(d) of the Margin Component Schedule discusses minimum charges and total Required Fund Deposit amounts for Netting Member Margin Portfolios, Sponsoring Member Omnibus Account Required Fund Deposits, Agent Clearing Member Omnibus Account Required Fund Deposits, and Sponsored GC CIL Omnibus Account Required Fund Deposits. Pursuant to this rule, FICC currently imposes a Required Fund Deposit amount equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of \$1 million (or, in the case of a Netting Member Margin Portfolio that includes Broker Accounts, a minimum charge of \$5 million).⁴⁶

FICC proposes to modify Section 2(d) of the Margin Component Schedule to remove the fixed minimum Required Fund Deposit amounts and instead provide that FICC may from time to time establish a minimum charge for each Netting Member's Margin Portfolios, which shall not be greater than \$1 million ("Minimum RFD Charge"). The proposed changes to Section 2(d) of the Margin Component Schedule would also clarify that margin requirements for Margin Portfolios and Required Fund Deposits for each applicable account type would be equal to the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges; and (ii) any Minimum RFD Charge imposed by FICC, if applicable (rather than the fixed minimum charges currently set forth in the GSD Rules). Upon implementation of the proposed change, FICC would initially set all Minimum RFD Charge amounts at \$0. However, FICC would monitor its margin coverage and reserve the right to impose a Minimum RFD Charge of up to \$1 million for particular account types as determined

appropriate by FICC based on factors such as backtesting coverage data.

FICC would make similar modifications to Section 3(c) of the Margin Component Schedule, which discusses minimum charges and total Required Fund Deposit amounts for Segregated Customer Margin Requirements and Segregated Indirect Participants Accounts, and Section 3a(c) of the Margin Component Schedule, which discusses minimum charges and total Required Fund Deposit amounts for Cross-Margining Customer Margin Requirements for Cross-Margining Customers. Pursuant to these rules, FICC currently imposes a margin charge equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of \$1 million, with the discretion to adjust the minimum charge if such an adjustment would be appropriate and consistent with achieving FICC's backtesting coverage target.⁴⁷

FICC proposes to modify Section 3(c) and 3a(c) of the Margin Component Schedule to remove the fixed minimum charge amounts for Segregated Indirect Participants and Cross-Margining Customers, respectively, and instead provide that FICC may from time to time establish a minimum charge for each Segregated Indirect Participant, which shall not be greater than \$1 million ("Minimum SIP Margin Charge") and each Cross-Margining Customer, which shall not be greater than \$1 million ("Minimum Customer Margin Charge"). FICC would also modify Section 3(c) and 3a(c) of the Margin Component Schedule to clarify that for purposes of determining Required Fund Deposits for Segregated Indirect Participants Accounts and Cross-Margining Customer Margin Requirements, FICC would take the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amounts and all applicable additional charges; and (ii) any Minimum SIP Margin Charge or Minimum Customer Margin Charge imposed by FICC, respectively, if applicable. Upon implementation of the proposed change, FICC would initially set all Minimum SIP Margin Charge and Minimum Customer Margin Charge amounts at \$0. However, FICC would monitor its margin coverage and reserve the right to impose a minimum charge of up to \$1 million for these account types as determined appropriate by FICC based on factors such as backtesting coverage data.

In connection with these proposed changes, FICC would also add defined terms in GSD Rule 1 for "Minimum RFD Charge," "Minimum Customer Margin Charge," and "Minimum SIP Margin Charge" to have the meaning given to such terms in the Margin Component Schedule.

Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICC's Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements,⁴⁸ and Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model.⁴⁹

FICC notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (e.g., a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC-GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC-GSD's various access models and/or utilizing multiple accounts under each model. FICC also notes that indirect participants have raised concerns about the \$1 million per indirect participant minimum charge limiting the ability of indirect participants to access FICC's segregated customer margin offerings.⁵⁰ FICC therefore believes that removing

⁴⁸ See Sections 2(a), 2(c), 3(a), 3a(a) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁴⁹ See Sections 2(b), 2(c), 3(b), 3a(b) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁵⁰ See Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Nov. 12, 2024), available at www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-539698-1546082.pdf.

⁴⁶ See Section 2(d) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁴⁷ See Sections 3(c) and 3a(c) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

these fixed minimum charges, and imposing minimums only where such charges are necessary for FICC to maintain sufficient coverage of its risk exposures, would promote greater access to clearing for both direct and indirect market participants.

While FICC would initially set all minimum charge amounts to \$0, FICC would continue to monitor its exposures and would maintain the authority within the GSD Rules to impose minimum charges of up to \$1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data to ensure that FICC maintains sufficient coverage of its risk exposures from its participants. FICC would inform Members of any changes in the Minimum RFD Charge, Minimum Customer Margin Charge or Minimum SIP Margin Charge by Important Notice posted to FICC's website.

e. Adjustments To Minimum Cash Requirements for Required Fund Deposits

In connection with the proposed elimination of fixed minimum Required Fund Deposits and minimum charges for Segregated Indirect Participants Accounts and Cross-Margining Customers, FICC would also modify Section 3 (Form of Deposit) of GSD Rule 4 to adjust the minimum cash composition requirements for Netting Member Required Fund Deposits, Segregated Customer Margin Requirement for Segregated Indirect Participants Accounts, and Cross-Margining Customer Margin Requirement for Cross-Margining Customer Accounts. FICC currently imposes a \$1 million minimum cash requirement for Netting Member Required Fund Deposits.⁵¹ For Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements, FICC imposes a minimum cash requirement of the product of \$1 million and the number Segregated Indirect Participants or Cross-Margining Customers whose Transactions are recorded in their respective accounts.⁵²

In the absence of FICC maintaining fixed minimum Required Fund Deposits and minimum charges as discussed above, these minimum cash requirements would serve as unintended default minimum Required Fund Deposits and charges for Members. As a result, FICC proposes to

modify these rules to require only that the first \$1 million of any Required Fund Deposit Portion, Segregated Customer Margin Requirement for each Segregated Indirect Participants Account, or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash. FICC also proposes to adopt a new requirement that the lesser of \$5,000,000 or 10 percent of any Segregated Customer Margin Requirement for each Segregated Indirect Participants Account or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash, with the remaining portion of the requirement to be made and maintained in the form specified in Section 3 of GSD Rule 4. This additional cash composition requirement would align the requirements for Segregated Indirect Participants Accounts and Cross-Margining Customer Accounts with the existing requirement for each Netting Member's Required Fund Deposit Portion.

FICC believes the proposed changes are necessary and appropriate to accommodate the proposed elimination of minimum Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements while still requiring that up to the initial amount of \$1 million be funded in cash to ensure a baseline level of highly liquid resources to be deposited as margin in each Netting Member account, Segregated Indirect Participants Account and Cross-Margining Customer Account. Furthermore, FICC notes that under the proposal, Netting Members would also be subject to Minimum Guaranty Fund Requirements, which would be composed entirely of cash.

f. Use of Clearing Fund for Liquidity Risk Management

As part of the proposal, FICC also proposes to modify Section 5 of GSD Rule 4 concerning the use of Clearing Fund and Segregated Customer Margin to (i) clarify that FICC would no longer have the authority to "borrow" Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations and (ii) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations.

First, FICC would remove item (ii) of the first paragraph of Section 5 of GSD Rule 4, which currently provides FICC

with the authority to use the Clearing Fund to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Clearing Fund or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity. FICC would also remove the second paragraph of Section 5 of GSD Rule 4, which discusses the charging and allocation of losses for any such Clearing Fund borrowings that remain outstanding for more than 30 calendar days.

Second, FICC would add a new paragraph (b) to Section 5 of GSD Rule 4 setting forth FICC's authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations. The proposed rule would provide that FICC may, for purposes of obtaining liquidity to meet its settlement obligations, exchange Clearing Fund consisting of cash for U.S. Treasury securities, including such securities deposited as Clearing Fund of a Defaulting Member or due to be delivered to a Defaulting Member or a Member who failed to satisfy its settlement obligation. The proposed rule would further provide that FICC shall effect such exchanges proportionally among Netting Members (other than any Defaulting Member) based on the amount of each Netting Member's Clearing Fund consisting of cash relative to the total amount of Clearing Fund consisting of cash, and subject to considerations such as operational feasibility and the value of the specific securities to be exchanged. FICC would notify each Member whose cash Clearing Fund deposits are used in this manner in accordance with FICC's procedures. Pursuant to the proposed rule, any such exchange shall constitute a purchase by each relevant Member of the securities subject to such exchange using such Member's cash Clearing Fund deposits, and the securities subject to such exchange shall be credited to each relevant Member's Netting Member Clearing Fund Custody Account(s) from which the cash Clearing Fund deposits were removed and shall constitute Clearing Fund deposits of such Netting Member.

In addition, the proposed rule would stipulate that the amount of securities that FICC shall provide to the Netting Member in any such sale shall be, at FICC's election, (A) an amount of securities having a market value, after applying the relevant haircut that FICC applies for Clearing Fund purposes, equal to the amount of cash subject to

⁵¹ See Section 3(b) of GSD Rule 4, *supra* note 4.

⁵² See Sections 3(c) and 3(d) of GSD Rule 4, *supra* note 4.

such exchange or (B) an amount of securities having a market value (without regard to haircuts) equal to the cash subject to such exchange, in each case as reasonably determined by FICC. Further, if FICC elects option (B), FICC shall not, for purposes of calculating Clearing Fund requirements, subject any securities sold to the Netting Member pursuant to clause (ii) to a haircut. Under the proposed rule, FICC may, but shall not be obligated to, repurchase the securities sold in such exchange at a date subsequent for the current market value therefor, as reasonably determined by FICC.

In connection with these proposed changes, FICC would also modify GSD Rule 20 (Special Provisions for GCF Repo Transactions) to remove rules allowing FICC to consider borrowing of Clearing Fund for settlement purposes if a Net Funds Payor who is otherwise in good standing does not satisfy its cash obligations to FICC and replace those rules with the authority to consider available Guaranty Fund or other liquidity resources available to FICC.

In sum, the proposal would eliminate FICC's authority to borrow Clearing Fund for liquidity purposes in order to facilitate the bankruptcy remote treatment of Clearing Fund as initial margin and remove Clearing Fund from the loss allocation calculation at GSD. The proposed changes would, however, permit FICC to access an important source of liquidity through the exchange of non-defaulting Netting Members' Clearing Fund deposits in the form of cash for U.S. Treasury securities. Accordingly, FICC believes the proposed change, together with the introduction of the proposed Guaranty Fund, would enhance FICC's default liquidity pool and lower the potential default liquidity obligations from Members.

g. Other Proposed Changes

Finally, FICC proposes additional changes to Rule 4 to clarify and enhance its rules regarding the Clearing Fund. Specifically, FICC would modify Section 9 (Initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirements, and Changes in Members' Required Fund Deposit, Segregated Customer Margin Requirements, and Cross-Margining Customer Margin Requirements) of GSD Rule 4 to remove a specific requirement that Netting Members make their initial Required Fund Deposit, Segregated Customer Margin Requirement (if applicable), and Cross-Margining Customer Margin Requirement (if applicable) no later than five (5)

Business Days prior to the Business Day on which such Person becomes a Netting Member and instead require only that such deposits be made within such timeframe as may be prescribed by FICC. Based on FICC's experience with new Member onboarding and account activations, FICC believes that a fixed five (5) Business Day requirement can present burdens and obstacles for Members in funding their requirements prior to determining their account activation dates, which may often occur in a period of time shorter than five (5) Business Days. FICC believes that a more reasonable standard is to allow Netting Members to make their initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirement deposits prior to the activation of their membership, without specifying a fixed number of days.

3. Proposed Changes to Loss Allocation Waterfall

FICC proposes to establish a new Rule 4C titled "Loss Allocation" to set forth GSD's loss allocation rules. FICC would relocate the current loss allocation rules in Section 7 of GSD Rule 4 to proposed Rule 4C and modify the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from the loss allocation calculation and loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day "cooling-off period" for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an "Event Period"); and (iv) impose an assessment cap on loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member's Guaranty Fund Requirement during any Event Period in lieu of the existing loss allocation rounds system.

a. Loss Allocation Waterfall Generally

Section 1 of proposed Rule 4C would set forth general terms regarding loss allocation, including that for purpose of proposed Rule 4C, the term Netting Member would not include Registered Investment Company Netting Members. The proposed rule is intended to reflect the elimination of the Tier Two Member category and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members) from loss allocation, as discussed further in Section 3.b. below. Section 1 of proposed Rule 4C would also incorporate the existing definition of

"Defaulting Member" from Section 7 of GSD Rule 4 (*i.e.*, a Member for which the Corporation has ceased to act pursuant to GSD Rule 21 or GSD Rule 22) for purposes of applying such term to proposed Rule 4C.

Section 2 of proposed Rule 4C would set forth the overall loss allocation framework for FICC-GSD. FICC proposes to relocate the majority of the first introductory section of existing Section 7 of GSD Rule 4⁵³ to Section 2 of proposed Rule 4C with several minor modifications.

First, FICC would relocate the definitions of Defaulting Member Event and Declared Non-Default Loss Event at the beginning of Section 7 of GSD Rule 4 to GSD Rule 1, with minor, non-substantive changes to conform to the style of GSD Rule 1, rather than including those definitions in proposed Rule 4C. FICC believes these terms are appropriately defined in GSD Rule 1 as they are used in several GSD Rules and not only in proposed Rule 4C.

Second, the next four paragraphs of the introductory section of Section 7 of GSD Rule 4 would be moved to Sections 2(a), 2(b) and 2(b)(i) and 2(b)(ii), respectively, with only minor modifications. Most significantly, the paragraph describing how FICC would attribute the amount of a loss or liability from one or more Defaulting Member Events would be revised to remove rule text explaining the allocation between Tier One Netting Members and Tier Two Members and instead state that if the loss or liability with respect to an Event Period results from one or more Defaulting Member Events or Declared Non-Default Loss Events, FICC shall determine the amount of such loss or liability that is attributable to Netting Members.

Third, the last paragraph of the introductory section of Section 7 of GSD Rule 4 would be relocated to Section 2(c) of proposed Rule 4C without changes.

Fourth, FICC would delete from the GSD Rules the paragraph in Section 7 of GSD Rule 4 discussing the allocation of losses from Off-the-Market Transactions as that topic is already addressed in Section 6 of GSD Rule 4.

Fifth, FICC would relocate existing Section 7a (Corporate Contribution) of GSD Rule 4 in its entirety to Section 3 of proposed Rule 4C, with only minor modification to remove a reference to "Section 7 of this Rule" as a result of the proposed relocation of the Rule.

⁵³ See Section 7 of GSD Rule 4, *supra* note 4.

b. Elimination of Tier One Netting Member and Tier Two Member Categories

FICC proposes to eliminate the concept of Tier One Netting Members and Tier Two Members from the GSD Rules. As discussed above, FICC currently categorizes Members into two different tiers for loss allocation purposes. A Tier One Netting Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss allocation purposes. A Tier Two Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss allocation purposes or a CCIT Member.⁵⁴

Currently, only CCIT Members and Registered Investment Company Netting Members are designated as Tier Two Members.⁵⁵ As proposed herein, all Netting Members (except for Registered Investment Company Netting Members) would be subject to Guaranty Fund Requirements and loss allocation, and both CCIT Members and Registered Investment Company Netting Members would be excluded from Guaranty Fund Requirements and loss allocation.

Tier Two Members (*i.e.*, CCIT Members and Registered Investment Company Netting Members) are currently only subject to loss allocation in a limited manner and only with respect to Defaulting Member Events. Specifically, in the event of one or more Defaulting Member Events, FICC would only allocate losses to Tier Two Members, after application of the Corporate Contribution, to the extent they traded with the defaulting Member and their trades resulted in the loss.⁵⁶ FICC understands that Registered Investment Companies are subject to regulatory requirements restricting their ability to incur mutualized losses. In addition, CCIT Members only provide liquidity as a cash lender via triparty arrangements in the CCIT Service and do not present market risk to FICC due to the perfected security interest FICC has in such CCIT Member's underlying repo securities. As a result, FICC believes it is appropriate to exclude CCIT Members and Registered Investment Company Netting Members from Guaranty Fund Requirements and loss allocation.

In connection with this proposed change, FICC would remove the Tier

Two Members section of Section 7 of GSD Rule 4 from the GSD Rules in its entirety. FICC would also make the following conforming changes to the GSD Rules as these rules would no longer be applicable for the reasons set forth above.

- Remove the definitions of Tier One Netting Members and Tier Two Members from GSD Rule 1;
- Remove rules concerning the categorization of Tier Two Members from Section 2 of GSD Rule 2 (Members);
- Remove a reference to Registered Investment Company Netting Members being Tier Two Members in Section 3 of GSD Rule 2A (Initial Membership Requirements);
- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning the voluntary withdrawal of membership in Section 12 of GSD Rule 3 (Ongoing Membership Requirements);
- Remove a reference to Tier One Netting Members, and include reference to Registered Investment Company Netting Members, in the discussion of members eligible to become Sponsoring Members in Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members);
- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning loss allocation obligations in Section 12 of GSD Rule 3A;
- Remove Section 7 (Loss Allocation Obligations of CCIT Members) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service); and
- Remove references to Tier Two Members and replace them with references to CCIT Members and Registered Investment Company Netting Members in Section 3 of GSD Rule 49 (DTCC Shareholders Agreement);

c. Allocation of Losses to Netting Members

In connection with the proposed changes described above, FICC also proposes to relocate the Tier One Netting Members section of Section 7 of GSD Rule 4⁵⁷ and the rules concerning withdrawal of a Member following loss allocation in Section 7b (Withdrawal Following Loss Allocation) of GSD Rule 4⁵⁸ to Sections 4 and 5 of proposed Rule 4C. The proposed rules would contain modifications to reflect the elimination of the Tier One Netting Member category from the GSD Rules and the application of the loss allocation rules to all Netting Members, excluding

Registered Investment Company Netting Members (and excluding CCIT Members).

Section 4 of proposed Rule 4C would describe the loss allocation process for Netting Members. In general, Section 4 of proposed Rule 4C would retain the concept of an Event Period for Defaulting Member Events and/or Declared Non-Default Loss Events that occur within the designated period, and such events would be grouped together for purposes of applying the limits on loss allocation set forth in proposed Rule 4C. Section 4 of proposed Rule 4C would, however, reduce the length of the Event Period from ten (10) Business Days to five (5) Business Days, and modify the application of the loss allocation (or assessment) cap for each Event Period. These changes are discussed in further detail in Section 3.d. below.

As proposed, the Event Period for a Defaulting Member Event would continue to begin on the day FICC notifies Members that it has ceased to act for the Defaulting Member (or the next Business Day, if such day is not a Business Day), consistent with the existing Section 7 of GSD Rule 4. With respect to a Declared Non-Default Loss Event, an Event Period would continue to begin on the day that FICC notifies Members of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day), which notification shall be issued promptly following any such determination, consistent with existing Section 7 of GSD Rule 4. Section 4 of proposed Rule 4C would also continue to state that, if a subsequent Defaulting Member Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period, consistent with the existing Section 7 of GSD Rule 4. FICC notes, however, that the timeframe for determining the losses or liabilities arising out of or relating to any Defaulting Member Event during a given Event Period would not be limited to the five (5) Business Day Event Period.

Additionally, Section 4 of proposed Rule 4C would provide that each Netting Member that is a Netting Member on the first day of an Event Period shall be obligated to pay its "Allocated Loss." The Allocated Loss of a Netting Member would be defined as the pro rata share, as determined by FICC based on the amount of such Netting Member's Guaranty Fund Requirement as compared to the total

⁵⁴ See definitions of "Tier One Netting Member" and "Tier Two Member" in GSD Rule 1, *supra* note 4.

⁵⁵ See Section 2(c) of GSD Rule 2 and Section 3(a)(viii) of GSD Rule 2A, *supra* note 4.

⁵⁶ See *supra* note 19.

⁵⁷ See Section 7 of GSD Rule 4, *supra* note 4.

⁵⁸ See Section 7b of GSD Rule 4, *supra* note 4.

Guaranty Fund size (excluding any Corporate Contribution and, in the case of a Defaulting Member Event, any Guaranty Fund Deposits of the Defaulting Member), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in respect of such Event Period. The “Loss Allocation Cap” of a Netting Member in respect of an Event Period would be further defined in the proposed rule as an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period, as discussed in further detail in Section 3.d. below. The proposed rules would define each Netting Member’s Loss Allocation Cap based on its Guaranty Fund Requirement rather than its Required Fund Deposit, to reflect the adoption of the Guaranty Fund as FICC’s default fund. The proposed rule would also remove the concept of loss allocation “rounds” and instead describe the loss allocation process in terms of FICC–GSD’s overall Loss Allocation Cap for Netting Members.

Section 4 of proposed Rule 4C would also provide that any Netting Member for which FICC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, shall be deemed to be a Netting Member on the first day of that Event Period. The proposed rule would also require FICC to communicate to Netting Members their respective Allocated Losses by the issuance of a notice specifying such amount and the relevant Event Period to which it relates (the “Loss Allocation Notice”). These proposed rules would be generally consistent with existing Section 7 of GSD Rule 4 with certain modifications to apply such rules to Netting Members rather than Tier One Netting Members and reflect the proposed adoption of the defined term “Allocated Losses.” The proposed rule would also continue to allow each Netting Member five (5) Business Days from the issuance of the first Loss Allocation Notice for the Event Period to notify FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C (as discussed below). Section 4 of proposed Rule 4C would also further clarify that a Defaulting Member whose Guaranty Fund Deposits or other resources remain available for use by FICC in accordance with the Rules shall

be deemed to have provided its withdrawal notice on the date of the first Loss Allocation Notice after FICC has ceased to act for such Defaulting Member.

Section 4 of proposed Rule 4C would require Netting Members to pay to FICC the amount specified in any Loss Allocation Notice on the second Business Day after FICC issues any such notice, consistent with existing GSD Rules. Section 4 of proposed Rule 4C would also provide that, if a Netting Member fails to make payment to FICC in respect of a Loss Allocation Notice by the time such payment is due, FICC shall have the right to proceed against such Netting Member as a Defaulting Member that has failed to satisfy an obligation in accordance with proposed Rule 4C, which is also consistent with existing Section 7 of GSD Rule 4.

FICC also proposes to eliminate the loss allocation limitations on Inter-Dealer Broker Netting Members with respect to activity in their Broker Account(s). Under Section 7 of GSD Rule 4, an Inter-Dealer Broker Netting Member with respect to activity in its Broker Account(s) shall not be subject to an aggregate loss allocation in an amount greater than \$5 million in losses and liabilities resulting from an Event Period. This current limitation on loss allocation treatment for Inter-Dealer Broker Netting Member Broker Accounts reflects that, while Inter-Dealer Broker Netting Members may have directional position exposure with FICC with respect to the transactions in such accounts, the Inter-Dealer Broker Netting Member is generally intermediating between FICC Members and non-Members with offsetting positions. As a result of the general nature of this activity, FICC recognized the offsetting nature of their overall activity and therefore limited their loss allocation exposures. Under the Commission’s Treasury Clearing rules, both of the Inter-Dealer Broker Netting Member’s transactions with its respective counterparties will be required to be submitted into clearing, thereby allowing FICC to directly recognize and account for the offsetting exposure within the Inter-Dealer Broker Netting Member’s Broker Account(s).⁵⁹ With the proposed establishment of the Guaranty Fund, FICC believes that it is appropriate to eliminate this legacy limitation on loss allocation for Inter-Dealer Broker Netting Members and include Inter-Dealer Broker Netting

Members’ Accounts in the Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts, as applicable) because (i) an Inter-Dealer Broker Netting Member’s Broker Account(s) should not be subject to significant Guaranty Fund Requirements stemming from activity in non-directional (*i.e.*, matched book) accounts based on the proposed allocation methodology and (ii) any directional activity of an Inter-Dealer Broker Netting Member in its Dealer Account would present risk to FICC that FICC would need to manage in the event of the default of that Member in the same manner as the directional activity of any other Netting Member. As a result, FICC believes that including Inter-Dealer Broker Netting Members in the proposed Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts) would appropriately capture the risk that should be covered in the loss allocation process.

Section 5 of proposed Rule 4C would set forth the requirements for Netting Members to withdraw from membership following loss allocation to limit their exposures to future loss allocations under a subsequent Event Period. Consistent with existing Section 7 of GSD Rule 4, Section 5 of proposed Rule 4C would provide that, if a Netting Member notifies FICC of its election to withdraw from membership, the Netting Member shall comply with the provisions of Section 5 of proposed Rule 4C. If, after notifying FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C, the Netting Member fails to comply with the provisions of Section 5 of proposed Rule 4C, its notice of withdrawal shall be deemed void and any further losses resulting from any subsequent Event Period may be allocated against it as if it had not given such notice. With respect to an Event Period, only Netting Members that have not submitted a Loss Allocation Withdrawal Notice in accordance with Section 5 of this Rule shall be subject to further loss allocation with respect to any subsequent Event Period.

Section 5 of proposed Rule 4C would also state that a Netting Member that elects to withdraw pursuant to Section 5 of proposed Rule 4C shall not be eligible to re-apply to become a Member unless, prior to submitting such application, it makes the payment(s) to FICC that would have been due pursuant to this Rule as if the Netting Member had not withdrawn, together with interest on that amount at a rate determined by FICC calculated from the

⁵⁹ See 17 CFR 240.17ad–22(e)(18)(iv)(A) and (B). See also Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7–23–22).

date on which the Event Period began. The proposed rule would also be largely consistent with existing Section 7 of GSD Rule 4, with two minor modifications. FICC would replace reference to re-applying to become a “Comparison-Only Member or a Netting Member” with the more general term “Member.” FICC would also replace a reference to the interest rate payable (*i.e.*, Federal Funds Rate plus one percent) with a more general statement that FICC would determine such rate to allow FICC to adjust the rate based on its current investment practices and market rates.

Section 5 of proposed Rule 4C would also set forth the requirements for Netting Members submitting notice of their withdrawal from membership, consistent with the requirements of existing Section 7b of GSD Rule 4. Section 5 of proposed Rule 4C would provide that, if a Netting Member timely notifies FICC of its election to withdraw from membership in respect of an Event Period (hereinafter, the “Loss Allocation Withdrawal Notice”), the Netting Member shall: (i) specify in the Loss Allocation Withdrawal Notice an effective date for its withdrawal from membership, which date shall not be prior to the scheduled final settlement date of any remaining obligation owed by the Netting Member to FICC, unless otherwise approved by FICC; and (ii) as of the time of such Netting Member’s submission of the Loss Allocation Withdrawal Notice to FICC, cease submitting transactions to FICC for processing, clearance or settlement, unless otherwise approved by FICC.

Section 5 of proposed Rule 4C would further provide that a Netting Member that withdraws in compliance with the requirements of this section shall nevertheless remain obligated for its Allocated Loss with respect to any Event Period for which it is otherwise obligated hereunder; however, it shall not be subject to any loss allocation in respect of any subsequent Event Period that commences after the Corporation’s receipt of the Member’s Loss Allocation Withdrawal Notice. If the Netting Member fails to comply with the requirements, its Loss Allocation Withdrawal Notice would be deemed void, and the Netting Member would remain subject to further loss allocations pursuant to proposed Rule 4C as if it had not given such Loss Allocation Withdrawal Notice.

d. Cooling-Off Period and Loss Allocation Caps

FICC proposes to modify the GSD Rules to adopt a “cooling-off period” structure for its loss allocation process

that would provide a clear, transparent and ex ante cap on the aggregate liability of its Netting Members for loss allocation during any Event Period. As proposed, Defaulting Member Events and/or Declared Non-Default Loss Events that occur within a period of five (5) Business Days would be grouped together in an Event Period for purposes of applying the limits on loss allocation set forth in proposed Rule 4C. Each Netting Member that is a Netting Member on the first day of an Event Period would be obligated to pay its Allocated Loss, which would be defined as the pro rata share, determined by FICC based on the amount of such Netting Member’s Guaranty Fund Requirement as compared to the total Guaranty Fund size (excluding any Corporate Contribution), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in respect of such Event Period. The “Loss Allocation Cap” of a Netting Member in respect of an Event Period would be set at an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period.

Under FICC’s current loss allocation rules, FICC may assess its Tier One Netting Members in loss allocation “rounds,” which are a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Tier One Netting Members (a “round cap”). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. FICC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among those Tier One Netting Members who have not submitted a Loss Allocation Withdrawal Notice. Each Tier One Netting Member has five (5) Business Days from the issuance of the first Loss Allocation Notice for each round of loss allocation to notify FICC of its election to withdraw from membership pursuant to Section 7b of GSD Rule 4 and invoke its Loss Allocation Cap, which is equal to the greater of (x) its Required Fund Deposit on the first day of the applicable Event Period and (y) its Average RFD.

Accordingly, FICC’s current loss allocation rules hypothetically allow for unlimited loss allocation to Tier One Netting Members if they do not submit a Loss Allocation Withdrawal Notice. In practice, however, Tier One Netting Members can, and likely would, limit their overall loss allocation obligations under an extreme stress scenario by notifying FICC of their intent to withdraw from membership.⁶⁰

FICC believes that the proposed 200 percent Loss Allocation Cap would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. Limiting the potential loss allocation amount during extreme market stress scenarios could prevent a “rush for the exit” scenario where many Netting Members seek to cap their liability by withdrawing from membership. It may also reduce the possibility of FICC imposing additional stress on its remaining Netting Members due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. While FICC acknowledges that the proposed changes to the Event Period and Loss Allocation Cap could hypothetically limit the amount of resources available to FICC in an extreme stress scenario, FICC notes that the proposed Loss Allocation Cap of 200 percent of a Member’s Guaranty Fund Requirement would itself be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC’s two largest Netting Member families using the extreme but plausible market shocks. FICC believes that it is unlikely that it would exhaust a 200 percent Loss Allocation Cap that is based on a Cover 2 Requirement during a given Event Period and notes that Netting Members could significantly limit the maximum loss allocation available to FICC under the current GSD Rules by withdrawing from membership in significant numbers during the beginning of any given loss allocation round.

4. Other Proposed Changes

a. Cross-Guaranty Repayment Deposits and Cross-Margining Repayment Deposits

Under the GSD Rules, certain Members may be required to make Cross-Guaranty Repayment Deposits to the Clearing Fund as Cross-Guaranty Beneficiary Members pursuant to Section 4 of GSD Rule 41 (Cross

⁶⁰ See Section 7 of GSD Rule 4, *supra* note 4.

Guaranty Agreements)⁶¹ or Cross-Margining Repayment Deposits to the Clearing Fund as Cross-Margining Beneficiary Participants pursuant to Section 6 of GSD Rule 43 (Cross-Margining Arrangements).⁶² These repayment deposits are intended to account for the amount of any reduction in an assessment made or that otherwise would have been made against a Cross-Guaranty Beneficiary Member or Cross-Margining Beneficiary Participant under the terms of a respective Cross Guaranty Agreement or Cross-Margining Arrangement. Such repayment deposits may be held by FICC for such time as FICC determines it may be liable for a repayment obligation under respective Cross Guaranty Agreement or Cross-Margining Arrangement, and to a

resulting loss allocation pursuant to Section 7 of GSD Rule 4.

Because these deposits are intended to offset or reflect a reduction in such Member's loss allocation obligations, FICC believes that they would be more appropriately held in the Guaranty Fund, which would represent the pool of mutualized loss allocation resources, rather than Clearing Fund, which would constitute the Member's initial margin under the proposal described herein. As a result, FICC proposes to update the definition of the terms Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit in GSD Rule 1, Sections 4 and 5 of GSD Rule 41, and Sections 5 and 6 of GSD Rule 43 to reflect that these repayment deposits would be held in the Guaranty Fund. FICC would also modify Section 4 of GSD Rule 41 and Section 6 of GSD Rule

43 to clarify that any Cross-Guaranty Repayment Deposit amount and Cross-Margining Repayment Deposit amount, respectively, shall not be included in the calculation of the Member's Guaranty Fund Requirement.

b. Fine Schedule for Late Guaranty Fund Payments

In connection with the proposed adoption of the Guaranty Fund, FICC also proposes to adopt a new fine schedule for the late satisfaction of Guaranty Fund Requirements. The proposed fine schedule would be similar in structure to the current fine schedules in the GSD Rules for the late satisfaction of Clearing Fund deficiency calls and late payment of funds settlement debits. The proposed fine schedule is set forth below.

Amount	First Occasion	Second Occasion	Third Occasion	Fourth Occasion
Up to \$100M	\$100	\$200	\$500	\$1,000
Greater than \$100M to \$900M	300	600	1,500	3,000
Greater than \$900M to \$1.7MM	600	1,200	3,000	6,000
Greater than \$1.7MM to \$2.5MM	900	1,800	4,500	9,000
Greater than \$2.5MM	1,000	2,000	5,000	10,000

FICC would determine the number of occasions for purposes of imposing a fine over a moving twelve-month period, beginning with the first occasion. If the number of occasions within the rolling period exceeds four, FICC would obtain the concurrence of the Board of Directors as to the amount of the fine. As proposed, a lateness of more than one hour would result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late for more than one hour and it is the member's fourth occasion, FICC would be required to obtain the concurrence of the Board of Directors as to the amount of the fine.

c. Conforming Changes To Incorporate Guaranty Fund and Update References to Loss Allocation Throughout the GSD Rules

FICC proposes the following conforming changes throughout the GSD Rules to incorporate references to the proposed Guaranty Fund.

- Update the definition of "Legal Risk" in GSD Rule 1 to include references to Guaranty Fund Deposits and proposed Rule 4A (Guaranty Fund) and proposed Rule 4C (Loss Allocation)
- Update Section 1 of GSD Rule 2 concerning general membership

requirements for the provision of FICC's services to include required contributions to the Guaranty Fund;

- Update Section 4 of GSD Rule 2 concerning membership qualifications and standards to include anticipated required contributions to the Guaranty Fund;
- Update Section 4 of GSD Rule 2 concerning membership agreements to include Guaranty Fund Requirements pursuant to proposed Rule 4A;
- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to include a reference to the return of Member's Guaranty Fund Deposits under Section 8 of proposed Rule 4A;
- Update Section 2 of GSD Rule 3A concerning Sponsoring and Sponsored Members to clarify that nothing in the GSD Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member, out of its Guaranty Fund Deposits;
- Update Section 7 of GSD Rule 13 (Funds Only Settlement) concerning the liability of Netting Members to include the Guaranty Fund in the amounts FICC may apply if a Netting Member fails to pay any portion of a Funds-Only Settlement Amount;
- Update GSD Rule 21A concerning the wind-down of a Netting Member to

include that a Wind-Down Member would be prohibited from withdrawing Guaranty Fund on deposit in excess of its Guaranty Fund Requirement (in addition to Clearing Fund);

- Update GSD Rule 22C concerning interpretations related to the Federal Deposit Insurance Corporation Improvement Act of 1991 to include the Guaranty Fund in the provisions of the GSD Rules constituting a "security agreement or arrangement or other credit enhancement;"
- Update GSD Rule 39 concerning limitations of liability to include the Guaranty Fund in the list of GSD assets not available to obligations of MBSD;

FICC also proposes the following conforming changes throughout the GSD Rules to update references to the loss allocation Rules (currently referenced as Rule 4 or Section 7 of Rule 4) to refer to new Rule 4C.

- Update the definition of "Legal Risk" in GSD Rule 1 to include references to proposed Rule 4C (Loss Allocation);
- Update the definition of "Corporate Contribution" in GSD Rule 1 to refer to the relocation of associated rules in Section 3 of proposed Rule 4C;
- Update the definition of "Loss Allocation Cap" in GSD Rule 1 to refer to the relocation of associated rules in Section 7 of proposed Rule 4C;

⁶¹ See Section 4 of GSD Rule 41, *supra* note 4.

⁶² See Section 6 of GSD Rule 43, *supra* note 4.

- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to refer to the relocation of certain loss allocation rules to Sections 4 and 5 of proposed Rule 4C;
- Update Section 12 of GSD Rule 3A concerning loss allocation obligations of Sponsoring and Sponsored Members to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 8 of GSD Rule 3B concerning the CCIT Service to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 7 of GSD Rule 8 (Agent Clearing Service) concerning Agent Clearing Transaction processing rules to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 5 of GSD Rule 13 (Funds-Only Settlement) concerning the Funds-Only Settlement Amount Payment Process to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update GSD Rule 21A (Wind-Down of a Netting Member) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 2 of GSD Rule 22A (Procedures for When the Corporation Ceases to Act) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update GSD Rule 22B (Corporate Default) to refer to the relocation of certain loss allocation rules to proposed Rule 4C; and
- Update GSD Rule 22D (Wind-Down of the Corporation) to refer to the relocation of certain loss allocation rules to proposed Rule 4C.

Anticipated Impact on Members

FICC performed a study of the potential Guaranty Fund sizing and allocation impacts over the period January 2025–December 2025 (“Guaranty Fund Impact Study”). The Guaranty Fund Impact Study showed that the average overall Guaranty Fund size was approximately \$6 billion, ranging from approximately \$5.25 to \$6.37 billion. There were no intramonth collections or resizing observed during the Guaranty Fund Impact Study. With respect to individual Netting Member impacts, the average allocated monthly requirement was approximately \$42.6 million, with the maximum monthly allocation being approximately \$898 million (or 14 percent of the total Guaranty Fund). The top 10 Netting Members were allocated approximately \$3.62 billion each month (or 59 percent of the total Guaranty Fund).

FICC also performed a Member-level impact study of the proposed Stress Test

Deficiency Charge over the period January 2025–December 2025 (“Stress Test Deficiency Charge Impact Study”). The Stress Test Deficiency Charge Impact Study compared Netting Members’ daily Stress Test Deficiencies to the aggregate Clearing Fund across all Members (excluding the Clearing Fund contribution from the respective Member) using the initial 30% threshold to determine the application of the charge.⁶³ The Stress Test Deficiency Charge Impact Study demonstrated that no breaches would have occurred in the review period and no Stress Test Deficiency Charges would have been applied using the initial 30% threshold.

Finally, FICC performed a backtesting study of its margin model reflecting the proposed removal of minimum Required Fund Deposit and minimum charge amounts over the period January 2025–December 2025 (“Backtesting Study”). The analysis incorporated recalculation of FICC–GSD’s existing Backtesting Charge that would have been applied if a Member incurred deficiencies that fell below the 99 percent coverage target. The Backtesting Study showed that backtesting coverage remained above the 99% coverage target when removing the minimum Required Fund Deposit and minimum charge amounts. The average increase in the Backtesting Charge would have been less than \$1 million across all Members, and the maximum increase in the Backtesting Charge would have been approximately \$1.74 million. Only three Members (out of 146 in the Backtesting Study) would have incurred an increase in the Backtesting Charge of \$1 million or more.

Implementation Timeframe

Subject to FICC receiving all necessary regulatory approvals, FICC expects to implement the proposed changes by no later than March 1, 2027. FICC would announce the effective date of the proposed changes by an Important Notice posted to FICC’s website.⁶⁴

⁶³ See *supra* note 44.

⁶⁴ Such approvals would include obtaining the consent of the Commission and the Commodity Futures Trading Commission (“CFTC”) prior to establishing the securities account proposed for the Netting Member Clearing Fund Custody Account, as conditioned under the exemptive order issued by the CFTC in connection with FICC’s customer cross-margining arrangement with the Chicago Mercantile Exchange, Inc. See Order Providing Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 91 FR 20880, 20885 (April 20, 2026).

2. Statutory Basis

FICC believes the proposed changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, FICC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act,⁶⁵ and Rules 17ad–22(e)(4), (6), (7), (18) and (23) promulgated under the Act,⁶⁶ for the reasons described below.

Section 17A(b)(3)(F) of the Act⁶⁷ requires that the rules of FICC be designed to, among other things, promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible, and, in general, to protect investors and the public interest.

FICC’s ability to manage its credit exposures to participants and to timely complete settlement are key parts of FICC’s role as a CCP and allow FICC to mitigate counterparty risk within the U.S. markets. The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD’s “default fund.” The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. FICC would use the Guaranty Fund to mitigate potential losses and liquidity needs associated with liquidating a defaulting Member’s portfolio so that FICC can continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a Member default and to protect investors and the public interest, consistent with the requirements of Section 17A(b)(3)(F) of the Act.

FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established

⁶⁵ 15 U.S.C. 78q–1(b)(3)(F).

⁶⁶ 17 CFR 240.17ad–22(e)(4), (6), (7), (18) and (23).

⁶⁷ 15 U.S.C. 78q–1(b)(3)(F).

for the sizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. As described herein, the proposed Stress Test Deficiency Charge is intended to implement a “defaulter pays” approach to addressing the additional risk presented by those Member’s whose Stress Test Deficiencies drive significant stress test exposures at FICC. FICC would use the resources collected through the Stress Test Deficiency Charges to mitigate potential losses to FICC (and through loss allocation, to its Members) associated with liquidating a defaulting Member’s portfolio and to continue to effect the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of FICC in the event of a Member default, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.

Additionally, FICC believes that adopting a “cooling-off period” structure and a Loss Allocation Cap of 200 percent of a Member’s Guaranty Fund Requirement for its loss allocation rules would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. The proposed 200 percent Loss Allocation Cap would be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC’s two largest Netting Member families using the extreme but plausible market shocks, while also reducing the possibility of FICC imposing additional stress on its remaining Netting Members in a default event due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. FICC believes that these changes would therefore also lower the risk exposure that Members may have with respect to FICC in its role as a CCP. Limiting the potential loss allocation amount during extreme market stress scenarios may also prevent a “rush for the exit” scenario where many Netting Members seek to cap their liability by withdrawing from membership. FICC believes the proposed Loss Allocation Cap structure strikes an appropriate balance between these considerations and would allow FICC to address potential losses that may be associated with a sequential default scenario during a given Event Period so that FICC can continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a

Member default, consistent with the requirements of Section 17A(b)(3)(F) of the Act.

FICC also believes that the proposed changes would continue to provide sufficient qualifying liquid resources for FICC to meet a Cover 1 Standard for liquidity risk. As discussed above, the proposed change would remove FICC’s authority to directly borrow Clearing Fund cash or use a non-defaulting Member’s Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity. FICC therefore believes the Proposed Rule Change would allow FICC to continue to effect the prompt and accurate clearance and settlement of securities transactions in the event of a Member default, in accordance with the requirements of Section 17A(b)(3)(F) of the Act.

In addition, FICC believes that agreeing to treat Clearing Fund deposits as “financial assets” credited to “securities accounts” within the meaning of the NYUCC and limiting FICC’s ability to use such Clearing Fund would assure the safeguarding of securities and funds in FICC’s custody or control. These changes would ensure that Clearing Fund deposits do not constitute property of FICC’s estate or property available to FICC’s general creditors and instead are safeguarded for the benefit of the Netting Members that posted them. As a result, FICC believes the Proposed Rule Change would help to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible in accordance with Section 17A(b)(3)(F) of the Act.

Rule 17ad–22(e)(4) under the Act⁶⁸ requires generally that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively

identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. Rules 17ad–22(e)(4)(i) and (iii) under the Act⁶⁹ requires that such policies and procedures include (i) maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence and (ii) the maintenance of additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (that is, to maintain a Cover 1 Standard for prefunded financial resources to address its credit/market risk).⁷⁰

The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD’s “default fund.” The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement, exclusive of FICC’s proposed assessment authority for additional Guaranty Fund contributions. FICC proposes to adopt a more conservative Cover 2 Standard for its Guaranty Fund to align FICC’s risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market’s systemically important infrastructures.⁷¹ FICC believes that a fixed income market stress event could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC’s mandate as a systemically important financial market utility. Further, FICC believes the size of the proposed Guaranty Fund that would be needed to maintain the Cover 2 Requirement would not present a significant burden on its Members based on both the projected size of a Guaranty Fund based on a Cover 2 Standard and resulting allocations, especially when considered with the potential benefits of bankruptcy remote treatment of the

⁶⁸ 17 CFR 240.17ad–22(e)(4)(i) and (iii).

⁷⁰ Rule 17ad–22(e)(4)(iv) under the Act further requires that such prefunded financial resources be exclusive of assessments for additional guaranty fund contributions. See 17 CFR 240.17ad–22(e)(4)(iv).

⁷¹ See *supra* note 11.

⁶⁸ 17 CFR 240.17ad–22(e)(4).

current Clearing Fund and exclusion of Member's Clearing Fund deposits from the loss allocation calculation. In addition, FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. For these reasons, FICC believes the proposed changes are consistent with the requirements of Rules 17ad-22(e)(4)(i) and (iii) under the Act.

Rule 17ad-22(e)(4)(vi) under the Act⁷² requires that such policies and procedures include requirements for FICC to conduct stress testing of its total financial resources once each day using standard predetermined parameters and assumptions. As described above, the Clearing Agencies maintain the ST Framework, which sets forth the manner in which FICC performs stress testing of the sufficiency of its prefunded financial resources.⁷³ FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, including their associated parameters and assumptions, to size the Guaranty Fund and test the sufficiency of its total financial resources each Business Day. FICC believes the proposed changes are therefore consistent with the requirements of Rule 17ad-22(e)(4)(vi) under the Act.

Rules 17ad-22(e)(4)(viii) and (ix) under the Act⁷⁴ further require that such policies and procedures address the allocation of credit losses FICC may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers, and describe its process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated. As described above, the proposed GSD Rules (and consequently FICC's supporting policies and procedures thereunder) would describe FICC's loss allocation process in proposed Rule 4C.

This includes the determination of Event Periods and the Loss Allocation Caps associated therewith. Furthermore, Section 7 of proposed rule 4A would describe FICC's process for replenishing any deficits in the Guaranty Fund that may result from FICC's application or use of a Netting Member's Guaranty Fund Deposit as permitted pursuant to proposed Rule 4C. Section 5(c) of proposed Rule 4A would also address how FICC would repay any funds borrowed from the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations. FICC therefore believes the proposed changes are consistent with the requirements of Rules 17ad-22(e)(4)(viii) and (ix) under the Act.

Rule 17ad-22(e)(6)(iii) under the Act⁷⁵ requires that FICC, as a CCP, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

FICC proposes to modify the Margin Component Schedule of the GSD Rules to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers. Rather than specifying fixed minimum charges in the GSD Rules, FICC proposes to modify the GSD Rules to provide the authority for FICC to establish minimum charges of up to \$1 million for particular account types and/or access models as determined appropriate by FICC. As described above, upon implementation of the proposal, FICC would initially set all required charge amounts to \$0. Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICC's Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements, and

Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model. FICC also notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (e.g., a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC-GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC-GSD's various access models and/or utilizing multiple accounts under each model. FICC would continue to monitor its exposures, however, and would maintain the authority within the GSD Rules to impose minimum charges up to \$1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad-22(e)(6)(iii) under the Act.

Rule 17ad-22(e)(7)(i) under the Act⁷⁶ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions (i.e., a Cover 1 Standard for liquidity resources).⁷⁷

FICC-GSD's liquidity risk is measured as the settlement payment obligation that FICC-GSD would have in the event of the default of the largest Netting Member Affiliated Family and is calculated based on eligible positions in

⁷² 17 CFR 240.17ad-22(e)(4)(vi).

⁷³ See *supra* note 24.

⁷⁴ 17 CFR 240.17ad-22(e)(4)(viii) and (ix).

⁷⁵ 17 CFR 240.17ad-22(e)(6)(iii).

⁷⁶ 17 CFR 240.17ad-22(e)(7)(i).
⁷⁷ Rule 17ad-22(e)(7)(ii) under the Act further requires that such resources be in the form of qualifying liquid resources in each relevant currency for which FICC has payment obligations owed to its Members. See 17 CFR 240.17ad-22(e)(7)(ii) and *supra* note 20.

clearing. The liquidity need is determined by the securities destined to be delivered to the defaulting member, referred to as “inbound deliveries.” As discussed above, FICC currently maintains qualifying liquid resources in the form of CCLF and Clearing Fund cash and has received necessary approvals to add a Commercial Paper Program.⁷⁸ CCLF is designed to address FICC’s liquidity needs by directly engaging in CCLF Transactions for the inbound deliveries driving the liquidity need. However, CCLF Transactions are bilateral repo transactions based on current market value that are subject to market haircuts and may experience significant changes in market value under an extreme stress scenario. Under CCLF, if FICC declares a CCLF event, Members are required to hold and fund their deliveries to the insolvent Member (*i.e.*, the inbound deliveries) up to a predetermined cap by entering into repo transactions (*i.e.*, CCLF Transactions) with FICC.⁷⁹ FICC will accept securities delivered by a solvent Member that are destined for the insolvent Member in excess of the solvent Member’s CCLF cap on a delivery-versus-payment (DVP) basis for FICC.

FICC may currently utilize Clearing Fund cash deposits or CCLF Transactions involving Clearing Fund Eligible Securities to address any shortfalls that may arise in resources versus liquidity needs resulting from such haircuts and changing market values.

As described above, the proposed change would remove FICC’s authority to directly borrow Clearing Fund cash or use a non-defaulting Member’s Clearing Fund securities for CCLF Transactions to facilitate the treatment of these deposits as bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. While this may result in an overall reduction of available liquidity resources for FICC, the amount of qualifying liquid resources would remain closely aligned to FICC’s daily Cover 1 liquidity measure. Accordingly, FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member’s Clearing Fund deposit in the

form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad–22(e)(7)(i) under the Act.

Rule 17ad–22(e)(7)(ix) under the Act⁸⁰ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any liquid resources that it may employ during a stress event. As described above, FICC proposes changes to the GSD Rules to (i) exclude Clearing Fund from the calculation of loss allocation obligations and from its authority to borrow funds or securities for purposes of meeting its settlement obligations and (ii) establish a Guaranty Fund comprised of cash, which would, among other things, provide liquidity to FICC to meet its settlement obligations. FICC would also update the GSD Rules to describe its process for allocating losses and replenishing the Guaranty Fund in the event that it experiences any losses that would require the replenishment of such funds, which would be substantially similar to its existing process for replenishing any Clearing Fund deposits used as a liquidity resource during a stress event. As a result, FICC believes the proposed changes are consistent with Rule 17ad–22(e)(7)(ix) under the Act.

Rule 17ad–22(e)(18)(iv)(C) under the Act⁸¹ requires FICC establish objective, risk-based, and publicly disclosed criteria for participation, which ensure it has appropriate means to facilitate access to its clearance and settlement services of all eligible market secondary transactions in U.S. Treasury securities, including those of indirect participants. FICC believes that eliminating the \$1mm minimum Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement per Segregated Indirect Participant and Cross-Margining Customer, respectively, would facilitate access to FICC’s clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities. This is because indirect participants have identified the \$1mm minimum charge as serving as a barrier to access FICC’s clearance and settlement services.⁸² Based on recent analysis performed by FICC in

connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members’ portfolios without the need for minimum charges. Accordingly, FICC believes eliminating the fixed Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement would facilitate access by indirect participants without disrupting FICC’s ability to meet its obligations to Members consistent with Rule 17ad–22(e)(18) under the Act.

Rule 17ad–22(e)(23) under the Act⁸³ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures, and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC. The proposed changes to the GSD Rules would clearly set forth the establishment, maintenance, purpose and use of the proposed Guaranty Fund, including Netting Member’s obligations to contribute Guaranty Fund Requirements on a pro rata basis. The proposed changes to the GSD Rules would also clearly and transparently describe Netting Members obligations with respect to loss allocation during a Defaulting Member Event, including the associated “cooling-off period” and Loss Allocation Caps that would apply to any designated Event Period, and their obligations to replenish any Guaranty Fund deposits used by FICC pursuant to the GSD Rules. The proposed changes to the GSD Rules would also clearly describe the proposed bankruptcy remote treatment of Clearing Fund deposits as “initial margin” and the limitations regarding the use of such deposits and their exclusion from loss allocation calculations. The proposed changes to the GSD Rules would also clearly set forth a fine schedule for late satisfaction of Guaranty Fund Requirements. The GSD Rules are publicly available on the FICC website. As a result, FICC believes the proposed changes are consistent with Rule 17ad–22(e)(23) under the Act.

For these reasons, FICC believes the proposal would support its compliance with Rules 17ad–22(e)(4), (6), (7), (18) and (23) under the Act.⁸⁴

⁷⁸ See *supra* note 23.

⁷⁹ See Section 2a of GSD Rule 22A, *supra* note 4.

⁸⁰ 17 CFR 240.17ad–22(e)(7)(ix).

⁸¹ 17 CFR 240.17ad–22(18)(iv)(C).

⁸² See *supra* note 50.

⁸³ 17 CFR 240.17ad–22(e)(23).

⁸⁴ 17 CFR 240.17ad–22(e)(4), (6), (7), (18) and (23).

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act⁸⁵ requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. FICC believes that the Proposed Rule Change could have an impact on competition because by requiring Netting Members to satisfy Guaranty Fund Requirements and Stress Test Deficiency Charges that are allocated based on Netting Member activity, it would require impose greater margin and default fund requirements on certain Netting Members than on others. In addition, by providing FICC with the authority to exchange a Netting Member's Clearing Fund Deposit in the form cash for U.S. Treasury Securities based on the proportion of the Netting Member's Clearing Fund consisting of cash, the Proposed Rule Changes may impose greater liquidity requirements on some Netting Members than others. FICC believes, however, that any impact or burden associated with the Proposed Rule Change is necessary and appropriate in furtherance of the purposes of the Act.

FICC believes any potential impact or burden competition that may be created by the Proposed Rule Change would be necessary and appropriate in furtherance of the purposes of the Act, specifically Section 17A(b)(3)(F) of the Act.⁸⁶ The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's "default fund." The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. FICC believes that a fixed income market stress event could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC's mandate as a systemically important financial market utility. By supplementing FICC's existing prefunded financial resources with a prefunded Guaranty Fund, the proposal

would contribute to FICC's goal of assuring that FICC has adequate prefunded resources to promptly and accurately meet its settlement obligations notwithstanding the default of any of its Members.

FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. FICC believes that the proposal would align with a "defaulter pays" approach to addressing the additional risk presented by those Members driving significant stress test exposures while also allowing FICC with the flexibility to resize the Guaranty Fund on an intramonth basis when a resizing of the Guaranty Fund may be necessary to ensure that FICC continues to meet its Cover 2 Requirement.

In addition, FICC believes that adopting the Guaranty Fund while also providing authority to impose additional Stress Test Deficiency Charges would provide an appropriate balance between maintaining sufficient mutualized default fund resources, sized to a Cover 2 Requirement, and providing for a "defaulter pays" approach to addressing additional risks presented by those Member's whose Stress Test Deficiencies drive significant stress test exposures at FICC. The proposed Guaranty Fund would be sized to a Cover 2 Requirement based on the results of daily stress testing using a range of historical and hypothetical scenarios. Each Netting Member's required Guaranty Fund contribution would be determined as their pro rata share of the Cover 2 Requirement based on average daily largest stress test deficiencies for such Members. FICC would also have the authority to impose additional margin charges on a Netting Member or an Affiliated Family whose Stress Test Deficiencies drive significant risk exposures at FICC. FICC therefore believes that the proposed Guaranty Fund and Stress Test Deficiency Charges would be appropriately allocated to Members based on a clear, risk-based methodology that aligns the collection of additional financial resources from Members in direct

proportion to each Member's individual stress test exposures at FICC.

Further, FICC believes the size of the proposed Guaranty Fund that would be needed to maintain the Cover 2 Requirement would not present a significant burden on its Members based on both the projected size of a Cover 2 Guaranty Fund and resulting allocations, especially when considered with the potential benefits of bankruptcy remote treatment of the current Clearing Fund and exclusion of Member's Clearing Fund deposits from loss allocation. Moreover, FICC believes that the proposed allocation methodology would appropriately allocate each Netting Member's contribution to the Guaranty Fund, and their associated loss allocation obligations, in direct proportion to the risk presented by each Netting Member's contribution to Stress Test Deficiencies observed by FICC under its daily stress testing.

The Proposed Rule Change would provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations, which may impact Netting Members subject to the utilization of this tool. However, any such exchange would be done proportionally among Netting Members (other than any Defaulting Member) based on the amount of each Netting Member's Clearing Fund consisting of cash relative to the total amount of Clearing Fund consisting of cash, and subject to considerations such as operational feasibility and the value of the specific securities to be exchanged. Moreover, FICC notes that any Netting Member subject to the exchange would not be obligated to hold any Treasury securities sold to it by FICC under this proposed authority and would have the right to immediately hedge the market risk exposure of such securities and/or immediately sell them to mitigate potential market risk exposure and substitute the cash proceeds of such sale as an alternative Clearing Fund deposit to FICC. FICC also notes that the Proposed Rule Change would, in turn, remove FICC's authority to directly borrow Clearing Fund cash or use a non-defaulting Member's Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed changes would therefore permit FICC to access an important source of liquidity through the exchange of non-defaulting Netting Members' Clearing Fund deposits in the form of cash for high quality liquid assets such as U.S. Treasury securities.

⁸⁵ 15 U.S.C. 78q-1(b)(3)(I).

⁸⁶ 15 U.S.C. 78q-1(b)(3)(F).

Accordingly, FICC believes the proposed change, together with the introduction of the proposed Guaranty Fund, would enhance FICC's default liquidity pool and lower the potential default liquidity obligations from Members and would not present any burden on Members that is not necessary or appropriate in furtherance of the purposes of the Act.

FICC also notes that while the proposed rule change to eliminate the loss allocation limitations on Inter-Dealer Broker Netting Members with respect to activity in their Broker Account(s) would have an impact on Inter-Dealer Broker Netting Members, FICC does not believe it would present a burden on competition that is not necessary or appropriate in furtherance of the goals of the Act. As described herein, under the Commission's Treasury Clearing rules, both of the Inter-Dealer Broker Netting Member's transactions with its respective counterparties will be required to be submitted into clearing, thereby allowing FICC to directly recognize and account for the offsetting exposure within the Inter-Dealer Broker Netting Member's Broker Account(s).⁸⁷ With the proposed establishment of the Guaranty Fund, FICC believes that it is appropriate to eliminate this legacy limitation on loss allocation for Inter-Dealer Broker Netting Members and include Inter-Dealer Broker Netting Members' Accounts in the Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts, as applicable) because (i) an Inter-Dealer Broker Netting Member's Broker Account(s) should not be subject to significant Guaranty Fund Requirements stemming from activity in non-directional (*i.e.*, matched book) accounts based on the proposed allocation methodology and (ii) any directional activity of an Inter-Dealer Broker Netting Member in its Dealer Account would present risk to FICC that FICC would need to manage in the event of the default of that Member in the same manner as the directional activity of any other Netting Member. As a result, FICC believes that including Inter-Dealer Broker Netting Members in the proposed Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts) would appropriately capture the risk that should be covered in the loss allocation process. In addition, such changes would subject Inter-Dealer Broker Netting Members and other Netting Members to the same loss allocation

rules, thereby placing them on a more level playing field, which would serve to promote competition.

Taken together, the Proposed Rule Change is designed to enhance FICC's ability to collect sufficient prefunded financial resources to continue to complete the prompt and accurate clearance and settlement of securities transactions in the event of the default of its two largest Netting Member families under extreme but plausible market conditions, and thereby mitigating potential impacts on the broader financial system, which helps to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible and protect investors and the public interest. Accordingly, FICC believes the Proposed Rule Change is necessary and appropriate to further the purposes of Section 17A(b)(3)(F) of the Act.

Finally, FICC believes that the proposed changes to remove fixed minimum Required Fund Deposits and minimum charges would promote greater competition. FICC notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (*e.g.*, a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC-GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC-GSD's various access models and/or utilizing multiple accounts under each model. Indirect participants, specifically, have raised concerns about \$1 million per indirect participant minimum charge limiting the ability of indirect participants to access FICC's segregated customer margin offerings.⁸⁸ In addition, such minima may make it more difficult for smaller Netting Members and indirect participants, for whom a \$1 million fixed charge is a proportionally greater cost, to compete with larger ones.⁸⁹ FICC therefore believes that removing these fixed minimum charges, and imposing minimums only where such charges are necessary for FICC to maintain sufficient coverage of its risk

⁸⁸ See *supra* note 50.

⁸⁹ The minimum's burden on smaller indirect participants was noted in the Managed Funds Association's comment letter on FICC's segregated customer margin rule proposal, which stated "[The minimum requirement] would discourage smaller indirect participants from selecting a segregated clearing model, which is not consistent with the customer protection objectives of the Securities Exchange Act of 1934 [. . .] or FICC's obligation to facilitate access." See *supra* note 50.

exposures would promote greater access to clearing for both direct and indirect market participants and improve the ability of Netting Members and indirect participants to compete on a level playing field.

For these reasons, FICC does not believe that the Proposed Rule Changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at* www.sec.gov/rules-regulations/how-submit-comment. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right to not respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such Proposed Rule Change, or
- (B) institute proceedings to determine whether the Proposed Rule Change should be disapproved.

The proposal shall not take effect until all regulatory actions required

⁸⁷ See *supra* note 59 and associated text.

with respect to the proposal are completed.

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 (www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2026-008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2026-008. 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 (www.sec.gov/rules/sro.shtml). Copies of the filing will be available for inspection and copying at the principal office of FICC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish 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-FICC-2026-008 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-16282 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106048; File No. SR-GEMX-2026-29]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Fees at Options 7, Section 3, Note 18

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 31, 2026, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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 Exchange's transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on August 3, 2026.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's transaction fees at Options 7, Section 3, note 18, to modify the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers³ and Non-Nasdaq GEMX Market Makers.⁴ Currently, the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers are \$0.43 per contract when the Member is (i) both the buyer and the seller, or (ii) if the Member removes liquidity from another Member as an Affiliated Member⁵ or Affiliated Entity.⁶ The Exchange proposes to increase this fee for Tier 3 and Tier 4 to \$0.47 and \$0.45 per contract, respectively. The proposed Tier 3 fee of \$0.47 per contract would be in lieu of the default \$0.50 per contract Penny Symbol Tier 3 Taker Fee, and the proposed Tier 4 fee of \$0.45 per contract would be in lieu of the default \$0.49 per contract Penny Symbol Tier 4 Taker Fee, for Market Makers and Non-Nasdaq GEMX Market Makers. A Member would continue to receive the pricing in either note 17 or amended note 18 with respect to SPY, whichever is more favorable, but not both in a given month. While the Exchange is increasing the Taker Fee in note 18, note

³ The term "Market Makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Options 1, Section 1(a)(21).

⁴ A "Non-Nasdaq GEMX Market Maker," also referred to as a "FarMM," is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. See Options 7, Section 1(c).

⁵ An "Affiliated Member" is a Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. See Options 7, Section 1(c).

⁶ An "Affiliated Entity" is a relationship between an Appointed Market Maker and an Appointed OFF for purposes of qualifying for certain pricing specified in the Pricing Schedule. Market Makers and OFFs are required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule. Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. See Options 7, Section 1(c).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁹⁰ 17 CFR 200.30-3(a)(12).

18 continues to offer a fee reduction to encourage Market Makers and Non-Nasdaq GEMX Market Makers to remove liquidity on GEMX at the reduced Penny Symbol Taker Fee.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁸ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.”⁹

Likewise, in *NetCoalition v. Securities and Exchange Commission*¹⁰ (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.¹¹ As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”¹²

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and

sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹³ Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of 18 options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

The proposed amended fees are equitable and not unfairly discriminatory because the Exchange would uniformly apply the new fees to any member or member organization who meets the criteria for the new fees.

The Exchange’s proposal to amend note 18 to Options 7, Section 3 to increase the Penny Symbol Taker Fee from \$0.43 per contract to \$0.47 per contract for Tier 3 and \$0.45 per contract for Tier 4 is reasonable because it would continue to allow Market Makers and Non-Nasdaq GEMX Market Makers to lower their Tier 3 and Tier 4 Penny Symbol Taker Fees thereby attracting more order flow to GEMX. The proposed Tier 3 fee of \$0.47 per contract would be in lieu of the \$0.50 per contract Penny Symbol Tier 3 Taker Fee, and the proposed Tier 4 fee of \$0.45 per contract would be in lieu of the \$0.49 per contract Penny Symbol Tier 4 Taker Fee, for Market Makers and Non-Nasdaq GEMX Market Makers. The Exchange’s proposal to amend note 18 to Options 7, Section 3 is equitable and not unfairly discriminatory because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting

requirements).¹⁴ The proposed note 18 fee reduction is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. While the Exchange is increasing the Taker Fee in note 18, note 18 continues to offer a fee reduction from the standard Tier 3 and Tier 4 Penny Symbol Taker Fees to encourage Market Makers and Non-Nasdaq GEMX Market Makers to remove liquidity on GEMX at the reduced Penny Symbol Taker Fee. Non-Nasdaq GEMX Market Makers qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to continue to remove liquidity on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers) with this fee reduction. Because the fee reduction is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal is equitable and not unfairly discriminatory because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal remains competitive with other options markets and will offer market participants another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(4) and (5).

⁹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁰ *NetCoalition v. SEC*, 615 F.3d 525 (D.C. Cir. 2010).

¹¹ See *NetCoalition*, at 534–535.

¹² *Id.* at 537.

¹³ *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782–83 (Dec. 9, 2008) (SR-NYSEArca–2006–21)).

¹⁴ See GEMX Options 2, Section 5.

readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

The Exchange's proposed amendments to the Tier 3 and Tier 4 Penny Symbol Taker Fees for Market Makers and Non-Nasdaq GEMX Market Makers when the Member is (i) both the buyer and the seller or (ii) the Member removes liquidity from another Member as an Affiliated Member or Affiliated Entity, would not impose an undue burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the Exchange would uniformly apply the revised fees to all qualifying GEMX members and member organizations. Additionally, the proposed note 18 fee changes do not impose an undue burden on intra-market competition because Market Makers have different requirements and additional obligations as compared to other market participants (such as quoting requirements).¹⁵ Although the Exchange is increasing the Taker Fee in note 18, note 18 continues to offer a fee reduction from the standard Tier 3 and Tier 4 Penny Symbol Taker Fees, and this fee reduction is designed to continue to incentivize Market Makers to remove liquidity on GEMX thereby facilitating tighter spreads and contributing towards a robust, well-balanced market ecosystem, to the benefit of all market participants. Non-Nasdaq GEMX Market Makers qualify as market makers on other exchanges. The Exchange believes that market makers not registered on GEMX will be encouraged to continue to remove liquidity on GEMX as an away market maker (Non-Nasdaq GEMX Market Makers) with this fee reduction. Because the fee reduction is being offered to both market makers registered on GEMX and those not registered on GEMX, the Exchange believes that the proposal does not impose an undue burden on intra-market competition because it encourages market makers to remove liquidity thereby filling orders of other market participants. This proposal recognizes the overall contributions made by market makers to a listed options market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹⁶ 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-GEMX-2026-29 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-GEMX-2026-29. 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-GEMX-2026-29 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16287 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106054; File No. SR-FICC-2026-802]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Extension of the Review Period of an Advance Notice, as Modified by Partial Amendment No. 1, To Establish a Guaranty Fund at the Government Securities Division

August 6, 2026.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")¹ and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),² notice is hereby given that on July 24, 2026, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-FICC-2026-802. On August 4, 2026, FICC filed Partial Amendment No. 1 to make clarifications and corrections to the advance notice.³ The advance notice, as modified by

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4(n)(1)(i).

³ Partial Amendment No. 1 made certain changes the description of the advance notice. Specifically, Partial Amendment No. 1 corrects certain figures in the description of the advance notice regarding the anticipated impact on FICC's Members for the average overall Guaranty Fund size. Additionally, Partial Amendment No. 1 clarifies certain statements regarding the effects on Member Backtesting Charges had the proposed changes been in place during the period of the Backtesting Study. These clarifications and corrections have been incorporated, as appropriate, into the description of the advance notice in Item II below. FICC filed the advance notice as a proposed rule change (SR-FICC-2026-008) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 under the Act, 17 CFR 240.19b-4. A copy of the proposed rule change is available at www.dtcc.com/legal/sec-rule-filings. On August 4, 2026, FICC filed Partial Amendment No. 1 to the proposed rule change to make the same clarifications and corrections to the proposed rule change as Partial Amendment No. 1 to the advance notice.

¹⁵ See GEMX Options 2, Section 5.

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

Partial Amendment No. 1 (hereinafter, the “Advance Notice”), is described in Items I, II and III below, which Items have been prepared primarily by the clearing agency. The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons and to extend the review period of the Advance Notice.

I. Clearing Agency’s Statement of the Terms of Substance of the Advance Notice

This Advance Notice is filed by FICC in connection with the proposed establishment of a guaranty fund for its Government Securities Division (“GSD”) designed to cover losses that may arise due to a Member default or a non-default loss event (“Guaranty Fund”).⁴

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency’s Statement on Comments on the Advance Notice Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, FICC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission’s instructions on How to Submit Comments, available at www.sec.gov/rules-regulations/how

⁴ Capitalized terms not defined herein shall have the meaning assigned to such terms in the GSD Rulebook (“GSD Rules”), available at www.dtcc.com/legal/rules-and-procedures.

submit-comment. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission’s Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

FICC reserves the right to not respond to any comments received.

(B) Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Executive Summary

FICC, through GSD and the Mortgage-Backed Securities Division (“MBSD”) (each a “Division” and together the “Divisions”), serves as a central counterparty (“CCP”) and provider of clearance and settlement services for fixed income transactions. FICC-GSD, specifically, provides CCP services in U.S. government securities, as well as repurchase and reverse repurchase transactions involving U.S. government securities.⁵

FICC proposes to establish a Guaranty Fund at GSD, which would be designed to cover and mutualize the risk of losses that may occur as a result of (i) a Defaulting Member Event⁶ under a wide range of foreseeable stress scenarios or (ii) a Declared Non-Default Loss Event.⁷ The Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD’s “default fund”⁸

⁵ GSD also clears and settles certain transactions on securities issued or guaranteed by U.S. government agencies and government sponsored enterprises.

⁶ A “Defaulting Member Event” is defined in the GSD Rules as a determination by FICC to cease to act for a Member pursuant to GSD Rule 21 or Rule 22. See Section 7 of GSD Rule 4 (Clearing Fund and Loss Allocation), *supra* note 4. These GSD Rules provide that FICC’s Board of Directors may suspend a Member or prohibit or limit a Member’s access to FICC’s services in enumerated circumstances; this includes, among other things, a default in delivering funds or securities to FICC, a Member insolvency or a Member experiencing such financial or operational difficulties that FICC determines, in its discretion, that restriction on access to services is necessary for its protection and for the protection of its membership. See GSD Rule 21 (Restrictions on Access to Services) and GSD Rule 22 (Insolvency of a Member), *supra* note 4.

⁷ A “Declared Non-Default Loss Event” is a determination by the FICC Board of Directors that a loss or liability incident to the clearance and settlement business of FICC may be a significant and substantial loss or liability that may materially impair the ability of FICC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Members in order to ensure that FICC may continue to offer clearance and settlement services in an orderly manner. See Section 7 of Rule 4 of the GSD Rules, *supra* note 4.

⁸ A CCP’s default fund is typically used to mutualize certain risks, such as losses that may occur under extreme but plausible stress scenarios that exceed a defaulting member’s initial margin.

and enable FICC to treat its Member’s Clearing Fund deposits as “initial margin,”⁹ excluding the Clearing Fund from loss mutualization and supporting bankruptcy remote treatment for Clearing Fund deposits at GSD.

As part of the proposal, FICC would make the following changes to the GSD Rules:

- Adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund each month at an amount sufficient to cover the stress test deficiency (*i.e.*, losses observed in daily stress testing over required Clearing Fund deposits) that may arise as a result of the default of the two Netting Member Affiliated Families¹⁰ that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (a “Cover 2 Standard” or “Cover 2 Requirement”); (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain established thresholds;

- Modify GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to “borrow” Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting

⁹ Initial margin is collateral collected by a CCP to cover its current and potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin is generally not mutualized and used only to cover the losses of the participant posting such initial margin.

¹⁰ “Affiliated Family” is defined in the GSD Rules as a group of Members, excluding from the group any Member that is a securities clearinghouse, depository, exchange or other market infrastructure, in which each Member in the group is an Affiliate of at least one other Member in the group. See Section 1 of GSD Rule 1 (Definitions), *supra* note 4.

Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.

- Relocate the loss allocation rules in Section 7 (Loss Allocation Waterfall, Off-the-Market Transactions) of GSD Rule 4 to new proposed Rule 4C (Loss Allocation) and modify those rules to (i) incorporate the proposed Guaranty Fund into the GSD loss allocation waterfall and exclude the Clearing Fund from the calculation of loss allocation obligations; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day "cooling-off period" for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an "Event Period"); and (iv) impose an assessment cap on loss allocation during each Event Period equal to two times (or 200 percent of) the Member's Guaranty Fund requirement for any Event Period in lieu of the existing loss allocation rounds system.

- Make other conforming changes throughout the GSD Rules to reflect the adoption of the Guaranty Fund as described herein.

FICC has discussed this proposal with Members, who generally expressed support for the proposed changes. By establishing a separate Guaranty Fund for loss mutualization and capping each Netting Member's loss allocation in Defaulting Member Events and Declared Non-Default Loss Events that occur during an Event Period at 200 percent of the Netting Member's Guaranty Fund requirement, FICC would provide greater transparency around each Member's potential exposures to FICC. The proposed Guaranty Fund, which would be sized and allocated based on the results of daily stress testing under a wide range of foreseeable historical and hypothetical scenarios, would also provide a more risk sensitive measure of FICC's stress exposures. FICC also notes that by establishing a Guaranty Fund and sizing it to a Cover 2 Standard, the proposal would align FICC's risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market's

systemically important infrastructures.¹¹

The proposal also includes changes to the GSD Rules to make it clear that Members' Clearing Fund deposits represent initial margin, excluding the Clearing Fund from the loss allocation calculation, and to facilitate the ability of Members to conclude that Clearing Fund deposits are bankruptcy remote¹² from FICC within the meaning of the Basel capital framework. The proposed changes would protect the Clearing Fund deposits of all Members from loss mutualization in the event of a Member default scenario where the losses incurred by FICC exceed the resources of the defaulting Member. The proposed changes would protect non-defaulting Members' Clearing Fund deposits from an FICC insolvency and thereby facilitate the ability of Clearing Members to conclude they do not need to hold regulatory capital against such deposits, providing additional capital relief to such Members, as discussed in further detail below.

Background

FICC-GSD maintains financial resources in the form of its Clearing Fund designed to enable it to cover potential losses resulting from the failure of the Member or Member family to which it has the largest credit exposure. FICC-GSD collects Clearing Fund deposits from its Members using a risk-based margin methodology. These amounts operate, individually, as the Member's initial margin, and the aggregate of all such Members' deposits is referred to collectively as the Clearing Fund, which operates as GSD's default fund. This risk-based methodology enables FICC to identify the risks posed by a Member's unsettled portfolio and to quickly adjust and collect additional deposits as needed to cover those risks. Each Member's required Clearing Fund deposit (or Required Fund Deposit) is calculated at least twice daily for GSD Members pursuant to a formula set forth in GSD Rule 4 and the Margin Component Schedule of the GSD Rules.¹³ The Clearing Fund is sized to an amount sufficient to cover a wide

range of potential stress scenarios, including the default of the Member and its affiliated Members that would cause the largest aggregate credit exposure to GSD in extreme but plausible market conditions (that is, to a "Cover 1 Standard").

Currently, under GSD Rule 4, if there is a loss (i) as a result of an obligation of a defaulting Member to FICC that was not fully satisfied by the application of its resources or the proceeds from the liquidation of its portfolio, or (ii) due to an event other than a Member default (*i.e.*, a Declared Non-Default Loss Event), FICC has recourse to the loss allocation waterfall. FICC allocates losses differently between Tier One Netting Members, which generally include all Netting Members unless otherwise specified by FICC, and Tier Two Members, which include CCIT Members and Registered Investment Company Netting Members.¹⁴

Under the current GSD Rules, triggering events for loss allocation purposes, which may include both Member defaults and non-default events, are grouped together chronologically into discrete "Event Periods" of ten business days.¹⁵ Losses arising from a group of events that occurred within the same Event Period, whether a default loss or a non-default loss, would be allocated as follows:

- Before the allocation of losses to Members, FICC would apply 50 percent of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the applicable event period (referred to as the "Corporate Contribution"), or such greater amount as the Board of Directors may determine to satisfy the losses.¹⁶

- If a loss is related to a Defaulting Member Event, FICC would allocate the loss between the Tier One Netting Members and the Tier Two Members, and the loss allocation process applicable to Tier One Netting Members and Tier Two Members would proceed via two separate, parallel, and simultaneous streams. If a loss is related to a Declared Non-Default Loss Event,

¹⁴ See Section 7 of GSD Rule 4, *supra* note 4.

¹⁵ See *id.*

¹⁶ The amount of the Corporate Contribution to be applied to any losses arising from events that may occur in subsequent event periods during the next 250 business days would be reduced to the remaining unused portion of the Corporate Contribution amount, if any. If the losses are attributable to only one Division, the Corporate Contribution to the losses would be up to the amount then available. If the losses occur simultaneously at both Divisions, the Corporate Contribution to the losses would be applied ratably between the Divisions. See Section 7a of GSD Rule 4, *supra* note 4.

¹¹ For example, CME Securities Clearing Inc. and ICE Clear Credit LLC maintain default funds that are separate from initial margin and sized to a Cover 2 Standard. See Chapter 4 of the Rules of CME Securities Clearing Inc., available at www.cmegroup.com/rulebook/cmesc/, and Chapter 8 of the Treasury Clearing Rules of ICE Clear Credit LLC, available at www.ice.com/clear-credit/us-treasury-clearing.

¹² FICC would obtain a legal memorandum from outside counsel regarding the bankruptcy remote treatment of the Clearing Fund.

¹³ See Rule 4 and Margin Component Schedule of the GSD Rules, *supra* note 4.

FICC would allocate the loss to Tier One Netting Members. Tier Two Members are not subject to loss allocation with respect to Declared Non-Default Loss Events.¹⁷

- With respect to Tier One Netting Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount among Tier One Netting Members that were Tier One Netting Members on the first day of the applicable Event Period, ratably in accordance with their average daily Required Fund Deposit over the prior 70 business days or such shorter period of time that the Tier One Netting Member has been a Tier One Netting Member, divided by the sum of the average Required Fund Deposit amounts of all Tier One Netting Members subject to loss allocation in such round. Each Tier One Netting Member must pay its allocation amount within two business days of receiving notice of the amount.¹⁸

- With respect to Tier Two Members, if a loss remains after applying the Corporate Contribution, FICC would allocate the remaining amount to Tier Two Members to the extent they traded with the defaulting Member and their trades resulted in the loss. FICC would assess Tier Two Members ratably based on their loss as a percentage of the entire amount of the remaining loss attributable to Tier Two Members. Tier Two Members are required to pay their loss allocation obligation in full.¹⁹

The GSD Clearing Fund also acts as a source of liquidity for FICC. FICC's qualifying liquid resources²⁰ are described in the Clearing Agency Liquidity Risk Management Framework ("LRM Framework")²¹ and include (i)

cash deposits to the respective Clearing Funds²² of GSD and MBSD and (ii) the Capped Contingency Liquidity Facility ("CCLF") for each of GSD and MBSD. Collectively, these resources provide FICC with liquidity to complete end-of-day settlement in the event of the default of a GSD Netting Member.²³

The Clearing Agencies also maintain a Clearing Agency Stress Testing Framework ("ST Framework"), which sets forth the manner in which FICC (i) performs stress testing of the sufficiency of its prefunded financial resources and (ii) determines the amount and regularly tests the sufficiency of FICC's liquidity resources.²⁴ FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, to size and test the sufficiency of the proposed Guaranty Fund.

Description of Proposed Change

FICC proposes to establish a Guaranty Fund for GSD, which is designed to cover losses that may arise due to a Member default or a non-default loss event and enable FICC to support bankruptcy remote treatment for its Clearing Fund deposits. The proposed changes would include, among other things:

- Adopting new GSD Rule 4A (Guaranty Fund) to set forth

Clearing Corporation (together, the "Clearing Agencies"), have adopted the LRM Framework, which sets forth the manner in which FICC measures, monitors and manages the liquidity risks that arise in or are borne by it. *See* Securities Exchange Act Release No. 82377 (Dec. 21, 2017), 82 FR 61617 (Dec. 28, 2017) (SR-DTC-2017-004; SR-FICC-2017-008; SR-NSCC-2017-005). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the LRM Framework to include the Guaranty Fund and the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC as sources of qualifying liquid resources for FICC-GSD.

²² Cash deposits to the Clearing Funds are held either at a Federal Reserve Bank or creditworthy commercial banks that provide same-day access to funds.

²³ The Commission also recently issued a Notice of No Objection to FICC's proposal to establish a commercial paper program in order to raise prefunded default liquidity ("Commercial Paper Program"). The Commercial Paper Program, once implemented, would also constitute an additional source of qualifying liquid resources for FICC. *See* Securities Exchange Act Release No. 105319 (Apr. 27, 2026), 91 FR 23318 (Apr. 30, 2026) (SR-FICC-2026-801).

²⁴ *See* Securities Exchange Act Release No. 82368 (Dec. 19, 2017), 82 FR 61082 (Dec. 26, 2017) (SR-DTC-2017-005; SR-FICC-2017-009; SR-NSCC-2017-006). Following the establishment of the Guaranty Fund, FICC would file a proposed rule change to amend the ST Framework to make conforming changes to reflect the utilization of FICC's stress testing methodology and scenarios in sizing and testing the sufficiency of the Guaranty Fund.

requirements for the Guaranty Fund, including, among other things, that (i) FICC performs daily stress testing using historical and hypothetical scenarios for purposes of sizing the Guaranty Fund; (ii) FICC sizes the Guaranty Fund at an amount sufficient to meet a Cover 2 Requirement; (iii) all deposits to the Guaranty Fund must be made in cash; and (iv) FICC has the authority to resize the Guaranty Fund on an intramonth basis if stress test deficiencies breach certain thresholds.

- Modifying GSD Rule 4 and the Margin Component Schedule to (i) support bankruptcy remote treatment for Clearing Fund deposits; (ii) exclude the Clearing Fund from loss mutualization; (iii) provide FICC with the authority to require additional margin deposits from Netting Members if their stress test deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund; (iv) clarify that FICC would no longer have the authority to "borrow" Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations; (v) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations; and (vi) eliminate fixed minimum Required Fund Deposit amounts and adjust the associated minimum cash composition requirements accordingly.

- Relocating the loss allocation rules in Section 7 of GSD Rule 4 to a new Rule 4C (Loss Allocation) and modifying the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day "cooling off period" for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an "Event Period"); and (iv) impose an assessment cap on loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member's Guaranty Fund requirement for each Event Period in lieu of the existing loss allocation rounds system.

- Make other conforming changes throughout the GSD Rules to reflect the

¹⁷ See Section 7 of GSD Rule, *supra* note 4. Losses relating to the events within the same Event Period may be allocated iteratively.

¹⁸ See *id.*

¹⁹ *Id.*

²⁰ "Qualifying liquid resources," as defined by Rule 17ad-22(a) under the Act, include three types of assets: (i) cash held either at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements, such as: (A) committed arrangements without material adverse change provisions, including (1) lines of credit, (2) foreign exchange swaps and (3) repurchase agreements, or (B) other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and (iii) other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank in a jurisdiction that permits said pledges or other transactions by the covered clearing agency. *See* 17 CFR 240.17ad-22(a).

²¹ FICC and its affiliate clearing agencies, The Depository Trust Company and National Securities

adoption of the Guaranty Fund as described herein.

The proposed changes are discussed in detail below.

1. Proposed Establishment of a Guaranty Fund

FICC proposes to adopt new GSD Rule 4A (Guaranty Fund) to set forth requirements for the proposed Guaranty Fund. The proposed rules would describe (i) general terms and requirements applicable to the Guaranty Fund; (ii) the maintenance of the Guaranty Fund; (iii) the form and investment of Guaranty Fund deposits; (iv) daily stress testing requirements for the Guaranty Fund; (v) the monthly sizing of the Guaranty Fund; (vi) intramonth resizing of the Guaranty Fund; (vii) the allocation of Guaranty Fund requirements among Netting Members; (viii) the setting of initial Guaranty Fund Requirements for new Netting Members and adjustments to Guaranty Fund Requirements due to certain business activities of Netting Members; (ix) the purpose and use of Guaranty Fund; and (x) the withdrawal of excess Guaranty Fund deposits, replenishing of any deficits in Guaranty Fund, and return of Guaranty Fund deposits after a Member withdraws from membership at GSD.

The term “Guaranty Fund” would be defined in GSD Rule 1 to mean the Guaranty Fund established by FICC pursuant to Rule 4A (as proposed herein), which shall be comprised of the aggregate of all contributions of Netting Members, excluding Registered Investment Company Netting Members. The proposed definition would further provide that the Guaranty Fund may be used to cover losses incurred by FICC as a result of a Defaulting Member Event or Declared Non-Default Loss Event. The term “Guaranty Fund Deposit” would also be defined in GSD Rule 1 as the deposit to the Guaranty Fund made by a Netting Member pursuant to Rule 4A (as proposed herein).

The proposed Guaranty Fund would be sized to a Cover 2 Requirement based on the results of daily stress testing using a range of historical and hypothetical scenarios. FICC would size the Guaranty Fund on a monthly basis; however, FICC would retain authority to resize the Guaranty Fund on an intramonth basis if it observes stress test deficiencies that breach certain established thresholds. Each Netting Member’s required Guaranty Fund contribution would be determined as their pro rata share of the Cover 2 Requirement based on average daily largest stress test deficiencies. FICC would also have the authority to impose

additional margin charges on a Netting Member or Affiliated Family whose Stress Test Deficiencies (as defined in Section 1.d. below) either (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause either the monthly or intramonth size of the Guaranty Fund to exceed upper bound parameters established for limiting the resizing of the Guaranty Fund.

The proposed Guaranty Fund and associated GSD Rules are discussed in detail below.

a. General Rules

Section 1 of proposed Rule 4A would set forth general provisions applicable to the Guaranty Fund and proposed Rule 4A. Specifically, Section 1 of proposed Rule 4A would clarify that, for purposes of proposed Rule 4A, the term Netting Member shall not include Registered Investment Company Netting Members, except for purposes of determining the total size of the Guaranty Fund or the application of any potential Stress Test Deficiency Charge, as defined below.²⁵ The proposed rule is intended to reflect the elimination of the concept of Tier Two Members and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members, to which proposed Rule 4A would not apply) from Guaranty Fund requirements and the calculation of loss allocation obligations, which are discussed in further detail below.

In addition, Section 1 of proposed Rule 4A would provide that FICC shall maintain on its public website information regarding the stress test scenarios, Guaranty Fund sizing parameters, and intramonth resizing thresholds used to determine the size of the Guaranty Fund. FICC believes that making these key details available on its public website would promote clarity and transparency for its Members, market participants, and the general public.

b. Maintenance of Guaranty Fund

Section 2 of proposed Rule 4A would require each Netting Member to make and maintain on an ongoing basis a contribution to the Guaranty Fund. The proposed rule would further provide that the amount of each Netting

Member’s required Guaranty Fund contribution (referred to as the “Guaranty Fund Requirement”) as well as the timing of payment of the Guaranty Fund Requirement shall be determined by FICC in accordance with the terms of proposed Rule 4A, as further discussed below.

In addition, FICC would update GSD Rule 1 to include a definition for Guaranty Fund Requirement to mean a Netting Member’s required Guaranty Fund contribution as determined in accordance with proposed Rule 4A.

c. Form and Investment of Guaranty Fund

Section 3 of proposed Rule 4A would require that each Netting Member’s Guaranty Fund Requirement be made in the form of cash in immediately-available funds and would permit FICC to invest cash in the Guaranty Fund in accordance with the Clearing Agency Investment Policy.²⁶ Under the proposed rule, each Netting Member would be entitled to such interest earned or paid on Guaranty Fund Cash deposits as FICC may determine from time to time. FICC believes that requiring Guaranty Fund contributions to be provided in cash would provide an important source of qualifying liquid resources for FICC.

d. Daily Stress Testing

Section 4(a) of proposed Rule 4A would require that FICC perform daily stress testing of its total financial resources at least once each day using a wide range of foreseeable scenarios, including both historical and hypothetical scenarios. Such daily stress testing would be used to determine “Stress Test Deficiencies” for purposes of sizing the Guaranty Fund. The term “Stress Test Deficiency” would be defined in GSD Rule 1 to mean the losses observed in FICC’s daily stress testing in excess of applicable Required Fund Deposits of Netting Members or an Affiliated Family of Netting Members.

As proposed herein, the Required Fund Deposits of Netting Members would be treated as initial margin at GSD. As a result, FICC believes the proposed approach for determining Stress Test Deficiencies would be consistent with practices of other CCPs, including other clearing agencies registered with the Commission and

²⁵ For example, a Registered Investment Company Netting Member’s Stress Test Deficiencies would be included in stress testing for purposes of determining the overall Cover 2 Requirement for the Guaranty Fund. However, Registered Investment Company Netting Member stress test exposures would not be considered in the Guaranty Fund allocation process.

²⁶ See Securities Exchange Act Release No. 79528 (Dec. 12, 2016), 81 FR 91232 (Dec. 16, 2016) (SR-DTC-2016-007; SR-FICC-2016-005; SR-NSCC-2016-003). FICC would file a separate proposed rule change with the Commission to update the Clearing Agency Investment Policy to permit the overnight investment of Guaranty Fund cash in either commercial bank deposits or its FRBNY account (similar to the Clearing Fund).

approved to clear U.S. Treasury activity, utilizing a “stress loss over initial margin” approach to sizing and testing the sufficiency of CCP default funds.²⁷ As noted above, FICC would leverage its stress testing methodology and inventory of stress scenarios, as described in the ST Framework, for its daily stress testing for the Guaranty Fund.²⁸

e. Monthly Sizing of Guaranty Fund

Section 4(b) of proposed Rule 4A would describe the monthly sizing of the Guaranty Fund. Specifically, the proposed rule would provide that the size of the Guaranty Fund would be established on a monthly basis at an amount determined by FICC to be sufficient to cover the Stress Test Deficiency that may arise as a result of the default of the two Netting Member Affiliated Families that would potentially cause the largest aggregate credit exposure for FICC in extreme but plausible market conditions (*i.e.*, the Cover 2 Requirement). The proposed rule would further provide that FICC may maintain the Guaranty Fund size at an amount larger than the Cover 2 Requirement (*e.g.*, by applying an additional buffer amount) based on FICC’s assessment of historical or recently observed Stress Test Deficiencies, fluctuations in Member portfolios, fluctuations in volatility or market conditions, or to prevent significant fluctuations in Guaranty Fund Requirements that may result in a deficiency in the Cover 2 Requirement or the need for imminent or frequent intramonth resizing. In addition, the proposed rule would provide that FICC may establish parameters (or “collars”) to limit monthly fluctuations in the size of the Guaranty Fund, which would apply to both increases or decreases in the size of the overall Guaranty Fund.²⁹

²⁷ For example, CME Securities Clearing Inc. sizes its guaranty fund to a cover two standard that measures the shortfall between the stress loss and collateral on deposit for initial margin. *See* Rule 402(a) of the Rules of CME Securities Clearing Inc., *supra* note 11. ICE Clear Credit LLC also determines the amount of required contributions to its Treasury Guaranty Fund based on stress loss over initial margin concepts. *See* Rule 801(a) of the Treasury Clearing Rules of ICE Clear Credit LLC, *supra* note 11.

²⁸ *See supra* note 24.

²⁹ FICC would initially establish parameter values of (i) 20 percent to limit month-over-month increases such that the size of the Guaranty Fund cannot increase by more than 20 percent from the beginning of one month to the beginning of the subsequent month and (ii) 15 percent to limit month-over-month decreases such that the size of the Guaranty Fund cannot decrease by more than 15 percent from the beginning of one month to the beginning of the subsequent month. These parameter values would be subject to periodic review and adjustment and would be subject to the

Section 4(b) of proposed Rule 4A would further provide that, if FICC observes Stress Test Deficiencies for a Netting Member or Affiliated Family that (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, FICC may impose a “Stress Test Deficiency Charge” on the Netting Members driving such stress test exposures. The proposed Stress Test Deficiency Charge is designed to enable FICC to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or cap. The proposed Stress Test Deficiency Charge would be set forth in the Margin Component Schedule of the GSD Rules, as described in Section 2.c. below.

FICC believes that the proposed approach would help FICC to limit significant month-over-month changes in the size of the Guaranty Fund and align with a “defaulter pays” approach to addressing the additional risk presented by those Members driving significant stress test exposures, providing important stability and predictability for monthly changes in the Guaranty Fund and Netting Members’ individual contribution requirements.

Section 4(b) of proposed Rule 4A would also require that, unless otherwise notified by FICC that it will receive such information at a different time, FICC shall inform each Netting Member of its monthly Guaranty Fund Requirement no later than the first Business Day of each month. Pursuant to the proposed rule, any deficit in a Netting Member’s Guaranty Fund Requirement must be funded by the Monthly Guaranty Fund Deposit Deadline on the first Business Day of each month unless otherwise determined by FICC. The term “Monthly Guaranty Fund Deposit Deadline” would be defined in GSD Rule 1 to mean the deadline set forth by

governance process set forth in the Clearing Agency Model Risk Management Framework (“MRM Framework”). The Clearing Agencies have adopted and maintain the MRM Framework, which sets forth the model risk management practices that the Clearing Agencies follow to identify, measure, monitor, and manage the risks associated with the design, development, implementation, use, and validation of quantitative models. *See* Securities Exchange Act Release No. 81485 (Aug. 25, 2017), 82 FR 41433 (Aug. 31, 2017) (SR-DTC-2017-008; SR-FICC-2017-014; SR-NSCC-2017-008).

FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.³⁰

In addition, Section 4(b) of proposed Rule 4A would state that the Guaranty Fund Requirement of each Netting Member to the Guaranty Fund would be determined pursuant to the allocation calculation set forth in the proposed rules, as discussed in Section 1.g. below.

Section 4(b) of proposed Rule 4A would also permit FICC to recalculate the size of the Guaranty Fund more frequently than monthly or reestablish the monthly size of the Guaranty Fund under certain circumstances set forth in the proposed rules, as discussed in Section 1.f. below.

In connection with these proposed changes, FICC would also update GSD Rule 1 to include a definition for “Cover 2 Requirement” that refers to the meaning given to that term in Section 4 of proposed Rule 4A.

f. Intramonth Resizing of Guaranty Fund

Section 4(c) of proposed Rule 4A would set forth requirements for any intramonth resizing of the Guaranty Fund. Under the proposed rule, if at any time FICC observes a daily Stress Test Deficiency that exceeds certain thresholds established by FICC (“Intramonth Resizing Threshold”), FICC would have the authority to reestablish the size of the Guaranty Fund on an intramonth basis (“Intramonth Resizing”) at an amount determined by FICC to reduce such Stress Test Deficiency below the Intramonth Resizing Threshold (“Adjusted Guaranty Fund Size”). The proposed rule would also provide that FICC may establish parameters to limit intramonth fluctuations in the size of the Guaranty Fund, similar to the collars established for monthly sizing of the Guaranty Fund discussed above. Pursuant to the proposed rule, the re-allocation of Guaranty Fund Requirements due to any Intramonth Resizing would be done based on the Adjusted Guaranty Fund Size pursuant to the standard allocation formula used for monthly Guaranty Fund sizing discussed in Section 1.g. below.

Under the proposed rule, FICC would notify each Netting Member of any Intramonth Resizing of the Guaranty Fund, and any deficit due to an Intramonth Resizing of the Guaranty

³⁰ FICC generally expects to notify Members of their monthly contribution requirement by no later than 11:00 a.m. Eastern Time on the first business day of each month and would require all deficits to be satisfied by 2:45 p.m. Eastern Time on the first business day of the month.

Fund must be funded by the Intramonth Guaranty Fund Deposit Deadline on the same Business Day of notification unless otherwise determined by FICC. The term “Intramonth Guaranty Fund Deposit Deadline” would be defined in GSD Rule 1 as the deadline set forth by FICC for such purpose in its procedures, unless FICC has issued a notice extending such deadline pursuant to the GSD Rules.³¹ The terms “Intramonth Resizing Threshold” and “Intramonth Resizing” would also be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

In addition to resizing the Guaranty Fund, FICC would also propose rules to allow FICC to collect Stress Test Deficiency Charges directly from those Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for any intramonth resizing of the Guaranty Fund. FICC believes that the proposed approach would align with a “defaulter pays” approach to addressing the additional risk presented by those Members whose Stress Test Deficiencies drive significant stress test exposures at FICC on an intramonth basis and also help to provide important stability and predictability for potential intramonth changes in the Guaranty Fund. The proposed Stress Test Deficiency Charge is discussed in further detail in Section 2.c. below.

g. Allocation of Guaranty Fund Requirements

Section 4(d) of proposed Rule 4A would set forth the allocation calculation used to determine each Netting Member’s Guaranty Fund Requirement. Pursuant to the proposed rule, each Netting Member’s Guaranty Fund Requirement shall be calculated as the greater of (i) the Netting Member’s pro rata share of the largest Cover 2 Requirement observed over a designated lookback period or (ii) the minimum Guaranty Fund Requirement as determined by FICC from time to time (“Minimum Guaranty Fund Requirement”). The Minimum Guaranty Fund Requirement for each Netting Member would be set by FICC at an amount no less than \$100,000 and no

greater than \$5 million,³² and each Netting Member’s pro rata share of the largest Cover 2 Requirement would be determined using each Netting Member’s average daily largest Stress Test Deficiencies as compared to the sum of all Netting Members’ average daily largest Stress Test Deficiencies over a designated lookback period.³³ In addition, the term Minimum Guaranty Fund Requirement would be defined in GSD Rule 1 as having the definitions set forth in Section 4 of proposed Rule 4A.

FICC believes that the proposed allocation methodology would appropriately allocate each Netting Member’s contribution to the Guaranty Fund, and their associated loss allocation obligations, in direct proportion to the risk presented by each Netting Member’s contribution to Stress Test Deficiencies observed by FICC under its daily stress testing.

h. Initial and Adjusted Guaranty Fund Requirements

Sections 4(e) and 4(f) of proposed Rule 4A would describe initial Guaranty Fund Requirements for new Netting Members and FICC’s authority to adjust Guaranty Fund Requirements in the event of actions such as mergers, consolidations, position transfers, and business expansions.

Section 4(e) of proposed Rule 4A would state that the initial Guaranty Fund Requirement of each new Netting Member would be equal to the Minimum Guaranty Fund Requirement established by FICC pursuant to Section 4(d) of proposed Rule 4A.

In addition, proposed Section 4(e) would permit FICC to adjust the Guaranty Fund Requirement of a Netting Member, until such time as FICC determines, to address any change in the risk profile of such Netting Member due to mergers, consolidations, position transfers, business expansions, membership approval or other similar events.

FICC believes that the proposed initial and adjusted Guaranty Fund

Requirement processes are appropriate to allocate the expected risks that may be presented by Netting Members until such time as those risks can be incorporated into FICC’s stress test results over the applicable lookback period.

i. Purpose and Use of Guaranty Fund; Replenishing Deficits in the Guaranty Fund

Section 5 of proposed Rule 4A would describe the intended purpose and use of the Guaranty Fund. Pursuant to the proposed rule, each Netting Member’s deposit to the Guaranty Fund may be used by FICC (i) to secure each Netting Member’s performance of obligations to FICC, including, without limitation, each Netting Member’s obligations with respect to any loss allocations as set forth in proposed Rule 4C (discussed below) and any obligations arising from a Cross-Guaranty Agreement pursuant to GSD Rule 41 (Cross Guaranty Agreements) or a Cross-Margining Agreement pursuant to GSD Rule 43 (Cross-Margining Arrangements); (ii) to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Guaranty Fund; and (iii) for investment as set forth in Section 3 of proposed Rule 4A (as discussed above).

The proposed rule would further provide that, upon the occurrence of a Defaulting Member Event with respect to a Netting Member, FICC shall, after appropriate application of such Netting Member’s Clearing Fund and other funds in the accounts of such Netting Member, apply such Netting Member’s Guaranty Fund Deposit to satisfy any loss, liability, or the performance of any obligations to FICC prior to applying the Corporate Contribution or allocating losses pursuant to proposed Rule 4C.

The proposed rule would also clarify that each time FICC uses any part of the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations for more than 30 calendar days, FICC, at the Close of Business on such 30th calendar day (or, if such day is not a Business Day, on the first Business Day thereafter) from the day of such use, shall consider the amount used but not yet replenished by FICC as a loss to the Guaranty Fund and immediately allocate such loss in accordance with proposed Rule 4C.

Section 7 of proposed Rule 4A would then describe the requirements for Netting Members to replenish any deficits in the Guaranty Fund. Specifically, the proposed rule would state that, if FICC’s application or use of a Netting Member’s Guaranty Fund

³¹ FICC generally expects to notify Members of any intra-month collection by no later than 11:00 a.m. Eastern Time and would require any deficits to be satisfied by 2:45 p.m. Eastern Time.

³² FICC would initially set the Minimum Guaranty Fund Requirement at \$1 million, subject to adjustment pursuant to FICC’s internal market risk management procedures. FICC would review the Minimum Guaranty Fund Requirement on at least an annual basis to ensure that it is calibrated to an amount that is consistent with achieving FICC’s targets for the sufficiency of total prefunded financial resources. Netting Members would be notified of any changes to the Minimum Guaranty Fund Requirement via Important Notice and update to the FICC website at least one business day in advance.

³³ FICC would initially establish this lookback period as a rolling 12-month period, which may be subject to periodic adjustment under the governance process set forth in the MRM Framework. See *supra* note 29.

Deposit as permitted pursuant to proposed Rule 4C results in any deficiency in the Netting Member's Guaranty Fund Requirement, the Netting Member shall, upon FICC's demand, satisfy the deficit in its Guaranty Fund Requirement, immediately or within such time as FICC shall require, subject to the Loss Allocation Caps set forth in proposed Rule 4C (as described in Section 3 below). The proposed rule would further state that if the Netting Member fails to do so, FICC may take disciplinary action against such Netting Member pursuant to Rule 21 or Rule 48, and any such disciplinary action that FICC takes or the voluntary or involuntary cessation of membership shall not affect the Netting Member's obligations to FICC or any remedy to which FICC may be entitled under applicable law.

j. Withdraw of Excess and Return of Guaranty Fund Deposits

Sections 6 and 8 of proposed Rule 4A would describe the withdrawal of excess Guaranty Fund Deposits and the return of a Netting Member's Guaranty Fund Requirement after their withdrawal from membership at GSD. Section 6 of proposed Rule 4A would provide that, following the completion of any resizing of the Guaranty Fund, FICC would determine whether the amount deposited by a Member in the Guaranty Fund is in excess of its Guaranty Fund Requirement ("Excess Guaranty Fund Deposit"). If FICC has determined that an Excess Guaranty Fund Deposit exists, FICC would notify each such Member of such excess and return the Member's Excess Guaranty Fund Deposit in accordance with such procedures as FICC may set forth from time to time, subject to FICC's rights to require additional amounts to be deposited by a Member. However, the proposed rule would further provide that Excess Guaranty Fund Deposits shall not be returned to a Member to the extent that such return would (i) reduce the amount of the Member's Cross-Guaranty Repayment Deposit to the Guaranty Fund below the amount required to be maintained pursuant to Section 4 of Rule 41 or (ii) reduce the amount of the Member's Cross-Margining Repayment Deposit to the Guaranty Fund below the amount required to be maintained pursuant to Section 6 of Rule 43 (as described in further detail in Section 4.a. below).³⁴

³⁴ FICC notes that the proposed limitations on withdrawing Excess Guaranty Fund Deposits below the Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit amounts is

The proposed rule would, however, also provide FICC with the discretion to retain some or all of a Member's Excess Guaranty Fund Deposit if the Member has an outstanding payment or margin obligation to FICC, including but not limited to outstanding deficits in such Member's Required Fund Deposit or unpaid Funds-Only Settlement Amounts. FICC notes that the proposed rule is generally similar to the GSD Rules concerning withdrawal of excess Clearing Fund deposits, with certain modifications intended to reflect the differing treatment between Clearing Fund as initial margin and the Guaranty Fund as a default fund.³⁵

Pursuant to Section 8 of proposed Rule 4A, if a Member gives notice to FICC of its election to withdraw from membership, the Member's Guaranty Fund Deposit would be returned to it within thirty (30) calendar days after all of its transactions have settled and all matured and contingent obligations to FICC for which the Member was responsible while a Member have been satisfied. Additionally, FICC would have the discretion to retain an amount equal to any Cross-Guaranty Repayment Deposit and/or Cross-Margining Repayment Deposit of any Member until such time as FICC determines that such Member is no longer liable to FICC under Rule 41 and/or Rule 43 to reimburse FICC for any Cross-Guaranty Repayment or Cross-Margining Repayment, respectively, that it may be obligated to make under any relevant Cross-Guaranty Agreement or Cross-Margining Agreement. FICC notes that this authority is generally consistent with the GSD Rules concerning the return of a Member's Clearing Fund deposits.³⁶ Furthermore, the proposed rule would clarify that, if FICC ceases to act for a Member, FICC would return any excess Guaranty Fund Deposit to it within thirty (30) calendar days after all of its obligations have been satisfied, and until such time, FICC may use such Guaranty Fund Deposit to the same extent as would be permissible had FICC not ceased to act for the Defaulting Member.

2. Proposed Changes to the Clearing Fund

FICC proposes to modify GSD Rule 4 and the Margin Component Schedule of the GSD Rules and make other conforming changes throughout the GSD

consistent with existing limitations on the withdrawal of Excess Clearing Fund Deposits in Section 10 of GSD Rule 4, which would be removed from the GSD Rules and replaced with the proposed rule described above.

³⁵ See Section 10 of GSD Rule 4, *supra* note 4.

³⁶ See Section 8 of GSD Rule 4, *supra* note 4.

Rules to (i) support bankruptcy remote treatment for Clearing Fund deposits as initial margin; (ii) exclude Clearing Fund deposits from the loss allocation calculation; (iii) adopt a new Stress Test Deficiency Charge that would be imposed on Netting Members or Affiliated Families whose Stress Test Deficiencies exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund; (iv) eliminate fixed minimum Required Fund Deposit amounts and minimum charges for Segregated Indirect Participants Accounts and for Cross-Margining Customers Accounts; (v) modify the associated minimum cash requirements for Required Fund Deposits; (vi) modify the GSD Rules concerning the use of Clearing Fund for liquidity risk management purposes; and (vii) make other clean up changes to Rule 4 concerning Clearing Fund requirements.

a. Bankruptcy Remoteness of Clearing Fund

FICC proposes to modify GSD Rule 4 to provide for Clearing Fund deposits at GSD to be bankruptcy remote from FICC. FICC understands that many Members are subject to regulatory capital rules (either directly or on a consolidated basis) that require such Members to hold capital against margin they post to a CCP unless such margin is "bankruptcy remote" from the CCP. The U.S. regulatory capital rules define "bankruptcy remote" as, "with respect to an entity or asset, that the entity or asset would be excluded from an insolvent entity's estate in receivership, insolvency, liquidation, or similar proceeding."³⁷ FICC understands that market participants generally view this definition as being satisfied if the institution "can conclude that the margin is subject to arrangements that would prevent the margin from being subject to (1) competing claims of (and, thus, distribution to) a CCP's creditors generally or (2) loss due to the CCP's default, including insolvency (e.g., as a result of the CCP's exercise of re-use, repledge, rehypothecation or other transfer rights), such that, in either case, the margin (or its liquidation value) would be unavailable for return to the [institution] in the CCP's [i]nsolvency."³⁸

³⁷ 12 CFR 217.2 "Bankruptcy remote."

³⁸ Futures Industry Association, Arrangements Necessary to Support a Positive Bankruptcy

The proposed changes to the GSD Rules include a number of provisions designed to facilitate Members' ability to conclude that Clearing Fund posted to FICC is bankruptcy remote from FICC for purposes of the regulatory capital rules. In particular, FICC proposes changes to Section 1 (Required Fund Deposit) of GSD Rule 4 to provide for FICC to credit all Clearing Fund it collects to a "securities account" on FICC's books and records (*i.e.*, the Netting Member Clearing Fund Custody Account) and to treat such Clearing Fund as "financial assets" within the meaning of the Uniform Commercial Code as in effect in the State of New York ("NYUCC"). The proposed changes would further provide that New York would be the "securities intermediary's jurisdiction" for purposes of the NYUCC and New York law would govern all issues specified in Article 2(1) of the Hague Securities Convention. These would ensure that New York law would be the "otherwise applicable non-bankruptcy law" for purposes of ascertaining which assets constitute property of FICC's estate in the event of FICC's insolvency, as discussed in more detail below.

In addition, the proposed changes to Section 1 of GSD Rule 4 would require FICC to hold Clearing Fund either (i) in an account at a commercial bank, which must be a "bank" within the meaning of the Exchange Act that is insured by the Federal Deposit Insurance Corporation and is a qualified custodian under the Investment Company Act of 1940, as amended or (ii) in an account at the Federal Reserve Bank of New York ("FRBNY"). In the case of the former, the proposed rules would require that the account be segregated from any other account of FICC, used exclusively to hold Clearing Fund, and be subject to a written agreement that Clearing Fund in such account is subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. In the case of the latter, the proposed changes would provide that the account may not be subject to any lien or security interest other than such as is required by FRBNY. In order to ensure that such lien is never operative, the proposed rules would require FICC to maintain sufficient funds within the account at all times to satisfy all fees or costs incurred and owed to the FRBNY

and would prohibit FICC from taking any action that would result in over-drafting or a negative balance or otherwise give rise to any obligation (other than for fees) secured by any lien on the account. FICC also proposes other changes throughout GSD Rule 4 to prohibit FICC from using Clearing Fund other than to secure the posting Member's performance of obligations to FICC (Section 5 of GSD Rule 4), to allow for investment in accordance with FICC's Investment Policy (Section 5 of GSD Rule 4), and to grant the security interest in any FRBNY account required by FRBNY (Sections 1 and 11 of GSD Rule 4).

The foregoing changes would ensure that, in the event of FICC's insolvency, the Clearing Fund would not form part of FICC's estate or be available to FICC's general creditors, and that, instead, the Netting Members who posted the Clearing Fund would have the right to its return.

The only insolvency or resolution regimes to which FICC could be subject are the U.S. Bankruptcy Code or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Orderly Liquidation Authority," or "OLA"). In any such proceeding, the question of whether a given asset, such as Clearing Fund, constitutes property of FICC's estate would be a question of otherwise applicable non-bankruptcy law. This is because neither the U.S. Bankruptcy Code nor OLA specifies the assets in which a debtor has a legal or equitable interest³⁹ (and because FICC

is not eligible for the special distributional rules applicable to "commodity brokers"⁴⁰ and "stockbrokers"⁴¹).

As discussed above, New York law would be the "otherwise applicable non-bankruptcy law" that determines whether FICC has any interest in the Clearing Fund. Because the proposed changes to the GSD Rules would provide for FICC to credit the Clearing Fund to a "securities account" and to treat such Clearing Fund as "financial assets" within the meaning of the NYUCC, each Netting Member would be an "entitlement holder" and have a "security entitlement" against FICC with respect to the Clearing Fund it posts, and FICC would be a "securities intermediary," within the meaning of the NYUCC.⁴² NYUCC Section 8–503(a) provides:

To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8–511 [of the NYUCC].

Accordingly, in the event of FICC's insolvency, the Clearing Fund that FICC holds for Members would not be part of FICC's estate and would be reserved for its entitlement holders, *i.e.*, the Members, except as provided in NYUCC

broker" to mean "futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title"; 11 U.S.C. 761(8) (defining "futures commission merchant" by reference to the Commodity Exchange Act); 11 U.S.C. 761(2) (defining "clearing organization" as a registered derivatives clearing organization); 17 CFR 190.00(c) (limiting the scope of the Commission's Part 190 Rules to futures commission merchants and registered derivatives clearing organizations); 11 U.S.C. 101(53A) (defining "stockbroker" as a person with respect to which there is a customer as defined in 11 U.S.C. 741 and that is engaged in the business of effecting transactions in securities for the account of others or with members of the general public, from or for such person's own account).

⁴⁰ See 11 U.S.C. 761, *et seq.*

⁴¹ See 11 U.S.C. 741, *et seq.*

⁴² See NYUCC § 8–102(a)(14)(ii) (defining "securities intermediary" as "a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity"). As a registered clearing agency, FICC is also automatically a securities intermediary within the meaning of the NYUCC. See NYUCC § 8–102(a)(14)(i) (defining "securities intermediary" to include a "clearing corporation"); NYUCC § 8–102(a)(5) (defining clearing corporation as a person that is registered as a clearing agency under the Securities Exchange Act).

³⁹ See 11 U.S.C. 541(a)(1) (defining a Bankruptcy Code debtor's estate as generally including "all legal or equitable interest of the debtor in property"); *Butner v. United States*, 440 U.S. 48, 54–55 ("The Bankruptcy Act does include provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors. Apart from these provisions, however, Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"); *In re FCX, Inc.*, 853 F.2d 1149, 1153 (4th Cir. 1988) ("[N]either 541(a), nor any other Bankruptcy Code provision, answers the threshold questions of whether a debtor has an interest in a particular item of property and, if so, what the nature of that interest is. . . . The existence and nature of a debtor's, and hence the estate's, interest in property must be determined by resort to nonbankruptcy law."). OLA is heavily modeled on the Federal Deposit Insurance Act (the "FDIA"), under which it is well established that the "rights, titles, powers, and privileges" acquired by the FDIC as receiver are generally to be determined pursuant to applicable state law. See *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 86–87 (1994) ("It is hard to avoid the conclusion that [12 U.S.C.] 1821(d)(2)(A) places the FDIC in the shoes of the insolvent S & L, to work out its claims under state law. . . ."); 12 U.S.C. 5390(a)(1)(i) (containing substantially similar language to 12 U.S.C. 1821(d)(2)(A)). While the Bankruptcy Code sets forth certain special distributional rules for commodity brokers and stockbrokers, these rules would not be applicable to FICC. See 11 U.S.C. 101(6) (defining "commodity

Remoteness Conclusion Under the Cleared Transaction Rules of U.S. Basel III With Respect to Collateral Posted by a Clearing Member to a Central Counterparty (Oct. 31, 2013), available at www.fia.org/sites/default/files/2019-05/FIA%20Guidance%20on%20CCP%20Bankruptcy%20Remote%20Requirements.pdf.

Section 8–511. That provision states, in relevant part, that, with limited exceptions:

if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

The exceptions to the foregoing rule only apply in the event that the securities intermediary has pledged the financial assets underlying the security entitlements to creditors. As described above, the proposed rules would affirmatively prohibit FICC from pledging any Clearing Fund it holds, with the exception of the lien that FRBNY may require on the Clearing Fund held in an account at FRBNY. Because the proposed rules would require FICC to maintain at all times sufficient funds within such account to satisfy all fees or costs incurred and owed to the FRBNY and prohibit FICC from taking any action that would give rise to any obligation (other than for fees) secured by such lien, the FRBNY's lien would never be operative. As a result, it would not interfere with the operation of NYUCC Section 8–503.

Accordingly, the proposed changes to the GSD Rules would serve to render Clearing Fund bankruptcy remote from FICC by ensuring that such Clearing Fund does not form part of FICC's estate, is not available to any competing creditors of FICC, and is available for distribution to Members in an FICC insolvency.

In connection with the foregoing changes, FICC also proposes to delete rule text in Section 1 of GSD Rule 4 stating that FICC shall not be required to segregate each Netting Member's Actual Deposit, but shall maintain books and records concerning the assets that constitute each Netting Member's Actual Deposit, as this rule would be replaced and superseded by the proposed rules concerning the treatment of the Netting Member Clearing Fund Custody Account discussed above.

FICC would also define the term “Netting Member Clearing Fund Custody Account” in GSD Rule 1 to mean a securities account within the meaning of the NYUCC maintained by FICC, in its capacity as securities intermediary as such term is used in the NYUCC, for the benefit of such Netting Member.

FICC also proposes additional clarifying and conforming changes throughout the GSD Rules in connection

with the proposed changes to support the bankruptcy remote treatment of Clearing Fund deposits. Specifically, FICC would modify Section 11 (Corporation's Authority to Pledge and Assign) of GSD Rule 4 concerning its authority to pledge and assign Clearing Fund to reflect that, under the proposed changes, FICC would no longer have broad authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing loans made to FICC. Rather, the proposed rule would only provide that FICC would, solely to the extent and for the purpose of satisfying any requirement imposed by the Federal Reserve Bank of New York in connection with any account maintained by it, have full power and authority to pledge, repledge, hypothecate, transfer, create a security interest in, or assign any and all or grant a security interest in Actual Deposits and any proceeds thereof for the purpose of securing FICC's obligation to the Federal Reserve Bank of New York.

FICC would also make changes throughout GSD Rule 4 to remove language describing Clearing Fund securities as pledged or used to secure open account indebtedness at FICC and make clear that such securities, as well as all Clearing Fund consisting of cash, constitute Clearing Fund deposits credited to the relevant Netting Member's Netting Member Clearing Fund Custody Account. Considering that all Clearing Fund posted by a Netting Member, whether in the form of cash or securities, would remain property of the Netting Member pledged to FICC to secure all obligations of the Netting Member under the Rules, there would be no need for the Rules to refer to open account indebtedness or to suggest that only Clearing Fund securities are pledged.

FICC would also modify Section 4 (Lien) of GSD Rule 4 to include the proposed Guaranty Fund deposits in the list of Netting Member assets in which a Netting Member grants to FICC a first priority perfected security interest in its right, title and interest in and to. This language would make clear that Guaranty Fund deposits posted by a Netting Member to FICC, like all Clearing Fund deposits, would secure all of the obligations of the Netting Member under the Rules.

b. Exclusion of Clearing Fund From the Calculation of Loss Allocation Obligations

In connection with proposed changes to support the bankruptcy remote

treatment of Clearing Fund, FICC proposes to modify Rule 4 of the GSD Rules to exclude non-defaulting Members' Clearing Fund deposits from the calculation of loss allocation obligations at GSD.

FICC would remove the majority of the rules in Section 7 of GSD Rule 4 concerning the loss allocation waterfall from GSD Rule 4, and relocate those rules to new proposed Rule 4C (as discussed in Section 3 below), with substantial modifications to reflect the exclusion of non-defaulting Members' Required Fund Deposits from the calculation of loss allocation obligations and the replacement thereof with the 200 percent of a Member's Guaranty Fund Requirement discussed above. Section 7 of GSD Rule 4 would be renamed to “Off-the-Market Transactions” and would retain only those rules related to the direct allocation of losses to the specific Member that was the counterparty to any Off-the-Market Transactions.⁴³

FICC also proposes to modify Section 5 (Use of Clearing Fund and Segregated Customer Margin) of GSD Rule 4 to remove language stating that the obligations of each Member to FICC the performance of which FICC may secure using Clearing Fund include each Member's obligations to FICC with respect to any loss allocations as set forth in Section 7 of GSD Rule 4. Such language is not necessary and may cause confusion considering there are a number of other obligations a Member has to FICC. FICC also proposes to add language to clarify that the Clearing Fund could be used to satisfy any loss or liability incurred by FICC as the result of the failure of a specific Defaulting Member to fulfill its obligations to FICC as set forth in Section 6 of GSD Rule 4.

Additionally, FICC would update Section 6 (Application of Clearing Fund Deposits and Other Amounts to Defaulting Members' Obligations) of GSD Rule 4 to reflect that any loss or liability incurred by FICC as the result of the failure of a Defaulting Member to fulfill its obligations shall “first” be satisfied as set forth in Section 6 “prior to the application of the resources pursuant to proposed Rule 4C.” FICC would also update Section 6 of GSD Rule 4 to reflect that the collateral and

⁴³ Section 7 of GSD Rule 4 provides, in part, that to the extent that a loss or liability of FICC is determined to arise in connection with the close-out or liquidation of an Off-the-Market Transaction in the portfolio of a Defaulting Member, it shall be allocated directly and entirely to the Member that was the counterparty to such Off-the-Market Transaction. See Section 7 of GSD Rule 4, *supra* note 4. This part of the GSD Rules would remain unchanged.

other assets held by FICC securing a Defaulting Member's obligations include such Defaulting Member's Guaranty Fund Deposits.

c. Stress Test Deficiency Charge

FICC proposes to adopt a new "Stress Test Deficiency Charge" to address changes in stress test exposures and significant increases in Netting Member Stress Test Deficiencies. The Stress Test Deficiency Charge would be defined in the Margin Component Schedule of the GSD Rules as an additional charge that may be added to a Netting Member's Required Fund Deposit to address Stress Test Deficiencies for any Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family)⁴⁴ or (ii) exceed the upper bound parameter established for monthly or intramonth resizing of the Guaranty Fund.⁴⁵ FICC would also update GSD Rule 1 to include a definition for "Stress Test Deficiency Charge" to have the meaning given that term in the Margin Component Schedule.

With respect to Stress Test Deficiencies exceeding the predetermined thresholds in relation to the total Required Fund Deposits of all other Members (or the Required Fund Deposit "ratio"), the Stress Test Deficiency Charge would be determined as an amount needed to reduce the ratio below the Required Fund Deposit ratio threshold. For Stress Test Deficiencies exceeding the upper bound parameter for changes in the Guaranty Fund size, the Stress Test Deficiency Charge would be determined as the amount needed to reduce the allocation (to all Netting Members) of any resized Guaranty Fund in excess of the upper bound parameter or "collar."

The proposed rule would also provide FICC with the authority to maintain any Stress Test Deficiency Charge until the next monthly sizing of the Guaranty Fund. Accordingly, upon the application of a Stress Test Deficiency Charge, FICC would generally maintain the charge for the remainder of the month and review the charge prior to the next monthly reset of the Guaranty Fund to determine if the charge should remain based on the application of these predefined thresholds and parameters.

⁴⁴ FICC would initially establish this threshold as a ratio of 30 percent, which is aligned to its existing Cover 1 stress testing ratio thresholds for monitoring a Member's stress deficiency in relation to the total Required Fund Deposits of all other Members (excluding such Member).

⁴⁵ See *supra* note 29 and associated text.

The Stress Test Deficiency initial margin add-on would be imposed to collect additional initial margin resources to (i) mitigate future deficiencies that could impact the size of the Guaranty Fund and/or (ii) reduce the allocation of any Guaranty Fund resizing that exceeds the upper bound parameter or collar established for limiting increases in the size of the Guaranty Fund, as discussed above. The proposed Stress Test Deficiency charge would serve two purposes. First, it would allow FICC to preemptively address Stress Test Deficiencies to reduce the likelihood of an intramonth resizing and avoid the allocation of such risks to Members that are not driving those exposures. Second, to the extent that a Member incurs a Stress Test Deficiency that exceeds the collar established for limiting increases in the Guaranty Fund, the Stress Test Deficiency initial margin add-on charge would also be applied to mitigate or reduce amount of the Guaranty Fund increase that is allocated to Members that are not driving those exposures.

As described in Section 1.a. above, while Registered Investment Company Netting Members are generally excluded from Guaranty Fund Requirements, Registered Investment Company Netting Members may be subject to Stress Test Deficiency Charges to address additional risk exposures that may arise if their Stress Test Deficiencies exceed the applicable thresholds and parameters discussed above. FICC notes that any resources collected in the form of a Stress Test Deficiency Charge would be part of the Registered Investment Company Netting Member's initial margin and would therefore be consistent with the exclusion of Registered Investment Company Netting Members from loss mutualization.

FICC believes that the Stress Test Deficiency Charge is necessary and appropriate to address increases in stress test exposures so that FICC is able to collect sufficient financial resources from its Members prior to exceeding the Cover 2 Requirement, and to allocate those charges to the Netting Members driving those increased exposures. FICC believes that the proposed Stress Test Deficiency Charge would align with a "defaulter pays" approach to addressing FICC's stress test exposures and associated risks and help to provide important stability and predictability for Guaranty Fund sizing and associated requirements for its Netting Members.

d. Elimination of Fixed Minimum Required Fund Deposit Amounts

FICC proposes to modify the Margin Component Schedule of the GSD Rules

to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers.

Section 2(d) of the Margin Component Schedule discusses minimum charges and total Required Fund Deposit amounts for Netting Member Margin Portfolios, Sponsoring Member Omnibus Account Required Fund Deposits, Agent Clearing Member Omnibus Account Required Fund Deposits, and Sponsored GC CIL Omnibus Account Required Fund Deposits. Pursuant to this rule, FICC currently imposes a Required Fund Deposit amount equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of \$1 million (or, in the case of a Netting Member Margin Portfolio that includes Broker Accounts, a minimum charge of \$5 million).⁴⁶

FICC proposes to modify Section 2(d) of the Margin Component Schedule to remove the fixed minimum Required Fund Deposit amounts and instead provide that FICC may from time to time establish a minimum charge for each Netting Member's Margin Portfolios, which shall not be greater than \$1 million ("Minimum RFD Charge"). The proposed changes to Section 2(d) of the Margin Component Schedule would also clarify that margin requirements for Margin Portfolios and Required Fund Deposits for each applicable account type would be equal to the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges; and (ii) any Minimum RFD Charge imposed by FICC, if applicable (rather than the fixed minimum charges currently set forth in the GSD Rules). Upon implementation of the proposed change, FICC would initially set all Minimum RFD Charge amounts at \$0. However, FICC would monitor its margin coverage and reserve the right to impose a Minimum RFD Charge of up to \$1 million for particular account types as determined appropriate by FICC based on factors such as backtesting coverage data.

FICC would make similar modifications to Section 3(c) of the Margin Component Schedule, which discusses minimum charges and total Required Fund Deposit amounts for Segregated Customer Margin Requirements and Segregated Indirect Participants Accounts, and Section 3a(c) of the Margin Component Schedule,

⁴⁶ See Section 2(d) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

which discusses minimum charges and total Required Fund Deposit amounts for Cross-Margining Customer Margin Requirements for Cross-Margining Customers. Pursuant to these rules, FICC currently imposes a margin charge equal to the greater of the Unadjusted GSD Margin Portfolio Amount and all applicable additional charges for such accounts or a minimum charge of \$1 million, with the discretion to adjust the minimum charge if such an adjustment would be appropriate and consistent with achieving FICC's backtesting coverage target.⁴⁷

FICC proposes to modify Section 3(c) and 3a(c) of the Margin Component Schedule to remove the fixed minimum charge amounts for Segregated Indirect Participants and Cross-Margining Customers, respectively, and instead provide that FICC may from time to time establish a minimum charge for each Segregated Indirect Participant, which shall not be greater than \$1 million ("Minimum SIP Margin Charge") and each Cross-Margining Customer, which shall not be greater than \$1 million ("Minimum Customer Margin Charge"). FICC would also modify Section 3(c) and 3a(c) of the Margin Component Schedule to clarify that for purposes of determining Required Fund Deposits for Segregated Indirect Participants Accounts and Cross-Margining Customer Margin Requirements, FICC would take the greater of (i) the sum of the Unadjusted GSD Margin Portfolio Amounts and all applicable additional charges; and (ii) any Minimum SIP Margin Charge or Minimum Customer Margin Charge imposed by FICC, respectively, if applicable. Upon implementation of the proposed change, FICC would initially set all Minimum SIP Margin Charge and Minimum Customer Margin Charge amounts at \$0. However, FICC would monitor its margin coverage and reserve the right to impose a minimum charge of up to \$1 million for these account types as determined appropriate by FICC based on factors such as backtesting coverage data.

In connection with these proposed changes, FICC would also add defined terms in GSD Rule 1 for "Minimum RFD Charge," "Minimum Customer Margin Charge," and "Minimum SIP Margin Charge" to have the meaning given to such terms in the Margin Component Schedule.

Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty

Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICC's Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements,⁴⁸ and Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model.⁴⁹

FICC notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (*e.g.*, a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC-GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC-GSD's various access models and/or utilizing multiple accounts under each model. FICC also notes that indirect participants have raised concerns about the \$1 million per indirect participant minimum charge limiting the ability of indirect participants to access FICC's segregated customer margin offerings.⁵⁰ FICC therefore believes that removing these fixed minimum charges, and imposing minimums only where such charges are necessary for FICC to maintain sufficient coverage of its risk exposures, would promote greater access to clearing for both direct and indirect market participants.

While FICC would initially set all minimum charge amounts to \$0, FICC would continue to monitor its exposures and would maintain the authority

within the GSD Rules to impose minimum charges of up to \$1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data to ensure that FICC maintains sufficient coverage of its risk exposures from its participants. FICC would inform Members of any changes in the Minimum RFD Charge, Minimum Customer Margin Charge or Minimum SIP Margin Charge by Important Notice posted to FICC's website.

e. Adjustments to Minimum Cash Requirements for Required Fund Deposits

In connection with the proposed elimination of fixed minimum Required Fund Deposits and minimum charges for Segregated Indirect Participants Accounts and Cross-Margining Customers, FICC would also modify Section 3 (Form of Deposit) of GSD Rule 4 to adjust the minimum cash composition requirements for Netting Member Required Fund Deposits, Segregated Customer Margin Requirement for Segregated Indirect Participants Accounts, and Cross-Margining Customer Margin Requirement for Cross-Margining Customer Accounts. FICC currently imposes a \$1 million minimum cash requirement for Netting Member Required Fund Deposits.⁵¹ For Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements, FICC imposes a minimum cash requirement of the product of \$1 million and the number Segregated Indirect Participants or Cross-Margining Customers whose Transactions are recorded in their respective accounts.⁵²

In the absence of FICC maintaining fixed minimum Required Fund Deposits and minimum charges as discussed above, these minimum cash requirements would serve as unintended default minimum Required Fund Deposits and charges for Members. As a result, FICC proposes to modify these rules to require only that the first \$1 million of any Required Fund Deposit Portion, Segregated Customer Margin Requirement for each Segregated Indirect Participants Account, or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash. FICC also proposes to adopt a new requirement that the lesser of \$5,000,000 or 10

⁴⁸ See Sections 2(a), 2(c), 3(a), 3a(a) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁴⁹ See Sections 2(b), 2(c), 3(b), 3a(b) and 5 of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁵⁰ See Letter from Jennifer W. Han, Executive Vice President, Chief Counsel & Head of Global Regulatory Affairs, MFA, to Vanessa Countryman, Secretary, SEC (Nov. 12, 2024), available at www.sec.gov/comments/sr-ficc-2024-005/srficc2024005-539698-1546082.pdf.

⁴⁷ See Sections 3(c) and 3a(c) of the Margin Component Schedule of the GSD Rules, *supra* note 4.

⁵¹ See Section 3(b) of GSD Rule 4, *supra* note 4.

⁵² See Sections 3(c) and 3(d) of GSD Rule 4, *supra* note 4.

percent of any Segregated Customer Margin Requirement for each Segregated Indirect Participants Account or Segregated Customer Margin Requirement for each Cross-Margining Customer Account be made and maintained in cash, with the remaining portion of the requirement to be made and maintained in the form specified in Section 3 of GSD Rule 4. This additional cash composition requirement would align the requirements for Segregated Indirect Participants Accounts and Cross-Margining Customer Accounts with the existing requirement for each Netting Member's Required Fund Deposit Portion.

FICC believes the proposed changes are necessary and appropriate to accommodate the proposed elimination of minimum Required Fund Deposits, Segregated Customer Margin Requirements and Cross-Margining Customer Margin Requirements while still requiring that up to the initial amount of \$1 million be funded in cash to ensure a baseline level of highly liquid resources to be deposited as margin in each Netting Member account, Segregated Indirect Participants Account and Cross-Margining Customer Account. Furthermore, FICC notes that under the proposal, Netting Members would also be subject to Minimum Guaranty Fund Requirements, which would be composed entirely of cash.

f. Use of Clearing Fund for Liquidity Risk Management

As part of the proposal, FICC also proposes to modify Section 5 of GSD Rule 4 concerning the use of Clearing Fund and Segregated Customer Margin to (i) clarify that FICC would no longer have the authority to "borrow" Clearing Fund deposits of non-defaulting Members to provide liquidity to FICC to meet its settlement obligations and (ii) provide FICC with the authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations.

First, FICC would remove item (ii) of the first paragraph of Section 5 of GSD Rule 4, which currently provides FICC with the authority to use the Clearing Fund to provide liquidity to FICC to meet its settlement obligations, including, without limitation, through the direct use of cash in the Clearing Fund or through the pledge or rehypothecation of pledged Eligible Clearing Fund Securities in order to secure liquidity. FICC would also remove the second paragraph of Section 5 of GSD Rule 4, which discusses the

charging and allocation of losses for any such Clearing Fund borrowings that remain outstanding for more than 30 calendar days.

Second, FICC would add a new paragraph (b) to Section 5 of GSD Rule 4 setting forth FICC's authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasury securities to provide liquidity to FICC to meet its settlement obligations. The proposed rule would provide that FICC may, for purposes of obtaining liquidity to meet its settlement obligations, exchange Clearing Fund consisting of cash for U.S. Treasury securities, including such securities deposited as Clearing Fund of a Defaulting Member or due to be delivered to a Defaulting Member or a Member who failed to satisfy its settlement obligation. The proposed rule would further provide that FICC shall effect such exchanges proportionally among Netting Members (other than any Defaulting Member) based on the amount of each Netting Member's Clearing Fund consisting of cash relative to the total amount of Clearing Fund consisting of cash, and subject to considerations such as operational feasibility and the value of the specific securities to be exchanged. FICC would notify each Member whose cash Clearing Fund deposits are used in this manner in accordance with FICC's procedures. Pursuant to the proposed rule, any such exchange shall constitute a purchase by each relevant Member of the securities subject to such exchange using such Member's cash Clearing Fund deposits, and the securities subject to such exchange shall be credited to each relevant Member's Netting Member Clearing Fund Custody Account(s) from which the cash Clearing Fund deposits were removed and shall constitute Clearing Fund deposits of such Netting Member.

In addition, the proposed rule would stipulate that the amount of securities that FICC shall provide to the Netting Member in any such sale shall be, at FICC's election, (A) an amount of securities having a market value, after applying the relevant haircut that FICC applies for Clearing Fund purposes, equal to the amount of cash subject to such exchange or (B) an amount of securities having a market value (without regard to haircuts) equal to the cash subject to such exchange, in each case as reasonably determined by FICC. Further, if FICC elects option (B), FICC shall not, for purposes of calculating Clearing Fund requirements, subject any securities sold to the Netting Member pursuant to clause (ii) to a haircut. Under the proposed rule, FICC may, but

shall not be obligated to, repurchase the securities sold in such exchange at a date subsequent for the current market value therefor, as reasonably determined by FICC.

In connection with these proposed changes, FICC would also modify GSD Rule 20 (Special Provisions for GCF Repo Transactions) to remove rules allowing FICC to consider borrowing of Clearing Fund for settlement purposes if a Net Funds Payor who is otherwise in good standing does not satisfy its cash obligations to FICC and replace those rules with the authority to consider available Guaranty Fund or other liquidity resources available to FICC.

In sum, the proposal would eliminate FICC's authority to borrow Clearing Fund for liquidity purposes in order to facilitate the bankruptcy remote treatment of Clearing Fund as initial margin and remove Clearing Fund from the loss allocation calculation at GSD. The proposed changes would, however, permit FICC to access an important source of liquidity through the exchange of non-defaulting Netting Members' Clearing Fund deposits in the form of cash for U.S. Treasury securities. Accordingly, FICC believes the proposed change, together with the introduction of the proposed Guaranty Fund, would enhance FICC's default liquidity pool and lower the potential default liquidity obligations from Members.

g. Other Proposed Changes

Finally, FICC proposes additional changes to Rule 4 to clarify and enhance its rules regarding the Clearing Fund. Specifically, FICC would modify Section 9 (Initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirements, and Changes in Members' Required Fund Deposit, Segregated Customer Margin Requirements, and Cross-Margining Customer Margin Requirements) of GSD Rule 4 to remove a specific requirement that Netting Members make their initial Required Fund Deposit, Segregated Customer Margin Requirement (if applicable), and Cross-Margining Customer Margin Requirement (if applicable) no later than five (5) Business Days prior to the Business Day on which such Person becomes a Netting Member and instead require only that such deposits be made within such timeframe as may be prescribed by FICC. Based on FICC's experience with new Member onboarding and account activations, FICC believes that a fixed five (5) Business Day requirement can present burdens and obstacles for Members in funding their requirements

prior to determining their account activation dates, which may often occur in a period of time shorter than five (5) Business Days. FICC believes that a more reasonable standard is to allow Netting Members to make their initial Required Fund Deposit, Segregated Customer Margin Requirement, and Cross-Margining Customer Margin Requirement deposits prior to the activation of their membership, without specifying a fixed number of days.

3. Proposed Changes to Loss Allocation Waterfall

FICC proposes to establish a new Rule 4C titled “Loss Allocation” to set forth GSD’s loss allocation rules. FICC would relocate the current loss allocation rules in Section 7 of GSD Rule 4 to proposed Rule 4C and modify the rules to (i) incorporate the proposed Guaranty Fund into the loss allocation rules and exclude the Clearing Fund from the loss allocation calculation and loss mutualization; (ii) eliminate the concept of Tier One Netting Members and Tier Two Members and exclude CCIT Members and Registered Investment Company Netting Members from loss allocation; (iii) adopt a new five-day “cooling-off period” for Defaulting Member Events and Declared Non-Default Loss Events (also referred to as an “Event Period”); and (iv) impose an assessment cap on loss allocation during each cooling-off period equal to two times (or 200 percent of) the Member’s Guaranty Fund Requirement during any Event Period in lieu of the existing loss allocation rounds system.

a. Loss Allocation Waterfall Generally

Section 1 of proposed Rule 4C would set forth general terms regarding loss allocation, including that for purpose of proposed Rule 4C, the term Netting Member would not include Registered Investment Company Netting Members. The proposed rule is intended to reflect the elimination of the Tier Two Member category and the exclusion of Registered Investment Company Netting Members (as well as CCIT Members) from loss allocation, as discussed further in Section 3.b. below. Section 1 of proposed Rule 4C would also incorporate the existing definition of “Defaulting Member” from Section 7 of GSD Rule 4 (*i.e.*, a Member for which the Corporation has ceased to act pursuant to GSD Rule 21 or GSD Rule 22) for purposes of applying such term to proposed Rule 4C.

Section 2 of proposed Rule 4C would set forth the overall loss allocation framework for FICC-GSD. FICC proposes to relocate the majority of the first introductory section of existing Section

7 of GSD Rule 4⁵³ to Section 2 of proposed Rule 4C with several minor modifications.

First, FICC would relocate the definitions of Defaulting Member Event and Declared Non-Default Loss Event at the beginning of Section 7 of GSD Rule 4 to GSD Rule 1, with minor, non-substantive changes to conform to the style of GSD Rule 1, rather than including those definitions in proposed Rule 4C. FICC believes these terms are appropriately defined in GSD Rule 1 as they are used in several GSD Rules and not only in proposed Rule 4C.

Second, the next four paragraphs of the introductory section of Section 7 of GSD Rule 4 would be moved to Sections 2(a), 2(b) and 2(b)(i) and 2(b)(ii), respectively, with only minor modifications. Most significantly, the paragraph describing how FICC would attribute the amount of a loss or liability from one or more Defaulting Member Events would be revised to remove rule text explaining the allocation between Tier One Netting Members and Tier Two Members and instead state that if the loss or liability with respect to an Event Period results from one or more Defaulting Member Events or Declared Non-Default Loss Events, FICC shall determine the amount of such loss or liability that is attributable to Netting Members.

Third, the last paragraph of the introductory section of Section 7 of GSD Rule 4 would be relocated to Section 2(c) of proposed Rule 4C without changes.

Fourth, FICC would delete from the GSD Rules the paragraph in Section 7 of GSD Rule 4 discussing the allocation of losses from Off-the-Market Transactions as that topic is already addressed in Section 6 of GSD Rule 4.

Fifth, FICC would relocate existing Section 7a (Corporate Contribution) of GSD Rule 4 in its entirety to Section 3 of proposed Rule 4C, with only minor modification to remove a reference to “Section 7 of this Rule” as a result of the proposed relocation of the Rule.

b. Elimination of Tier One Netting Member and Tier Two Member Categories

FICC proposes to eliminate the concept of Tier One Netting Members and Tier Two Members from the GSD Rules. As discussed above, FICC currently categorizes Members into two different tiers for loss allocation purposes. A Tier One Netting Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss

allocation purposes. A Tier Two Member is a Netting Member whose membership category has been designated as such by FICC pursuant to GSD Rule 2A for loss allocation purposes or a CCIT Member.⁵⁴

Currently, only CCIT Members and Registered Investment Company Netting Members are designated as Tier Two Members.⁵⁵ As proposed herein, all Netting Members (except for Registered Investment Company Netting Members) would be subject to Guaranty Fund Requirements and loss allocation, and both CCIT Members and Registered Investment Company Netting Members would be excluded from Guaranty Fund Requirements and loss allocation.

Tier Two Members (*i.e.*, CCIT Members and Registered Investment Company Netting Members) are currently only subject to loss allocation in a limited manner and only with respect to Defaulting Member Events. Specifically, in the event of one or more Defaulting Member Events, FICC would only allocate losses to Tier Two Members, after application of the Corporate Contribution, to the extent they traded with the defaulting Member and their trades resulted in the loss.⁵⁶ FICC understands that Registered Investment Companies are subject to regulatory requirements restricting their ability to incur mutualized losses. In addition, CCIT Members only provide liquidity as a cash lender via triparty arrangements in the CCIT Service and do not present market risk to FICC due to the perfected security interest FICC has in such CCIT Member’s underlying repo securities. As a result, FICC believes it is appropriate to exclude CCIT Members and Registered Investment Company Netting Members from Guaranty Fund Requirements and loss allocation.

In connection with this proposed change, FICC would remove the Tier Two Members section of Section 7 of GSD Rule 4 from the GSD Rules in its entirety. FICC would also make the following conforming changes to the GSD Rules as these rules would no longer be applicable for the reasons set forth above.

- Remove the definitions of Tier One Netting Members and Tier Two Members from GSD Rule 1;
- Remove rules concerning the categorization of Tier Two Members from Section 2 of GSD Rule 2 (Members);

⁵⁴ See definitions of “Tier One Netting Member” and “Tier Two Member” in GSD Rule 1, *supra* note 4.

⁵⁵ See Section 2(c) of GSD Rule 2 and Section 3(a)(viii) of GSD Rule 2A, *supra* note 4.

⁵⁶ See *supra* note 19.

⁵³ See Section 7 of GSD Rule 4, *supra* note 4.

- Remove a reference to Registered Investment Company Netting Members being Tier Two Members in Section 3 of GSD Rule 2A (Initial Membership Requirements);

- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning the voluntary withdrawal of membership in Section 12 of GSD Rule 3 (Ongoing Membership Requirements);

- Remove a reference to Tier One Netting Members, and include reference to Registered Investment Company Netting Members, in the discussion of members eligible to become Sponsoring Members in Section 2 of GSD Rule 3A (Sponsoring Members and Sponsored Members);

- Remove a reference to Tier One Netting Members, and replace it with Netting Members, concerning loss allocation obligations in Section 12 of GSD Rule 3A;

- Remove Section 7 (Loss Allocation Obligations of CCIT Members) of GSD Rule 3B (Centrally Cleared Institutional Triparty Service); and

- Remove references to Tier Two Members and replace them with references to CCIT Members and Registered Investment Company Netting Members in Section 3 of GSD Rule 49 (DTCC Shareholders Agreement);

c. Allocation of Losses to Netting Members

In connection with the proposed changes described above, FICC also proposes to relocate the Tier One Netting Members section of Section 7 of GSD Rule 4⁵⁷ and the rules concerning withdrawal of a Member following loss allocation in Section 7b (Withdrawal Following Loss Allocation) of GSD Rule 4⁵⁸ to Sections 4 and 5 of proposed Rule 4C. The proposed rules would contain modifications to reflect the elimination of the Tier One Netting Member category from the GSD Rules and the application of the loss allocation rules to all Netting Members, excluding Registered Investment Company Netting Members (and excluding CCIT Members).

Section 4 of proposed Rule 4C would describe the loss allocation process for Netting Members. In general, Section 4 of proposed Rule 4C would retain the concept of an Event Period for Defaulting Member Events and/or Declared Non-Default Loss Events that occur within the designated period, and such events would be grouped together for purposes of applying the limits on loss allocation set forth in proposed

Rule 4C. Section 4 of proposed Rule 4C would, however, reduce the length of the Event Period from ten (10) Business Days to five (5) Business Days, and modify the application of the loss allocation (or assessment) cap for each Event Period. These changes are discussed in further detail in Section 3.d. below.

As proposed, the Event Period for a Defaulting Member Event would continue to begin on the day FICC notifies Members that it has ceased to act for the Defaulting Member (or the next Business Day, if such day is not a Business Day), consistent with the existing Section 7 of GSD Rule 4. With respect to a Declared Non-Default Loss Event, an Event Period would continue to begin on the day that FICC notifies Members of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day), which notification shall be issued promptly following any such determination, consistent with existing Section 7 of GSD Rule 4. Section 4 of proposed Rule 4C would also continue to state that, if a subsequent Defaulting Member Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period, consistent with the existing Section 7 of GSD Rule 4. FICC notes, however, that the timeframe for determining the losses or liabilities arising out of or relating to any Defaulting Member Event during a given Event Period would not be limited to the five (5) Business Day Event Period.

Additionally, Section 4 of proposed Rule 4C would provide that each Netting Member that is a Netting Member on the first day of an Event Period shall be obligated to pay its “Allocated Loss.” The Allocated Loss of a Netting Member would be defined as the pro rata share, as determined by FICC based on the amount of such Netting Member’s Guaranty Fund Requirement as compared to the total Guaranty Fund size (excluding any Corporate Contribution and, in the case of a Defaulting Member Event, any Guaranty Fund Deposits of the Defaulting Member), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in

respect of such Event Period. The “Loss Allocation Cap” of a Netting Member in respect of an Event Period would be further defined in the proposed rule as an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period, as discussed in further detail in Section 3.d. below. The proposed rules would define each Netting Member’s Loss Allocation Cap based on its Guaranty Fund Requirement rather than its Required Fund Deposit, to reflect the adoption of the Guaranty Fund as FICC–GSD’s default fund. The proposed rule would also remove the concept of loss allocation “rounds” and instead describe the loss allocation process in terms of FICC–GSD’s overall Loss Allocation Cap for Netting Members.

Section 4 of proposed Rule 4C would also provide that any Netting Member for which FICC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, shall be deemed to be a Netting Member on the first day of that Event Period. The proposed rule would also require FICC to communicate to Netting Members their respective Allocated Losses by the issuance of a notice specifying such amount and the relevant Event Period to which it relates (the “Loss Allocation Notice”). These proposed rules would be generally consistent with existing Section 7 of GSD Rule 4 with certain modifications to apply such rules to Netting Members rather than Tier One Netting Members and reflect the proposed adoption of the defined term “Allocated Losses.” The proposed rule would also continue to allow each Netting Member five (5) Business Days from the issuance of the first Loss Allocation Notice for the Event Period to notify FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C (as discussed below). Section 4 of proposed Rule 4C would also further clarify that a Defaulting Member whose Guaranty Fund Deposits or other resources remain available for use by FICC in accordance with the Rules shall be deemed to have provided its withdrawal notice on the date of the first Loss Allocation Notice after FICC has ceased to act for such Defaulting Member.

Section 4 of proposed Rule 4C would require Netting Members to pay to FICC the amount specified in any Loss Allocation Notice on the second Business Day after FICC issues any such notice, consistent with existing GSD Rules. Section 4 of proposed Rule 4C would also provide that, if a Netting Member fails to make payment to FICC in respect of a Loss Allocation Notice by

⁵⁷ See Section 7 of GSD Rule 4, *supra* note 4.

⁵⁸ See Section 7b of GSD Rule 4, *supra* note 4.

the time such payment is due, FICC shall have the right to proceed against such Netting Member as a Defaulting Member that has failed to satisfy an obligation in accordance with proposed Rule 4C, which is also consistent with existing Section 7 of GSD Rule 4.

FICC also proposes to eliminate the loss allocation limitations on Inter-Dealer Broker Netting Members with respect to activity in their Broker Account(s). Under Section 7 of GSD Rule 4, an Inter-Dealer Broker Netting Member with respect to activity in its Broker Account(s) shall not be subject to an aggregate loss allocation in an amount greater than \$5 million in losses and liabilities resulting from an Event Period. This current limitation on loss allocation treatment for Inter-Dealer Broker Netting Member Broker Accounts reflects that, while Inter-Dealer Broker Netting Members may have directional position exposure with FICC with respect to the transactions in such accounts, the Inter-Dealer Broker Netting Member is generally intermediating between FICC Members and non-Members with offsetting positions. As a result of the general nature of this activity, FICC recognized the offsetting nature of their overall activity and therefore limited their loss allocation exposures. Under the Commission's Treasury Clearing rules, both of the Inter-Dealer Broker Netting Member's transactions with its respective counterparties will be required to be submitted into clearing, thereby allowing FICC to directly recognize and account for the offsetting exposure within the Inter-Dealer Broker Netting Member's Broker Account(s).⁵⁹ With the proposed establishment of the Guaranty Fund, FICC believes that it is appropriate to eliminate this legacy limitation on loss allocation for Inter-Dealer Broker Netting Members and include Inter-Dealer Broker Netting Members' Accounts in the Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts, as applicable) because (i) an Inter-Dealer Broker Netting Member's Broker Account(s) should not be subject to significant Guaranty Fund Requirements stemming from activity in non-directional (*i.e.*, matched book) accounts based on the proposed allocation methodology and (ii) any directional activity of an Inter-Dealer Broker Netting Member in its Dealer Account would present risk to FICC that FICC would need to manage

in the event of the default of that Member in the same manner as the directional activity of any other Netting Member. As a result, FICC believes that including Inter-Dealer Broker Netting Members in the proposed Guaranty Fund and loss allocation methodology (both for their Broker Accounts and their Dealer Accounts) would appropriately capture the risk that should be covered in the loss allocation process.

Section 5 of proposed Rule 4C would set forth the requirements for Netting Members to withdraw from membership following loss allocation to limit their exposures to future loss allocations under a subsequent Event Period. Consistent with existing Section 7 of GSD Rule 4, Section 5 of proposed Rule 4C would provide that, if a Netting Member notifies FICC of its election to withdraw from membership, the Netting Member shall comply with the provisions of Section 5 of proposed Rule 4C. If, after notifying FICC of its election to withdraw from membership pursuant to Section 5 of proposed Rule 4C, the Netting Member fails to comply with the provisions of Section 5 of proposed Rule 4C, its notice of withdrawal shall be deemed void and any further losses resulting from any subsequent Event Period may be allocated against it as if it had not given such notice. With respect to an Event Period, only Netting Members that have not submitted a Loss Allocation Withdrawal Notice in accordance with Section 5 of this Rule shall be subject to further loss allocation with respect to any subsequent Event Period.

Section 5 of proposed Rule 4C would also state that a Netting Member that elects to withdraw pursuant to Section 5 of proposed Rule 4C shall not be eligible to re-apply to become a Member unless, prior to submitting such application, it makes the payment(s) to FICC that would have been due pursuant to this Rule as if the Netting Member had not withdrawn, together with interest on that amount at a rate determined by FICC calculated from the date on which the Event Period began. The proposed rule would also be largely consistent with existing Section 7 of GSD Rule 4, with two minor modifications. FICC would replace reference to re-applying to become a "Comparison-Only Member or a Netting Member" with the more general term "Member." FICC would also replace a reference to the interest rate payable (*i.e.*, Federal Funds Rate plus one percent) with a more general statement that FICC would determine such rate to allow FICC to adjust the rate based on

its current investment practices and market rates.

Section 5 of proposed Rule 4C would also set forth the requirements for Netting Members submitting notice of their withdrawal from membership, consistent with the requirements of existing Section 7b of GSD Rule 4. Section 5 of proposed Rule 4C would provide that, if a Netting Member timely notifies FICC of its election to withdraw from membership in respect of an Event Period (hereinafter, the "Loss Allocation Withdrawal Notice"), the Netting Member shall: (i) specify in the Loss Allocation Withdrawal Notice an effective date for its withdrawal from membership, which date shall not be prior to the scheduled final settlement date of any remaining obligation owed by the Netting Member to FICC, unless otherwise approved by FICC; and (ii) as of the time of such Netting Member's submission of the Loss Allocation Withdrawal Notice to FICC, cease submitting transactions to FICC for processing, clearance or settlement, unless otherwise approved by FICC.

Section 5 of proposed Rule 4C would further provide that a Netting Member that withdraws in compliance with the requirements of this section shall nevertheless remain obligated for its Allocated Loss with respect to any Event Period for which it is otherwise obligated hereunder; however, it shall not be subject to any loss allocation in respect of any subsequent Event Period that commences after the Corporation's receipt of the Member's Loss Allocation Withdrawal Notice. If the Netting Member fails to comply with the requirements, its Loss Allocation Withdrawal Notice would be deemed void, and the Netting Member would remain subject to further loss allocations pursuant to proposed Rule 4C as if it had not given such Loss Allocation Withdrawal Notice.

d. Cooling-Off Period and Loss Allocation Caps

FICC proposes to modify the GSD Rules to adopt a "cooling-off period" structure for its loss allocation process that would provide a clear, transparent and ex ante cap on the aggregate liability of its Netting Members for loss allocation during any Event Period. As proposed, Defaulting Member Events and/or Declared Non-Default Loss Events that occur within a period of five (5) Business Days would be grouped together in an Event Period for purposes of applying the limits on loss allocation set forth in proposed Rule 4C. Each Netting Member that is a Netting Member on the first day of an Event Period would be obligated to pay its

⁵⁹ See 17 CFR 240.17ad-22(e)(18)(iv)(A) and (B). See also Securities Exchange Act Release No. 99149 (Dec. 13, 2023), 89 FR 2714 (Jan. 16, 2024) (S7-23-22).

Allocated Loss, which would be defined as the pro rata share, determined by FICC based on the amount of such Netting Member's Guaranty Fund Requirement as compared to the total Guaranty Fund size (excluding any Corporate Contribution), in each case, on the first date of the Event Period, of losses and liabilities arising out of or relating to each Defaulting Member Event (other than a Defaulting Member Event with respect to which it is the Defaulting Member) and each Declared Non-Default Loss Event occurring during the Event Period, up to the amount of its Loss Allocation Cap in respect of such Event Period. The "Loss Allocation Cap" of a Netting Member in respect of an Event Period would be set at an amount equal to 200 percent of its Guaranty Fund Requirement on the first date of the Event Period.

Under FICC's current loss allocation rules, FICC may assess its Tier One Netting Members in loss allocation "rounds," which are a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Tier One Netting Members (a "round cap"). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. FICC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among those Tier One Netting Members who have not submitted a Loss Allocation Withdrawal Notice. Each Tier One Netting Member has five (5) Business Days from the issuance of the first Loss Allocation Notice for each round of loss allocation to notify FICC of its election to withdraw from membership pursuant to Section 7b of GSD Rule 4 and invoke its Loss Allocation Cap, which is equal to the greater of (x) its Required Fund Deposit on the first day of the applicable Event Period and (y) its Average RFD. Accordingly, FICC's current loss allocation rules hypothetically allow for unlimited loss allocation to Tier One Netting Members if they do not submit a Loss Allocation Withdrawal Notice. In practice, however, Tier One Netting Members can, and likely would, limit

their overall loss allocation obligations under an extreme stress scenario by notifying FICC of their intent to withdraw from membership.⁶⁰

FICC believes that the proposed 200 percent Loss Allocation Cap would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. Limiting the potential loss allocation amount during extreme market stress scenarios could prevent a "rush for the exit" scenario where many Netting Members seek to cap their liability by withdrawing from membership. It may also reduce the possibility of FICC imposing additional stress on its remaining Netting Members due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. While FICC acknowledges that the proposed changes to the Event Period and Loss Allocation Cap could hypothetically limit the amount of resources available to FICC in an extreme stress scenario, FICC notes that the proposed Loss Allocation Cap of 200 percent of a Member's Guaranty Fund Requirement would itself be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC's two largest Netting Member families using the extreme but plausible market shocks. FICC believes that it is unlikely that it would exhaust a 200 percent Loss Allocation Cap that is based on a Cover 2 Requirement during a given Event Period and notes that Netting Members could significantly limit the maximum loss allocation available to FICC under the current GSD Rules by withdrawing from membership in significant numbers during the beginning of any given loss allocation round.

4. Other Proposed Changes

a. Cross-Guaranty Repayment Deposits and Cross-Margining Repayment Deposits

Under the GSD Rules, certain Members may be required to make Cross-Guaranty Repayment Deposits to the Clearing Fund as Cross-Guaranty Beneficiary Members pursuant to Section 4 of GSD Rule 41 (Cross Guaranty Agreements)⁶¹ or Cross-Margining Repayment Deposits to the Clearing Fund as Cross-Margining

Beneficiary Participants pursuant to Section 6 of GSD Rule 43 (Cross-Margining Arrangements).⁶² These repayment deposits are intended to account for the amount of any reduction in an assessment made or that otherwise would have been made against a Cross-Guaranty Beneficiary Member or Cross-Margining Beneficiary Participant under the terms of a respective Cross Guaranty Agreement or Cross-Margining Arrangement. Such repayment deposits may be held by FICC for such time as FICC determines it may be liable for a repayment obligation under respective Cross Guaranty Agreement or Cross-Margining Arrangement, and to a resulting loss allocation pursuant to Section 7 of GSD Rule 4.

Because these deposits are intended to offset or reflect a reduction in such Member's loss allocation obligations, FICC believes that they would be more appropriately held in the Guaranty Fund, which would represent the pool of mutualized loss allocation resources, rather than Clearing Fund, which would constitute the Member's initial margin under the proposal described herein. As a result, FICC proposes to update the definition of the terms Cross-Guaranty Repayment Deposit and Cross-Margining Repayment Deposit in GSD Rule 1, Sections 4 and 5 of GSD Rule 41, and Sections 5 and 6 of GSD Rule 43 to reflect that these repayment deposits would be held in the Guaranty Fund. FICC would also modify Section 4 of GSD Rule 41 and Section 6 of GSD Rule 43 to clarify that any Cross-Guaranty Repayment Deposit amount and Cross-Margining Repayment Deposit amount, respectively, shall not be included in the calculation of the Member's Guaranty Fund Requirement.

b. Fine Schedule for Late Guaranty Fund Payments

In connection with the proposed adoption of the Guaranty Fund, FICC also proposes to adopt a new fine schedule for the late satisfaction of Guaranty Fund Requirements. The proposed fine schedule would be similar in structure to the current fine schedules in the GSD Rules for the late satisfaction of Clearing Fund deficiency calls and late payment of funds settlement debits. The proposed fine schedule is set forth below.

Amount	First occasion	Second occasion	Third occasion	Fourth occasion
Up to \$100M	\$100	\$200	\$500	\$1,000
Greater than \$100M to \$900M	300	600	1,500	3,000

⁶⁰ See Section 7 of GSD Rule 4, *supra* note 4.

⁶¹ See Section 4 of GSD Rule 41, *supra* note 4.

⁶² See Section 6 of GSD Rule 43, *supra* note 4.

Amount	First occasion	Second occasion	Third occasion	Fourth occasion
Greater than \$900M to \$1.7MM	600	1,200	3,000	6,000
Greater than \$1.7MM to \$2.5MM	900	1,800	4,500	9,000
Greater than \$2.5MM	1,000	2,000	5,000	10,000

FICC would determine the number of occasions for purposes of imposing a fine over a moving twelve-month period, beginning with the first occasion. If the number of occasions within the rolling period exceeds four, FICC would obtain the concurrence of the Board of Directors as to the amount of the fine. As proposed, a lateness of more than one hour would result in a fine equal to the amount applicable to the next highest occasion for the specific deficiency amount. If a member is late for more than one hour and it is the member's fourth occasion, FICC would be required to obtain the concurrence of the Board of Directors as to the amount of the fine.

c. Conforming Changes To Incorporate Guaranty Fund and Update References to Loss Allocation Throughout the GSD Rules

FICC proposes the following conforming changes throughout the GSD Rules to incorporate references to the proposed Guaranty Fund.

- Update the definition of “Legal Risk” in GSD Rule 1 to include references to Guaranty Fund Deposits and proposed Rule 4A (Guaranty Fund) and proposed Rule 4C (Loss Allocation)
- Update Section 1 of GSD Rule 2 concerning general membership requirements for the provision of FICC's services to include required contributions to the Guaranty Fund;
- Update Section 4 of GSD Rule 2 concerning membership qualifications and standards to include anticipated required contributions to the Guaranty Fund;
- Update Section 4 of GSD Rule 2 concerning membership agreements to include Guaranty Fund Requirements pursuant to proposed Rule 4A;
- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to include a reference to the return of Member's Guaranty Fund Deposits under Section 8 of proposed Rule 4A;
- Update Section 2 of GSD Rule 3A concerning Sponsoring and Sponsored Members to clarify that nothing in the GSD Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member, out of its Guaranty Fund Deposits;

- Update Section 7 of GSD Rule 13 (Funds Only Settlement) concerning the liability of Netting Members to include the Guaranty Fund in the amounts FICC may apply if a Netting Member fails to pay any portion of a Funds-Only Settlement Amount;

- Update GSD Rule 21A concerning the wind-down of a Netting Member to include that a Wind-Down Member would be prohibited from withdrawing Guaranty Fund on deposit in excess of its Guaranty Fund Requirement (in addition to Clearing Fund);

- Update GSD Rule 22C concerning interpretations related to the Federal Deposit Insurance Corporation Improvement Act of 1991 to include the Guaranty Fund in the provisions of the GSD Rules constituting a “security agreement or arrangement or other credit enhancement;”

- Update GSD Rule 39 concerning limitations of liability to include the Guaranty Fund in the list of GSD assets not available to obligations of MBSD;

FICC also proposes the following conforming changes throughout the GSD Rules to update references to the loss allocation Rules (currently referenced as Rule 4 or Section 7 of Rule 4) to refer to new Rule 4C.

- Update the definition of “Legal Risk” in GSD Rule 1 to include references to proposed Rule 4C (Loss Allocation);
- Update the definition of “Corporate Contribution” in GSD Rule 1 to refer to the relocation of associated rules in Section 3 of proposed Rule 4C;
- Update the definition of “Loss Allocation Cap” in GSD Rule 1 to refer to the relocation of associated rules in Section 7 of proposed Rule 4C;
- Update Section 12 of GSD Rule 3 concerning the voluntary termination of membership to refer to the relocation of certain loss allocation rules to Sections 4 and 5 of proposed Rule 4C;
- Update Section 12 of GSD Rule 3A concerning loss allocation obligations of Sponsoring and Sponsored Members to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 8 of GSD Rule 3B concerning the CCIT Service to refer to the relocation of certain loss allocation rules to proposed Rule 4C;
- Update Section 7 of GSD Rule 8 (Agent Clearing Service) concerning Agent Clearing Transaction processing

rules to refer to the relocation of certain loss allocation rules to proposed Rule 4C;

- Update Section 5 of GSD Rule 13 (Funds-Only Settlement) concerning the Funds-Only Settlement Amount Payment Process to refer to the relocation of certain loss allocation rules to proposed Rule 4C;

- Update GSD Rule 21A (Wind-Down of a Netting Member) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;

- Update Section 2 of GSD Rule 22A (Procedures for When the Corporation Ceases to Act) to refer to the relocation of certain loss allocation rules to proposed Rule 4C;

- Update GSD Rule 22B (Corporate Default) to refer to the relocation of certain loss allocation rules to proposed Rule 4C; and

- Update GSD Rule 22D (Wind-Down of the Corporation) to refer to the relocation of certain loss allocation rules to proposed Rule 4C.

Anticipated Impact on Members

FICC performed a study of the potential Guaranty Fund sizing and allocation impacts over the period January 2025–December 2025 (“Guaranty Fund Impact Study”). The Guaranty Fund Impact Study showed that the average overall Guaranty Fund size was approximately \$6 billion, ranging from approximately \$5.25 to \$6.37 billion. There were no intramonth collections or resizing observed during the Guaranty Fund Impact Study. With respect to individual Netting Member impacts, the average allocated monthly requirement was approximately \$42.6 million, with the maximum monthly allocation being approximately \$898 million (or 14 percent of the total Guaranty Fund). The top 10 Netting Members were allocated approximately \$3.62 billion each month (or 59 percent of the total Guaranty Fund).

FICC also performed a Member-level impact study of the proposed Stress Test Deficiency Charge over the period January 2025–December 2025 (“Stress Test Deficiency Charge Impact Study”). The Stress Test Deficiency Charge Impact Study compared Netting Members' daily Stress Test Deficiencies to the aggregate Clearing Fund across all Members (excluding the Clearing Fund contribution from the respective

Member) using the initial 30% threshold to determine the application of the charge.⁶³ The Stress Test Deficiency Charge Impact Study demonstrated that no breaches would have occurred in the review period and no Stress Test Deficiency Charges would have been applied using the initial 30% threshold.

Finally, FICC performed a backtesting study of its margin model reflecting the proposed removal of minimum Required Fund Deposit and minimum charge amounts over the period January 2025–December 2025 (“Backtesting Study”). The analysis incorporated recalculation of FICC–GSD’s existing Backtesting Charge that would have been applied if a Member incurred deficiencies that fell below the 99 percent coverage target. The Backtesting Study showed that backtesting coverage remained above the 99% coverage target when removing the minimum Required Fund Deposit and minimum charge amounts. The average increase in the Backtesting Charge would have been less than \$1 million across all Members, and the maximum increase in the Backtesting Charge would have been approximately \$1.74 million. Only three Members (out of 146 in the Backtesting Study) would have incurred an increase in the Backtesting Charge of \$1 million or more.

Implementation Timeframe

Subject to FICC receiving all necessary regulatory approvals, FICC expects to implement the proposed changes by no later than March 1, 2027. FICC would announce the effective date of the proposed changes by an Important Notice posted to FICC’s website.⁶⁴

Anticipated Effect on and Management of Risk

FICC’s ability to manage its credit exposures to participants and to timely complete settlement are key parts of FICC’s role as a CCP and allow FICC to mitigate counterparty risk within the U.S. markets. The proposed Guaranty Fund would provide an additional source of prefunded financial resources,

separate from the Clearing Fund, to serve as GSD’s “default fund.” The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members or Affiliated Families whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. FICC believes that establishing a separate Guaranty Fund designed to address extreme but plausible stress events would lower the risk profile of FICC and in turn lower the risk exposure that Members may have with respect to FICC in its role as a CCP.

Additionally, FICC believes that adopting a “cooling-off period” structure and a Loss Allocation Cap of 200 percent of a Member’s Guaranty Fund Requirement for its loss allocation rules would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. The proposed 200 percent Loss Allocation Cap would be sized to account for a two-time assessment based on a Guaranty Fund sized to cover the default of FICC’s two largest Netting Member families using the extreme but plausible market shocks, while also reducing the possibility of FICC imposing additional stress on its remaining Netting Members in a default event due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. FICC believes that these changes would therefore also lower the risk exposure that Members may have with respect to FICC in its role as a CCP.

FICC also believes that the proposed changes would continue to provide sufficient qualifying liquid resources for FICC to meet a Cover 1 Standard for

liquidity risk. As discussed above and in further detail below, the proposed change would remove FICC’s authority to directly borrow Clearing Fund cash or use a non-defaulting Member’s Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed changes would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. While this may result in an overall reduction of available liquidity resources for FICC, the amount of qualifying liquid resources would remain closely aligned to FICC’s daily Cover 1 liquidity measure. Accordingly, FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity.

Further, the proposal is designed to meet FICC’s risk management goals and its regulatory obligations, as described below.

Consistency With Section 805 Clearing Supervision Act

FICC believes the proposed rule changes are consistent with the Clearing Supervision Act.⁶⁵ Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.⁶⁶ FICC believes the proposed rule changes are consistent with the risk management objectives and principles of Section 805 of the Clearing Supervision Act.⁶⁷

(i) Consistency With Section 805(b) of the Clearing Supervision Act

Section 805(b) of the Clearing Supervision Act provides that “[t]he objectives and principles for the risk

⁶³ See *supra* note 44.

⁶⁴ Such approvals would include obtaining the consent of the Commission and the Commodity Futures Trading Commission (“CFTC”) prior to establishing the securities account proposed for the Netting Member Clearing Fund Custody Account, as conditioned under the exemptive order issued by the CFTC in connection with FICC’s customer cross-margining arrangement with the Chicago Mercantile Exchange, Inc. See Order Providing Exemptive Relief to Facilitate Cross-Margining of Customer Positions Cleared at Chicago Mercantile Exchange, Inc. and Fixed Income Clearing Corporation, 91 FR 20880, 20885 (April 20, 2026).

⁶⁵ 12 U.S.C. 5461, *et seq.*

⁶⁶ 12 U.S.C. 5461(b).

⁶⁷ 12 U.S.C. 5464.

management standards prescribed under subsection (a) shall be to (1) promote robust risk management; (2) promote safety and soundness; (3) reduce systemic risks; and (4) support the stability of the broader financial system.”⁶⁸

FICC believes the proposal is consistent with Section 805(b)(1) of the Clearing Supervision Act because it would support FICC’s robust risk management by establishing a Guaranty Fund to serve as an additional source of prefunded financial resources designed to cover and mutualize the risk of losses that may occur as a result of (i) a Defaulting Member Event under a wide range of foreseeable stress scenarios based on a Cover 2 Standard or (ii) a Declared Non-Default Loss Event. The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD’s “default fund.” The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement. The establishment of a Guaranty Fund based on a Cover 2 Standard would align FICC’s risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission, promoting greater consistency across the market’s systemically important infrastructures. FICC believes that by establishing a Guaranty Fund sized to meet a Cover 2 Requirement, FICC would be better positioned to address an extreme fixed income market stress event that could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC’s mandate as a systemically important financial market utility. FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund in the event that it observes significant

increases in its daily stress test exposures.

FICC also believes that adopting a “cooling-off period” structure and Loss Allocation Cap of 200 percent of a Member’s Guaranty Fund Requirement for its loss allocation rules would improve transparency and predictability for Netting Members regarding their potential loss allocation obligations during extreme market stress scenarios. It would also reduce the possibility of FICC imposing additional stress on its remaining Netting Members in a default event due to a continual obligation to replenish the Guaranty Fund, potentially weakening the financial condition of those Members. FICC believes that these changes would therefore also lower the risk exposure that Members may have with respect to FICC in its role as a CCP. Furthermore, FICC notes that the proposed 200 percent Loss Allocation Cap would be based on a two-time assessment of a Guaranty Fund sized to cover the default of FICC’s two largest Netting Member families using the extreme but plausible market shocks. FICC believes that it is unlikely that it would exhaust a 200 percent Loss Allocation Cap that is based on a Cover 2 Requirement during a given Event Period and acknowledges that Netting Members could limit the maximum loss allocation available to FICC under the current GSD Rules by withdrawing from membership in significant numbers during any given loss allocation round.

In its critical role as a CCP, FICC is also obligated to cover settlement and funds-only settlement, on an ongoing basis, in the event of a Member default. In order to sufficiently perform this role, FICC must have ready access to adequate liquidity resources. As noted above, the proposed change would remove FICC’s authority to directly borrow Clearing Fund cash or use a non-defaulting Member’s Clearing Fund securities as these deposits would constitute bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed authority to exchange a Netting Member’s Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient

qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity.

By strengthening and enhancing FICC’s credit, market and liquidity risk management, FICC also believes the proposal would promote safety and soundness, mitigate systemic risk in the financial system, and support the stability of the broader financial system in the event of a Member default, consistent with Section 805(b)(2)-(4) of the Clearing Supervision Act. By supplementing FICC’s existing prefunded financial resources with a prefunded Guaranty Fund, the proposal would contribute to FICC’s goal of assuring that FICC has adequate prefunded resources to meet its settlement obligations notwithstanding the default of any of its Members. FICC also believes the proposed cooling-off period and Loss Allocation Caps would promote safety and soundness, reduce systemic risks, support the stability of the broader financial system.

As a result, FICC believes the proposed rule changes would advance Section 805(b)’s objectives and principles of promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.

(ii) Consistency With Section 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like FICC.⁶⁹ Accordingly, the Commission has adopted risk management standards under this section and Section 17A of the Act.⁷⁰ These standards require covered clearing agencies to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.⁷¹ FICC believes that the proposed changes associated with the establishment of a Guaranty Fund at GSD are consistent with Rules 17ad–22(e)(4), (6), (7), (18) and (23) under the Act⁷² for the reasons described below.

Rule 17ad–22(e)(4) under the Act⁷³ requires generally that FICC establish, implement, maintain and enforce

⁶⁹ 12 U.S.C. 5464(a)(2).

⁷⁰ See 17 CFR 240.17ad–22(e).

⁷¹ *Id.*

⁷² 17 CFR 240.17ad–22(e)(4), (6), (7), (18) and (23).

⁷³ 17 CFR 240.17ad–22(e)(4).

⁶⁸ 12 U.S.C. 5464(b), *et seq.*

written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes. Rules 17ad–22(e)(4)(i) and (iii) under the Act⁷⁴ requires that such policies and procedures include (i) maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence and (ii) the maintenance of additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (that is, to maintain a Cover 1 Standard for prefunded financial resources to address its credit/market risk).⁷⁵

The proposed Guaranty Fund would provide an additional source of prefunded financial resources, separate from the Clearing Fund, to serve as GSD's "default fund." The Guaranty Fund would be sized based on daily stress testing using historical and hypothetical scenarios designed to achieve a Cover 2 Requirement, exclusive of FICC's proposed assessment authority for additional Guaranty Fund contributions. FICC proposes to adopt a more conservative Cover 2 Standard for its Guaranty Fund to align FICC's risk management practices more closely with other global CCPs, including other clearing agencies registered with the Commission and approved to clear U.S. Treasury activity, promoting greater consistency across the market's systemically important infrastructures.⁷⁶ FICC believes that a fixed income market stress event could impact more than one Netting Member in a similar manner given the portfolio risk profiles at GSD. Therefore, FICC believes a Cover 2 Requirement for its Guaranty Fund is consistent with FICC's mandate as a systemically important financial market utility. Further, FICC believes the size of the proposed Guaranty Fund that would be needed to maintain the Cover 2 Requirement would not present a significant burden on its Members based on both the projected size of a Guaranty Fund based on a Cover 2 Standard and resulting allocations, especially when considered

with the potential benefits of bankruptcy remote treatment of the current Clearing Fund and exclusion of Member's Clearing Fund deposits from the loss allocation calculation. In addition, FICC would also have the authority to impose additional Stress Test Deficiency Charges on Netting Members whose Stress Test Deficiencies (i) exceed predetermined thresholds in relation to the total Required Fund Deposits of all other Members (excluding such Member or Affiliated Family) or (ii) would cause the Guaranty Fund to be greater than the amount of the upper bound parameter established for the sizing of the Guaranty Fund, and, if necessary, to implement an intramonth resizing of the Guaranty Fund to ensure that FICC continues to meet its Cover 2 Requirement of the Guaranty Fund. For these reasons, FICC believes the proposed changes are consistent with the requirements of Rules 17ad–22(e)(4)(i) and (iii) under the Act.

Rule 17ad–22(e)(4)(vi) under the Act⁷⁷ requires that such policies and procedures include requirements for FICC to conduct stress testing of its total financial resources once each day using standard predetermined parameters and assumptions. As described above, the Clearing Agencies maintain the ST Framework, which sets forth the manner in which FICC performs stress testing of the sufficiency of its prefunded financial resources.⁷⁸ FICC would utilize its existing stress testing methodology and scenarios, as described in the ST Framework, including their associated parameters and assumptions, to size the Guaranty Fund and test the sufficiency of its total financial resources each Business Day. FICC believes the proposed changes are therefore consistent with the requirements of Rule 17ad–22(e)(4)(vi) under the Act.

Rules 17ad–22(e)(4)(viii) and (ix) under the Act⁷⁹ further require that such policies and procedures address the allocation of credit losses FICC may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers, and describe its process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated. As described above, the proposed GSD Rules (and consequently FICC's supporting policies and procedures

thereunder) would describe FICC's loss allocation process in proposed Rule 4C. This includes the determination of Event Periods and the Loss Allocation Caps associated therewith. Furthermore, Section 7 of proposed rule 4A would describe FICC's process for replenishing any deficits in the Guaranty Fund that may result from FICC's application or use of a Netting Member's Guaranty Fund Deposit as permitted pursuant to proposed Rule 4C. Section 5(c) of proposed Rule 4A would also address how FICC would repay any funds borrowed from the Guaranty Fund to provide liquidity to FICC to meet its settlement obligations. FICC therefore believes the proposed changes are consistent with the requirements of Rules 17ad–22(e)(4)(viii) and (ix) under the Act.

Rule 17ad–22(e)(6)(iii) under the Act⁸⁰ requires that FICC, as a CCP, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.

FICC proposes to modify the Margin Component Schedule of the GSD Rules to eliminate fixed minimum Required Fund Deposits for Members, fixed minimum charges for Segregated Indirect Participants Accounts and fixed minimum charges for Cross-Margining Customers. Rather than specifying fixed minimum charges in the GSD Rules, FICC proposes to modify the GSD Rules to provide the authority for FICC to establish minimum charges of up to \$1 million for particular account types and/or access models as determined appropriate by FICC. As described above, upon implementation of the proposal, FICC would initially set all required charge amounts to \$0. Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. This includes FICC's Portfolio Differential Charge, which is designed to mitigate the risks presented to FICC by period-over-period fluctuations in a Member's Margin Portfolio(s) that may occur between the collections of Required Fund Deposits Segregated Customer Margin

⁷⁴ 17 CFR 240.17ad–22(e)(4)(i) and (iii).

⁷⁵ Rule 17ad–22(e)(4)(iv) under the Act further requires that such prefunded financial resources be exclusive of assessments for additional guaranty fund contributions. See 17 CFR 240.17ad–22(e)(4)(iv).

⁷⁶ See *supra* note 11.

⁷⁷ 17 CFR 240.17ad–22(e)(4)(vi).

⁷⁸ See *supra* note 24.

⁷⁹ 17 CFR 240.17ad–22(e)(4)(viii) and (ix).

⁸⁰ 17 CFR 240.17ad–22(e)(6)(iii).

Requirements and Cross-Margining Customer Margin Requirements, and Backtesting Charge, which is an additional charge that may be added to a Netting Member's Required Fund Deposit, Segregated Customer Margin Requirement, or Cross-Margining Customer Margin Requirement to mitigate exposures caused by settlement risks that may not be adequately captured by FICC's portfolio volatility model. FICC also notes that historically, minimum Required Fund Deposit amounts were applied to Netting Members that had a limited number of accounts (e.g., a Netting Member account and/or Sponsoring Member Omnibus Account). As FICC-GSD has expanded its access models and the number of available account types, these minimum requirements were extended, resulting in the potential for a significant number of account-based minimums for Netting Members choosing to utilize FICC-GSD's various access models and/or utilizing multiple accounts under each model. FICC would continue to monitor its exposures, however, and would maintain the authority within the GSD Rules to impose minimum charges up to \$1 million for particular account types and/or access models as determined appropriate by FICC based on factors such as backtesting coverage data. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad-22(e)(6)(iii) under the Act.

Rule 17ad-22(e)(7)(i) under the Act⁸¹ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions (i.e., a Cover 1 Standard for liquidity resources).⁸²

FICC-GSD's liquidity risk is measured as the settlement payment obligation that FICC-GSD would have in the event of the default of the largest Netting

Member Affiliated Family and is calculated based on eligible positions in clearing. The liquidity need is determined by the securities destined to be delivered to the defaulting member, referred to as "inbound deliveries." As discussed above, FICC currently maintains qualifying liquid resources in the form of CCLF and Clearing Fund cash and has received necessary approvals to add a Commercial Paper Program.⁸³ CCLF is designed to address FICC's liquidity needs by directly engaging in CCLF Transactions for the inbound deliveries driving the liquidity need. However, CCLF Transactions are bilateral repo transactions based on current market value that are subject to market haircuts and may experience significant changes in market value under an extreme stress scenario. Under CCLF, if FICC declares a CCLF event, Members are required to hold and fund their deliveries to the insolvent Member (i.e., the inbound deliveries) up to a predetermined cap by entering into repo transactions (i.e., CCLF Transactions) with FICC.⁸⁴ FICC will accept securities delivered by a solvent Member that are destined for the insolvent Member in excess of the solvent Member's CCLF cap on a delivery-versus-payment (DVP) basis for FICC.

FICC may currently utilize Clearing Fund cash deposits or CCLF Transactions involving Clearing Fund Eligible Securities to address any shortfalls that may arise in resources versus liquidity needs resulting from such haircuts and changing market values.

As described above, the proposed change would remove FICC's authority to directly borrow Clearing Fund cash or use a non-defaulting Member's Clearing Fund securities for CCLF Transactions to facilitate the treatment of these deposits as bankruptcy remote initial margin. The proposed change would, however, provide FICC with a new source of qualifying liquid resources in the form of the Guaranty Fund as well as the ability to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries to provide liquidity to FICC. While this may result in an overall reduction of available liquidity resources for FICC, the amount of qualifying liquid resources would remain closely aligned to FICC's daily Cover 1 liquidity measure. Accordingly, FICC believes that CCLF combined with the proposed addition of Guaranty Fund cash (which itself is sized under extreme but plausible stress scenarios), the proposed

authority to exchange a Netting Member's Clearing Fund deposit in the form of cash for U.S. Treasuries, and proceeds from the Commercial Paper Program would provide sufficient qualifying liquid resources for FICC to continue to meet a Cover 1 Standard for liquidity. As a result, FICC believes the proposed changes are consistent with the requirements of Rule 17ad-22(e)(7)(i) under the Act.

Rule 17ad-22(e)(7)(ix) under the Act⁸⁵ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any liquid resources that it may employ during a stress event. As described above, FICC proposes changes to the GSD Rules to (i) exclude Clearing Fund from the calculation of loss allocation obligations and from its authority to borrow funds or securities for purposes of meeting its settlement obligations and (ii) establish a Guaranty Fund comprised of cash, which would, among other things, provide liquidity to FICC to meet its settlement obligations. FICC would also update the GSD Rules to describe its process for allocating losses and replenishing the Guaranty Fund in the event that it experiences any losses that would require the replenishment of such funds, which would be substantially similar to its existing process for replenishing any Clearing Fund deposits used as a liquidity resource during a stress event. As a result, FICC believes the proposed changes are consistent with Rule 17ad-22(e)(7)(ix) under the Act.

Rule 17ad-22(e)(18)(iv)(C) under the Act⁸⁶ requires FICC establish objective, risk-based, and publicly disclosed criteria for participation, which ensure it has appropriate means to facilitate access to its clearance and settlement services of all eligible market secondary transactions in U.S. Treasury securities, including those of indirect participants. FICC believes that eliminating the \$1mm minimum Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement per Segregated Indirect Participant and Cross-Margining Customer, respectively, would facilitate access to FICC's clearance and settlement services for eligible secondary market transactions in U.S. Treasury securities. This is because indirect participants have identified the \$1mm minimum charge as serving as a barrier to access FICC's clearance and

⁸¹ 17 CFR 240.17ad-22(e)(7)(i).

⁸² Rule 17ad-22(e)(7)(ii) under the Act further requires that such resources be in the form of qualifying liquid resources in each relevant currency for which FICC has payment obligations owed to its Members. See 17 CFR 240.17ad-22(e)(7)(ii) and *supra* note 20.

⁸³ See *supra* note 23.

⁸⁴ See Section 2a of GSD Rule 22A, *supra* note 4.

⁸⁵ 17 CFR 240.17ad-22(e)(7)(ix).

⁸⁶ 17 CFR 240.17ad-22(e)(18)(iv)(C).

settlement services.⁸⁷ Based on recent analysis performed by FICC in connection with the development of the proposed Guaranty Fund, FICC believes that its current margin methodology is effective in mitigating the exposure arising from fluctuations in its Members' portfolios without the need for minimum charges. Accordingly, FICC believes eliminating the fixed Segregated Customer Margin Requirement and Cross-Margining Customer Margin Requirement would facilitate access by indirect participants without disrupting FICC's ability to meet its obligations to Members consistent with Rule 17ad-22(e)(18) under the Act.

Rule 17ad-22(e)(23) under the Act⁸⁸ requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to, among other things, publicly disclose all relevant rules and material procedures, including key aspects of its default rules and procedures, and provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in FICC. The proposed changes to the GSD Rules would clearly set forth the establishment, maintenance, purpose and use of the proposed Guaranty Fund, including Netting Member's obligations to contribute Guaranty Fund Requirements on a pro rata basis. The proposed changes to the GSD Rules would also clearly and transparently describe Netting Members obligations with respect to loss allocation during a Defaulting Member Event, including the associated "cooling-off period" and Loss Allocation Caps that would apply to any designated Event Period, and their obligations to replenish any Guaranty Fund deposits used by FICC pursuant to the GSD Rules. The proposed changes to the GSD Rules would also clearly describe the proposed bankruptcy remote treatment of Clearing Fund deposits as "initial margin" and the limitations regarding the use of such deposits and their exclusion from loss allocation calculations. The proposed changes to the GSD Rules would also clearly set forth a fine schedule for late satisfaction of Guaranty Fund Requirements. The GSD Rules are publicly available on the FICC website. As a result, FICC believes the proposed changes are consistent with Rule 17ad-22(e)(23) under the Act.

For these reasons, FICC believes the proposal would support its compliance

with Rules 17ad-22(e)(4), (6), (7), (18) and (23) under the Act.⁸⁹

Accelerated Commission Action Requested

Pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,⁹⁰ FICC requests that the Commission notify FICC that it has no objection to the proposal as soon as practicable, in order ensure that FICC can establish the Guaranty Fund as additional source of prefunded financial resources on a timely basis given the importance of maintaining sufficient prefunded sources in connection with FICC's risk management.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. Comments may be

submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-FICC-2026-802 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-FICC-2026-802. 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 (www.sec.gov/rules/sro.shtml). Copies of the filing will be available for inspection and copying at the principal office of FICC and on DTCC's website (www.dtcc.com/legal/sec-rule-filings). Do not include personal identifiable information in submissions; you should submit only information that you wish 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-FICC-2026-802 and should be submitted on or before September 1, 2026.

V. Date of Timing for Commission Action

Section 806(e)(1)(G) of the Clearing Supervision Act provides that FICC may implement the changes if it has not received an objection to the proposed changes within 60 days of the later of (i) the date that the Commission receives the Advance Notice or (ii) the date that any additional information requested by the Commission is received,⁹¹ unless extended as described below.

Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension.⁹²

Here, as the Commission has not requested any additional information,

⁸⁷ See *supra* note 50.

⁸⁸ 17 CFR 240.17ad-22(e)(23).

⁸⁹ 17 CFR 240.17ad-22(e)(4), (6), (7), (18) and (23).

⁹⁰ 12 U.S.C. 5465(e)(1)(I).

⁹¹ 12 U.S.C. 5465(e)(1)(G).

⁹² 12 U.S.C. 5465(e)(1)(H).

the date that is 60 days after FICC filed the Advance Notice with the Commission is September 22, 2026. However, the Commission finds that the changes proposed in the Advance Notice raise novel and complex issues. Specifically, the proposed changes raise novel issues because the proposed Guaranty Fund represents an entirely new way to approach risk management at GSD. The proposed changes also raise complex issues because they are substantial, detailed, and interrelated with a broad range of FICC's risk management practices. Among other things, FICC would establish the Guaranty Fund with an entirely new set of sizing and re-sizing parameters and deposit requirements. FICC would also change the nature of the Clearing Fund to treat Required Fund Deposits as initial margin, excluding the Clearing Fund from loss mutualization and supporting bankruptcy remote treatment. Additionally, the proposed changes would include significant revisions to FICC's loss allocation processes, which are a key component of FICC's risk management. Therefore, the Commission finds it appropriate to extend the review period of the Advance Notice for an additional 60 days under Section 806(e)(1)(H) of the Clearing Supervision Act.⁹³

Accordingly, the Commission, pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act,⁹⁴ extends the review period for an additional 60 days so that the Commission shall have until November 21, 2026, to issue an objection or non-objection to Advance Notice SR-FICC-2026-802.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16281 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106051; File No. SR-MIAX-2026-34]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Interpretation and Policy .06, To Reduce the Waiting Periods for Retaking FINRA Qualification Examinations

August 6, 2026

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 6, 2026, Miami International Securities Exchange, LLC ("MIAX" 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 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 Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

The text of the proposed rule change is available on the Exchange's website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings>, and at MIAX's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

In general, the Exchange's current rules require that persons engaged in a Member's³ securities business who are to function as representatives⁴ or principals⁵ register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations⁶ and exempt specified associated persons from the registration requirements.⁷

Current Exchange Rule 1900, Interpretation and Policy .06, provides that "[a]ny person who fails to pass a qualification examination prescribed by the Exchange shall be permitted to take that examination again after a period of 30 calendar days has elapsed from the date of such person's last attempt to pass that examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking that examination until a period of 180 calendar days has elapsed from the date of such person's last attempt to pass that examination. The waiting periods for

³ The term "Member" means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed "members" under the Exchange Act. See Exchange Rule 100.

⁴ A "representative" is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. See Exchange Rule 1901.

⁵ A "principal" is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member's securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member's chief executive officer and chief financial officer (or equivalent officers). A "principal" also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. See Exchange Rule 1901.

⁶ See Exchange Rule 1901, Registration Categories, and Exchange Rule 1302, Registration of Representatives.

⁷ See Exchange Rule 1902, Associated Persons Exempt from Registration.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ 17 CFR 200.30-3(a)(91).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

retaking a failed examination shall apply to the SIE and the representative and principal examinations specified under Rule 1901.” In 2019, the Exchange adopted current Exchange Rule 1900, Interpretation and Policy .06, in response to the FINRA rule changes.⁸ The Exchange notes that current Exchange Rule 1900, Interpretation and Policy .06, is substantively similar to FINRA Rule 1210.06.⁹

On June 29, 2026, FINRA filed to shorten the required qualification examination retake waiting periods to 15 days after the first and second failed attempts, and 60 days after the third and all subsequent failed attempts that occur within a two-year period.¹⁰ The Exchange proposes to align the Exchange’s requirement with FINRA’s by establishing uniform qualification examination retake waiting periods.

The Exchange believes that as a result of the changes to the qualification program that have occurred since the implementation of the current retake waiting periods provided in the FINRA filing, shortening the waiting periods in this manner would lessen the burden on individuals who are trying to register to

begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the rule applies uniformly to all Members and does not unfairly discriminate against any Member or type of market participant. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁴ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change to shorten the waiting periods for retaking FINRA qualification examinations will lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity. The proposal would align the Exchange’s requirement with FINRA’s by establishing uniform qualification examination retake waiting periods.¹⁵ This proposal would avoid potentially different requirements for members of both FINRA and the Exchange with

respect to qualification examination retake waiting periods.

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, the proposed rule text is substantially similar to FINRA’s rule text. The proposal is based on a proposal that FINRA filed with the Commission for immediate effectiveness, and therefore, does not raise any new or novel issues, not already considered by the Commission.¹⁶

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for qualification examination retake waiting periods, resulting in less burdensome and more efficient regulatory compliance for dual members.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b–4 thereunder.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

⁸ See Securities Exchange Act Release No. 87830 (December 20, 2019), 84 FR 72025 (December 30, 2019) (SR-MIAX–2019–50) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education); see also Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR-FINRA–2017–007) (Order Approving Proposed Rule Change to Adopt Consolidated Registration Rules, Restructure the Representative-Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements); see also FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person’s activities and compensation.

⁹ See FINRA Rule 1210, Registration Requirements, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/1210>.

¹⁰ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR-FINRA–2026–014) (the “FINRA Filing”).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(1).

¹⁵ See *supra* note 10.

¹⁶ See *id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b–4(f)(6).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MIAX-2026-34 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-MIAX-2026-34. 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-MIAX-2026-34 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16284 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106056; File No. SR-IEX-2026-25]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 11.280 (Limit Up-Limit Down Plan and Trading Halts on the Exchange) To Reflect That IEX Will Not Cancel Outstanding Orders During a Regulatory Halt or Operational Halt in Anticipation of the SIP Implementation of the New Regulatory Halt Rules

August 6, 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 July 29, 2026, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4 thereunder,⁵ the Exchange is filing with the Commission a proposed rule change to amend Rule 11.280 (Limit Up-Limit Down Plan and Trading Halts on the Exchange) to reflect that IEX will not cancel outstanding orders during a Regulatory Halt or Operational Halt in anticipation of the SIP implementation of the new regulatory halt rules.

The text of the proposed rule change is available at the Exchange's website at <https://www.iexexchange.io/resources/regulation/rule-filings> and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is a participant of the transaction reporting plan⁶ governing Tape C Securities ("Nasdaq UTP Plan"),⁷ and the transaction reporting plan governing Tape A and B Securities ("CTA Plan")⁸ (collectively, with the CQ Plan,⁹ the "SIP Plans"). In tandem with all other national securities exchanges that trade equities securities, and in conjunction with the adoption of amendments to the Nasdaq UTP Plan¹⁰ and comparable amendments to the CTA and CQ Plans¹¹ (collectively, the "SIP Plan Amendments"), the Exchange

⁶ Each transaction reporting plan has a securities information processor ("SIP") responsible for consolidation of information for the plan's securities, pursuant to Rule 603 of Regulation NMS.

⁷ Nasdaq UTP Plan refers to the transaction reporting plan for Nasdaq-listed securities that is known as The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis.

⁸ CTA Plan refers to the transaction reporting plan for NYSE-listed securities (Tape A) and all non-NYSE or non-Nasdaq listed securities (Tape B).

⁹ CQ Plan refers to the plan for the dissemination on a current and continuous basis of bid and asked quotations and quotation sizes of Tape B and Tape C securities.

¹⁰ On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. See Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The Commission approved the amendments on May 28, 2021. See Securities Exchange Act Release 92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7-24-89) (the "Amended UTP Plan"). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations ("SROs") to honor a Regulatory Halt declared by the Primary Listing Market.

¹¹ On February 3, 2021, the CTA/CQ Plan participants (collectively with the Nasdaq UTP Plan participants referred to herein as "Participants") filed Amendment 36 to the Second Restatement of the CTA Plan and Amendment 27 to the Restated CQ Plan, to revise provisions governing regulatory and operational halts. See Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 3, 2021. The Commission approved the amendments on May 28, 2021 (the "Amended CTA/CQ Plan"). See Securities Exchange Act Release No. 92070 (May 28, 2021), 86 FR 29849 (June 3, 2021) (SR-CTA/CQ-2021-01).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

previously amended Rules 11.271 and 11.280 to integrate several definitions and concepts from the SIP Plan Amendments and to reorganize several rules in light of the Exchange's experience with applying the rules as a national securities exchange.¹² The changes clarified the circumstances and manner in which the Exchange would halt trading in one or more securities. Included in these changes were rules setting forth the manner in which the Exchange would handle outstanding orders in a security should it become subject to a Regulatory Halt¹³ or an Operational Halt.¹⁴

The SIP Plans' Processors¹⁵ have informed IEX and the other equities exchanges that they will be implementing the SIP Plan Amendments on August 10, 2026, and on July 10, 2026, IEX issued a trading alert announcing the test and implementation dates for these changes.¹⁶ Thus, pursuant to the terms of the IEX SIP Halts Filing, August 10, 2026 will be the operative date for the rule changes made in that filing. In preparation for the August 10, 2026 implementation of the SIP Plan Amendments, IEX makes this rule filing proposal to conform its pending trading halt rules with existing Exchange practices with respect to one aspect of how IEX will handle a Regulatory or Operational Halt. As described below, the Exchange proposes to amend Rules 11.280(b)(3) and 11.280(d)(2) to reflect that the Exchange will not cancel all outstanding orders under either a Regulatory or Operational Halt.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in

the event of regulatory or operational issues.¹⁷ These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. However, these common standards do not address the manner in which individual exchanges handle outstanding orders during a halt, specifically whether to cancel outstanding orders, or retain outstanding orders in a halted security to allow them to trade when the halt ends, while allowing Users¹⁸ to cancel orders during the halt if they prefer.¹⁹

Among the changes introduced in the SIP Plan Amendments and then adopted by IEX (as well as the other equities exchanges) is a new standardized definition of a Regulatory Halt.²⁰ Under these common rules, a Regulatory Halt means one of five types of halts: (a) a halt in trading a security called by the Primary Listing Market for regulatory purposes (such as dissemination of material news); (b) a trading pause triggered by Limit Up Limit Down; (c) a halt based on Extraordinary Market Activity;²¹ (d) a SIP Halt; or (e) a halt triggered by a Market-Wide Circuit Breaker.²² While the Exchange and the other SROs intended to harmonize certain aspects of their trading halt rules

(such as the start and stop times of a Regulatory Halt), other elements of each exchanges' trading halt rules continued to be unique to each market.²³ For example, some exchanges, such as MEMX and IEX, proposed to cancel all outstanding orders for the subject securities in the event of a Regulatory Halt²⁴ or Operational Halt.²⁵ Other exchanges proposed to halt the subject securities from trading, but not cancel any outstanding orders for those securities during a Regulatory Halt²⁶ or Operational Halt.²⁷ And other exchanges proposed to halt the subject securities from trading, only cancel some outstanding orders for those securities during a Regulatory Halt while retaining others on their order books,²⁸ and cancel all outstanding orders during an Operational Halt.²⁹

IEX's current process for handling a regulatory or operational halt, which is scheduled to be supplanted by the processes set forth in the IEX SIP Halt Filing on August 10, 2026, is to halt trading, but not cancel outstanding orders. Upon further consideration, IEX has decided to amend Rules 11.280(b)(3) and 11.280(d)(2) to align those rules with the Exchange's current functionality with respect to cancelling outstanding orders during either a Regulatory Halt or an Operational Halt. Thus, IEX would no longer cancel all outstanding orders during a Regulatory or Operational Halt, but Users would be able to cancel their outstanding orders during a Regulatory or Operational Halt.

Accordingly, IEX proposes to delete the first sentence of Rule 11.280(b)(3) as set forth in the IEX SIP Halt Filing, and to update the paragraph with language from its former Rule 11.272(b). As proposed, Rule 11.280(b)(3) would read:

While a security is subject to a Regulatory Halt pursuant to this Rule the Exchange will not accept orders, and all orders resting on the Order Book will

¹² See Securities Exchange Act Release No. 104499 (December 23, 2025), 90 FR 61442 (December 31, 2025) (SR-IEX-2025-37) ("IEX SIP Halts Filing").

¹³ "Regulatory Halt" means a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt. See Rule 11.280(a)(10).

¹⁴ "Operational Halt" refers to a halt in trading in one or more securities only on the market declaring the halt; it is not a Regulatory Halt, and other markets are not required to halt trading in the impacted securities. See Rule 11.280(a)(5).

¹⁵ Unless otherwise indicated, capitalized terms in this rule filing are defined in both the Nasdaq UTP Plan and the CTA/CQ Plan.

¹⁶ See IEX Trading Alert #2026-09, available at <https://notifications.iex.io/tradingalerts/42>.

¹⁷ Currently, during a trading halt, the Exchange will not allow outstanding orders to execute, but will leave them resting on the Order Book. The Exchange will zero out the quotes disseminated via the Exchange's top-of-book and SIP feeds to reflect the unavailability of the security for trading during the halt. Users may cancel their own outstanding orders during a trading halt.

¹⁸ The term "User" means any Member (as defined in Rule 1.160(s)) or Sponsored Participant (as defined in Rule 1.160(l)) who is authorized to obtain access to the System pursuant to IEX Rule 11.130. See IEX Rule 1.160(qq).

¹⁹ See IEX SIP Halts Filing, *supra*, note 12, at 61443.

²⁰ See IEX SIP Halts Filing, *supra*, note 12, at 61444.

²¹ "Extraordinary Market Activity" means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period. See Rule 11.280(a)(2).

²² See *supra*, note 13.

²³ See IEX SIP Halts Filing, *supra*, note 12, at 61443.

²⁴ See MEMX Rule 11.22(b)(3) and Rule 11.280(b)(3).

²⁵ See MEMX Rule 11.22(d)(2) and Rule 11.280(d)(2).

²⁶ See, Nasdaq Equity IV Rules 4120(b)(3)(A)(i) and 4120(b)(4)(A)(ii) (describing the process for halting and resuming trading during a Regulatory Halt declared by a Primary Listing Market, which does not involve cancelling any outstanding orders).

²⁷ See Nasdaq Equity IV Rules 4120(c)(2) and 4120(c)(3)(A) (describing the process for halting and resuming trading during an Operational Halt declared by Nasdaq, which does not involve cancelling any outstanding orders).

²⁸ See, e.g., NYSE Rules 7.18(b)(1)(A)(i)–(ii) and 7.18(b)(1)(B)(i)–(ii); Nasdaq Texas Equity 4, Rule 4120(b)(3)(A)–(B).

²⁹ See, e.g., NYSE Rule 7.18(c)(2)–(3); Nasdaq Texas Equity 4, Rule 4120(c)(2)–(3).

be unavailable for trading or re-sweep during the Regulatory Halt, but will be available for cancellation by the submitting User. At the end of the Regulatory Halt the Exchange shall re-open the security and again begin accepting orders.

With respect to Operational Halts, IEX will continue to notify the SIPs of the start and end of any Operational Halt caused by System³⁰ issues on the Exchange and will disseminate an Operational Halt Status Message through its proprietary data feeds, but will not automatically cancel all outstanding orders. However, based upon its evaluation of factors such as the reason for the Operational Halt and its expected duration, the Exchange may determine to cancel all outstanding orders during an Operational Halt.³¹ And, as described above, if IEX does not cancel outstanding orders during an Operational Halt, Users would be able to cancel their outstanding orders during the Operational Halt. Thus, IEX proposes to amend Rule 11.280(d)(2) to remove the first sentence, which currently reads: “On the occurrence of any Operational Halt pursuant to this Rule all outstanding orders in the System will be cancelled,” and to add new last sentence that will read: “While a security is subject to an Operational Halt pursuant to this Rule the Exchange will not accept orders, and all orders resting on the Order Book will be unavailable for trading or re-sweep during the Operational Halt, but will be available for cancellation by the submitting User.”

IEX notes that these proposed rule changes were previously approved by the Commission,³² and are also comparable to the current rules and functionality of the Nasdaq Stock Market in the circumstance of a Regulatory Halt³³ initiated by another exchange or an Operational Halt initiated by Nasdaq.³⁴

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the

requirements of Section 6(b) of the Act.³⁵ Specifically, the proposal is consistent with Section 6(b)(5) of the Act³⁶ because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other SROs have adopted harmonized rules related to halting and resuming trading in U.S.-listed equity securities which are not impacted by this rule filing. As discussed in the Purpose section, there are differences in how the exchanges have chosen to handle outstanding orders during a Regulatory or Operational Halt, with such order handling not mandated by the SIP Plan Amendments. The Exchange believes that it is appropriate to not cancel outstanding orders during a Regulatory or Operational Halt, but instead to permit Users to cancel their own outstanding orders. This approach is designed to avoid potential confusion on the part of Users as to the status of their outstanding orders, particularly in the case of a short halt or Limit Up Limit Down pause, and would reduce technical complexity for the Exchange and its Users. Thus, the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act because it is designed to foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

Further, IEX believes that the proposed rule change is consistent with the SIP Plan Amendments in that no changes are proposed to the harmonized rules related to halting and resuming trading in U.S.-listed equity securities.

Finally, as detailed above, the proposed changes in this rule filing are comparable to Nasdaq rules.³⁷ Thus, the Exchange does not believe that this proposal raises any new or novel issues that have not already been considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX believes the proposal is consistent with Section 6(b)(8) of the Act³⁸ in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed rule change is not designed to address any competitive concerns but to

avoid potential confusion and reduce technical complexity as described in the Statutory Basis section.

With respect to intermarket competition, the Exchange notes that other exchanges are free to adopt comparable provisions subject to the Commission rule filing process. With respect to intramarket competition, the Exchange notes as well that the proposed rule change would apply to all Users in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Not applicable.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³⁹ and Rule 19b-4(f)(6) thereunder.⁴⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.⁴¹

A proposed rule change filed under Rule 19b-4(f)(6)⁴² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),⁴³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, so that the proposed rule change may become operative on August 10, 2026, when all the changes introduced in the IEX SIP Halts Filing become operative. The Exchange has asserted that waiving the 30-day operative will allow the Exchange to coordinate its

³⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁰ 17 CFR 240.19b-4(f)(6).

⁴¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴² 17 CFR 240.19b-4(f)(6).

⁴³ 17 CFR 240.19b-4(f)(6)(iii).

³⁰ See Rule 1.160(nm).

³¹ IEX has the authority to cancel an order back to the User if based on market conditions such order is not executable, cannot be routed to an away trading center, or cannot be posted to the Order Book. See Rule 11.230(a).

³² See Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142, 41157 (June 23, 2016) (Exchange Approval Order).

³³ See *supra*, note 26.

³⁴ See *supra*, note 27.

³⁵ 15 U.S.C. 78f(b).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ See *supra* notes 26 and 27.

³⁸ 15 U.S.C. 78f(b)(8).

implementation of the new market-wide Regulatory and Operational Halts processes with the other national securities exchanges and will help ensure consistency across the SROs.

The Commission believes that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to implement the proposed changes on the date that the IEX SIP Halts Filing becomes operative. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.⁴⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁴⁵ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-IEX-2026-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-IEX-2026-25. 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](https://www.sec.gov/rules/sro.shtml)). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-IEX-2026-25 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16279 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106055; File No. SR-FICC-2026-007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Modify the GSD Rules To Adopt a U.S. Treasury Clearing Trade Submission Requirement

August 6, 2026.

On June 24, 2026, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-FICC-2026-007 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b 4² thereunder to modify FICC's Government Securities Division ("GSD") Rulebook ("GSD Rules")³ to adopt (1) a requirement for each Netting Member to submit all eligible secondary market transactions in U.S. Treasury securities to which it is a counterparty for central clearing, (2) provisions to monitor and enforce the trade submission requirement, and (3) other revisions to clarify, conform, and enhance the disclosures of the GSD Rules.⁴ The Proposed Rule Change was published for public comment in the

Federal Register on July 9, 2026.⁵ The Commission has received comments regarding the substance of the changes proposed in the Proposed Rule Change.⁶

Section 19(b)(2)(i) of the Exchange Act⁷ provides that, within 45 days of the publication of notice of the filing of a proposed rule change, 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 unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.⁸ Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.⁹

The 45th day after publication of the Notice of Filing is August 23, 2026. In order to provide the Commission with sufficient time to consider the Proposed Rule Change, the Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,¹⁰ designates October 7, 2026, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR-FICC-2026-007.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16280 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

⁵ Securities Exchange Act Release No. 105849 (July 6, 2026), 91 FR 42571 (July 9, 2026) (File No. SR-FICC-2026-007) ("Notice of Filing").

⁶ Comments on the Proposed Rule Change are available at <https://www.sec.gov/rules-regulations/public-comments/sr-ficc-2026-007>.

⁷ 15 U.S.C. 78s(b)(2)(i).

⁸ 15 U.S.C. 78 s(b)(2)(ii).

⁹ *Id.*

¹⁰ *Id.*

¹¹ 17 CFR 200.30-3(a)(12).

⁴⁴ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴⁵ 15 U.S.C. 78s(b)(2)(B).

⁴⁶ 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b 4.

³ Terms not defined herein are defined in the GSD Rules, available at www.dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.

⁴ See Notice of Filing, *infra* note 5.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106050; File No. SR-MIAX-2026-31]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 515A Related to PRIME and cPRIME Functionality

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 27, 2026, Miami International Securities Exchange, LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 Exchange Rule 515A, MIAX Price Improvement Mechanism (“PRIME”) and PRIME Solicitation Mechanism, related to Request for Response (“RFR”) messages.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings> and at MIAX’s principal office.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 515A related to PRIME functionality. PRIME is a process by which a Member³ may electronically submit for execution (“Auction”) an order it represents as agent (“Agency Order”) against principal interest, and/or an Agency Order against solicited interest.⁴ A Member (the “Initiating Member”) may initiate an Auction provided all of the following are met: (i) the Agency Order is in a class designated as eligible for PRIME as determined by the Exchange and within the designated Auction order eligibility size parameters as such size parameters are determined by the Exchange; (ii) the Initiating Member must stop the entire Agency Order as principal or with a solicited order at the better of the NBBO⁵ or the Agency Order’s limit price (if the order is a limit order); and (iii) with respect to Agency Orders that have a size of less than 50 contracts, if at the time of receipt of the Agency Order, the NBBO has a bid/ask differential of \$0.01, the System⁶ will reject the Agency Order.⁷ Members may use PRIME to execute complex orders at a net price. “cPRIME” is the process by which a Member may electronically submit a “cPRIME Order” (as defined in Rule 518(b)(7)) it represents as agent (a “cPRIME Agency Order”) against principal or solicited interest for execution (a “cPRIME Auction”), subject to the criteria enumerated in Policy .12 of Rule 515A.⁸

Specifically, the Exchange proposes to amend Exchange Rule 515A(a)(2)(i)(B) related to Request for Response (“RFR”) messages for PRIME and cPRIME Auctions. The Exchange proposes to amend the information displayed in an RFR message. Currently, the RFR details the option, side, size, and initiating price through the Exchange’s Administrative Information Subscriber

data feed.⁹ The Exchange now proposes to remove the initiating price detail from the RFR message so that the RFR message will only disseminate option, side, and size.

The Exchange notes other options exchanges with price improvement auctions do not provide the initiating price in their notification messages.¹⁰

Implementation

The Exchange proposes to implement this functionality in Q3 of 2026 and will issue an alert notifying market participants of the exact date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange’s proposal to remove the price information from the RFR detail is consistent with the Act because it will encourage responders to submit more aggressive prices resulting in greater price improvement. The proposed amendment protects investors and the public interest by introducing competitive uncertainty to the auction process to drive meaningful price improvement and prevent responders from anchoring to the initiating price. The Exchange believes that removing the initiating price from the RFR detail will encourage more competition in

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ See Exchange Rule 515A(a).

⁵ The term “NBBO” means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from OPRA. See Exchange Rule 100. The term “OPRA” means the Options Price Reporting Authority, LLC. See Exchange Rule 100.

⁶ The term “System” means the automated trading system used by the Exchange for the trading of securities. See Exchange Rule 100.

⁷ See Exchange Rule 515A(a)(1).

⁸ See Exchange Rule 515A.12(a).

⁹ See Administrative Information Subscriber Feed, version 2.5 (8/1/2022) available online @ https://www.miaxglobal.com/sites/default/files/2022-09/Administrative_Information_Subscriber_Feed_AIS_v2.5.pdf.

¹⁰ See Securities Exchange Act Release No.105854 (July 7, 2026), 91 FR 42780 (July 10, 2026) (SR-Phlx-2026-42) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend PIXL). See also Cboe Exchange Rule 5.37(c)(2) and 5.38(c)(2).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

PRIME and cPRIME Auctions and result in greater opportunities for potential price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed change will not impose any burden on intramarket competition because the same RFR message will be disseminated to all market participants.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates to orders submitted into the PRIME or cPRIME Auction mechanism on the Exchange.

Additionally, the Exchange notes that the rules of at least one other options exchange with a price improvement auction does not broadcast price.¹⁴ The Exchange believes the proposed rule benefits competition as other exchanges may make similar changes to their rules.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed rule change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that a waiver will permit the Exchange to immediately amend its PRIME and cPRIME functionality to remove the price detail from its RFR message, similar to other option exchanges' notification messages for price improvement auctions.¹⁹ The Exchange believes that permitting the Exchange to remove the price detail in a more expeditious manner will improve execution quality by enhancing competitive dynamics to the benefit of market participants by eliciting the best possible prices through competitive responses. For these reasons, and because the proposal raises no new or novel legal or regulatory issues, the Commission finds that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ See *supra* note 10.

²⁰ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-MIAX-2026-31 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-MIAX-2026-31. 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 also 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-MIAX-2026-31 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-16285 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106052; File No. SR-EMERALD-2026-22]

Self-Regulatory Organizations; MIAx Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Interpretation and Policy .06, To Reduce the Waiting Periods for Retaking FINRA Qualification Examinations

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

²¹ 17 CFR 200.30-3(a)(12) and (59).

¹⁴ See *supra* note 10.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing

(“Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 6, 2026, MIAx Emerald, LLC (“Emerald” 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 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 Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings>, and at Exchange’s principal office.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

In general, the Exchange’s current rules require that persons engaged in a Member’s³ securities business who are to function as representatives⁴ or

principals⁵ register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations⁶ and exempt specified associated persons from the registration requirements.⁷

Current Exchange Rule 1900, Interpretation and Policy .06, provides that “[a]ny person who fails to pass a qualification examination prescribed by the Exchange shall be permitted to take that examination again after a period of 30 calendar days has elapsed from the date of such person’s last attempt to pass that examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking that examination until a period of 180 calendar days has elapsed from the date of such person’s last attempt to pass that examination. The waiting periods for retaking a failed examination shall apply to the SIE and the representative and principal examinations specified under Rule 1901.” In 2020, the Exchange adopted current Exchange Rule 1900, Interpretation and Policy .06, in response to the FINRA rule changes.⁸

solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. *See* Exchange Rule 1901.

⁵ A “principal” is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member’s chief executive officer and chief financial officer (or equivalent officers). A “principal” also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. *See* Exchange Rule 1901.

⁶ *See* Exchange Rule 1901, Registration Categories, and Exchange Rule 1302, Registration of Representatives. The Exchange notes that the rules contained in Chapter XIII of the rulebook of Miami International Securities Exchange, LLC, including Rule 1302, are incorporated by reference into MIAx Emerald Chapter XIII, and are thus MIAx Emerald Rule and thereby applicable to MIAx Emerald Members.

⁷ *See* Exchange Rule 1902, Associated Persons Exempt from Registration.

⁸ *See* Securities Exchange Act Release No. 87942 (January 10, 2020), 85 FR 2766 (January 16, 2020) (SR–EMERALD–2020–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend, Reorganize and Enhance Its Membership, Registration and Qualification Rules and Consolidate These Rules Into New Chapter XIX Registration, Qualification and Continuing Education); *see also* Securities Exchange Act Release No. 81098 (July 7, 2017), 82 FR 32419 (July 13, 2017) (SR–FINRA–2017–007) (Order Approving Proposed Rule Change To Adopt Consolidated Registration Rules, Restructure the Representative-

The Exchange notes that current Exchange Rule 1900, Interpretation and Policy .06, is substantively similar to FINRA Rule 1210.06.⁹

On June 29, 2026, FINRA filed to shorten the required qualification examination retake waiting periods to 15 days after the first and second failed attempts, and 60 days after the third and all subsequent failed attempts that occur within a two-year period.¹⁰ The Exchange proposes to align the Exchange’s requirement with FINRA’s by establishing uniform qualification examination retake waiting periods.

The Exchange believes that as a result of the changes to the qualification program that have occurred since the implementation of the current retake waiting periods provided in the FINRA filing, shortening the waiting periods in this manner would lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and

Level Qualification Examination Program, Allow Permissive Registration, Establish Exam Waiver Process for Persons Working for Financial Services Affiliate of Member, and Amend the Continuing Education Requirements); *see also* FINRA Regulatory Notice 17–30 (SEC Approves Consolidated FINRA Registration Rules, Restructured Representative-Level Qualification Examinations and Changes to Continuing Education Requirements) (October 2017). FINRA articulated its belief that the proposed rule change would streamline, and bring consistency and uniformity to, its registration rules, which would, in turn, assist FINRA members and their associated persons in complying with the rules and improve regulatory efficiency. FINRA also determined to enhance the overall efficiency of its representative-level examinations program by eliminating redundancy of subject matter content across examinations, retiring several outdated representative-level registrations, and introducing a general knowledge examination that could be taken by all potential representative-level registrants and the general public. FINRA amended certain aspects of its continuing education rule, including by codifying existing guidance regarding the effect of failing to complete the Regulatory Element on a registered person’s activities and compensation.

⁹ *See* FINRA Rule 1210, Registration Requirements, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/1210>.

¹⁰ *See* Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR–FINRA–2026–014) (the “FINRA Filing”).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. *See* Exchange Rule 100.

⁴ A “representative” is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member’s securities business, such as supervision,

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the rule applies uniformly to all Members and does not unfairly discriminate against any Member or type of market participant. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁴ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

In particular, the proposed rule change to shorten the waiting periods for retaking FINRA qualification examinations will lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity. The proposal would align the Exchange's requirement with FINRA's by establishing uniform qualification examination retake waiting periods.¹⁵ This proposal would avoid potentially different requirements for members of both FINRA and the Exchange with respect to qualification examination retake waiting periods.

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, the proposed rule text is substantially similar to FINRA's rule text. The proposal is based on a proposal that FINRA filed with the Commission for immediate effectiveness, and therefore, does not raise any new or novel issues, not already considered by the Commission.¹⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for qualification examination retake waiting periods, resulting in less burdensome and more efficient regulatory compliance for dual members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-EMERALD-2026-22 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-EMERALD-2026-22. 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-EMERALD-2026-22 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-16283 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106047; File No. SR-SAPPHIRE-2026-32]

Self-Regulatory Organizations; MIAx Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1900, Interpretation and Policy .06, To Reduce the Waiting Periods for Retaking FINRA Qualification Examinations

August 6, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,²

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(1).

¹⁵ See *supra* note 10.

¹⁶ See *id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

notice is hereby given that on August 6, 2026, MIAX Sapphire, LLC (“MIAX Sapphire” or “Exchange”) filed with 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 Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings>, and at the Exchange’s principal office.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 1900, Interpretation and Policy .06, to reduce the waiting periods for retaking FINRA qualification examinations.

In general, the Exchange’s current rules require that persons engaged in a Member’s³ securities business who are to function as representatives⁴ or

principals⁵ register with the Exchange in each category of registration appropriate to their functions by passing one or more qualification examinations⁶ and exempt specified associated persons from the registration requirements.⁷

Current Exchange Rule 1900, Interpretation and Policy .06, provides that “[a]ny person who fails to pass a qualification examination prescribed by the Exchange shall be permitted to take that examination again after a period of 30 calendar days has elapsed from the date of such person’s last attempt to pass that examination, except that any person who fails to pass an examination three or more times in succession within a two-year period shall be prohibited from again taking that examination until a period of 180 calendar days has elapsed from the date of such person’s last attempt to pass that examination. The waiting periods for retaking a failed examination shall apply to the SIE and the representative and principal examinations specified under Rule 1901.”⁸ The Exchange notes that current Exchange Rule 1900, Interpretation and Policy .06, is substantively similar to FINRA Rule 1210.06.⁹

On June 29, 2026, FINRA filed to shorten the required qualification examination retake waiting periods to

⁵ A “principal” is any person associated with a Member, including, but not limited to, sole proprietor, officer, partner, manager of office of supervisory jurisdiction, director or other person occupying a similar status or performing similar functions, who is actively engaged in the management of the Member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. Such persons shall include, among other persons, a Member’s chief executive officer and chief financial officer (or equivalent officers). A “principal” also includes any other person associated with a Member who is performing functions or carrying out responsibilities that are required to be performed or carried out by a principal under Exchange rules. See Exchange Rule 1901.

⁶ See Exchange Rule 1901, Registration Categories, and Exchange Rule 1302, Registration of Representatives. The Exchange notes that the rules contained in Chapter XIII of the rulebook of Miami International Securities Exchange, LLC, including Rule 1302, are incorporated by reference into MIAX Sapphire Chapter XIII, and are thus MIAX Sapphire Rules and applicable to MIAX Sapphire Members.

⁷ See Exchange Rule 1902, Associated Persons Exempt from Registration.

⁸ The Exchange adopted Exchange Rule 1900, Interpretation and Policy .06, in 2024. The rule text was contained in the Exhibit B of the Exchange’s Form 1 application. On July 15, 2024, the Commission approved the application of the Exchange for registration of a national securities exchange. See Securities Exchange Act Release No. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10–240). The Exchange did not make any changes to this rule text after it was adopted.

⁹ See FINRA Rule 1210, Registration Requirements, <https://www.finra.org/rules-guidance/rulebooks/finra-rules/1210>.

15 days after the first and second failed attempts, and 60 days after the third and all subsequent failed attempts that occur within a two-year period.¹⁰ The Exchange proposes to align the Exchange’s requirement with FINRA’s by establishing uniform qualification examination retake waiting periods.

The Exchange believes that as a result of the changes to the qualification program that have occurred since the implementation of the current retake waiting periods provided in the FINRA filing, shortening the waiting periods in this manner would lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, because the rule applies uniformly to all Members and does not unfairly discriminate against any Member or type of market participant. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,¹⁴ which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange’s Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

¹⁰ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR–FINRA–2026–014) (the “FINRA Filing”).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

¹⁴ 15 U.S.C. 78f(b)(1).

³ The term “Member” means an individual or organization that is registered with the Exchange pursuant to Chapter II of these Rules for purposes of trading on the Exchange as an “Electronic Exchange Member” or “Market Maker.” Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

⁴ A “representative” is any person associated with a Member, including assistant officers other than principals, who is engaged in the Member’s securities business, such as supervision, solicitation, conduct of business in securities or the training of persons associated with a Member for any of these functions. See Exchange Rule 1901.

In particular, the proposed rule change to shorten the waiting periods for retaking FINRA qualification examinations will lessen the burden on individuals who are trying to register to begin their employment in the securities industry while also continuing to protect investors by maintaining appropriate program integrity. The proposal would align the Exchange's requirement with FINRA's by establishing uniform qualification examination retake waiting periods.¹⁵ This proposal would avoid potentially different requirements for members of both FINRA and the Exchange with respect to qualification examination retake waiting periods.

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, the proposed rule text is substantially similar to FINRA's rule text. The proposal is based on a proposal that FINRA filed with the Commission for immediate effectiveness, and therefore, does not raise any new or novel issues, not already considered by the Commission.¹⁶

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for qualification examination retake waiting periods, resulting in less burdensome and more efficient regulatory compliance for dual members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become

operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-SAPPHIRE-2026-32 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-SAPPHIRE-2026-32. 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-SAPPHIRE-2026-32 and should be submitted on or before September 1, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-16277 Filed 8-10-26; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21757 and #21758; ILLINOIS Disaster Number IL-20031]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of Illinois dated August 5, 2026.

Incident: Severe Storms.

DATES: Issued on August 5, 2026.

Incident Period: July 2, 2026 through July 4, 2026.

Physical Loan Application Deadline Date: October 5, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: May 5, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Tamara Edge, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-9888.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kane.

¹⁵ See *supra* note 10.

¹⁶ See *id.*

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

²⁰ 17 CFR 200.30-3(a)(12).

Contiguous Counties:

Illinois: Cook, DeKalb, DuPage,
Kendall, McHenry.
The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 21757B and for economic injury is 217580.

The state which received an SBA Administrative declaration is Illinois.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–16293 Filed 8–10–26; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Fiscal Year List of Requests From States or Tribes for a Small Business Administration Disaster Declaration.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This notice provides an updated list of requests received by the

U. S. Small Business Administration to make a disaster declaration for a state, territory, or tribe. The published list complies with a directive in the explanatory statement of the Consolidated Appropriations Act, 2026, Pub. L. 119–75.

DATES: Issued on August 7, 2026.

ADDRESSES: For further information contact: Eric Wall, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6739.

SUPPLEMENTARY INFORMATION: Notice is hereby given as of July 31, 2026, the following requests have been made to the U.S. Small Business Administration in Fiscal Year 2026 to declare a disaster.

State	Disaster date(s)	Disaster description	Date of state request to SBA	Approval status	Date of declaration
Arizona	September 25–27, 2025	Gila County Flooding Event	October 9, 2025	Approved	October 10, 2025.
Illinois	July 10–August 1, 2025	Algal Bloom Water Contamination	November 4, 2025	Approved	November 6, 2025.
Arizona	October 10–13, 2025	Remnants of Hurricane Priscilla and Tropical Storm Raymond.	November 4, 2025	Approved	November 14, 2025.
Florida	October 26, 2025	Severe Storms and Flooding	November 7, 2025	Approved	November 7, 2025.
New York	September 17, 2025	Red Hook Five-Alarm Fire	November 13, 2025 ..	Approved	November 14, 2025.
Kentucky	November 4, 2025	Louisville Airplane Crash	November 14, 2025 ..	Approved	November 15, 2025.
Colorado	August 2–29, 2025	Lee and Elk Fires, Mudslides, and Debris Flows.	November 17, 2025 ..	Approved	November 18, 2025.
California	November 13–December 4, 2025.	Pack Fire	December 4, 2025	Approved	December 9, 2025.
New York	November 23, 2025	Cottage Avenue Apartment Building Fire.	December 12, 2025 ..	Approved	December 16, 2025.
Minnesota	October 26, 2025	Skyline Tower Apartment Complex Fire and Severe Water Damage.	December 19, 2025 ..	Approved	December 22, 2025.
California	December 16–26, 2025	2025 Late December Storm	January 28, 2026	Approved	February 3, 2026.
California	December 31, 2025–January 5, 2026.	2026 Early January Storm, Tidal Flooding, and King Tides.	January 28, 2026	Approved	February 3, 2026.
Louisiana	January 23–27, 2026	2026 Severe Winter Storm	January 30, 2026	Approved	February 2, 2026.
California	December 16–26, 2025	2025 Late December Storms	January 30, 2026	Approved	February 6, 2026.
California	January 19, 2026	Oakland Apartment Fire	February 4, 2026	Approved	February 10, 2026.
Washington	December 5–22, 2025	Severe Winter Storms, 2025	February 11, 2026	Approved	February 24, 2026.
New Mexico	June 23–August 5, 2025	Mescalero Apache Tribe—Rural Area—Severe Storms, Flooding and Landslides.	February 17, 2026	Approved	February 23, 2026.
Pennsylvania	February 20, 2026	Hotel Hampton Fire	March 3, 2026	Approved	March 4, 2026.
Illinois	August 16–19, 2025	Severe Storms, Straight-Line Winds, and Flash Flooding.	March 12, 2026	Approved	March 16, 2026.
Tennessee	January 22–27, 2026	2026 Severe Winter Storm Fern	March 23, 2026	Approved	April 7, 2026.
Hawaii	November 30, 2025	Downtown Hilo Fire	April 1, 2026	Approved	April 3, 2026.
Louisiana	January 23–27, 2026	Louisiana Severe Winter Storm	April 2, 2026	Approved	April 8, 2026.
Illinois	March 10, 2026	Severe Storm and Tornado	April 7, 2026	Approved	April 9, 2026.
Indiana	March 10–11, 2026	Severe Storms and Tornado	April 7, 2026	Approved	April 9, 2026.
Alaska	October 8–13, 2025	Severe Storms, Flooding and Remnants of Typhoon Halong.	April 13, 2026	Approved	April 15, 2026.
Arkansas	January 23–26, 2026	Severe Winter Weather	April 14, 2026	Approved	April 29, 2026.
Illinois	July 25–28, 2025	Severe Storms and Flash Flooding ...	April 22, 2026	Approved	April 23, 2026.
Michigan	March 6, 2026	Tornadoes	April 27, 2026	Approved	April 28, 2026.
Oklahoma	April 2, 2026	Severe Weather, Tornadoes, and Straight-line Winds.	May 1, 2026	Approved	May 1, 2026.
Texas	April 24–May 1, 2026	Severe Storms and Tornadoes	May 5, 2026	Approved	May 7, 2026.
Illinois	April 17, 2026	Severe Storm and Tornado	May 15, 2026	Approved	May 18, 2026.
Georgia	April 20, 2026	Wildfires	May 26, 2026	Approved	May 27, 2026.
Idaho	December 16–18, 2025	Straight-line Winds	June 3, 2026	Approved	June 8, 2026.
Rhode Island	February 22–23, 2026	2026 Historic Snowstorm	June 3, 2026	Approved	June 10, 2026.
Illinois	May 15, 2026	Oak Lawn Apartment Complex Fire ..	June 9, 2026	Approved	June 10, 2026.
California	May 21, 2026–May 29, 2026	Garden Grove Hazmat Incident	June 8, 2026	Approved	June 11, 2026.

State	Disaster date(s)	Disaster description	Date of state request to SBA	Approval status	Date of declaration
Massachusetts	February 22, 2026–February 27, 2026.	Blizzard	June 8, 2026	Approved	June 12, 2026.
New Jersey	May 3–14, 2026	12-Alarm Warehouse Fire	June 10, 2026	Approved	June 12, 2026.
Pennsylvania	June 11, 2026	Oak Forest Apartment Complex Fire	June 23, 2026	Approved	June 24, 2026.
New York	May 20, 2026	Severe Storms and Flooding	June 26, 2026	Approved	June 30, 2026.
Illinois	June 10–11, 2026	Severe Storms and Tornadoes	July 7, 2026	Approved	July 10, 2026.
Illinois	June 17, 2026	Severe Storms and Tornadoes	July 7, 2026	Approved	July 10, 2026.
Missouri	April 23–28, 2026	Severe Storms, Tornadoes, and Flooding.	July 14, 2026	Approved	July 15, 2026.
Iowa	July 2–4, 2026	Severe Storms, Heavy Rain, and Flash Flooding.	July 20, 2026	Approved	July 23, 2026.
Pennsylvania	July 5–6, 2026	Severe Storms and Flooding	July 20, 2026	Approved	July 21, 2026.
Illinois	June 21, 2026	Severe Storms and Tornado	July 28, 2026	Approved	July 29, 2026.
Pennsylvania	July 11, 2026	Severe Storms	July 28, 2026	Approved	July 30, 2026.
Illinois	June 16, 2026	Severe Storms and Tornadoes	July 28, 2026	Approved	July 30, 2026.
Pennsylvania	July 4, 2026	Severe Storms	July 28, 2026	Approved	July 31, 2026.

(Catalog of Federal Domestic Assistance Number 59008)

Authority: 13 CFR 123.3(b).

James Stallings

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–16349 Filed 8–10–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice 13099]

30-Day Notice of Proposed Information Collection: Employee Self-Certification and Ability To Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to September 10, 2026.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional

information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Director of Medical Clearances, Jessica Martinez, who may be reached on (202) 663–1657 or at MartinezJA7@state.gov.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Employee Self-Certification and Ability to Perform in Emergencies (ESCAPE) Posts, Pre-Deployment Physical Exam Acknowledgement Form.

- *OMB Control Number:* 1405–0224.

- *Type of Request:* Revision of a Currently Approved Collection.

- *Originating Office:* Bureau of Medical Services, Office of Medical Clearances MED/CP/CS/CL.

- *Form Number:* DS–6570.

- *Respondents:* Contractors and eligible family members deploying to ESCAPE Diplomatic Missions requesting access to the Department of State Medical Program (currently Iraq, Juba, Kyiv, Libya, Peshawar, Somalia, Syria, and Yemen).

- *Estimated Number of Respondents:* 3,800.

- *Estimated Number of Responses:* 1,900.

- *Average Time per Response:* 40 minutes (applicants); 30 minutes (physicians).

- *Total Estimated Burden Time:* 2,216 hours.

- *Frequency:* Annually for those deployed to an ESCAPE post.

- *Obligation To Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The DS–6570 is completed by an individual and their medical provider to declare that the individual has health concerns that may represent a safety hazard for the individual or others at an ESCAPE Diplomatic Mission. ESCAPE is an acronym used to describe Diplomatic Missions overseas that are in extremely high threat, potentially combat, areas. Current ESCAPE Missions are Iraq, Juba, Kyiv, Libya, Peshawar, Somalia, Syria, and Yemen. This program is authorized under the Foreign Service Act of 1980, as implemented by the Department in 13 FAM 301.4–5.

Methodology

The respondents will be prompted access to the forms digitally based on their medical clearance needs (ESCAPE post designation). They will then take it to their personal medical provider for completion and authorization. Once complete, the forms will be submitted via a secure online platform for review by the Office of Medical Clearances.

Response to Public Comment

The Department published a notice in the **Federal Register** soliciting public comments for a period of 60 days. The Department received one comment. The commenter suggested that the burden

calculation was inaccurate because it did not account for the burden on the non-federal healthcare providers who were filling out the DS-6570. The Department agrees and has provided revised burden estimates in paragraph 12. The other allegations from the commenter, including Privacy Act concerns, are without merit. The Department is in compliance with the Privacy Act, and the relevant System of Records Notice is up to date. Finally, the commenter cites E.O. 12866 in asking for a meeting with OIRA. We note that E.O. 12866 relates to rulemaking and does not provide any procedures under the Paperwork Reduction Act.

Jessica A. Martinez,

Director of Medical Clearances, Bureau of Medical Services, Department of State.

[FR Doc. 2026-16307 Filed 8-10-26; 8:45 am]

BILLING CODE 4710-36-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36907]

Rapid City, Pierre & Eastern Railroad, Inc.—Acquisition and Operation Exemption—State of South Dakota

On May 18, 2026, Rapid City, Pierre & Eastern Railroad, Inc. (RCPE), a Class II rail carrier, filed a petition under 49 U.S.C. 10502 for an exemption from the prior approval requirements of 49 U.S.C. 10902 to acquire and operate over approximately 15.33 miles of rail line owned by the State of South Dakota, acting by and through its Department of Transportation (the State or SDDOT). The line of railroad at issue is known as the Huron–Yale Line, and extends between Huron, S.D., at milepost 160.33, and Yale, S.D., at approximately milepost 145, a distance of approximately 15.33 miles (the Line). RCPE concurrently filed a petition for waiver of the 60-day advance notice requirement of 49 CFR 1121.4(h). For the reasons discussed below, the Board will grant the petition for exemption and the petition for waiver.

Background

The State acquired the Line in 2008 through a series of sales transactions where ownership of the Line was ultimately transferred by the Dakota, Minnesota & Eastern Railroad Corporation (DM&E) to the State.¹ (Pet.

4.) RCPE explains in its filing that since 2008, the State has leased the Line to ECRRA. (Pet. 4.) Between 2008 and 2014, ECRRA subleased the Line to DM&E, and following RCPE's acquisition of certain lines from DM&E in 2014, ECRRA subleased the Line to RCPE.² RCPE asserts it has been leasing and operating the Line since 2014. (*Id.* at 6.) The State and RCPE have now entered into an agreement for RCPE to purchase the Line.³ (*Id.* at 4.) RCPE states that, as part of this transaction, the State and ECRRA have agreed to terminate their Line lease, and ECRRA and RCPE have agreed to terminate their Line sublease. (*Id.*)

According to RCPE, it does not intend to change its existing operations over the Line or make any changes in the way it currently maintains and dispatches the Line. (*Id.* at 5.) RCPE states in its filing that the transaction will have no impact on current RCPE, State, or ECRRA employees because these employees will be unaffected by the conversion of RCPE's leasehold interest in the Line to an ownership interest. (*Id.*) RCPE requests that the Board grant its petition for authority to acquire and operate the Line by September 30, 2026, so that the parties may close the transaction no later than October 31, 2026. (*Id.* at 2–3.)

RCPE also petitions the Board for a waiver of the 60-day notice requirement under 49 CFR 1121.4(h). Unless waived, Section 1121.4(h) would require RCPE, at least 60 days before the exemption becomes effective, to post a notice of its intent to undertake the proposed transaction (setting forth certain information) at the workplace of the employees on the affected lines, serve a copy of the notice on the national

(SDRRA), and SDRRA subsequently sold the Line to the State. *See State of S.D. by & through its S.D. R.R. Auth. and its Dep't of Transp.—Acquis. Exemption—E. Cent. Reg'l R.R.*, FD 35185, slip op. at 1–2 (STB served Nov. 5, 2008). Following consummation of these transactions, “DM&E . . . remain[ed] the operator of the [Huron–Yale] line by virtue of having retained sublease rights in the sale agreement with ECRRA.” (*Id.* at 2.) According to the State, this series of transactions was conducted so that the State could fund the rehabilitation of the Line. SDDOT Verified Notice 4, FD 35185 (stating that this structure is to “fund necessary rehabilitation of the line” while complying with applicable South Dakota statutes, and that “[t]hese statutory considerations are the reason for the slightly complex transactional structure” employed).

² *See Rapid City, Pierre & E. R.R.—Acquis. & Operation Exemption Including Interchange Commitment—Dakota, Minn. & E. R.R.*, FD 35799 (STB served Mar. 27, 2014).

³ In this agreement, RCPE will also acquire from the State 4.2 miles of sidetrack in Wolsey, S.D., that RCPE currently utilizes for interchange with BNSF Railway Company. (Pet. 4.) RCPE states that this track is not subject to Board jurisdiction and thus RCPE is not seeking authority to acquire it. (*Id.*)

offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. RCPE argues that the notice requirement would serve no useful purpose under the circumstances, asserts that it is clear that no railroad employees will be affected, much less adversely affected, by RCPE's purchase of the Line, and states that there will be no operational changes on the Line. (Pet. 8.) RCPE argues that posting notices on the Line would not provide any relevant notice to any State or ECRRA employees, since none are railroad employees and none work on the Line. (*Id.* at 5.)

No opposition to either the petition for exemption or the petition for waiver has been filed.

Discussion and Conclusions

Exemption from 49 U.S.C. 10902. Under 49 U.S.C. 10902, the acquisition of a rail line by a Class II rail carrier requires the prior approval of the Board. Under 49 U.S.C. 10502(a), however, the Board shall, to the maximum extent consistent with Title 49, Subtitle IV, Part A, exempt a transaction or service from regulation when it finds that: (1) regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction under section 10902 is not necessary to carry out the RTP. An exemption from the application process would minimize the need for Federal regulatory control, reduce regulatory barriers to entry, and result in the expeditious handling of this proceeding. *See* 49 U.S.C. 10101(2), (7), (15). Other aspects of the RTP would not be adversely affected by use of the exemption process.

Moreover, regulation of the proposed transaction under section 10902 is not needed to protect shippers from the abuse of market power.⁴ There would be no loss of rail competition and no adverse change in the competitive balance in the transportation market, as RCPE has been the carrier providing service over the Line since 2014,⁵ and will continue to do so. Nor would there be a change in the level of service to any

⁴ Because the Board concludes that regulation is not needed to protect shippers from the abuse of market power, it is unnecessary to determine whether the proposed transaction is limited in scope. *See* 49 U.S.C. 10502(a).

⁵ *Rapid City, Pierre & E. R.R.—Acquis. & Operation Exemption Including Interchange Commitment—Dakota, Minn. & E. R.R.*, FD 35799 (STB served Mar. 27, 2014).

¹ As explained in RCPE's filing, DM&E sold the Line to the East Central Regional Railroad Authority (ECRRA) in 2008. *See E. Cent. Reg'l R.R.—Acquis. Exemption—Dakota, Minn. & E. R.R.*, FD 35184, slip op. at 1 (STB served Nov. 5, 2008). ECRRA sold the Line to the South Dakota Railroad Authority

shippers, as RCPE has indicated that its “acquisition will not change the current service or service options for any shipper on the Line.” (Pet. 6.)

Waiver of 49 CFR 1121.4(h). As noted, RCPE has petitioned for waiver of the 60-day notification requirement under 49 CFR 1121.4(h). The purpose of that requirement is to ensure that rail labor unions and employees who would be affected by the transfer of a line are given sufficient notice of the transaction before consummation. The Board takes seriously the requirements of the regulation, but it does not appear that the purpose behind the notice requirement would be thwarted if the requested waiver is granted in this case.

The record indicates that no railroad employees would be adversely affected by waiver of the requirement here. As RCPE explains, no railroad employees will be affected by RCPE’s purchase of the Line and there will be no operational changes on the Line as a result of the transaction. (Pet. 8.) To the contrary, the record includes a letter of support from the union representing RCPE’s employees.⁶ (*Id.*) Because no employees would be adversely affected by the requested waiver of the 60-day notice period, the Board will grant the waiver. *See, e.g., Wis. & S. R.R.—Acquis. & Operation Exemption—City of Fitchburg, Wis.*, FD 35838, slip op. at 4 (STB served Nov. 18, 2014).

Employee Protection. Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Section 10902(d) provides for labor protection in line acquisitions by Class II rail carriers. As a condition to this exemption, any employees affected by the acquisition will be protected as required by 49 U.S.C. 10902(d), subject to the standards and procedures established in *Wisconsin Central Ltd.—Acquisition Exemption—Lines of Union Pacific Railroad*, 2 S.T.B. 218 (1997), *aff’d in relevant part sub nom. Ass’n of American Railroads v. STB*, 162 F.3d 101 (D.C. Cir. 1998).

Environmental and Historic Review. Under 49 CFR 1105.6(c)(1), this action, which will not result in significant changes in carrier operations, is

categorically excluded from environmental review. Similarly, under 49 CFR 1105.8(b)(1), no historic report is required because the subject transaction is for continued rail service. RCPE has indicated no plans to alter railroad properties 50 years old or older, and any abandonment would be subject to Board jurisdiction.

Effective Date. The exemption will take effect on September 5, 2026, unless it is stayed.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10902 RCPE’s acquisition of and operation over the Line, subject to the employee protective conditions implementing 49 U.S.C. 10902(d) as provided in this decision.

2. Notice of this exemption will be published in the **Federal Register**.

3. RCPE’s request for a waiver of the advance notice requirement under 49 CFR 1121.4(h) is granted.

4. This exemption will become effective on September 5, 2026.

5. Petitions to stay must be filed by August 17, 2026. Petitions to reopen must be filed by August 26, 2026.

Decided: August 6, 2026.

By the Board, Board Members Fuchs, Hedlund, Kloster, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2026–16276 Filed 8–10–26; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to

the Commission’s approval by rule process set forth in 18 CFR 806.22 (f) for the time period specified above.

Approvals by Rule—Issued Under 18 CFR 806.22(f)

1. Beech Resources, LLC; Pad ID: Foxtrot East Well Site; ABR–202606004; Anthony Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 16, 2026.

2. RENEWAL—Seneca Resources Company, LLC; Pad ID: D17–PPHC–B; ABR–201103023.R3; Lawrence Township, Clearfield County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 16, 2026.

3. RENEWAL—BKV Operating, LLC; Pad ID: Johnston 1 Pad; ABR–201106009.R3; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 21, 2026.

4. RENEWAL—Expand Operating LLC; Pad ID: Belawske; ABR–201107002.R3; Burlington Borough, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 21, 2026.

5. RENEWAL—Expand Operating LLC; Pad ID: Mitchell Well Pad; ABR–201105026.R3; Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 21, 2026.

6. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Null, Eugene Unit #2H–#7H Drilling Pad; ABR–201104011.R3; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2026.

7. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Shipman, James Unit #1H & #2H Drilling Pad; ABR–201104014.R3; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 21, 2026.

8. RENEWAL—Seneca Resources Company, LLC; Pad ID: Drake 274; ABR–201106003.R3; Lawrence Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 22, 2026.

9. RENEWAL—Seneca Resources Company, LLC; Pad ID: Gamble Pad R; ABR–201606001.R2; Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 22, 2026.

10. RENEWAL—BKV Operating, LLC; Pad ID: Giangrieco Pad; ABR–201107011.R3; Forest Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: July 27, 2026.

11. RENEWAL—Clean Energy Exploration & Production, LLC; Pad ID:

⁶In its filing, the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (SMART–TD) states that “converting [RCPE]’s leasehold interest into a full ownership will result in no operational changes or job reductions.” (SMART–TD Filing Pet. 1), and that “[b]ecause no SMART–TD represented employees will be adversely affected, displaced, or subjected to changes in employment terms as a result of this purchase, SMART–TD does not object to [RCPE]’s request for a waiver of the 60-day labor notice requirement[.]” (*Id.*)

Whispering Pines Pad 1; ABR–201606004.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

12. RENEWAL—EQT ARO LLC; Pad ID: Salt Run Pad A Ext; ABR–202107001.R1; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

13. RENEWAL—Expand Operating LLC; Pad ID: Lambs Farm; ABR–201106023.R3; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 27, 2026.

14. RENEWAL—LPR Energy, LLC; Pad ID: Snow Shoe 2; ABR–201011007.R3; Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

15. RENEWAL—LPR Energy, LLC; Pad ID: Snow Shoe 4; ABR–201011042.R3; Snow Shoe Township, Centre County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

16. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Mohawk South Unit Well Pad; ABR–201606002.R2; Gallagher Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

17. RENEWAL—Range Resources—Appalachia, LLC; Pad ID: Shipman-Goodwill Unit #1H–#4H Drilling Pad; ABR–201104016.R3; Lewis Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

18. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: ALDERSON (05 011) V; ABR–201104008.R3; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2026.

19. RENEWAL—Repsol Oil & Gas USA, LLC; Pad ID: DORN (02 180) A; ABR–201604003.R2; Hamilton Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: July 27, 2026.

20. RENEWAL—Seneca Resources Company, LLC; Pad ID: Yourgalite 1119; ABR–201012056.R3; Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: July 27, 2026.

21. RENEWAL—Expand Operating LLC; Pad ID: ACW; ABR–201107004.R3; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

22. RENEWAL—Expand Operating LLC; Pad ID: Burns; ABR–201107038.R3; Ulster Township,

Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

23. RENEWAL—Expand Operating LLC; Pad ID: Fisher; ABR–201107047.R3; Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

24. RENEWAL—Expand Operating LLC; Pad ID: IH; ABR–201106014.R3; Stevens Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

25. RENEWAL—Expand Operating LLC; Pad ID: J & J; ABR–201106015.R3; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

26. RENEWAL—Expand Operating LLC; Pad ID: Knickerbocker; ABR–201106013.R3; Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

27. RENEWAL—Expand Operating LLC; Pad ID: Layton; ABR–201107036.R3; Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

28. RENEWAL—Expand Operating LLC; Pad ID: Mel; ABR–201106012.R3; Franklin Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

29. RENEWAL—Expand Operating LLC; Pad ID: Neal; ABR–201106010.R3; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

30. RENEWAL—Expand Operating LLC; Pad ID: Nichols; ABR–201106024.R3; Smithfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

31. RENEWAL—Expand Operating LLC; Pad ID: Oilcan; ABR–201107037.R3; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

32. RENEWAL—Expand Operating LLC; Pad ID: Paul; ABR–201107048.R3; Ulster Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

33. RENEWAL—Expand Operating LLC; Pad ID: Ramblinrose; ABR–201105003.R3; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

34. RENEWAL—Expand Operating LLC; Pad ID: Sadecki Well Pad; ABR–201105020.R3; Liberty Township, Susquehanna County, Pa.; Consumptive

Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

35. RENEWAL—Expand Operating LLC; Pad ID: SJW; ABR–201107003.R3; Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: July 31, 2026.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: August 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026–16338 Filed 8–10–26; 8:45 am]

BILLING CODE 7040–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

General Permit Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists General Permits approved by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax (717) 238–2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists General Permits for projects, described below, pursuant to 18 CFR 806.17(c)(4), for the time period specified above.

1. Pennsylvania Department of Environmental Protection—Bureau of Abandoned Mine Reclamation; Locust Gap Refuse Bank Fire, General Permit Approval of Coverage No. GP–02–202607023, Mount Carmel Township and Butler Township, Northumberland and Schuylkill County, Pa.; Extinguish a Mine Fire; approved withdrawals and consumptive use up to 0.720 mgd (30-day average) from Admiral Breaker Water Well, Girardville Breaker Water Well, and Commissioner's Lake Mine Pit; Approval Date: July 21, 2026.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: August 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026-16339 Filed 8-10-26; 8:45 am]

BILLING CODE 7040-01-P

SUSQUEHANNA RIVER BASIN COMMISSION

Grandfathering Registration Notice

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Grandfathering Registration for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: July 1–31, 2026.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238-0423, ext. 1312; fax: (717) 238-2436; email: joyler@srbc.gov. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists GF Registration for projects, described below, pursuant to 18 CFR Part 806, Subpart E, for the time period specified above:

1. Susquehanna Area Regional Airport Authority—Harrisburg International Airport—Public Water Supply System, GF Certificate No. GF-202607317, Lower Swatara Township and Middletown Borough, Dauphin County, Pa.; Issue Date: July 22, 2026.

Authority: Public Law 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806 and 808.

Dated: August 7, 2026.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2026-16340 Filed 8-10-26; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2025-0588]

Notice of Petition for Modification of Waiver of Compliance

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

ACTION: Notice.

SUMMARY: This document provides the public notice that Long Island Rail Road (LIRR) petitioned FRA for a modification of the existing waiver from certain regulations concerning video and audio recording system on passenger cars.

DATES: FRA must receive comments on the petition by October 13, 2026. FRA will consider comments received after that date to the extent practicable.

ADDRESSES:

Comments: Comments related to this docket may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Harold Weisinger, Railroad Safety Specialist, FRA Motive Power and Equipment Division, telephone: 202-493-0036, email: harold.weisinger@dot.gov.

SUPPLEMENTARY INFORMATION: Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated May 14, 2026, LIRR petitioned FRA for a modification of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 229 (Railroad Locomotive Safety Standards). The relevant Docket Number is FRA-2025-0588.

Specifically, LIRR seeks to modify its implementation plan that was approved in FRA's April 9, 2026 decision letter.¹ That letter extended the compliance deadline for installation of a new video and audio recording system on LIRR's M7 and diesel passenger fleets until December 31, 2030, allowing LIRR to keep a large portion of its fleets in service.

In its May 14, 2026 petition, LIRR requests that although the existing video and audio recording system is not

¹ <https://www.regulations.gov/document/FRA-2025-0588-0008>.

compliant with the final rule in § 229.136, *Locomotive image and audio recording devices*, the system should continue to be used until the units can be replaced. LIRR determined that removing its existing system, which “functions around 98% of the time,” until the installation deadline for its new system would not serve the public interest.

LIRR seeks to exclude its existing system from the daily inspection requirements of 49 CFR 229.21, stating its intent to retain the current system pending replacement and to ensure that units that have completed the 92-day periodic inspection function properly. The petition states that LIRR's existing system on its locomotives “indicate faults that may or may not render the cab cameras non-functional.” Investigation of the reported faults requires “considerable resources” on systems that “are still capturing” “important images and audio.”

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

Communications received by October 13, 2026 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Privacy Act

Anyone can search the electronic form of any written communications and comments received into any of FRA's dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to inform its processes. DOT posts these comments, without edit, 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/privacy>. See also <https://www.regulations.gov/privacy-notice> for the privacy notice of www.regulations.gov.

Issued in Washington, DC.

John Karl Alexy,

*Associate Administrator for Railroad Safety,
Chief Safety Officer.*

[FR Doc. 2026-16347 Filed 8-10-26; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT-OST-2026-2443]

Privacy Act of 1974; System of Records

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT) proposes a new system of records titled “DOT/FMCSA 016, Customer Relationship Records (CRR).” This system of records allows DOT to collect and maintain both written and verbal correspondence from Agency customers who contact the FMCSA (1-800-832-5660 toll free number, by email, or chat). The information in the system enables the Agency to receive, respond to, and refer customer inquiries regarding Agency services.

DATES: Submit comments on or before September 10, 2026. The Department may publish an amended Systems of Records Notice considering any comments received. This new system of records will be effective immediately upon publication. The routine uses will be effective September 10, 2026.

ADDRESSES: You may submit comments, identified by docket number DOT-OST-2026-2443, by one of the following methods:

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

- *Mail:* Department of Transportation Docket Management, Room W12-140, 1200 New Jersey Ave. SE, Washington, DC 20590.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Instructions:* You must include the agency name and docket number DOT-OST-2026-2443. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided. You may review the

Department of Transportation’s complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For questions, please contact Karyn Gorman, Departmental Chief Privacy Officer, Privacy Office, Department of Transportation, Washington, DC 20590; email: privacy@dot.gov; phone (202) 603-8321.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, the DOT/FMCSA is proposing a new system of records titled “Department of Transportation (DOT)/Federal Motor Carrier Safety Administration (FMCSA) 016, Customer Relationship Records (CRR)”. The information in the system is collected to enable the Agency to receive, respond to, and refer customer inquiries regarding Agency services. The system serves as a record of the inquiry and is used for collecting inquiry data; responding to or referring the inquiry; aggregating data that will be used to inform other functions of the Agency and, as appropriate, other agencies and/or the public; and providing related educational and informational content. The information will also be used for administrative purposes to ensure quality control, performance, and improving management processes at the FMCSA contact center. This system consists of written or verbal inquiries received by the Agency as well as information concerning responses to or referrals of these inquiries, as appropriate.

The information in the system is collected to create a unique Customer Contact Record for each customer. The record is available to all FMCSA authorized users. The record includes all inquiry responses facilitating consistency across engagements and limiting opportunities for “answer shopping.” Answer shopping can cause inconsistent responses and increase time to answer, which is why this activity should be limited within the

contact center. This enables the Agency to receive, respond to, and refer customer inquiries regarding Agency services.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the Federal Government collects, maintains, and uses personally identifiable information (PII) in a System of Records. A “system of records” is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a System of Records Notice (SORN) identifying and describing each System of Records the agency maintains, including the purposes for which the agency uses PII in the system, the routine uses for which the agency discloses such information outside the agency, and how individuals to whom a Privacy Act record pertains can exercise their rights under the Privacy Act (e.g., to determine if the system contains information about them and to contest inaccurate information). In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM NAME AND NUMBER:

DOT/FMCSA 016—Customer Relationship Records (CRR).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained in a FedRAMP-authorized third-party cloud environment (Amazon Web Services (AWS) GovCloud East region). The contracts are maintained by U.S. DOT at 1200 New Jersey Avenue SE, Washington, DC 20590.

SYSTEM MANAGER(S):

FMCSA Office of Registration, 1200 New Jersey Avenue SE, Washington, DC 20590.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 502, 504, 506, 508, Chapter 139, and 49 CFR 1.73.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to enable the FMCSA to fulfill its statutory mandates under 49 U.S.C. 502, 504, 506, 508, and Chapter 139, as delegated by 49 CFR 1.73. The system serves as a centralized platform to manage, track, and coordinate interactions with both external constituents and governmental

partners to enhance the safety, oversight, and administration of motor carrier regulations.

Specifically, the system is used to:

- *Execute Regulatory Oversight:*

Facilitate the collection and management of information required for the registration, licensing, and financial responsibility oversight of entities governed by 49 U.S.C. Chapter 139.

- *Facilitate Constituent Engagement:* Provide a streamlined mechanism for responding to inquiries, requests for technical assistance, and safety-related information from motor carriers, drivers, and the public.

- *Coordinate Inter-agency Enforcement and Safety Initiatives:* Enable secure and efficient communication with Federal, State, and local law enforcement and transportation partners to coordinate safety audits, inspections, and enforcement activities as authorized under 49 U.S.C. 502 and 506.

- *Maintain Administrative Records:* Serve as the official repository for reports, data, and communications required to be maintained or produced under 49 U.S.C. 504, ensuring transparency and accountability in agency proceedings.

- *Support Data-Driven Safety Programs:* Analyze interaction trends and stakeholder feedback to improve the efficacy of safety programs, outreach initiatives, and regulatory compliance assistance.

- *Manage Stakeholder Outreach:* Disseminate critical safety alerts, regulatory updates, and official notices to industry stakeholders and governmental partners.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

- Individuals who are sole proprietors, owners, or operators of a regulated entity who have provided PII.

- Individuals associated with regulated entities, including company officials, designated registrant employees, safety managers, and authorized account holders.

- Individuals associated with cargo tank facilities required to register with FMCSA, including manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers.

- Individuals employed by or acting on behalf of insurers, financial institutions, blanket process agent companies, and third-party service providers who submit registration-related information on behalf of registrants.

- Members of the public who submit registration-related protests.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

- *External Constituent and Citizen Records:*

Records maintained on members of the public, representatives of non-governmental organizations, and private sector entities may include:

- *Biographic and Contact Data:* Legal name, aliases, and preferred names; home or business mailing addresses; personal and/or professional email addresses; and phone numbers.

- *Organizational Affiliations:* Name of the entity represented, job title, and professional credentials.

- *Inquiry and Response Records:* Subject matter of the inquiry; correspondence (electronic or physical); records of phone calls or virtual meetings; and any supporting documentation provided by the individual to facilitate a request for information or service.

- *Engagement Metadata:* Subscription preferences for agency communications; language preferences; and digital identifiers (such as usernames) for public-facing agency portals.

- *Inter-agency and Inter-governmental Stakeholder Records.*

- Records maintained on employees of Federal, State, Local, Tribal, or international government agencies acting in their official capacities may include:

- *Official Professional Identity:* Name, official government title, agency, bureau, or department name; and office location/duty station.

- *Work Contact Information:* Government-issued email addresses and work telephone numbers.

- *Liaison and Coordination Records:* Records regarding joint projects or initiatives; inter-agency agreement (IAA) reference numbers associated with a contact; records of official briefings; and logs of inter-agency task force participation.

- *Authentication Data:* Unique internal identifiers used to grant access to shared government-to-government (G2G) databases or collaborative CRM modules.

- *Common Transactional and Audit Records*

For all categories of individuals, the system maintains records necessary to ensure the integrity and security of the data, including:

- *Audit Logs:* Timestamps of record creation, modification, or access; and IP addresses associated with system interactions.

- *Reference Identifiers:* System-generated unique identification numbers used to link related records

across different modules within the CRM.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals, regulated entities, and supporting companies submitting inquiries. Inquiries are received via phone, email, or chat to the Agency's contact center.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses:

1. To Federal, State, local, or Tribal agencies, or foreign counterparts, for the purpose of coordinating motor carrier safety audits, inspections, investigations, or enforcement actions, or to facilitate the exchange of information related to the registration and financial responsibility of entities governed by 49 U.S.C. Chapter 139.

2. To members of the public or private sector organizations for the purpose of disseminating safety alerts, regulatory updates, or official agency notices where such disclosure is necessary to ensure the safety of the motoring public or compliance with Federal motor carrier safety regulations.

Department General Routine Uses:

3. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

- 4a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—(a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to

represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

4b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when—(a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

5. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

6. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration (NARA) in records management inspections being

conducted under the authority of 44 U.S.C. 2904 and 2906.

7a. DOT may disclose records from this system, as a routine use, to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records; (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7b. DOT may disclose records from this system, as a routine use, to another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

9. DOT may disclose records from the system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

10. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

11. DOT may disclose from this system, as a routine use, records consisting of, or relating to, terrorism information (6 U.S.C. 485(a)(5)),

homeland security information (6 U.S.C. 482(f)(1)), or Law enforcement information (Guideline 2 Report attached to White House Memorandum, "Information Sharing Environment", November 22, 2006) to a Federal, State, local, tribal, territorial, foreign government and/or multinational agency, either in response to its request or upon the initiative of the Component, for purposes of sharing such information as is necessary and relevant for the agencies to detect, prevent, disrupt, preempt, and mitigate the effects of terrorist activities against the territory, people, and interests of the United States of America, as contemplated by the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108-458) and Executive Order 13388 (October 25, 2005).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in the system are stored electronically on a contractor-maintained cloud storage service.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by USDOT number, Operating Authority number (Docket Number), telephone number, email address, and/or person's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in the system are maintained in accordance with NARA retention schedule DAA-0557-2015-0006. The records are considered temporary and are destroyed 20 years after the end of the event product lifecycle and then until no longer needed for conducting business.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT IT systems security and access policies. Appropriate controls have been imposed to minimize the risk of compromising the information that is being stored and ensuring confidentiality of communications using tools such as encryption, authentication, auditing, and compartmentalizing databases. Data is encrypted at rest and in transit. Access to the records in this system is limited to those authorized individuals who have a need to know the information in furtherance of the performance of their official duties, and who have appropriate clearances or permissions. All personnel with access to data are screened through background investigations commensurate with the

level of access required to perform their duties.

RECORD ACCESS PROCEDURES:

Individuals seeking access to and notification of any record contained in this system of records or seeking to contest its content may submit a request in writing to the System Manager to the address provided under “System Manager and Address” above or submit online via the Department’s Public Access Link (PAL) at <https://pal.dot.gov/>. Requests submitted through these electronic channels must include a digital certification of identity.

When an individual seeks records about himself or herself from this system of records or any other Departmental system of records, the request must conform with the Privacy Act regulations set forth in 49 CFR part 10. The individual’s request must verify their identity by providing their full name, current address, and date and place of birth. The individual must sign the request, and the individual’s signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. No specific form is required.

In addition, the individual should:

- Explain why the individual believes the Department would have information on them;
- Identify which component(s) of the Department the individual believes may have the information about them;
- Specify when the individual believes the records would have been created;
- and provide any other information that will help FMCSA.

If an individual’s request is seeking records pertaining to another living individual, the first individual must include a statement from the second individual certifying his/her agreement for the first individual to access his/her records. Without the above information, the component(s) may not be able to conduct an effective search, and the individual’s request may be denied due to a lack of specificity or compliance

with the consent requirements of the Privacy Act statute and regulations.

CONTESTING RECORD PROCEDURES:

See “Records Access Procedures” above.

NOTIFICATION PROCEDURES:

See “Record Access Procedures” above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Issued in Washington, DC.

Karyn Gorman,

Departmental Chief Privacy Officer.

[FR Doc. 2026–16366 Filed 8–10–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection Activity: Veteran/ServiceMembers Supplemental Application for Assistance in Acquiring Specially Adapted Housing

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 September 10, 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. 2900–0031.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Dorothy Glasgow, 202–461–1084, VAPRA@va.gov.

SUPPLEMENTARY INFORMATION:

Title: Veteran/ServiceMembers Supplemental Application for Assistance in Acquiring Specially Adapted Housing.

OMB Control Number: 2900–0031 <https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Extension without change of a currently approved collection.

Abstract: VA Form 26–4555c, authorized under Title 38, U.S.C., Chapter 21, is used to collection information necessary to support the VA program that provides specially adapted housing grants and evaluates the suitability of proposed housing modifications or construction for Veterans and Servicemembers.

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 91 FR 32514, June 1, 2026.

Affected Public: Individuals or Households.

Estimated Annual Burden: 350 hours annually.

Estimated Average Burden per Respondent: 15 Minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,400.

Authority: 44 U.S.C. 3501 *et seq.*

Shunda Willis,

Alternate, VA PRA Clearance Officer, Office of Information Technology, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2026–16308 Filed 8–10–26; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 153

August 11, 2026

Part II

Department of Health and Human Services

Food and Drug Administration

21 Parts 170 and 570

Substances Generally Recognized as Safe; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 170 and 570

[Docket No. FDA-2025-N-3262]

RIN 0910-AJ02

Substances Generally Recognized as Safe

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to require the submission of generally recognized as safe (GRAS) notices for the use of a human or animal food substance purported to be GRAS under the conditions of its intended use under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

DATES: Either electronic or written comments on the proposed rule must be submitted by December 9, 2026. Submit comments (including recommendations) on the collection of information under the Paperwork Reduction Act of 1995 by December 9, 2026.

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

Electronic Submissions

Submit electronic comments in the following way:

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

comments, that information will be posted on <https://www.regulations.gov>.

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2025-N-3262 for "Substances Generally Recognized as Safe." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

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

of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

Docket: For access to the docket to read background documents, the plain language summary of the proposed rule of not more than 100 words as required by the "Providing Accountability Through Transparency Act," or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if your comments are received by December 9, 2026. Submit your comments on FDA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden to FDA using the docket identified at the beginning of this rulemaking. FDA will respond to any information collection-related comments in the final rule. You may also send your information collection-related comments to OMB's Office of Information and Regulatory Affairs using the interface at <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 title of this proposed collection is "Substances Generally Recognized as Safe: Notification Procedure."

FOR FURTHER INFORMATION CONTACT:

With regard to substances that would be used in human food: Paulette Gaynor or Christopher Kampmeyer, Office of Pre-Market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-1200; Carrol Bascus or Alexandra Beliveau, Office of Policy and International Engagement, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

With regard to substances that would be used in animal food: Charlotte Conway, Tonia Bair, or Marla Keller, Office of Surveillance and Compliance, Center for Veterinary Medicine, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-6768.

With regard to the information collection: Michael Ellison, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 240–402–2093, PRAStaff@fda.hhs.gov.

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I. Executive Summary

A. Purpose and Coverage of the Proposed Rule

The proposed rule, if finalized, would amend our regulations at parts 170 and 570 (21 CFR parts 170 and 570) to require the submission of GRAS notices for the use of a human or animal food substance that is purported to be GRAS under the conditions of its intended use under section 201(s) of the FD&C Act (21 U.S.C. 321(s)). Food substances include both ingredients and substances added indirectly, such as from food packaging. The proposed rule would require any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act to notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use unless an exception to the requirement to submit a GRAS notice applies. This change would provide greater transparency about substances that are added to food (including substances already in the food supply and those being introduced into interstate commerce for use in food for the first time), so that FDA can more efficiently determine if the use of a substance constitutes a food additive use that is subject to FDA review and approval under the FD&C Act. This change is expected to provide FDA with information to help identify the use of potentially unsafe substances in food, thereby enabling FDA to take action as appropriate and regulate the safety of food substances more effectively.

B. Summary of the Major Provisions of the Proposed Rule

The proposed rule, if finalized, would:

- Convert the voluntary GRAS notification program to a mandatory GRAS notification program and explain that if the notification requirement is not met for a substance's conditions of intended use, FDA would consider such noncompliance as a factor in its prioritization of food substances for post-market review;
- Establish certain exceptions to the requirement to submit a GRAS notice,

including a time-limited option to make a streamlined submission to FDA for certain intended uses of substances already in interstate commerce instead of initially submitting a GRAS notice; and

- Revise our procedural regulations for a threshold of regulation (TOR) exemption for human food to reflect updated scientific guidance and to include uses of substances in food and as a food contact substance (FCS).

C. Legal Authority

We are issuing this proposed rule consistent with our authority in sections 201, 402, 409, and 701 of the FD&C Act (21 U.S.C. 321, 342, 348, 371).

D. Costs and Benefits

This proposed rule would revise the procedures by which a person introducing a human or animal food substance into interstate commerce notifies FDA of a conclusion that the use of such substance is GRAS. Specifically, the proposed rule would require the submission of GRAS notices to FDA for certain uses of food substances. A substance that is GRAS under the conditions of its intended use is not subject to FDA premarket review and approval as a food additive for that particular use (see sections 201(s) and 409 of the FD&C Act). Under our current regulations, a person who concludes that the use of a substance is GRAS under the conditions of its intended use may, but is not required to, notify FDA of this conclusion. The submission of a GRAS notice is therefore currently voluntary. If the proposed rule is finalized, GRAS notices will be required for certain uses of substances in human and animal food.

The primary benefits of the proposed rule, if finalized, would come from increased information being made available to FDA and the public regarding substances used in human and animal foods. This information would enable us to more effectively determine if the use of a substance constitutes a food additive use that is subject to premarket review and approval under the FD&C Act. This information is also expected to provide FDA with information to help identify the use of potentially unsafe substances in food, thereby enabling FDA to take action as appropriate and regulate the safety of food substances more effectively. A mandatory GRAS notification program would allow FDA to ensure that GRAS conclusions have a scientific basis and that appropriate documentation supporting those conclusions exists. The proposed rule, if finalized, is in part intended to help

strengthen public confidence in FDA's ability to oversee the safety of the U.S. food supply. One-time costs of the proposed rule to persons who introduce a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act include reading the rule and revising standard operating procedures regarding GRAS notices. Other one-time per manufacturer costs of the proposed rule are preparing and submitting streamlined submissions related to uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act before the effective date of a final rule, for firms that choose to submit this information during the window of availability for this time-limited option for such submissions. Costs associated with these activities may include translation costs for manufacturers in non-English speaking countries. Recurring costs to affected manufacturers would include preparing and submitting GRAS notices for new uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act after the effective date of a final rule that would otherwise have been the

subject of an independent conclusion of GRAS status (*i.e.*, a GRAS conclusion has been reached without submitting a GRAS notice) (see sections III and VII of this document for further discussion of independent conclusion of GRAS status and effective and compliance dates, respectively).

Costs to FDA would include one-time costs of reviewing streamlined submissions related to uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act before the effective date of a final rule during the time-limited period for such submissions, and annual costs of evaluating ongoing submissions of GRAS notices regarding uses of substances that would otherwise have been the subject of an independent conclusion of GRAS status.

Other effects of the proposed rule may include transfers of market share and revenue between manufacturers of products with similar ingredients. For example, the submission of a GRAS notice may lead to a determination by FDA that there is an insufficient basis for concluding that a substance that happens to be used in only certain of

the products was GRAS. We acknowledge the potential for such transfers if the rule is finalized. We do not estimate the magnitude of such effects because we cannot identify which substances may be the subject of an insufficient basis letter, which products they are in, or the market share of such products.

We estimate that the present value of the costs of the proposed rule would be approximately \$89.6 million, with a lower bound of \$34.9 million and an upper bound of \$210.0 million, discounted at 3 percent at 10 years in 2024 dollars. At a 7 percent discount rate, the present value of costs would be approximately \$82.3 million, with a lower bound of \$31.5 million and an upper bound of \$195.9 million. We estimate that the annualized costs of the proposed rule would be approximately \$10.5 million, with a lower bound of \$4.1 million and an upper bound of \$24.6 million, discounted at 3 percent over 10 years. At a 7 percent discount rate, annualized costs would be approximately \$11.7 million, with a lower bound of \$4.5 million and an upper bound of \$27.9 million.

II. Table of Abbreviations/Commonly Used Acronyms in This Document

Abbreviation/Acronym	What It Means
AAFCO	Association of American Feed Control Officials, Inc.
CFR	Code of Federal Regulations
COSM	Centralized Online Submission Module
CVM	Center for Veterinary Medicine
FCN	Food Contact Notification
FCS	Food Contact Substance
FDA	Food and Drug Administration
FD&C Act	Federal Food, Drug, and Cosmetic Act
FOIA	Freedom of Information Act
FR	Federal Register
GAO	U.S. Government Accountability Office
GRAS	Generally Recognized as Safe
GRN No.	GRAS notice file number
HFP	Human Foods Program
HHS	U.S. Department of Health and Human Services
IOM	Institute of Medicine (now National Academies of Science, Engineering, and Medicine)
mg/p/d	Milligrams per person per day
NCI	National Cancer Institute
OMB	Office of Management and Budget
PRA	Paperwork Reduction Act
PRIA	Preliminary Regulatory Impact Analysis
Secretary	Secretary of HHS
TOR	Threshold of Regulation
U.S.C.	United States Code

III. Background

On March 10, 2025, the Secretary of Health and Human Services, Robert F. Kennedy Jr., directed FDA to explore rulemaking to eliminate the pathway for firms to introduce purported GRAS uses of substances into the market without notifying FDA of the basis for their GRAS conclusions (Ref. 1). Secretary Kennedy's call for a reformed GRAS notification process aligns with the Administration's Make America Healthy Again initiative by providing increased transparency about the substances being added to the nation's food supply (Ref. 2). A mandatory GRAS notification program would require any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act to notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use. A mandatory program would enable FDA to more effectively ensure the safety of the U.S. food supply—one that has grown far more complex in recent years—by providing us with information needed to help identify the use of potentially unsafe substances in food or additives that require FDA's review and approval to be lawfully marketed, so we can take action as appropriate. A mandatory GRAS notification program would therefore address growing concerns about the increasingly complex U.S. food supply. For example, firms are introducing substances into food without publicly disclosing the underlying safety information about the use of such ingredients and FDA sometimes becomes aware of the need to take action regarding unsafe substances in food only after adverse public health events occur. Further, a mandatory program that includes the continued public disclosure of information about GRAS uses of substances would substantially increase the public's access to information concerning the substances being added to human and animal food.

In 1958, Congress enacted the Food Additives Amendment to the FD&C Act (the 1958 amendment) (Pub. L. 85–929, 72 Stat. 1784), which expanded FDA's broad authority under the FD&C Act to ensure the safety of the U.S. food supply. Among other things, the 1958 amendment created a new framework for FDA's oversight of substances being added to food. The 1958 amendment defined the term “food additive” and established a premarket review and approval framework for these food substances (sections 201(s) and 409 of the FD&C Act). Notably, in defining

what constitutes a food additive subject to premarket review and approval, the 1958 amendment excluded substances that are GRAS under the conditions of their intended use (section 201(s) of the FD&C Act). Congress therefore exempted substances that are GRAS under the conditions of their intended use from the premarket review and approval requirements for food additives under the FD&C Act. However, as discussed elsewhere in this document, Congress struck a balance: although it exempted substances that are GRAS under the conditions of their intended use from premarket review and approval, Congress granted FDA the authority to review food substances on the market, including new and existing substances introduced into food that are purported to be GRAS under the conditions of their intended use, to assess whether these substances meet the definition of a food additive that requires premarket authorization (sections 409(a) and (d) of the FD&C Act).

In the over 60 years since the enactment of the 1958 amendment, FDA has regulated GRAS uses of substances in food through various mechanisms, including by: listing certain substances as GRAS under the conditions of their intended use in our regulations; conducting a comprehensive study of purported GRAS uses of substances to determine whether certain uses of substances required FDA's review and approval as food additive uses; and establishing a GRAS affirmation process, through which interested parties could petition us to affirm the GRAS status of a particular use of a substance.

Our current GRAS notification program was first proposed in 1997, and under this program, parties can voluntarily notify us of a conclusion that a substance is GRAS under the conditions of its intended use. Through a GRAS notice, parties can share with us the underlying data and other scientific information used to support their conclusion that the use of a substance is GRAS under the conditions of its intended use. A GRAS conclusion constitutes an assertion on the part of the notifier (*i.e.*, the person responsible for the GRAS notice; see § 170.203 (21 CFR 170.203) and § 570.203 (21 CFR 570.203)) that the intended use of a substance is not a food additive use that is subject to the premarket review and approval requirements of section 409 of the FD&C Act. Importantly, a person's conclusion that a substance is GRAS under the conditions of its intended use (or similar claims by a person that they have independently “certified” the use

of a substance as GRAS) does not necessarily mean that such a use is GRAS or that the use is not an unapproved food additive use. For example, FDA may determine, based on an assessment of evidence, that the use of a substance is not GRAS or that it is otherwise an unapproved food additive.

As part of our voluntary GRAS notification program, once we file a GRAS notice, we conduct an evaluation to determine whether the data and information presented, and other information available to FDA, provide a sufficient basis for a conclusion that the substance is GRAS under the conditions of its intended use. In general, FDA will respond to a GRAS notice in one of three ways: (1) by indicating that we do not question the basis for the GRAS conclusion contained in the notice (“no questions” letter); (2) by indicating that we have concluded that the notice does not provide a sufficient basis for a GRAS conclusion (*e.g.*, because the notice does not include appropriate data and information or because key data and information are not publicly available); or (3) by stating that we have granted a request by the notifier for us to cease our evaluation of the GRAS notice. There is no requirement that a notifier must wait to receive a response from FDA regarding their GRAS conclusion before introducing the substance into interstate commerce. We provide information about GRAS notices and our responses on our website (Refs. 3 and 4).

While the current GRAS notification program has been informative and beneficial to our administration of the FD&C Act, our nearly 30 years of experience with the program, and particularly our experience administering the program since it was finalized in 2016, has highlighted several challenges.

The voluntary nature of the GRAS notification program has meant that information gaps persist for both FDA and the public about substances being added to food, an issue covered extensively in a 2010 U.S. Government Accountability Office (GAO) report (see section III.B.1.c of this document for further discussion) (Ref. 5). Our lack of complete information about what substances are being added to food has, at times, prevented early engagement with industry about new uses of substances in food and frustrated our ability to carry out our public health and safety responsibilities under the FD&C Act (see section III.B of this document for further discussion). At the same time, recent changes in our country's food supply, such as evolving consumer demand for different types of

products and ongoing innovation in food manufacturing and ingredient development, have resulted in a more diverse food supply. It was estimated that, as of January 2011, more than 10,000 additives were being used in food, including an estimated 1,000 human food substances for which firms had claimed independent conclusions of GRAS status (*i.e.*, they had reached a GRAS conclusion without submitting a GRAS notice) (Refs. 6 and 7).

In light of the issues we have identified with the voluntary GRAS notification program, and the challenges we face due to ongoing food innovation and evolving consumer demands, we find ourselves in a situation much like the years before the 1958 amendment's enactment. At that time, numerous substances with unknown safety profiles were being added to or used in connection with food without sufficient FDA oversight. Today, an unknown number of substances are being introduced into the market under the GRAS provision of section 201(s) of the FD&C Act. The proposed rule would address our current circumstances by requiring the submission of GRAS notices. Mandatory submission of GRAS notices would increase knowledge and improve the transparency about substances in the U.S. food supply that are purported to be GRAS under the conditions of their intended use. It would give FDA, state regulators, consumers, industry, and consumer advocacy groups more information about substances being used in human and animal food. Once filed, information about all purported GRAS uses of substances is expected to enable FDA to more efficiently determine whether the use of a substance meets the definition of a food additive use under the FD&C Act, and therefore whether the use of the substance requires FDA's review and approval to be lawfully marketed. Further, mandatory submission of GRAS notices would help FDA ensure that GRAS conclusions have a scientific basis and are appropriately documented and maintained. It would also provide an earlier opportunity for us to engage with industry if questions arise regarding a conclusion that a substance is GRAS under the conditions of its intended use. Mandatory submission of GRAS notices would enable FDA to administer and enforce the FD&C Act more effectively and efficiently.

A. Statutory and Regulatory History

1. The Food Additives Amendment of 1958

In 1950, to address emerging health concerns about the use of new chemicals in food, the U.S. House of Representatives established a committee chaired by Representative James Delaney of New York (the Delaney Committee) to investigate the substances being added to or used in connection with the nation's changing food supply. The Delaney Committee issued a report in June 1952 summarizing its findings (Ref. 8). The report found, among other things, that food substances were being used "without adequate and sufficient testing of their possible long-range injurious effects" (*id.* at 27). The report further concluded that the public was "entitled to greater protection with respect to the foods it must necessarily consume[.]" and that "such protection [was] not afforded by existing legislation, under which the Government may take no action until after the food has been placed upon the market and injury may have occurred" (*id.* at 27). The Delaney Committee therefore recommended that the FD&C Act be amended to require premarket safety reviews for "chemicals employed in or on foods" (*id.* at 27).

In 1958, based in part on the Delaney Committee's report, as referenced in the corresponding House Report (Ref. 9), Congress enacted the Food Additives Amendment to the FD&C Act to strengthen government oversight of substances being added to or used in connection with food. "Food" includes articles used for food or drink for humans or other animals and articles used for components of such food (see section 201(f) of the FD&C Act); therefore, the 1958 amendment covered additives in both human and animal foods. Echoing the Delaney Committee's call for premarket oversight of food substances, Congress's stated purpose in passing the 1958 amendment was "[t]o protect the public health by amending the [FD&C Act] to prohibit the use in food of additives which have not been adequately tested to establish their safety" (Pub. L. 85–929, 72 Stat. 1784).

Specifically, the 1958 amendment requires that, before certain substances may be added to food, FDA must authorize their use through a premarket review and approval process (sections 409(b) through (e) of the FD&C Act). Among other things, the 1958 amendment:

- defines what constitutes a "food additive" subject to premarket review and approval (now codified at section 201(s) of the FD&C Act);

- creates a detailed premarket authorization process for food additives that can result in a food additive regulation establishing the safety of a food additive for a particular use (sections 409(a) through (e) of the FD&C Act);

- enables any person to submit a food additive petition to propose the issuance of a food additive regulation (section 409(b) of the FD&C Act);

- empowers the Secretary of the U.S. Department of Health and Human Services (the Secretary) to at any time, on their own initiative, propose the issuance of a food additive regulation (section 409(d) of the FD&C Act); and

- deems adulterated any food that is, or bears or contains, a "food additive that is unsafe within the meaning of section 409 [of the FD&C Act]" (now section 402(a)(2)(C)(i) of the FD&C Act).

With some exceptions, section 409(a) of the FD&C Act provides that food additives are deemed "unsafe" for purposes of the adulteration provision of section 402(a)(2)(C)(i) of the FD&C Act unless their use conforms with a food additive regulation issued pursuant to the premarket review and approval process of section 409 of the FD&C Act. Congress later added to this premarket authorization framework by establishing a mandatory food contact notification program for human foods (see section 409(h) of the FD&C Act) and certain requirements specific to food additives intended for use in animal food (see section 409(k) of the FD&C Act).

2. Statutory Approach to Substances Generally Recognized as Safe (GRAS)

In enacting the 1958 amendment, Congress recognized that many substances added to food would not need to go through formal premarket review and approval to assure their safety, either because their safety had been established by a long history of use in food or by virtue of the nature of the substance, its customary or projected conditions of use, and the information generally available to scientists about the substance. Therefore, Congress adopted a two-step definition of "food additive" (see section 201(s) of the FD&C Act). The first step broadly includes any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food. This includes substances added to food directly (*i.e.*, ingredients) and indirectly (*i.e.*, substances used in contact with food). As such, substances that migrate or may reasonably be expected to migrate into food from their intended use in contact with food (*e.g.*,

from conveyor belts, containers for shipping, packaging for food) would be regulated as food additives unless such use is GRAS or otherwise excepted from the definition of a food additive. Further information about food contact substances is available on our website (see Ref. 10). The second step excludes from the definition of a “food additive” substances that are generally recognized, among experts qualified by scientific training and experience to evaluate their safety, as having been adequately shown through scientific procedures (or, in the case of substances used in food before January 1, 1958, through either scientific procedures or through experience based on common use in food) to be safe under the conditions of their intended use. Under section 201(s) of the FD&C Act, the conditions of intended use of a substance, rather than the substance itself, are eligible for GRAS status. Similarly, food additives are deemed unsafe when their conditions of use do not conform with a food additive regulation (see section 409(a) of the FD&C Act).

The 1958 amendment created two distinct processes for the proposal and creation of food additive regulations. First, under section 409(b) of the FD&C Act, any person may propose the issuance of a food additive regulation by filing a petition with the Secretary. Under section 409(c) of the FD&C Act, in response to a food additive petition, the Secretary, and by delegation, FDA, will, by order, either: (1) deny the petition; or (2) establish a food additive regulation prescribing the conditions under which the food additive may be safely used. Second, under section 409(d) of the FD&C Act, Congress specifically authorized the Secretary, and by delegation, FDA, to at any time, upon the Secretary’s own initiative, propose the issuance of a food additive regulation prescribing the conditions under which a particular food additive may be safely used. After 30 days, the Secretary, and by delegation, FDA, may issue an order establishing a food additive regulation based upon the proposal (section 409(d) of the FD&C Act).

Section 409(d) of the FD&C Act thus authorizes us to propose food additive regulations of our own accord. As discussed further in section IV of this document, by granting FDA authority to propose food additive regulations upon our own initiative and at any time, Congress intended for FDA to play a critical role in determining whether a food substance being introduced into interstate commerce, including one already being added to food, meets the

definition of a food additive and requires a food additive regulation to be lawfully marketed.

3. FDA’s Regulatory Approach to the GRAS Provision of Section 201(s) of the FD&C Act

We have periodically revised our regulations to adapt our approach to the GRAS provision of section 201(s) of the FD&C Act to the nation’s changing food supply and to address issues we identified after years of experience under prior regulatory schemes. The revisions were intended to help us better understand what substances are being added to or used in connection with food under the GRAS provision of section 201(s) of the FD&C Act. The goal of these regulations was to give us, and the public, safety information about these substances and to enable us to take appropriate actions to assure the safe use of these substances in food. Shortly after Congress amended the FD&C Act in 1958, we clarified the regulatory status of many substances that were added to food before 1958, and we ultimately amended our regulations to include a list of food substances that, when used for the purposes indicated and in accordance with good manufacturing practices, are GRAS. The list, historically referred to as “the GRAS list,” can be found at part 182 (21 CFR part 182) for human food and part 582 (21 CFR part 582) for animal food.

When creating the GRAS list, we acknowledged that it would be impracticable for us to list all substances that are GRAS for their intended use in our regulations (§ 121.101(a) (later renumbered as § 182.1(a) (21 CFR 182.1(a)) and § 582.1(a) (21 CFR 582.1(a))). Consequently, we did not include many substances considered GRAS under the conditions of their intended use by the food industry in the GRAS list. Despite the fact that a substance that is GRAS under the conditions of its intended use is not subject to FDA premarket review and approval as a food additive for that particular use (see sections 201(s) and 409 of the FD&C Act), firms who concluded on their own initiative that a use of a substance qualified for GRAS status frequently sought our opinion on whether their conclusion was justified. Many firms requested an “opinion letter,” in which FDA would render an informal opinion on the GRAS status of the conditions of use of a substance. Although convenient and expedient, these informal opinion letters were often available only to the requestor and were not binding on us even at the time they were issued.

FDA updated the GRAS list over time. For example, in the **Federal Register** of October 21, 1969 (34 FR 17063), we deleted from the GRAS list various cyclamate salts, a family of nonnutritive sweeteners that had been added to food under the GRAS provision of section 201(s) of the FD&C Act, because they were implicated in the formation of bladder tumors in rats (Ref. 11). Later, in response to concerns raised by the new information on cyclamates, then-President Nixon directed FDA to reexamine the safety of all substances included on the GRAS list (Ref. 12). We subsequently announced that we were conducting a comprehensive study of these substances (35 FR 18623, December 8, 1970). The purpose of the study was to evaluate the available safety information for substances on the GRAS list. For substances determined safe under their conditions of use, we would then repromulgate each substance in a new (*i.e.*, affirmed) GRAS list, a food additive regulation, or an interim food additive regulation pending completion of additional studies. In conjunction with this comprehensive study, we revoked informal GRAS opinion letters issued before April 9, 1970, in part because many letters no longer resided in FDA’s files; thus, in the absence of information concerning the names and uses of the substances in the letters, the safety of all such substances and uses could not be reexamined (35 FR 5810, April 9, 1970) (see § 170.6 (21 CFR 170.6) and § 570.6 (21 CFR 570.6)).

In the notice announcing the comprehensive review of substances included on the original GRAS list, we proposed criteria that could be used to establish whether the use of these substances should be included on a new GRAS list, become the subject of a food additive regulation, or be listed in an interim food additive regulation pending completion of additional studies (35 FR 18623). We incorporated these criteria into our regulations as § 121.3 (21 CFR 121.3) (36 FR 12093, June 25, 1971) (renumbered as § 170.30 (21 CFR 170.30) for human food and § 570.30 (21 CFR 570.30) for animal food; see 41 FR 38618, September 10, 1976, and 42 FR 14302, March 15, 1977). We later announced that we were conducting a study of certain GRAS substances (36 FR 20546, October 23, 1971) and subsequently instituted a rulemaking to establish procedures that we could use, on our own initiative, to affirm the GRAS status of substances that were the subject of that review and were found to satisfy the criteria established in § 121.3 (proposed rule, 37

FR 6207, March 25, 1972; final rule, 37 FR 25705, December 2, 1972). We recodified these procedures at § 170.35(a) and (b) (21 CFR 170.35(a) and (b)) for human food (42 FR 14302) and § 570.35(a) and (b) (21 CFR 570.35(a) and (b)) for animal food (41 FR 38618). Because the GRAS review did not cover all GRAS substances (e.g., substances that were marketed based on a firm's conclusion of GRAS status), the 1972 rulemaking included a mechanism (the GRAS affirmation petition process) whereby an individual could petition us to review the GRAS status of substances not being considered as part of our GRAS review. If we agreed that the substance was GRAS under the conditions of its intended use, we could affirm the use of the substance as GRAS in our regulations. Our affirmations of GRAS status are currently codified in parts 184 and 186 (21 CFR parts 184 and 186) for human food and part 584 (21 CFR part 584) for animal food.

Petitions submitted as part of the GRAS affirmation process informed us, the domestic and international food industry, and the public of conclusions of GRAS status. However, this framework proved to be resource-intensive (e.g., FDA issued a rule proposing to affirm a substance as GRAS under the conditions of its intended use and affirmed the GRAS status in a final rule). Therefore, in the **Federal Register** of April 17, 1997 (62 FR 18938), we proposed to: (1) clarify the criteria for eligibility for classification as GRAS; and (2) replace the voluntary GRAS affirmation petition process with a voluntary GRAS notification procedure. In the **Federal Register** of August 17, 2016 (81 FR 54960) (the 2016 GRAS final rule), we finalized the voluntary GRAS notification regulation in Subpart E of part 170 (21 CFR part 170) for human food and Subpart E of part 570 (21 CFR part 570) for animal food. The regulations provide that any person may notify FDA of a view that a substance is not subject to the premarket review and approval requirements of section 409 of the FD&C Act based on that person's conclusion that the substance is GRAS under the conditions of its intended use (see § 170.205 (21 CFR 170.205) and § 570.205 (21 CFR 570.205)). We explained that we would evaluate whether the data, information, and narrative in a GRAS notice support that conclusion (81 FR 54960 at 55035; see also § 170.265(b) (21 CFR 170.265(b)) and § 570.265(b) (21 CFR 570.265(b))).

B. The Need To Mandate GRAS Notifications

The voluntary GRAS notification program has improved our efficient

administration of the FD&C Act by providing us with more data and information about uses of substances in food. GRAS notices have informed us about new food substances entering the market, including some substances into which we might not otherwise have insight. GRAS notices have therefore provided us with information that improved our understanding of the U.S. food supply and enhanced our ability to protect public health by helping to identify the use of potentially unsafe substances in food or additives that require FDA review and approval to be lawfully marketed, so we can take action as appropriate.

As part of an interim pilot program created with the 1997 proposed rule, parties began notifying us about their conclusions of GRAS status (62 FR 18938 at 18954). FDA's former Center for Food Safety and Applied Nutrition (now called the Human Foods Program (HFP)) filed its first GRAS notice in 1998 under the interim pilot program. As of March 25, 2025, HFP has filed over 1,200 GRAS notices (Ref. 3). FDA's Center for Veterinary Medicine (CVM) established its interim pilot program more recently (75 FR 31800, June 4, 2010) and filed its first GRAS notice in December 2010. As of March 28, 2025, CVM has filed 75 GRAS notices (Ref. 4).

In addition to providing us with more information about uses of substances in food, the voluntary GRAS notification program has improved our administration of the FD&C Act in other ways. For example, the voluntary GRAS notification program created new opportunities for us to engage with industry to learn more about the U.S. markets for human and animal food. Under the voluntary GRAS notification program, FDA routinely engages with industry through pre-submission meetings and related consultations. We also work with industry to improve GRAS notice submissions and recommend the necessary data and other information to facilitate a successful evaluation of a GRAS notice. These opportunities to engage with stakeholders provide us with more information about human and animal food substances, and they enable us to better achieve our ultimate goal of helping to identify the use of potentially unsafe substances in food or additives that require FDA review and approval to be lawfully marketed, so we can take action as appropriate.

Despite the benefits of our GRAS notification program, we have identified challenges with our current voluntary approach to GRAS notifications. These challenges, which we describe in the sections that follow, have created

obstacles to fulfilling our statutory responsibility to determine if the use of a substance constitutes a food additive use that is subject to the premarket review and approval requirements of section 409 of the FD&C Act. We are, therefore, proposing a mandatory approach to GRAS notifications to better serve these purposes.

1. Issues Identified Over the Course of the Voluntary GRAS Notification Program

After nearly 30 years of receiving and evaluating GRAS notices, and after filing more than 1,200 GRAS notices, FDA has identified several issues with the current voluntary approach to GRAS notifications. We describe some issues we have identified with a voluntary approach to GRAS notifications in greater detail in the following sections.

a. Issue #1: Inadequate analyses to support independent conclusions of GRAS status can result in unapproved food additive uses. Due to the voluntary nature of the GRAS notification program, we have periodically learned about the continued use of substances in food that we have publicly indicated constitute unapproved food additive uses. It may be unclear whether such substances are being used based on a new independent conclusion of GRAS status and, if so, what data and information a firm may be relying on to substantiate that conclusion.

The continued use of stevia leaves and crude extracts of stevia leaves provide one such example. We first issued an import alert in 1991 for crude extracts of stevia leaves and foods containing stevia leaves or stevia extracts to prevent the importation of unsafe stevia products into the United States. We have updated the import alert to add firms subject to the import alert and to account for uses of purified extracts for which FDA does not have questions following the review of a GRAS notice. The most recent update issued in 2025 continues to recommend detention without physical examination of stevia leaves, crude extracts of stevia leaves, or foods containing these substances (Ref. 13). The import alert states that, when used in conventional foods, stevia leaf, or its crude extract, is not an approved food additive and is not considered GRAS due to inadequate toxicological information necessary to demonstrate safety. In contrast, the safety of high purity (greater than or equal to 95 percent pure) steviol glycosides, the sweetening molecules found in stevia leaves, is well-established, and FDA has evaluated and issued "no questions" letters in response to multiple GRAS notices

regarding highly purified forms of steviol glycosides. Notwithstanding these developments regarding high purity steviol glycosides, FDA's position on stevia leaves and their crude extracts has remained clear and consistent since the 1991 import alert—their use is not considered GRAS and constitutes an unapproved food additive use. Despite our unambiguous position regarding stevia leaves and stevia leaf crude extracts since 1991, we continue to find products containing these substances. In 2022, for instance, FDA issued a warning letter about the use of an unapproved food additive—stevia leaf—in several green tea products (Ref. 14).

Our experience under the voluntary GRAS notification program has further demonstrated that some firms may not be conducting sufficient analyses of whether their use of a substance in food is GRAS. FDA advises firms that preserving the applicable data and information that forms the basis of an independent conclusion of GRAS status represents prudent practice for those who assert that the statutory premarket review and approval requirements for food additives do not apply to the use of a substance in food (81 FR 54960 at 55028; see also 62 FR 18938 at 18947). We encourage firms to maintain the data and information that support the independent conclusion of GRAS status in the form of a GRAS notice (81 FR 54960 at 55027; see also Ref. 14). We also recommend that a firm make public the basis for its independent conclusion of GRAS status, as that aligns with FDA's practice to make GRAS notices publicly available (Ref. 15) and our goal of increasing transparency.

Notwithstanding these recommendations, we have learned that some firms may not conduct an evaluation that is sufficient to establish that a substance is GRAS under the conditions of its intended use. Firms also may not have the data and information that adequately support the basis for an independent conclusion of GRAS status. These observations are troubling given that firms are responsible for the safe manufacture of food being introduced into interstate commerce, including assuring the safety of substances used in making a food product.

Several examples illustrate the real-life consequences of these trends. In 2009, we received a letter from 18 Attorneys General and one city attorney expressing concerns about caffeinated alcoholic beverages (Ref. 16). FDA advised manufacturers that we were considering whether caffeine could lawfully be added to alcoholic beverages (Ref. 17). We informed these firms that

there are no food additive regulations authorizing the use of added caffeine in alcoholic beverages, that such use was not prior sanctioned, and that we had not determined the use to be GRAS (*id.*). We gave them 30 days to submit their rationale, supporting data, and information for their conclusion that the use of caffeine in alcoholic beverages was GRAS or prior sanctioned. One firm said that it would prepare and submit a GRAS notice to us (Ref. 18), but it took more than 7 months for us to receive their GRAS notice. We identified several questions for the submitted notice, and in the end, we granted the firm's request to cease to evaluate the GRAS notice (Ref. 19).

During our evaluation of the GRAS notice, we issued four warning letters to firms marketing caffeinated alcoholic beverage products, including the firm that submitted the GRAS notice (Ref. 20). We stated in the letters that, based on the publicly available literature, a number of qualified experts have concerns about the safety of caffeinated alcoholic beverages. We further stated that FDA is not aware of data or other information to establish the safety of caffeine as used in these products. We informed firms marketing these caffeinated alcoholic beverages that caffeine, as used in the firms' products, is an unsafe food additive, and that the products are thus adulterated under section 402(a)(2)(C) of the FD&C Act. The firms subsequently ceased distribution of these products. This experience yielded a valuable insight into our GRAS notification program—had the firms marketing caffeinated alcoholic beverages been required to submit GRAS notices, we could have reviewed the information provided and informed firms much earlier that this use of caffeine rendered the substance a food additive requiring premarket review and approval.

We have drawn similar insight from our more recent experience involving human food products containing Delta-8 tetrahydrocannabinol (THC). In 2024, we sent warning letters to several firms for selling human food products that were represented as containing Delta-8 THC (Ref. 21). We stated that no food additive regulation authorizes the use of Delta-8 THC and that the use of the substance was not prior sanctioned. The warning letters went on to explain that available data raise serious concerns about the potential harm from Delta-8-THC, including adverse effects on the central nervous and cardiopulmonary systems and that some studies in animals suggested gestational exposure can interfere with neurodevelopment. The warning letters also cited adverse

event reports related to ingestion by children and adults of edible products containing Delta-8 THC. The letters concluded that, based on FDA's review, the use of Delta-8 THC in conventional foods did not meet the criteria for GRAS status in FDA's regulations and that these products contained an unsafe food additive rendering them adulterated under section 402(a)(2)(C)(i) of the FD&C Act.

When we are not aware of an independent conclusion of GRAS status, we do not know what data and other information a firm uses to support their GRAS conclusion. Thus, there may be independent GRAS conclusions for currently marketed uses of substances for which we would typically have questions about their GRAS status. Without data and information, we cannot follow up on these questions as we would if we received a deficient voluntary GRAS notice. Moreover, in the case of independent conclusions of GRAS status, we may not become aware of a firm's poorly supported GRAS conclusion until after a product becomes available to consumers and, in some cases, only after an adverse event occurs.

For example, in 2022, a firm that used tara flour as an ingredient in a human food product initiated a voluntary recall of that product after it was associated with roughly 400 adverse event reports that detailed, among other things, gastrointestinal distress, hepatotoxicity, and hospitalization (Ref. 22). The firm conducted its own root cause analysis and identified tara flour as a possible contributor to the illnesses. We requested, but the firm did not share with FDA any records or other indication that demonstrated that they had reached a GRAS conclusion regarding the use of tara flour in human food. FDA evaluated the regulatory status of tara flour, which had not been the subject of any prior GRAS notice or a GRAS pre-submission meeting. We determined that there are not enough data on the use of tara flour in food, or a history of its safe use in food before 1958, to consider it GRAS, and there is also no food additive regulation authorizing the use of tara flour in food (*id.*). We posted our assessment of tara flour to FDA's "Post-market Determinations that the Use of a Substance is Not GRAS" website (Ref. 23). If we had received information from the firm through a GRAS notice earlier, we could have advised them of the need for information and studies to establish safety.

In addition to posting "not GRAS" memos to our website, we also issue import alerts or warning letters in

situations where we have first evaluated the regulatory status of an ingredient, such as following inspection activities. For example, in 2023 FDA placed ashwagandha, an evergreen shrub whose extracts were identified in some human food products, on Import Alert 99–45 after FDA inspectors raised questions about its regulatory status and deemed it to be an unsafe food additive (Ref. 24). As a result, FDA may detain, without physical examination, shipments of certain identified food products containing ashwagandha from firms on the Red List of Import Alert 99–45. Ashwagandha has not been the subject of a voluntary GRAS notice.

These examples demonstrate that, under the current voluntary GRAS notification program, firms sometimes lack a sufficient basis for GRAS conclusions, resulting in the use of unapproved food additives in our food supply. In some cases, we become aware of the need to take action regarding unsafe additives in food only after learning of adverse public health events. Mandating the submission of GRAS notifications would enable us to better address concerns regarding the potential use of unapproved food additives in foods by providing us with information about independent conclusions of GRAS status. It would also further improve our administration of the FD&C Act by providing more opportunities for us to engage with industry to understand the basis for these GRAS conclusions.

b. Issue #2: Substances introduced into the marketplace after we cease to evaluate a GRAS notice at a notifier's request. The voluntary GRAS notification program provides that notifiers may request that FDA cease to evaluate a GRAS notice (see § 170.260(b) (21 CFR 170.260(b)) and § 570.260(b) (21 CFR 570.260(b))). We noted in the 2016 GRAS final rule that a cease to evaluate letter signals that a GRAS notice does not provide an adequate basis for a conclusion that the notified substance is GRAS under the conditions of its intended use, even though we do not issue an insufficient basis letter regarding the notified substance (81 FR 54960 at 55010).

In current practice, notifiers request that we cease to evaluate a GRAS notice for a variety of reasons. For example, if we have questions about a GRAS notice that cannot be addressed by a timely amendment, a notifier may ask us to cease evaluating their GRAS notice so that they can later submit a new GRAS notice that addresses our questions. During our evaluation of a GRAS notice, we also may raise issues regarding the data and information used to support the GRAS conclusion. If our questions

about the underlying support for a GRAS conclusion cannot be easily resolved, notifiers may request that we cease reviewing the notice while they develop or compile additional data to address the issues raised. For GRAS notices pertaining to substances used in animal food, notifiers have sometimes sent us cease to evaluate requests after we have raised questions about proposed contaminant limits in their GRAS notices.

In some cases, a notifier who received a cease to evaluate letter submits a new GRAS notice for the use of the notified substance after addressing our questions, and we respond to the new GRAS notice with a no questions letter. Alternately, after receiving a cease to evaluate letter from FDA, some notifiers may decide not to submit a new GRAS notice and instead to make an independent conclusion of GRAS status and market the substance or food containing the substance. If a notifier does not submit a new GRAS notice to FDA after receiving a cease to evaluate letter, we have no information about whether the previously notified substance later entered the market based on an independent conclusion of GRAS status. We also do not have insight into whether any questions we raised about the notified substance were adequately addressed. In such cases, this could cause confusion about whether the use of a substance meets the definition of a food additive use under the FD&C Act, and therefore whether the use of the substance requires FDA review and approval to be lawfully marketed. Our existing voluntary GRAS notification program creates the opportunity for a notifier to introduce a substance about which we had safety questions into the market without providing transparency to FDA and the public regarding the basis of their GRAS conclusion.

c. Issue #3: Insufficient information hinders FDA's efficient administration of the FD&C Act. Due to the voluntary nature of our current GRAS notification program, a firm can market a substance that it has concluded is GRAS under the conditions of its intended use without submitting a notice to FDA. This prevents us and the public from having knowledge about, and insight into, these purported GRAS uses of substances. Our lack of a complete understanding of what substances are being used in the food supply impedes our ability to efficiently carry out our role under the FD&C Act to prohibit the use of unsafe additives in food and protect public health.

In GAO's 2010 report entitled "Food Safety: FDA Should Strengthen Its Oversight of Food Ingredients

Determined to be Generally Recognized as Safe (GRAS)," GAO noted that FDA generally has no information about GRAS determinations that are not submitted to the voluntary notification program (Ref. 5 at page 12). (We use the terms "GRAS conclusion" or "conclusion of GRAS status" instead of "GRAS determination"; see 81 FR 54960 at 54969.) The GAO report included one example of a firm indicating that it "makes about 5 GRAS determinations each year without notifying FDA" (Ref. 5 at page 12). These GRAS determinations usually pertained to "new uses of substances that have been deemed GRAS for other uses" (id. at page 12). The GAO report further stated that FDA is less informed about the U.S. food supply and consumers' cumulative dietary exposure to GRAS substances because we do not oversee all GRAS determinations (id. at page 13). GAO recommended that we develop a strategy to require any firm that conducts a GRAS determination to provide FDA with basic information about the identity and use of the substance (id. at page 34).

As discussed in our response to the GAO Report, we share the transparency goal underlying GAO's recommendation to require the submission of basic information about GRAS uses of substances (Ref. 5). In the 2016 GRAS final rule, we said that a voluntary approach to GRAS notifications would mitigate many issues GAO raised in its report. For instance, we noted that a voluntary GRAS notification program would enable us to evaluate more, and higher priority, substances (81 FR 54960 at 54961). We also discussed the increasing use of the voluntary GRAS notification program throughout the interim pilot program (id. at 54980). However, after nearly a decade of additional experience administering the voluntary GRAS notification program, and in light of the ongoing changes to the nation's food supply discussed in greater detail below, the risks of not requiring GRAS notifications have become more evident.

As of January 2011, some sources estimate that there were 1,000 substances in use in human food for which firms had claimed independent conclusions of GRAS status (Refs. 6 and 7). However, given that the current GRAS notification program is voluntary, we have little, if any, information on independent conclusions of GRAS status, including the identity of the substance and its intended use(s).

Regarding food contact substances, specifically, we operate two programs (the infant formula notification program and the food contact substance

formulation review program) where food packaging producers submit their packaging product formulations to us to verify compliance with FDA regulations. These programs provide FDA with limited opportunities to obtain information on independent conclusions of GRAS status. Through these programs, FDA has reviewed submissions where the inclusion of certain food contact product components is based on claims that the component is GRAS under the conditions of its intended use. While these programs provide us with some insight into independent GRAS conclusions made about those components, we lack a complete understanding of the number of substances currently on the market based on an independent conclusion of GRAS status.

In addition, our lack of a complete understanding of the substances added to food prevents us from efficiently sharing knowledge and providing transparency to others, such as state regulators, food manufacturers, and consumers, about substances in interstate commerce that are purported to be GRAS under the conditions of their intended use. For example, both HFP and CVM receive questions from state regulators, the regulated industry, and consumers about the regulatory status of such substances in human and animal food. Responding to these inquiries can often be challenging, as the lack of information we have on many substances impedes FDA's ability to effectively provide oversight in partnership with state regulators.

We are also aware that confidence in the federal government's ability to ensure the safety of the U.S. food supply, generally, has declined. The percentage of U.S. adults who say they have a "great deal" or "fair amount" of confidence in the government to keep the food supply safe fell from 68 percent in 2019 to 57 percent in 2024 (Ref. 25). Consumers indicate they would have more confidence in the safety of the U.S. food supply if they better understood how the federal government and industry work together to ensure food safety or if the federal government's regulations on food safety were stricter (Ref. 26). This general lack of consumer confidence speaks to an overarching need for the federal government to work to strengthen public confidence in the safety of the U.S. food supply—this proposed rule would be one example of a way to strengthen public confidence through increased transparency about the substances being added to the nation's food supply.

Unless a voluntary GRAS notice has been filed, we may not have insight into whether a given substance is GRAS under the conditions of its intended use without expending significant FDA resources to identify whether publicly available data supports the safe use of the substance. Aside from our GRAS notice inventory, which does not cover independent conclusions of GRAS status, no publicly available list exists where we or interested parties can verify the use in interstate commerce of all substances purported to be GRAS under the conditions of their intended use. Our inability to proactively share knowledge and provide transparency regarding all such substances may undermine public confidence regarding FDA's ability to protect public health. It also impedes our ability to effectively and efficiently regulate the U.S. food supply.

2. The Changing Food Supply in the United States

The country's continually evolving food supply also presents new challenges to our efficient administration of the FD&C Act. As referenced elsewhere in this document, some sources estimate that, as of January 2011, there were more than 10,000 additives in use in food, including an estimated 1,000 human food substances for which firms had claimed independent conclusions of GRAS status (Refs. 6 and 7). Although we cannot verify the accuracy of these estimates, these figures, and the statistics from our voluntary GRAS notification programs for both human and animal food, describe a food supply that is markedly different from the one FDA regulated when it first began to implement the 1958 amendment.

The Delaney Committee, for instance, stated in its 1952 report that FDA representatives testified during a 1950 hearing that there were in total "704 chemicals employed in food use" at that time (Ref. 8), of which "428 [were] definitely known to be safe" (id.). In contrast, HFP and CVM combined have filed over 670 GRAS notices since January 2016 and more than 1,200 GRAS notices in total since 1998 when FDA began filing GRAS notices under the interim pilot program. (We note that multiple GRAS notices may pertain to the same substance (*i.e.*, they describe different conditions of intended use).) Information from GRAS notices we have filed also highlights the increasingly complex and globalized nature of our food supply. Of the more than 1,200 filed GRAS notices, 617 were submitted by foreign firms, and 503 of these were submitted by foreign firms located in

countries where English is not the primary language.

An additional challenge is that, for certain nutrients, dietary exposure estimates are approaching the tolerable upper intake level (UL) established by the Institute of Medicine (IOM) (now the National Academies of Sciences, Engineering, and Medicine). A nutrient's UL is the highest level of daily intake that is likely to pose no risk of adverse health effects (Ref. 27). A UL may differ for individuals at different life stages (*e.g.*, children ages 9 through 13 years, adults over 70 years) and is determined using a risk assessment approach developed specifically for nutrients (id.). Notably, whether a substance in food is contributing to dietary exposure approaching a nutrient's UL is information that is critical to our assessment of both whether a given use of a substance renders it a food additive use, and whether the use of a food additive is safe.

A case study of calcium demonstrates the importance of such information. Calcium is an essential nutrient necessary for numerous physiological processes, including formation/metabolism of bone, and intracellular signaling related to muscular function, vascular contraction/dilation, nerve transmission, and hormonal secretion (Ref. 28). Maintenance of calcium balance is essential for the body's normal function (id.). The IOM established ULs between 2,000 and 3,000 milligrams per day for different life stage groups among the population aged 4 years and older (Ref. 29). However, excessive supplemental calcium intake can lead to certain health complications, such as an increased risk for kidney stones (Refs. 29 and 30).

To assess the safety of calcium, which we would do when we are evaluating a submission for a calcium salt, such as a food additive petition, color additive petition, or GRAS notice, we consider the IOM ULs relative to the cumulative dietary exposure estimates. Since 2017, our evaluations regarding uses of calcium salts for human foods have shown that cumulative dietary exposure estimates to calcium have been increasing (see 82 FR 51554, November 7, 2017; and 87 FR 58445, September 27, 2022). In 2024, we noted that the dietary exposure estimate for calcium at the 90th percentile was approaching the IOM's upper limit for calcium of 2000 mg for population groups 51–70 and 71 years and older (Ref. 31). We also noted that the National Cancer Institute (NCI) developed a validated model to estimate the usual dietary intakes of episodically consumed foods and dietary

supplements (NCI usual dietary intakes method) (id.).

In a recent final order listing calcium phosphate (a calcium salt) as a color additive in ready-to-eat chicken products, white candy melts, doughnut sugar, and sugar for coated candies, we stated our literature search identified no new publications relevant to the safe use of calcium in food, and therefore, the current state of the science supports the continued use of the IOM UL for calcium as a dietary reference value to support public health (90 FR 20097, May 12, 2025). During our review, and in consultation with us, the petitioner amended the intended uses of calcium phosphate to remove the use in icing and reduce the use level in sugar for coated candies to reduce overall dietary exposure to calcium (id. at 20098). Using 2015–2020 National Health and Nutrition Examination Survey food consumption data combined with the NCI usual dietary intakes method, we estimated the cumulative dietary exposure to calcium from the background dietary sources, including dietary supplements and drugs, and the petitioned uses to be 1,195 mg/p/d at the mean and 1,789 mg/p/d at the 90th percentile for the U.S. population ages 2 years and older (id.). If the petitioner had not amended the intended uses of calcium phosphate, then overall dietary exposure to calcium would have exceeded the UL for certain life stage groups.

We anticipate continuing to see nutrients approaching, and potentially exceeding, the UL, which, in certain cases, would present questions about the safe use of such ingredients and raise health concerns that we would want to address. Ongoing consumption of substances that are purported to be GRAS under the conditions of their intended use, as well as consumption of new substances that are purported to be GRAS under the conditions of their intended use, may be contributing to these trends. Without a mandatory GRAS notification requirement, FDA will not always be aware of what uses of substances are contributing to nutrient consumption approaching the UL, nor will FDA always be provided with sufficient information to engage with firms to address questions and concerns about such issues.

Another facet of the changes we are seeing to the nation's food supply is the increase in individually packaged single-serving foods along with the growing awareness both by food manufacturers and consumers about the environmental impact of disposable food packaging (Ref. 32). This has resulted in initiatives to substitute

certain food packaging materials, in particular plastics made from petroleum sources, with alternative packaging materials thought to have lower environmental impacts (id.). Many of these alternative packaging materials are bio-based (*i.e.*, derived from raw materials such as plants), which may be perceived as less toxic than petroleum-based plastics (Ref. 33). In some cases, users of these alternative materials may consider them to be GRAS under the conditions of their intended use and may choose not to go through FDA's review programs prior to bringing their products to market. As stated elsewhere in this document, due to the voluntary nature of our current GRAS notification program, a firm can market a substance that it has concluded is GRAS under the conditions of its intended use without submitting a notice to FDA. The Food and Drug Administration Modernization Act amended section 409 of the FD&C Act to establish the food contact notification program for food contact substances that are food additives, as an alternative to food additive petitions. Food contact notifications (FCNs) or food additive petitions are not required for food contact substances that are GRAS. Therefore, companies use the GRAS provision of the statute to conclude that a food contact substance is GRAS and that a food contact notification or a food additive petition is not required. This prevents us and the public from having knowledge about, and insight into, these purported GRAS uses of substances. This proposed rule would provide flexibility to companies to submit an FCN instead of a GRAS notice for food contact substances if they prefer to use the FCN process. Note, in contrast to GRAS notices, food contact notifications and the intended use are specific to the listed manufacturer or supplier for the effective FCN.

Our lack of a complete understanding of what substances are being used in the food supply impedes or delays our ability to efficiently carry out our role under the FD&C Act to prohibit the use of unsafe additives in food and protect public health.

For example, we recently evaluated, on our own initiative, dinnerware (*i.e.*, bowls, plates, cups, cutlery) manufactured from the sheath of leaves from the *Areca catechu* (*A. catechu*) plant (Ref. 34) after inquiries from industry as to whether this use would require premarket authorization. Our research shows that naturally occurring toxins in these products migrate into food at levels that may pose a potential safety concern to consumers (Ref. 35). Therefore, the use of the sheath of *A.*

catechu palm leaves in food contact articles such as dinnerware does not meet the statutory criteria for GRAS, and no authorizations exist for its use in food (Ref. 34). We issued a letter informing retailers, distributors, and importers of dinnerware manufactured from the sheath of leaves from the *A. catechu* plant that such dinnerware may not be lawfully offered for sale in the U.S. (Ref. 36), and we added palm leaf dinnerware to Import Alert 23–15 (Ref. 37).

3. How a Mandatory GRAS Notification Program Would Address These Issues and Challenges

A mandatory GRAS notification program would provide FDA with information, in the form of a GRAS notice, on the uses of substances that would otherwise be marketed under an independent conclusion of GRAS status. The proposed amendments to convert our current voluntary GRAS notification program to a mandatory program would increase the level of knowledge and transparency about substances in the U.S. food supply that are purported to be GRAS under the conditions of their intended use. This would provide FDA, state regulators, consumers, and industry with more information about substances being added to human and animal food and enable FDA to establish a more comprehensive catalog of what substances are being added to food. These proposed changes would help ensure that GRAS conclusions have a scientific basis and that sufficient documentation supporting those conclusions is developed and shared with FDA. This information would be accessible to the public within a few weeks of filing through FDA's GRAS Notice Inventory, which is available on our website and where we currently maintain this information (Refs. 3 and 4), thereby increasing transparency about purported GRAS uses of substances (see section V.K of this document for further discussion). These proposed changes would also enhance our ability to efficiently carry out our role under the FD&C Act to prohibit the use of unsafe additives in food and protect public health. Therefore, the proposed rule, if finalized, is in part intended to help strengthen public confidence in FDA's ability to oversee the safety of the U.S. food supply.

A mandatory GRAS notification program would also help ensure that human food safety, as well as target animal safety in the case of animal food GRAS notices, is fully assessed as part of a notifier's GRAS conclusion. This information would help us to more efficiently determine whether the use of

a substance meets the definition of a food additive use under the FD&C Act, and therefore whether the use of the substance requires FDA review and approval to be lawfully marketed. A mandatory GRAS notification program would also respond to GAO's recommendation to develop a strategy to require any firm that conducts a GRAS determination to provide FDA with basic information about the identity and use of the substance.

In addition, a mandatory GRAS notification program would provide us with insight into any current uses of substances that were the subject of a cease to evaluate letter. Only some notified substances that were the subject of a cease to evaluate letter were later the subject of a new GRAS notice for the same intended use. While our existing voluntary GRAS notification program does not prohibit a notifier from making an independent conclusion of GRAS status and entering the market with a use of a substance that was the subject of a cease to evaluate letter, this, in practice, leads to the same lack of knowledge that we have when it comes to other independent conclusions of GRAS status. Unless we receive a voluntary GRAS notice or there is a public health concern prompting us to evaluate the use of an ingredient, we do not always know how such substances are being used. Making GRAS notice submissions mandatory would eliminate much of the confusion over whether a substance is GRAS under the conditions of its intended use, because these GRAS conclusions and their underlying data would be publicly available along with our response letters.

Information about levels of added nutrients, such as calcium, would help FDA evaluate the uses of nutrients across the food supply to accurately evaluate dietary exposure. Mandatory GRAS notices would provide more transparency about the ingredients, such as calcium salts, being used in the food supply, including how they are being used and at what levels. Such information would give us greater insight into whether these ingredients pose safety concerns under certain conditions of use, which might render them food additives subject to premarket review and approval for those uses.

Ultimately, the proposed rule would help us better carry out our statutory responsibility to prohibit the use of unsafe additives in food. The proposed rule, if finalized, would create a framework whereby firms would still be able to render their own GRAS conclusions, but they would be required

to submit these GRAS conclusions to FDA in accordance with subpart E of parts 170 and 570. Mandatory GRAS notices would provide us with safety information about substances that are purportedly GRAS under the conditions of their intended use, helping us to carry out our statutorily-defined role under sections 409(a) and (d) of the FD&C Act of determining whether uses of substances introduced into interstate commerce constitute food additive uses that are subject to premarket review and approval. The proposed rule would, therefore, aid in our effective and efficient administration of the FD&C Act.

IV. Legal Authority

We are proposing to amend parts 170 and 570 to require submission of GRAS notices for certain substances added to or used in connection with human or animal food under our authority in sections 201, 402, 409, and 701 of the FD&C Act. Specifically, the proposed rule would require any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act, for which the conditions of intended use of such substance are not covered by one of several exceptions listed in the rule, to notify FDA of the basis for a conclusion that the conditions of intended use of the substance are GRAS.

A. Statutory Framework

As discussed in section III.A.1 of this document, in 1958 Congress amended the FD&C Act to address growing concerns about the increasing number of chemicals being added to the nation's food supply. As amended, the FD&C Act requires that all food additives (as defined by section 201(s) of the FD&C Act) be approved by FDA before they are marketed or used in food (sections 402(a)(2)(C)(i) and 409 of the FD&C Act). Sections 409(a) through (h), and also (k) for animal food, of the FD&C Act authorize FDA to approve a food additive by issuing an order establishing a regulation regarding the food additive's safety for a particular use. In particular, sections 409(b) and (d) of the FD&C Act set out in detail the two types of processes that may result in orders establishing food additive regulations: (1) under section 409(b) of the FD&C Act, any person may file with the Secretary a petition proposing the issuance of a food additive regulation; and (2) under section 409(d) of the FD&C Act, the Secretary (or his delegate) may propose the issuance of a food additive regulation at any time, upon his own initiative. In addition, section 409(h) of the FD&C Act provides

for a process through which the intended use of a food additive that is an FCS becomes authorized through a notification submitted by the manufacturer or supplier. With some exceptions, food additives are deemed unsafe food additives under section 409(a) of the FD&C Act unless their use conforms with a food additive regulation. Foods that are, or bear or contain, unsafe food additives are deemed adulterated under section 402(a)(2)(C)(i) of the FD&C Act, rendering them potential targets for enforcement actions under the FD&C Act (e.g., sections 302 and 304 of the FD&C Act).

Section 201(s) of the FD&C Act excludes from the definition of a food additive a substance generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food before January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use. Thus, substances that are GRAS under the conditions of their intended use are not subject to the food additive premarket review and approval requirements of section 409 of the FD&C Act.

B. Legal Basis for the Proposal

The proposed rule would provide FDA with information about substances being introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act. Specifically, the proposed rule would require the submission of information about the intended use of such substances and the data and information supporting the conclusion that the substance is GRAS under the conditions of its intended use. Because the conditions of intended use of these substances, together with available safety data, may render them food additives subject to premarket review and approval, requiring the submission of information about these substances and their intended uses would help FDA efficiently carry out its responsibilities under sections 409(a) and (d) of the FD&C Act to propose and establish food additive regulations.

When read together, sections 409(a) and (d) of the FD&C Act task the Secretary, and by delegation, FDA, with identifying food substances that have not been the subject of a food additive petition or an FCN and with initiating review of the safety of such substances for particular uses. *See Se. Minerals, Inc. v. Harris*, 622 F.2d 758, 767 (5th

Cir. 1980) (citing, *inter alia*, section 409(d) of the FD&C Act and *Weinberger v. Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 624 (1973)) (“The FDA has the authority to determine whether a particular product requires an approved food additive regulation in order to be marketed in interstate commerce.”). Thus, sections 409(a) and (d) of the FD&C Act authorize FDA to review substances on the market, including new and existing substances introduced into food that are purportedly GRAS under the conditions of their intended use, to assess whether these uses constitute food additive uses that require a food additive regulation to be lawfully marketed. The proposed rule, which would require persons introducing certain substances into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act to notify FDA of the basis for their conclusion that the use of a substance is GRAS, would help FDA to efficiently carry out these statutory responsibilities.

Specifically, requiring the submission of GRAS notifications would better enable us to monitor what substances are being added to or used in connection with food by alerting us to substances on the market that we might not otherwise know exist. This includes uses of substances in food that were the subject of independent conclusions of GRAS status, and thus uses of substances that FDA otherwise may learn about only after public health concerns are raised. Further, requiring the submission of GRAS notices would provide us with safety information about substances that are purportedly GRAS under the conditions of their intended use, which would help us to determine whether such uses of substances actually constitute food additive uses that are subject to the premarket review and approval requirements of the FD&C Act. *See, e.g., Se. Minerals, Inc.*, 622 F.2d at 767 (“FDA, as the administrative agency created by Congress to administer the [FD&C Act], cannot intelligently and rationally perform its regulatory duties unless it determines what products are ‘food additives’ . . . and what products, because of their GRAS status, are exempt from regulation.”). This information would also support FDA’s compliance and enforcement activities related to the use of unapproved food additives, such as the issuance of warning letters and seizure of adulterated foods. A mandatory GRAS notification program would therefore help us to fulfill the underlying purpose of sections 409(a) and (d) and related

provisions of the FD&C Act by providing us with information that better enables us “[t]o prohibit the use in food of additives which have not been adequately tested to establish their safety.” *See* Public Law 85–929, 72 Stat. 1784 (1958).

The proposed rule, if finalized, would thus facilitate FDA’s efficient administration and enforcement of sections 409(a) and (d) of the FD&C Act. Section 701(a) of the FD&C Act authorizes the Secretary to issue regulations for the efficient enforcement of the FD&C Act; under section 1003(d) of the FD&C Act (21 U.S.C. 393(d)), the Secretary is responsible for executing the FD&C Act, including section 701(a) of the FD&C Act, through the Commissioner of Food and Drugs.

V. Description of the Proposed Rule

As discussed in section III.B.1 of this document, in light of the issues we have identified with the voluntary GRAS notification program, and the challenges posed by the changing U.S. food supply, we are proposing to require the submission of GRAS notices for the use of a human or animal food substance that is purported to be GRAS under the conditions of its intended use. Food substances include both ingredients (*i.e.*, substances added directly to food) and food contact substances (*i.e.*, substances added indirectly to food, such as migration from food packaging). In proposing these changes, FDA is (1) converting the current GRAS notification program from voluntary to mandatory; (2) identifying certain categories of exceptions from the requirement to submit a GRAS notice, including a time-limited option to make a streamlined submission to FDA for certain substances already in use in interstate commerce; and (3) identifying uses of substances that are not eligible to be the subject of a GRAS notice.

We are also proposing to make conforming edits throughout part 170 to reflect the change to a mandatory program; changes to our procedural regulations for a TOR exemption to reflect updated scientific guidance and to expand the scope of this exemption to cover uses of substances in food and FCSs generally, in addition to FCSs used in food contact articles; and other changes to make non-substantive edits. Several of these changes would support the Administration’s goal of modernizing Federal regulations to eliminate outdated or unnecessary requirements and ensure there is flexibility to, for example, leverage new technology in the future to more efficiently fulfill regulatory requirements. In addition, we are

proposing new definitions to help in the administration of a mandatory GRAS notification program and updating other definitions for clarity.

A. Proposed Revisions to § 170.3—Definitions

Our regulations, at § 170.3 (21 CFR 170.3), define certain terms for use throughout part 170. Specifically, § 170.3(m) defines food as including human food, substances migrating to food from food-contact articles, pet food, and animal feed. Proposed § 170.3(m) would revise the definition of food to include human food, substances migrating to food from food-contact articles, and animal food. The term “animal food” would update “pet food, and animal feed” and would align with the use of the term “animal food” within our regulations in part 507 (21 CFR part 507) (see § 507.3) and proposed changes to part 570 (see section V.Q of this document).

Proposed § 170.3(p) would define “We, our, us, and FDA” to mean the Food and Drug Administration. While our regulations, at § 170.203, define “We, our, and us” as the “United States Food and Drug Administration” for use in Subpart E—Generally Recognized as Safe (GRAS) Notice, these terms are not defined in § 170.3 to apply more generally to part 170. We propose adding “FDA” to the list of terms that would mean the Food and Drug Administration. This change would establish these terms for use throughout part 170.

B. Proposed Revisions to § 170.30—Eligibility for Classification as GRAS

Our regulations, at § 170.30, describe the criteria for determining if a substance is eligible to be classified as GRAS. Specifically, § 170.30(a) outlines the general criteria for GRAS status, in accordance with section 201(s) of the FD&C Act, and provides that general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. GRAS status may be based on scientific procedures (see § 170.30(a)(1)) or for a substance used in food before January 1, 1958, through experience based on common use in food (see § 170.30(a)(2)). Our regulations, at § 170.30(b) and (c), further explain the elements of the general criteria for GRAS status, and § 170.30(d) through (l) discuss specific situations in relation to GRAS status.

We are proposing revisions to § 170.30(c), (e), and (i). Our regulations, at § 170.30(c)(2), recommend that a person notify FDA if they conclude that

a use of a substance is GRAS through experience based on its common use in food outside of the U.S. Proposed § 170.30(c)(2) would remove this recommendation, because the proposed rule would require a person to notify FDA about the purported GRAS status of a substance used in food before January 1, 1958, if that conclusion is through experience based on the substance's common use in food outside of the United States.

Our regulations, at § 170.30(e), provide some historical context for substances listed or affirmed as GRAS in parts 182, 184, or 186 of this chapter and mention of the systematic review of such substances that FDA conducted beginning in 1969. Proposed § 170.30(e) would remove those discussions because they are no longer necessary.

Our regulations, at § 170.30(i), state that if a substance is affirmed as GRAS in part 184 or part 186 with no limitation other than good manufacturing practice, then it is regarded as GRAS if its conditions of use are not significantly different from those reported in the regulation as the basis on which the GRAS status of the substance was affirmed. If the conditions of use are significantly different, then the use of the substance may not be GRAS, and a manufacturer may not rely on the regulation as authorizing the use but must independently establish that the use is GRAS or must use the substance in accordance with a food additive regulation. Proposed § 170.30(i) would divide the provision into § 170.30(i)(1) and (i)(2) for clarity, as these provisions cover different circumstances. Proposed § 170.30(i)(1) would contain the concept that a substance will be regarded as GRAS if the conditions of use are not significantly different from those reported in the regulation (*i.e.*, part 184 or part 186). A mandatory GRAS notice would not be required for substances that fall within the scope of proposed § 170.30(i)(1) (see proposed § 170.205(b)(3)). Proposed § 170.30(i)(2) would contain the concept that if the conditions of use of a substance are significantly different, the regulation in part 184 or part 186 may not be relied on as authorizing such use. In this latter situation, a GRAS notice would need to be submitted to FDA that covers the conclusion that a substance is GRAS under the conditions of its intended use if relevant safety information is generally available or a food additive petition could be submitted if there is not an existing food additive regulation to cover such use. Together, proposed § 170.30(i)(1) and (i)(2) would clarify the circumstances when our regulations in

part 184 or part 186 can be relied on to regard a substance as GRAS under the conditions of its intended use.

C. Proposed Revisions to § 170.38—Determination of Food Additive Status

The proposed rule would amend § 170.38 (21 CFR 170.38) to remove unnecessary provisions and add new provisions to clarify the steps we may take when we determine that a substance is not GRAS under the conditions of its intended use.

Our regulations, at § 170.38(a), provide for the Commissioner to publish a notice in the **Federal Register** determining that a substance is not GRAS under the conditions of its intended use if, after proposing that a substance is entitled to affirmation as GRAS under the conditions of its intended use, the Commissioner evaluates the comments and concludes that there is a lack of convincing evidence that the substance is GRAS under the conditions of its intended use (see § 170.35). The proposal would amend § 170.38(a) to remove the reference to publishing a notice in the **Federal Register** because FDA does not necessarily publish a notice when making such a determination. However, even though we may not publish a notice in the **Federal Register**, we would still make public the basis for our determination that the substance is not GRAS under the conditions of its intended use and is a food additive subject to section 409 of the FD&C Act. Proposed § 170.38(a) would retain the concept that when a substance is determined to not be GRAS under the conditions of its intended use and would instead be a food additive, the substance and its use or intended use are subject to section 409 of the FD&C Act. A substance subject to section 409 of the FD&C Act would require the issuance of a food additive regulation, or an effective FCN in the case of an FCS, for its use as a food additive to be authorized.

Our regulations, at § 170.38(b), provide for the Commissioner, on his own initiative or on the petition of any person pursuant to part 10 of this chapter, to issue a notice in the **Federal Register** proposing that a substance is not GRAS under the conditions of its intended use and is a food additive subject to section 409 of the FD&C Act; receive comments; and, upon evaluation of all comments, publish a notice in the **Federal Register** as to whether the substance's conditions of intended use are GRAS. Proposed § 170.38(b) would clarify that this paragraph applies to substances listed or affirmed as GRAS in parts 182, 184, or 186. We also propose

other non-substantive edits for § 170.38(b)(1) and (b)(2) (see section V.O of this document for further discussion). Proposed § 170.38(b)(3) would also provide that if FDA concludes that there is a lack of convincing evidence that the substance is GRAS under the conditions of its intended uses, FDA will amend or repeal the relevant regulation. We propose removing language stating that we will evaluate all comments received. As we would consider comments in response to a published proposal, this language is unnecessary.

Our regulations, at § 170.38(c), state that a **Federal Register** notice determining that a substance is a food additive must provide the use of the food additive in food or food contact substances and that we may promulgate a food additive regulation governing the additive's use, an interim food additive regulation governing the additive's use, require discontinuation of the additive's use, or adopt any combination of the above for different uses or levels of use of the additive. Proposed § 170.38(c) would replace the discussion of what a **Federal Register** notice must contain (because the discussion is unnecessary as sections 409(c) and (d) of the FD&C Act already describe the contents of a food additive regulation) and would provide that, for uses of a substance for which FDA has issued a no questions letter (see proposed § 170.203 and section V.E of this document for further discussion) in response to a GRAS notice, FDA may send the notifier questions about their GRAS conclusion in accordance with § 170.265(c). Under proposed § 170.38(c), if we determine that a substance is not GRAS under the conditions of its intended use (*e.g.*, we receive information that calls into question a notifier's GRAS conclusion), FDA would make public the basis for this determination and update or rescind the no questions letter. This provision would pertain to GRAS conclusions received through the current voluntary GRAS notification program and the proposed mandatory GRAS notification program, if finalized.

Our regulations, at § 170.38(d), provide that if we are aware of a prior sanction for use of a substance, FDA will concurrently propose a separate regulation for such use. We propose to replace § 170.38(d), because the proposal of a regulation based on prior sanction for use of the substance would be covered by proposed § 170.30(e). Instead, the proposed rule would create a new paragraph (d) to cover uses of substances not covered by proposed paragraphs (b) or (c) (*i.e.*, uses of substances not covered by a regulation or a GRAS notice but which exist in

interstate commerce). If FDA makes a determination that uses of such substances are not GRAS, we would make public the basis for this determination. The fact that FDA has not made such a determination for a specific substance does not mean that the substance is GRAS under the conditions of its intended use.

D. Proposed Revisions to § 170.39—Threshold of Regulation (TOR) for Substances Used in Food or as a Food Contact Substance

Our regulations, at § 170.39 (21 CFR 170.39), allow for an exemption from regulation for a substance used in food contact articles (*e.g.*, food packaging or food processing equipment) that migrates or, that may be expected to migrate, into food if such substance meets the TOR criteria, as outlined in § 170.39(a)(1) through (a)(4). These criteria include that the substance has not been shown to be a carcinogen and data supporting the resultant dietary concentration will be below 0.5 parts per billion.

FDA established the TOR exemption process for food contact uses where migration is so trivial there are no concerns for safety. TOR submissions to FDA only require minimal data (*e.g.*, identity, dietary exposure) to demonstrate the safe use of a substance. A full safety narrative is not required for a TOR submission. The scientific basis for the TOR is FDA's determination that very low dietary exposure presents no meaningful safety concern. Analysis of existing toxicological data allows FDA to identify a dietary exposure threshold for safety under certain criteria (see 60 FR 36582, July 17, 1995).

We propose revising the title of § 170.39 to "Threshold of regulation for substances used in food or as a food contact substance." We propose amending § 170.39(a) to provide that any substance used in food (both directly or indirectly added to food) will be exempted from regulation as a food additive or from the GRAS notification requirement under § 170.205, if it meets the TOR criteria (see proposed 170.39(a)(1) through (a)(3)), which demonstrate safe use (*i.e.*, the substance is present in foods at levels that result in no appreciable risk to human health). This would be true regardless of whether the use of the substance directly or indirectly resulted in it becoming a component of food. Therefore, both direct and indirect uses of a substance would be appropriately handled through the TOR process.

We propose other changes throughout § 170.39 to consistently reflect the expansion of the TOR exemption

program to include substances used in food or as food contact substances and remove language specific to food contact articles (see proposed § 170.39(c)(2), (c)(3), (c)(4)(i) through (c)(4)(iv), (e), and (g)). Additionally, in several provisions, we propose amendments to reference GRAS substances, the GRAS notification requirement, and the GRAS notice program, given the proposed expansion of the TOR provisions to cover uses in food and as FCSs generally, that fall under the GRAS exception to the food additive definition of section 201(s) of the FD&C Act, as well as the FCN program, where applicable (see proposed § 170.39(b), (c), and (e)). We note that a substance that meets the TOR criteria can fall outside the definition of a food additive as defined by section 201(s) of the FD&C Act if such substance, under the conditions of its intended use, is GRAS. In such situations, a manufacturer or supplier may submit a TOR request as specified under proposed § 170.39 and, if the intended use of a substance is the subject of a granted TOR exemption under § 170.39, would meet an exception to submitting a mandatory GRAS notice under proposed § 170.205(b)(5). The TOR process is specifically tailored to handle the submission of data related to the use of substances that meet the TOR criteria, and we therefore recommend that industry use the TOR process for the intended use of a food substance that is purported to be GRAS and meets the TOR criteria.

We propose revising § 170.39(a) to update scientific terminology and reflect updated approaches to account for the assessment of cancer risk of carcinogenic compounds. Our regulation, at § 170.39(a)(2)(i), states that the use in question must result in a dietary concentration of the FCS at or below 0.5 parts per billion corresponding to dietary exposure levels at or below 1.5 micrograms per person per day (based on a diet of 1,500 grams of solid food and 1,500 grams of liquid food per person per day). Proposed § 170.39(a)(2)(i) would reflect updated approaches to determining exposure that accounts for differences in total dietary consumption and body weight of different subpopulations; the proposed revision from the dietary concentration of 0.5 parts per billion currently specified in our regulations to an estimated daily intake of 0.025 micrograms per kilogram bodyweight per day normalizes exposure across subpopulations, ensuring an equivalent level of safety for all subpopulations (Ref. 38). We would make

corresponding edits in proposed § 170.39(a)(1), (c)(3) through (c)(5), (e), and (g).

Additionally, our regulations at § 170.39(a)(1) state that a substance must not contain a carcinogenic impurity or, if it does, it must not contain a carcinogenic impurity with a TD₅₀ value of less than 6.25 milligrams per kilogram bodyweight per day. Proposed § 170.39(a)(1) would update this requirement to reflect equivalent updated approaches to assessment of cancer risk and scientific terminology and state that the substance, if it contains a carcinogenic impurity, must not contain a carcinogenic impurity with a lifetime cancer risk greater than one in one million, when calculated using a TD₅₀ value or another approach based on chronic feeding studies reported in the scientific literature or otherwise available to FDA, when present in the diet at 0.025 micrograms per kilogram bodyweight per day. In the parenthesis that follows, we propose clarifying that a TD₅₀ of 6.25 milligrams per kilogram bodyweight per day equates to a lifetime cancer risk of less than one in one million when the impurity is present in the diet at 0.025 micrograms per kilogram bodyweight per day. This demonstrates that the proposed revision results in an equivalent level of safety to that currently specified in our regulations. We would make corresponding edits in proposed § 170.39(c)(5).

Our regulations, at § 170.39(a)(3), state that a substance used in a food contact article that migrates, or that may be expected to migrate, into food will be exempted from regulation as a food additive because it becomes a component of food at levels that are below the threshold of regulation if the substance has no technical effect in or on the food to which it migrates. We propose removing § 170.39(a)(3) because it is focused on food contact articles and would thus be inconsistent with our proposed change to expand the regulation to include substances added to food, and FCSs generally, that meet the criteria for exemption. We would also renumber existing § 170.39(a)(4) as § 170.39(a)(3).

Our regulations, at § 170.39(b), state that we reserve the right to decline to grant an exemption in those cases in which available information establishes that the proposed use may pose a public health risk. The rule also states that we will provide the reasons for our decision to decline to grant an exemption in our response to the "requestor." Proposed § 170.39(b) would clarify that the "requestor" is the person who submits the request to exempt a use of a

substance from regulation as a food additive or from the GRAS notification requirement. These proposed changes align with the proposed expansion of TOR and the proposed changes to the GRAS notification program (see proposed § 170.205).

Our regulations, at § 170.39(c), describe the contents of a request to exempt a use of a substance from regulation as a food additive. For example, under § 170.39(c), the request must include three copies. Under § 170.39(c)(1), the request must contain the chemical composition of the substance for which the request is being made, including, whenever possible, the chemical's name in accordance with the current Chemical Abstract Service (CAS) nomenclature guidelines and a CAS registry number if available. Proposed § 170.39(c) would clarify that a request under this section may be for FDA to exempt a use of a substance from regulation as a food additive or from the proposed GRAS notification requirement under § 170.205. The proposed change would expand the provision to include the proposed mandatory GRAS notification requirement (see proposed § 170.205(a)) and remove the requirement to submit three copies of the request, as submission in triplicate is no longer efficient or necessary.

Our regulations, at § 170.39(d), specify where data to be reviewed under this section must be submitted. Proposed § 170.39(d) would require electronic submission of the data through HFP's Centralized Online Submission Module (COSM). Electronic submission of the data would make our administration of the TOR exemption process more efficient. Proposed § 170.39(d) would also include an opportunity to request a waiver from the requirement to electronically submit the data through COSM. We are aware that electronic submission may not be available to every requestor, and thus, we are proposing that a requestor may request a waiver from the electronic data submission requirement from HFP's Office of Pre-Market Additive Safety.

Our regulations, at § 170.39(e), state that FDA will inform the requestor by letter whether the specific use is exempt from regulation as a food additive and that FDA will maintain a list of substances exempt from regulation as food additives on display at the Dockets Management Staff. Such list would include the name of the company that made the request, the chemical name of the substance, the specific use for which it has received an exemption from regulation as a food additive, and any

appropriate limitations on its use, but it will not include trade names. Proposed § 170.39(e) would remove reference to informing the requestor "by letter" whether the use is exempt or not from regulation as a food additive or from the GRAS notification requirement under § 170.205. This change would provide flexibility to ensure we can leverage current and future technology to communicate information to the requestor and the public. Proposed § 170.39(e) would also state that FDA will maintain a "publicly available" list of substances and their uses that are exempted from regulation as food additives or from the GRAS notification requirement under § 170.205. The proposed revision would remove language which provides that the list of substances and their use will be on display at the Dockets Management Staff and what the list will include. We are proposing these changes to maintain flexibility in how we provide information to a requestor and the public.

We propose removing § 170.39(f) which provides that if a request for an exemption from regulation as a food additive is not granted, the requestor may submit a petition for reconsideration to FDA in accordance with § 10.33 (21 CFR 10.33). Paragraph (f) is unnecessary because our existing regulations at § 10.33, "Administrative reconsideration of action," establish a process for interested persons to request reconsideration. Although it would no longer be specified in § 170.39, under § 10.33 the opportunity to seek reconsideration is available to a requestor that is denied a request for an exemption from regulation. We would renumber existing § 170.39(g) as § 170.39(f).

Our regulations, at § 170.39(h), state that guidance documents to help a requestor prepare a submission seeking exemption from the food additive regulations are available from FDA's Office of Food Additive Safety. The rule also encourages interested persons to obtain specific guidance from FDA on protocols to be used for obtaining migration data, on validation of analytical methods used to quantify migration levels, on procedures used to relate migration data to dietary exposures, and on any other issue. The proposed rule would remove § 170.39(h) because FDA guidance documents are publicly available online, as well as through HFP, generally. As such guidance and recommendation language is not information we usually include in our regulations, removing it would streamline the provision.

E. Proposed Revisions to § 170.203—Definitions Pertaining to GRAS Notices

Our regulations, at § 170.203, provide definitions that are applicable throughout Subpart E—Generally Recognized as Safe (GRAS) Notice. Proposed § 170.203 would remove introductory language, as well as the definition of "We, our, and us;" amend the definitions of "GRAS" and "GRAS notice" with clarifying edits; and establish definitions for "Inventory" and "No questions letter." We propose removing the introductory language, which states "The definitions and interpretations of terms in § 170.3 apply to such terms when used in this subpart. The following definitions also apply." This language is unnecessary, as the introductory language of § 170.3 makes clear that the definitions listed in § 170.3 apply throughout part 170. The definitions in proposed § 170.3 would continue to apply to subpart E of part 170, as well as to the other subparts. As discussed in section V.A of this document, we propose moving the definition of "We, our, and us" to § 170.3 so that these terms can apply throughout part 170.

In the definition of "GRAS," we propose adding a cross-reference to § 170.3(i), which defines "safe or safety." Our regulations, at § 170.203, explain the acronym "GRAS," but they do not provide a tie to how we define "safe." Providing a cross-reference to § 170.3(i) would connect the explanation of the GRAS acronym with the definition of "safe or safety" in our regulations.

In the definition of "GRAS notice," we propose to cross-reference § 170.205, "Opportunity to submit a GRAS notice," in relation to "a submission" and to revise "not subject to the premarket approval requirements" to read "not subject to the premarket review and approval requirements for food additives under section 409 of the Act" for clarity.

We propose establishing definitions for "Inventory" and "No questions letter," as we use these terms in proposed § 170.275 (21 CFR 170.275) and § 170.205, respectively. "Inventory" would mean an online repository where FDA makes public certain information related to GRAS notices. In proposed § 170.275(b) (see section V.K of this document for further discussion), we state that we will make the information included in § 170.275(b)(1) through (3) available to the public through its inclusion in the inventory. We propose keeping the term "inventory" generic to allow for flexibility, because the name of the inventory or the location where

we house the inventory might evolve over time. This information is currently housed in a searchable database entitled “GRAS Notices” (Ref. 3).

As discussed in the 2016 GRAS final rule, we established at least three categories of response letters during the interim pilot program, with “No questions letter” being one category (81 FR 54960 at 55014). We stated that the content of these categories of response letters has evolved over time and may continue to evolve; therefore, we did not specify any detail about the nature of our responses in our regulations (id.). Under the current voluntary GRAS notification program, a typical no questions letter makes clear that: (1) It is the information that is provided by the notifier that forms the basis for our response, and that the notifier (rather than FDA) is responsible for the conclusion of GRAS status; (2) our response must be considered in context based on the knowledge and information available to us at a point in time, because scientific knowledge and information about a particular ingredient can evolve and sometimes change; and (3) our response is not an affirmation of GRAS status of the notified substance under the conditions of its intended use in accordance with § 170.35.

Proposed § 170.203 would define “No questions letter” as a letter from FDA, sent in response to a GRAS notice, which states that, based on the information the notifier provided, as well as other information available to us, we have no questions at this time regarding the notifier’s conclusion that the notified substance is GRAS under the conditions of its intended use. We also propose including language to clarify that a no questions letter is neither an affirmation by FDA that the notified substance is GRAS for its intended conditions of use under § 170.35, nor a published finding under section 721(b)(4) of the FD&C Act, which pertains to the premarket review and approval process for color additives, declaring the use of such substance exempt from the term “food additive” because of its being GRAS. Establishing a definition in our regulations for the no questions letter would be appropriate and necessary, as we propose to include an exception to the proposed requirement to submit a GRAS notice that is based off the existence of a no questions letter (see proposed § 170.205 and section V.F of this document for further discussion).

We also discussed two other categories of response letters in the 2016 GRAS final rule (81 FR 54960 at 55014 through 55015). We noted that it is

possible that in the future a response to a GRAS notice may not fit squarely within one of the current categories of response letters. In addition to the proposed definition for no questions letter, we also propose establishing definitions for cease to evaluate letter and insufficient basis letter (see section V.M.1 of this document). However, we are not proposing to establish these categories of response letters as the only response letters FDA might send in response to a GRAS notice.

F. Proposed § 170.205—Creation of a Mandatory GRAS Notification Program

Our regulations, at § 170.205, provide that any person may voluntarily notify FDA of a view that a substance is not subject to the premarket review and approval requirements of section 409 of the FD&C Act based on that person’s conclusion that the substance is GRAS under the conditions of its intended use. As discussed in section III of this document, we propose moving from the current voluntary GRAS notification program to a framework under which GRAS notices would be mandatory with certain limited exceptions. This change would lead to increased transparency about substances that are added to food, enabling FDA to regulate the safety of food substances more effectively and efficiently; determine if the use of a substance constitutes a food additive use that is subject to the premarket review and approval requirements of section 409 of the FD&C Act; and possibly identify instances where a potentially unsafe food additive is used in food, so we can take action as appropriate. Therefore, we propose revising the title of § 170.205 from “Opportunity to submit a GRAS notice” to “Submission of a GRAS notice.”

1. Mandatory GRAS Notice Submission

The proposed rule would create a new § 170.205(a) to provide that any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act must notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use. This would include substances already in the food supply and those being marketed for food use for the first time. Proposed § 170.205(a) would replace the current voluntary GRAS notification program, under which any person may, but is not required to, notify FDA of a view that a substance is GRAS under the conditions of its intended use. As discussed elsewhere in this document, our experience administering the voluntary GRAS notification program, particularly in the last decade, has

demonstrated a need for us to require the submission of GRAS notices to provide FDA with information to help us to better identify potentially unsafe substances used in food, thereby enabling FDA to take action as appropriate and regulate the safety of food substances more effectively. Changes in our country’s food supply during this same period further support the need to require the submission of GRAS notices. Among other things, requiring the submission of GRAS notices would increase transparency about substances in the U.S. food supply that are purported to be GRAS under the conditions of their intended use.

Uses of substances that are excepted from the definition of a food additive under section 201(s)(1) through (6) of the FD&C Act cannot be the subject of a GRAS notice. Specifically, the term “food additive” does not include: (1) A pesticide chemical residue in or on a raw agricultural commodity or processed food; (2) a pesticide chemical; (3) a color additive; (4) any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to the FD&C Act, the Poultry Products Inspection Act (Pub. L. 85–172, 71 Stat. 441) or the Federal Meat Inspection Act (Pub. L. 59–382, 34 Stat. 669); (5) a new animal drug; or (6) an ingredient described in section 201(ff) of the FD&C Act in, or intended for use in, a dietary supplement (section 201(s)(1) through (6) of the FD&C Act). As such categories are excepted from the definition of “food additive” in section 201(s) of the FD&C Act, they are not eligible for classification as GRAS under the GRAS provision included in the definition of “food additive” (see proposed § 170.205(c)).

Proposed § 170.205(a) would also provide that if the conditions of use meet the definition of an FCS in accordance with § 170.3(e)(3), then a manufacturer or supplier may submit an FCN as specified under § 170.100 (21 CFR 170.100) instead of a GRAS notice. An FCN refers to a premarket notification for an FCS. Section 409(h)(3)(A) of the FD&C Act states that the FCN process shall be utilized for authorizing the marketing of food additives that are FCSs, except where the Secretary determines that the submission and review of a food additive petition is necessary to provide adequate assurance of safety, or where FDA and any manufacturer or supplier agree that a petition may be submitted (see S. Rept. No. 105–43, 105th Cong., 1st sess. 46 (1997); H. Rept. 105–306, 105th Cong., 1st sess. 19 (1997)). FCNs are required only for those FCSs that are

food additives as defined by section 201(s) of the FD&C Act (21 U.S.C. 321(s)) and that are not otherwise authorized under section 409 of the FD&C Act. We note, however, that an FCS can fall outside the definition of a food additive as defined by section 201(s) of the FD&C Act if such substance, under the conditions of its intended use, is GRAS. In such situations, a manufacturer or supplier may submit either an FCN as specified under § 170.100 or a mandatory GRAS notice under proposed § 170.205. However, we recognize that the FCN process is specifically tailored to handle the submission of data related to FCSs, and we therefore recommend that industry use the FCN process for an FCS that is purported to be GRAS under the conditions of its intended use.

For uses of substances that are required to be the subject of a GRAS notice, FDA would consider as a factor in its prioritization of food substances for post-market review whether the notification requirement has been met concerning the substance's conditions of intended use pursuant to § 170.265(a) (which relates to what FDA will do with a GRAS notice). As discussed in section II.B.3 of this document, we are proposing the GRAS notification requirement to gain information about purported GRAS uses of substances on the market, including some substances and uses into which we might not otherwise have insight. Because the failure to comply with the proposed GRAS notification requirement would impede FDA's efforts in this regard, as well as our ability to carry out our statutory responsibility to prohibit the use of unsafe additives in food, noncompliance with proposed § 170.205(a) for uses of substances that are required to be the subject of a GRAS notice would be a factor in FDA's prioritization of food substances for post-market review.

As we have received a significant number of submissions during the voluntary GRAS notification program that we did not file as GRAS notices (e.g., because the submission did not contain all parts of a GRAS notice that are required by our regulations), we are proposing that the mere submission of materials for a GRAS notice to FDA would not be sufficient to meet the notification requirement. Rather, under proposed § 170.265(a)(2), FDA would consider the notification requirement of proposed § 170.205 to be met upon FDA's filing of a submission as a GRAS notice, except as provided for in proposed § 170.265(b)(3).

Upon receipt of a submission, we would continue to follow our existing

procedures to conduct an initial evaluation of the submission before determining whether to file it as a GRAS notice, but we are proposing that this initial evaluation will be completed within 45 days (see proposed § 170.265(a)(1)). During this preliminary assessment to determine whether the submission is adequate to file, FDA is not evaluating the GRAS status of the substance's conditions of intended use, and the filing of a GRAS notice does not mean that the substance that is the subject of the GRAS notice is GRAS under the conditions of its intended use. Upon the filing of a GRAS notice, we will then evaluate the notifier's basis for concluding that the criteria for GRAS status are satisfied.

Importantly, the proposed GRAS notification program generally, and proposed § 170.205(a), do not establish a premarket review program for purportedly GRAS substances. As explained elsewhere in this document, the FD&C Act allows a person to introduce a substance into interstate commerce if the substance is GRAS under the conditions of its intended use (see sections 201(s) and 409 of the FD&C Act). Thus, a company may continue marketing a purported GRAS substance before submitting a GRAS notice or after submitting a GRAS notice before it is filed by FDA. Similarly, a company may reach a GRAS conclusion about a new use of a substance and introduce the substance into interstate commerce before submitting a GRAS notice. However, the proposed GRAS notification program would assist FDA's post-market review of purported GRAS substances, enabling FDA to determine whether these substances are not GRAS and therefore require FDA review and approval under section 409 of the FD&C Act.

2. Exceptions From Mandatory GRAS Notice Submission

There may be circumstances where requiring the submission of a GRAS notice would be unnecessary or unwarranted.

a. No questions letter. Proposed § 170.205(b)(1) would create an exception from the GRAS notice submission requirement when an existing no questions letter covers the substance under the conditions of its intended use. There is no provision in the FD&C Act providing a notifier exclusivity for the use of a substance on the basis that it is GRAS under the conditions of its intended use. As discussed in section V.E of this document, a no questions letter is a category of response letter that FDA may send to the notifier in response to a

GRAS notice (see also 81 FR 54960 at 55014). When a no questions letter exists and covers a substance under the conditions of its intended use, that means that we previously received a GRAS notice pertaining to the conditions of use of the substance, conducted a substantive evaluation of the GRAS notice, and had no questions at that time regarding the notifier's conclusion that the notified substance is GRAS under the conditions of its intended use (see proposed § 170.203). Given this prior evaluation and assessment, if the conditions of use of a substance are the same as those that were the subject of a GRAS notice that received a no questions letter, we would not need to evaluate the GRAS status of the use of such substance.

We note that a GRAS conclusion within a GRAS notice for which we issued a no questions letter may not apply to a use of a substance if the identity of, manufacturing process for, or the conditions of use (e.g., food categories, use levels, technical effect, specifications) of that substance are significantly different from those discussed in the GRAS notice that received the no questions letter response. For example, a substance may not be food grade following a manufacturing process change that introduces impurities into the substance. Therefore, a change in manufacturing process may alter the composition, and perhaps the toxicity, of the substance. If the use of a substance differs from the uses discussed in a GRAS notice that received a no questions letter response, it is the obligation of the manufacturer to demonstrate whether the substance is GRAS under the conditions of its intended use. The manufacturer may consult with FDA regarding this issue.

In addition, we note that proposed § 170.205(b)(1) would require that a no questions letter cover the conditions of use of a substance in order for the exception to apply. Thus, proposed § 170.205(b)(1) would not apply, and a GRAS notice would be required for the use of the substance, if pursuant to proposed § 170.38(c), FDA later rescinded the no questions letter that pertained to the conditions of use of the substance.

We considered whether to provide for an alternate procedure (e.g., abbreviated GRAS notice submission) for substances that exist in our GRAS notice inventory—e.g., when the use of a substance differs from the uses discussed in an existing GRAS notice that received a no questions letter or when there is a change in manufacturing process related to the

uses of a substance discussed in an existing GRAS notice that received a no questions letter. We have tentatively concluded that an alternate procedure is unnecessary, as notifiers currently are able to incorporate into a new GRAS notice data and information previously submitted to FDA (see 21 CFR 170.215). As we stated in the 2016 GRAS final rule (81 FR 54960 at 54988), we expect a notifier to provide a specific file number (e.g., for a GRAS notice) that contains the referenced data and information, and to identify the specific data and information in that file (rather than to broadly incorporate into a GRAS notice the entire file without explaining which data and information to incorporate). However, we invite comment on additional ways in which we could facilitate or make more efficient a notifier's ability to incorporate data and information already submitted to FDA into a new GRAS notice. We also invite comment on other specific scenarios for which FDA could consider providing an alternate procedure (e.g., abbreviated GRAS notice submission) or that FDA could consider to be covered by an existing no questions letter. Furthermore, as discussed in section V.Q of this document, we invite comment on this topic as it relates to substances that exist in our animal food GRAS notice inventory.

b. Substance listed or affirmed as GRAS under the conditions of its intended use in parts 182, 184, or 186. Proposed § 170.205(b)(2) would create an exception from the GRAS notice submission requirement for a substance that is listed or affirmed as GRAS under the conditions of its intended use in parts 182, 184, or 186. Where FDA has conducted rulemaking to list or affirm a substance as GRAS under the conditions of its intended use, we have already determined that such substance is GRAS for its intended use. Therefore, a GRAS notice would be unnecessary. If, pursuant to proposed § 170.38(b), we later repeal the relevant regulation in parts 182, 184, or 186 that covered the conditions of use of a substance, or amended the relevant regulation such that it no longer covered the conditions of use of the substance, a GRAS notice would be required if the substance is introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act.

c. Substance considered GRAS under the conditions of its intended use in accordance with § 170.30(d) or proposed § 170.30(i)(1). Proposed § 170.205(b)(3) would create an exception from the GRAS notice submission requirement for a substance

considered GRAS under the conditions of its intended use in accordance with § 170.30(d) or proposed § 170.30(i)(1). Our regulations, at § 170.30(d), provide that a food ingredient of natural biological origin that has been widely consumed for its nutrient properties in the United States before January 1, 1958, without known detrimental effects, which is subject only to conventional processing as practiced before January 1, 1958, and for which no known safety hazard exists, will ordinarily be regarded as GRAS without specific inclusion in parts 182, 184, or 186. Our regulations, at § 170.30(i) (see proposed § 170.30(i)(1)), provide that a substance that is affirmed as GRAS under the conditions of its intended use in part 184 or part 186 with no limitation other than good manufacturing practice shall be regarded as GRAS if its conditions of use are not significantly different from those reported in the regulation as the basis on which the GRAS status of the substance was affirmed. While such substances are not explicitly listed or affirmed as GRAS under the conditions of their intended use in our regulations, both provisions provide that such substances are generally to be regarded as GRAS if certain conditions are met. Requiring a GRAS notice for uses of substances already covered by § 170.30(d) and proposed § 170.30(i)(1) would similarly be unnecessary.

d. Established FDA process. Proposed § 170.205(b)(4) would create an exception from the GRAS notice submission requirement where we have considered the intended use of the substance through an established FDA process to evaluate the potential presence of unapproved food additives and documentation made publicly available by FDA through that process does not recommend or otherwise identify the need to submit a GRAS notice.

FDA operates three processes for evaluating foods developed using innovative technologies to help developers ensure that resulting foods are safe and lawful prior to marketing. For foods from new plant varieties developed through biotechnology, HFP and CVM jointly offer Voluntary Premarket Consultations and Voluntary Premarket Meetings. For foods from cultured animal cells, HFP offers Animal Cell Culture Consultations. These processes are standardized, science-based, and provide transparency—we post information about the subjects of Voluntary Premarket Consultations, Voluntary Premarket Meetings, and Animal Cell Culture Consultations to FDA's website (Refs. 39 to 41). During these processes,

we consider whether the food under consideration may require further review because it contains a substance that would be subject to the premarket review and approval requirements for food additives under section 409 of the FD&C Act or those for color additives under section 721 of the FD&C Act.

A possible outcome is a recommendation that a substance undergo evaluation through a separate program (e.g., GRAS notification, FCN, food additive petition, or color additive petition). If the process concludes without FDA recommending or otherwise identifying the need for evaluation through a GRAS notice, we propose that a GRAS notice would not be required for anyone marketing the substance for the particular use that was reviewed because FDA was able to examine the intended use of the substance in food before it is introduced into interstate commerce. We note that if we were to recommend or otherwise identify the need for evaluation through a premarket review and approval program (e.g., FCN, food additive petition, or color additive petition), it would not be appropriate to introduce such a substance into the food supply under the GRAS provision of section 201(s) of the FD&C Act.

FDA routinely conducts informal consultations with firms and advises on the regulatory status of substances added to food. Informal written statements, such as technical assistance, would not qualify for the exception in proposed § 170.205(b)(4), because such documentation does not necessarily reflect the conclusion of a formal, standardized evaluation process providing for transparency. FDA also offers the Early Food Safety Evaluation Program for new non-pesticidal proteins produced by new plant varieties not intended to enter the food supply, but that might occur in food unintentionally at intermittent, low levels. This program would similarly not qualify for the exception in proposed § 170.205(b)(4), because this process was developed to manage instances of unintended, low-level presence in food, not to resolve regulatory issues about the potential presence of unapproved food additives.

e. TOR exemption. Proposed § 170.205(b)(5) would create an exception from the GRAS notice submission requirement where the intended use of a substance is the subject of an exemption under the TOR process in § 170.39. If the intended use of a substance is a subject of an exemption under the TOR process as proposed in § 170.39, it means that the substance is in foods or migrates into foods at levels that result in no

appreciable risk to human health. As such, the substance used in food or as a food contact substance is present in the diet at levels that are below the TOR. The TOR process allows these substances to undergo an abbreviated review process where we determine whether the specific use of the substance meets criteria ensuring that the intended use would pose no more than a negligible health risk. If we evaluated the specific use of a substance under TOR and granted an exemption, a mandatory GRAS notice would be redundant and unnecessary. Providing an exception in this circumstance would enable us to devote more time and resources to reviewing GRAS notices for uses of substances where there could be more pressing public health concerns.

f. Effective premarket notification for an FCS. Proposed § 170.205(b)(6) would create an exception from the GRAS notice submission requirement where there is an effective premarket notification for an FCS which covers the substance under the conditions of its intended use and the substance in interstate commerce originates from the manufacturer or supplier listed in the effective FCN. As discussed elsewhere in this document, the FCN program may receive submissions that cover a food contact substance that is GRAS under the conditions of its intended use. If there is an effective FCN which covers the substance under the conditions of its intended use, a GRAS notice is not required. However, as the FCN program is limited to the use of a specific food contact-substance and to the specific manufacturer or supplier listed in the FCN (see section 409(h)(2)(C) of the FD&C Act and § 170.100(a)), this exception from a mandatory GRAS notice submission would apply only for the manufacturer or supplier listed in the FCN. Therefore, if the substance under the conditions of its intended use is in interstate commerce through a different manufacturer or supplier than is listed in the FCN, this exception would not apply, and a GRAS notice submission would be required for the substance under the conditions of its intended use.

g. Time-limited option to submit certain information to FDA. Proposed § 170.205(b)(7) would create an exception from the GRAS notice submission requirement if certain information about the conditions of use of the substance is submitted to FDA (see proposed § 170.305 (21 CFR 170.305), discussed in section V.M of this document) and the submission is included on a public list maintained by FDA, unless we issue a determination

that a GRAS notice or a food additive petition must be submitted for the intended use of a substance. Thus, inclusion on the list would not represent a determination by FDA that the use of the substance is GRAS or does not require a food additive petition (see proposed § 170.305(d) (21 CFR 170.305(d))).

This proposed exception from having to submit a GRAS notice, in conjunction with proposed § 170.305, provides a pathway, for a time-limited period, to submit certain information to FDA for a substance that was introduced into interstate commerce before the effective date of any final rule resulting from this rulemaking based on an independent conclusion of GRAS status. As many persons have relied on section 201(s) of the FD&C Act and our existing regulations to market these substances and given the considerable resources it takes us to evaluate and respond to a GRAS notice, providing this alternate streamlined submission pathway would enable FDA to gather information about these substances and their conditions of use while not overly burdening our administrative resources. We would use the information we gather to evaluate through post-market activities whether the use of substances should be re-evaluated, including whether a GRAS notice regarding the conditions of use of a substance must be submitted (see proposed § 170.305(d) and section V.M. of this document for further discussion).

G. Proposed Revisions to § 170.210—Mandatory Electronic Submission of GRAS Notices to FDA

Our regulations, at § 170.210 (21 CFR 170.210), specify where a GRAS notice is to be submitted, the format, and the organization of a GRAS notice. Proposed § 170.210 would require electronic submission of GRAS notices through HFP's Centralized Online Submission Module (COSM). Requiring the electronic submission of GRAS notices would make our administration of the GRAS notification program more efficient. Requiring electronic submission of GRAS notices would reduce the resources needed to disseminate a submission among FDA staff, decrease the likelihood of poor-quality paper scans or lost documents, and ensure submissions are transmitted in a timely fashion, thus making our administration of the GRAS notification procedure more efficient.

We propose the use of COSM for submission of mandatory GRAS notices. COSM is used to transmit not only voluntary GRAS notices, but also food and color additive petitions, FCNs, final biotechnology consultations, and more.

COSM provides a real-time user interface to assist users in making submissions to HFP's program offices. FDA has worked with industry on transmitting the submission of GRAS notices in electronic format since 2010.

Proposed § 170.210 would also include the opportunity to request a waiver from the requirement to electronically submit a GRAS notice through COSM. We are aware that electronic submission may not be available to every notifier, and, thus, we are proposing that a notifier could send a request for a waiver from the requirement to submit a GRAS notice electronically to the Office of Pre-Market Additive Safety. If granted, a waiver would allow the notifier to submit a GRAS notice on paper.

H. Proposed Revisions to § 170.220—Requirement To Submit English Translations of Material Included in a GRAS Notice

Our regulations, at § 170.220 (21 CFR 170.220), cover general requirements applicable to a GRAS notice. Proposed § 170.220(c) would add a requirement that any material submitted in or referenced by a GRAS notice that is in a foreign language must be accompanied by an accurate and complete English translation. This requirement is comparable to the requirements in § 170.100 and § 171.1(a) (21 CFR 171.1(a)) for data submitted in a premarket notification for an FCS and a food additive petition, respectively, and would facilitate our review of GRAS notice submissions.

I. Proposed Revisions to § 170.250—Identification of Data and Information Exempt From Disclosure Under the Freedom of Information Act

Our regulations, at § 170.250 (21 CFR 170.250), describe what is to be included in Part 6 of a GRAS notice: Narrative. Specifically, § 170.250(d) tells notifiers that they must, at the time of their submission, identify specific data and information that they view as exempt from disclosure under the Freedom of Information Act (FOIA; 5 U.S.C. 552). Proposed § 170.250(d) would clarify how we intend to handle data and information that is not identified as exempt under FOIA by stating that if a notifier's narrative does not identify data and information as exempt from disclosure under FOIA, we will consider such data and information to not be exempt from disclosure or that you have waived any claim of confidentiality. This proposed change would provide transparency to notifiers as to what data and information will be considered not exempt and subject to

public disclosure in accordance with part 20 (21 CFR part 20).

Proposed § 170.250(e) would require the notifier to explain how there could be a basis for a conclusion of GRAS status for any non-public, safety related data and information that the notifier identifies as exempt from disclosure under FOIA despite the fact that qualified experts do not have access to such data and information. The proposed change would more clearly connect the explanation required by § 170.250(e) with the data and information identified as exempt from disclosure under FOIA in § 170.250(d).

*J. Proposed Revisions to § 170.265—
Circumstance Where FDA Would Not
Consider the Mandatory GRAS Notice
Notification Requirement To Be Met*

Our regulations, at § 170.265, outline what FDA does with a GRAS notice. Currently, we conduct an initial evaluation of a notifier's submission to determine whether to file it as a GRAS notice. There are no timing parameters for how long this initial evaluation takes. Proposed § 170.265(a)(1) would add a 45-day timeframe to this initial evaluation of a submission to determine whether to file it as a GRAS notice. We recognize that, under the current voluntary GRAS notification program, the initial evaluation of a submission can be lengthy. Including timing parameters around our initial pre-filing evaluation would alleviate concerns about potential delays that might occur for these steps and provide more certainty about FDA's GRAS notification program. As we are proposing that the notification requirement of § 170.205 will be met when we file a submission as a GRAS notice, we request comment on this proposed 45-day pre-filing period and other ways to reduce potential delays between receipt of a submission and filing of a GRAS notice.

Our regulations, at § 170.265(a)(2), provide that if FDA files a submission as a GRAS notice, we will send the notifier a letter that informs them of the date of filing; alternately, § 170.265(a)(3) provides that if FDA does not file a submission as a GRAS notice, we will send the notifier a letter that informs them of this fact and provides our reasons for not filing the submission as a GRAS notice. We propose to amend § 170.265(a)(2) and (a)(3) to state that we will send these letters within two business days of FDA making the decision to file or not file the submission as a GRAS notice. Including timing parameters around our sending of these filing decision letters would similarly alleviate potential concerns and provide more certainty about FDA's

GRAS notification program. Proposed § 170.265(a)(2) would also state that if we file a submission as a GRAS notice, we will consider the notification requirement of § 170.205 to be met, except as provided by § 170.265(b)(3). Proposed § 170.265(a)(5) would clarify that we may contact a notifier with questions related to the notice, including about the data and information used to support a GRAS conclusion, during our evaluation of a GRAS notice. This new provision would help prevent confusion with the response that we send to a notifier based on our evaluation of a GRAS notice under § 170.265(b)(1).

Our regulations, at § 170.265(b)(1), state that, within 180 days of filing plus an additional 90 days if needed, we will respond to a notifier based on our evaluation of a GRAS notice. If we need to extend the timeframe, we inform a notifier in writing of the extension as soon as practicable but no later than within 180 days of filing (see § 170.265(b)(2)). Proposed § 170.265(b)(1) would add a second 90-day extension period, if necessary, and proposed § 170.265(b)(2) would clarify that we will inform a notifier in writing of this second extension as soon as practicable but no later than the end of the initial 90-day extension. Given the expected increase in the number of GRAS notices if this rule is finalized, a second 90-day extension would provide FDA with the opportunity to complete timely evaluations. It would give us the time needed to consider amendments to a filed notice or any other information received from a notifier related to a GRAS submission. Further, allowing for a second 90-day extension may increase the potential for a successful evaluation outcome (*i.e.*, issuance of a no questions letter). Informing the notifier about the need for a second extension by no later than the end of the initial 90-day extension aligns with the current notification procedure for an extension of the 180-day evaluation period. We invite comment on the addition of a second 90-day extension to the 180-day evaluation period.

Our regulations, at § 170.265(b)(3), state that if a notifier asks us to cease to evaluate a GRAS notice, we will send the notifier a letter informing them of our decision regarding the request. Proposed § 170.265(b)(3) would clarify that if FDA ceases to evaluate a GRAS notice, we will not consider the mandatory GRAS notification requirement under proposed § 170.205 to be met. A GRAS notice for which we grant a cease to evaluate request for has the same effect as if we never received a GRAS notice for the intended use of

a substance. Therefore, a notifier would not meet their obligation under proposed § 170.205 to submit a mandatory GRAS notice if they: submit a GRAS notice, later request that FDA cease to evaluate their GRAS notice, and we grant such request. In such a case, the use of the substance that was the subject of the GRAS notice that we ceased to evaluate would not comply with the GRAS notification requirement until we filed a new GRAS notice pertaining to the substance's use.

In other situations, after completing our review of a GRAS notice, we may not issue a no questions letter, and may instead issue a different response, for example, a letter stating that the notice does not provide sufficient information in support of a GRAS conclusion. A response stating that there is an insufficient basis for a GRAS conclusion would not mean that a notifier has failed to meet their obligation under § 170.205 to submit a mandatory GRAS notice. However, such a response would be relevant to our determination of whether a food substance is an unapproved food additive under its conditions of use and would inform any post-market action against such a substance added to food.

*K. Proposed Revisions to § 170.275—
Public Disclosure of a GRAS Notice*

Our regulations, at § 170.275, cover public disclosure of GRAS notices. Specifically, § 170.275(a)(1) states that even though submission of a GRAS notice is voluntary, it is considered a mandatory submission for purposes of its status under FOIA and FDA's public information requirements in part 20. Section 170.275(a)(2) states that the information is available for public disclosure in accordance with part 20 as of the date that we receive the GRAS notice. Proposed § 170.275(a) would reflect the change from a voluntary to a mandatory submission requirement for GRAS notices and combine the information in a single paragraph (a), thus eliminating the need for subparagraphs (a)(1) and (2).

Our regulations, at § 170.275(b), outline what information we will make readily accessible to the public. However, we do not specify a location where we make this information public. Proposed § 170.275(b) would clarify that we will make the information listed in § 170.275(b)(1) through (3) accessible to the public through the inventory (as defined in proposed § 170.203). We currently maintain this information in FDA's GRAS Notice Inventory, which is available on our website (Refs. 3 and 4). We intend to continue using this web page to share: (1) filed GRAS notices; (2)

any letters sent based on our evaluation of the notice (§ 170.265(b)(1)) or subsequent letters regarding the notice (§ 170.265(c)); and (3) any letters granting a cease to evaluate request (§ 170.265(b)(3)).

We propose removing § 170.275(c), which states that we will disclose all remaining data and information that are not exempt from public disclosure in accordance with part 20, because this language would be covered by proposed § 170.275(a). Data and information which falls within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure (see part 20).

L. Proposed Revocation of § 170.285—Disposition of GRAS Affirmation Petitions

Our regulations, at § 170.285 (21 CFR 170.285), cover how we handled filed GRAS affirmation petitions that were pending as of October 17, 2016 (the effective date of the GRAS final rule) as we transitioned to the current voluntary GRAS notification program. As there are no longer any pending GRAS affirmation petitions, and we have replaced the GRAS affirmation process with the voluntary GRAS notification program, this section is outdated. We propose removing § 170.285 consistent with Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821, Jan. 21, 2011), which requires agencies to periodically conduct retrospective analyses of existing regulations to identify those “that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them,” accordingly.

M. Proposed Addition of Subpart F—Establishment of Definitions and Pathway for Submission of Certain Information During Time-Limited Option for Substances Introduced Into Interstate Commerce Under the GRAS Provision of Section 201(s) of the FD&C Act Before the Effective Date of a Final Rule

We propose establishing a new subpart F, “Submissions for Substances Introduced into Interstate Commerce Under the GRAS Provision of Section 201(s) of the Act Before [EFFECTIVE DATE OF THE FINAL RULE].” The proposed subpart F would provide definitions that would apply only to subpart F (see proposed § 170.303 (21 CFR 170.303)) and describe the time-limited option that firms can choose to participate in to qualify for an exception from the GRAS notice submission

requirement under proposed § 170.205(b)(7) (see proposed § 170.305).

1. Definitions Applicable for Proposed Subpart F

Proposed § 170.303 would define “Cease to evaluate letter,” “GRAS,” “GRAS notice,” “Insufficient basis letter,” and “Submitter.” Our regulations reference that FDA may grant a notifier’s request that we cease to evaluate a GRAS notice by sending a letter informing the notifier of our decision (§ 170.265(b)(3)). While we refer to these as cease to evaluate letters (see, e.g., 81 FR 54960 at 55015), our regulations have not codified this term. Because proposed § 170.305 would use this term (see section V.M.2 of this document), we propose to define “Cease to evaluate letter” to mean a letter from FDA granting a request to cease to evaluate a GRAS notice under § 170.265(b)(3).

We propose using the terms “GRAS” and “GRAS notice” in subpart F in the same way as we use these terms in subpart E; however, the definitions in § 170.203 only apply to subpart E. Therefore, we propose including the same definitions for “GRAS” and “GRAS notice” in § 170.303 so that these terms are defined for use in subpart F of part 170 and align with subpart E of part 170.

Our regulations, at § 170.265(b)(1), state that within 180 days of filing a GRAS notice, we will respond to a notifier by letter based on our evaluation of the notice. As discussed in the 2016 GRAS final rule, we established at least three categories of response letters during the interim pilot program—“Insufficient basis letter” was one category (81 FR 54960 at 55014). The content of these categories of response letters has evolved over time and may continue to evolve; therefore, we did not specify any detail about the nature of our responses in our regulations (Id.). We propose in § 170.303 to define “Insufficient basis letter” to mean a letter from FDA, sent in response to a GRAS notice, which states that, based on the data and information provided, as well as other available information, the notice does not provide a sufficient basis for a conclusion that the notified substance (as defined in § 170.203) is GRAS under the conditions of its intended use. Establishing this definition is necessary because we propose that a submission under § 170.305 is not allowed for any conditions of use of a substance that are the subject of an insufficient basis letter (see proposed § 170.305(b) and section V.M.2 of this document for further discussion).

Proposed § 170.303 would define “Submitter” to mean a person (e.g., an individual, partnership, corporation, association, or other legal entity) who is responsible for the submission under subpart F, even if another person (such as an attorney, agent, or qualified expert) prepares or submits the information. This definition would parallel the definition of “Notifier” for a GRAS notice (see § 170.203), while also differentiating the people responsible for a GRAS notice (“notifiers”) from those who are responsible for this information in accordance with proposed § 170.303 (“submitters”).

2. Specific Requirements Proposed for the Option To Submit Information To Be Excepted From Mandatory GRAS Notice Submission

As discussed in section V.F of this document, we are proposing a limited number of exceptions to the proposed GRAS notice submission requirement. One exception would state that a GRAS notice does not need to be submitted if certain information about the conditions of use of a substance is submitted to FDA in accordance with proposed § 170.305 and the submission is included on a public list maintained by FDA, unless we issue a determination that a GRAS notice or a food additive petition must be submitted for the intended use of a substance (see proposed § 170.205(b)(7)). Any person could rely on the inclusion of the submission on a public list maintained by FDA for the same conditions of use of a substance.

Proposed § 170.305 would provide a streamlined way for us to gain insight into substances already in use in the market under the GRAS provision of section 201(s) of the FD&C Act. We are proposing this exception because we recognize that many persons have relied on section 201(s) of the FD&C Act and our existing regulations to market uses of substances based on an independent conclusion of GRAS status. Requiring GRAS notices for all such uses of substances would likely overburden the administrative resources we have to evaluate and respond to GRAS notices. This exception will enable us to administer the proposed mandatory GRAS notification program more effectively and efficiently.

Proposed § 170.305(a) would describe the substances that could be the subject of these streamlined submissions, i.e., substances that have been introduced into interstate commerce before the effective date of any final rule resulting from this rulemaking based on a conclusion that the substance is GRAS

under the conditions of its intended use. Proposed § 170.305(a) would state that, for a substance that has been introduced into interstate commerce before the effective date of any final rule under the GRAS provision of section 201(s) of the FD&C Act, a person may submit information regarding the substance and its conditions of use in accordance with subpart F instead of submitting a GRAS notice under proposed § 170.205. Obtaining this information for substances already in use in food would better inform our oversight of the food supply and help us prioritize our post-market review of substances used in food.

Proposed § 170.305(b) would not allow a submission under this subpart in two circumstances, even if a substance would otherwise qualify under § 170.305(a). First, a submission would not be allowed under this subpart if the submission concerned any conditions of use of a substance that are the subject of an insufficient basis letter (proposed § 170.305(b)(1)). If the conditions of use of a substance are the subject of an insufficient basis letter, this means that we have evaluated the data and information in a prior GRAS notice for the substance under the conditions of its intended use and determined that the GRAS notice does not provide a sufficient basis for a conclusion that the notified substance is GRAS under the conditions of intended use. Under these circumstances, a new GRAS notice would have to be submitted that covers the substance purported to be GRAS under the conditions of its intended use to enable us to re-evaluate whether data and information provides a sufficient basis for a GRAS conclusion (and whether the insufficient basis should be revised or rescinded), or whether the use of the substance should be the subject of a food additive petition.

Second, a submission would not be allowed under this subpart if the submission concerned any conditions of use of a substance that are the subject of a determination by FDA that the substance is not GRAS under the conditions of its intended use (proposed § 170.305(b)(2)). If the conditions of use of a substance are the subject of such a determination by FDA, this means we have evaluated data and information relating to a substance and determined that such conditions of use of a substance are not GRAS. As explained in section III.B.1.a of this document, we post our determinations that the conditions of use of a substance are not GRAS on a public inventory (see Ref. 20). Under these circumstances, we would expect to receive a food additive

petition for the substance's conditions of use. However, if a person believes that there are data or information supporting the conclusion that the substance is GRAS under these conditions of use, we would require the submission of a GRAS notice so that we can adequately evaluate that GRAS conclusion.

Proposed § 170.305(c) would detail what a submission must include (proposed § 170.305(c)(1)), additional information that it may include (proposed § 170.305(c)(2)), and how the submission must be made and by when (proposed § 170.305(c)(3)).

Proposed § 170.305(c)(1)(i) would require the submission to include the name and address of the submitter. This is necessary for full identification of the person who accepts responsibility for the submission. This is also necessary so that we can ask a submitter questions about their submission (proposed § 170.305(d)(2)). Proposed § 170.305(c)(1)(ii) would require the submission to include the name of the substance, using an appropriately descriptive term. This is necessary to identify the substance to both FDA and the public. Proposed § 170.305(c)(1)(iii) would require the submission to include the conditions of intended use of the substance, including the foods in which the substance is used or is in contact with, the levels of use, and the purposes for which the substance is used.

Information describing the conditions of intended use is necessary to delineate the boundaries of the submission under this subpart and the GRAS provision of section 201(s) of the FD&C Act. The information that would be required to be submitted under proposed § 170.305(c)(1)(i) through (iii) aligns with information submitted as part of a GRAS notice (see § 170.225(c)(2) through (4)). We are not proposing to require that submissions under proposed subpart F include underlying data or information pertaining to a conclusion of GRAS status.

Proposed § 170.305(c)(1)(iv) would require the submission to include evidence of presence of the substance under the conditions of its intended use in interstate commerce before the effective date of any final rule resulting from this rulemaking. Evidence of presence in interstate commerce before the effective date of any final rule resulting from this rulemaking would be necessary, as only those substances that have been introduced into interstate commerce before this time can take advantage of the option to submit under proposed subpart F of part 170. We would offer this alternative to submitting a GRAS notice only for

substances already in interstate commerce under the GRAS provision of section 201(s) of the FD&C Act so that we can gather information on all purported GRAS uses of substances and not just for new uses moving forward. Uses of substances that are excepted from the definition of a food additive under section 201(s)(1) through (6) of the FD&C Act cannot be the subject of a GRAS notice. Likewise, uses of substances that are excepted from the definition of a food additive under section 201(s)(1) through (6) of the FD&C Act would be ineligible for this alternative to submitting a GRAS notice for uses of substances already in interstate commerce. As this option is available as an exception to the proposed requirement to submit a GRAS notice, it would be available only for uses of substances that can properly be the subject of a GRAS notice.

Proposed § 170.305(c)(1)(v) would require the submitter to include a GRAS notice file number (GRN No.) if FDA sent a cease to evaluate letter in response to a submitter's previous GRAS notice for the same conditions of intended use of a substance. Information about a submitter's previous GRAS notice in the form of submitting to us the GRN No. is necessary, as safety issues raised during our evaluation of a GRAS notice that we ceased to evaluate may warrant consideration as a higher priority.

Proposed § 170.305(c)(2) would provide that a submission may inform us of the statutory basis for the conclusion of GRAS status for the conditions of intended use of the substance (*i.e.*, through scientific procedures or through experience based on common use in food (section 201(s) of the FD&C Act; see also § 170.30(a) through (c))), but this information would not be a required element of the submission. This information is not necessary to establish the presence of a substance already in interstate commerce under the GRAS provision of section 201(s) of the FD&C Act, but we recommend its inclusion because it would help us understand the basis for the GRAS conclusion.

Proposed § 170.305(c)(3) would require that a submission under this section be submitted to us electronically through COSM within one year after the effective date of any final rule, unless provided with a waiver to submit on paper. This would align with our proposed requirement for electronic submission of GRAS notices (see proposed § 170.210). The proposed one-year deadline to make these submissions would enable us to obtain information on many substances already

in use in food, informing our oversight of the food supply and helping us prioritize our post-market review of these substances. The one-year deadline would also allow many affected parties to efficiently comply with new proposed regulatory requirements, while helping us to more effectively administer the proposed mandatory GRAS notification program.

Proposed § 170.305(c)(3) would provide that submissions under subpart F of part 170 will not be accepted beyond one year after the effective date of any final rule resulting from this rulemaking. This would provide a clear cutoff for submissions under this subpart.

Proposed § 170.305(d) would outline what we will do with these submissions. Proposed § 170.305(d)(1) would state that we will post the information we receive (*i.e.*, information listed in proposed § 170.305(c)(1) and (2)) in a publicly available list in accordance with part 20 and clarify that the posting of this information does not mean that we have reviewed the GRAS status of the substance's conditions of intended use. This would provide transparency into the substances that are purported to be GRAS under the conditions of their intended use, and it would enable us to develop a more comprehensive catalog of food substances in use in the market under the GRAS provision of section 201(s) of the FD&C Act.

Proposed § 170.305(d)(2) would enable us to ask a submitter questions about their submission. This is necessary for us to ask clarifying questions about any information provided or to help us determine whether we need more information about the use of a substance.

Proposed § 170.305(d)(3) would state that we may issue a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance in accordance with subpart E of part 170 or section 409 of the FD&C Act, respectively. This would mean that the conditions of use of the substance would not qualify for the exception from the GRAS notice submission requirement under proposed § 170.205(b)(7). The submitter would have to submit a GRAS notice in accordance with subpart E of part 170 or, under certain circumstances, a food

additive petition in accordance with section 409 of the FD&C Act. Proposed § 170.305(d)(3) would also state that we would make such a determination publicly available. This would provide transparency into the substances that were purported to be GRAS under the conditions of their intended use but no longer qualify for the exception from the GRAS notice submission requirement under proposed § 170.205(b)(7).

While we are not proposing to require that submissions under proposed subpart F include underlying data or information pertaining to a conclusion of GRAS status, FDA is proposing that we may issue a determination that a GRAS notice must be submitted for the intended use of a substance that is the subject of a proposed subpart F submission. Thus, proposed subpart F would provide a streamlined way for us to gain insight into substances already in use in the market under the GRAS provision of section 201(s) of the FD&C Act, while still enabling us to require that additional information (in the form of a GRAS notice) be submitted for certain uses of these substances.

N. Proposed Revision to the Header of Part 170

Part 170 of Title 21 is titled “Part 170—Food Additives;” however, it not only covers food additives but also our GRAS regulations. Therefore, to reflect the subject matter of this part more accurately, we propose renaming part 170 to “Part 170—Food Additives and Generally Recognized as Safe (GRAS) Substances.”

O. Non-Substantive Edits to Part 170

We propose several non-substantive edits throughout part 170 to align with federal plain language guidelines (Ref. 42). We propose revising “prior to” to “before”; “shall” to “must,” “will,” or “are”; “assist” to “help”; and “agency” to “FDA” (see proposed §§ 170.30(c)(2), (d), (e), (i)(1), 170.38(b)(1) and (b)(2), and 170.39(b), (c), (d), (e), and (f)).

We propose other non-substantive edits to update terms and improve clarity. We propose changing “company” to “requestor,” “part 182, part 184, or part 186 of this chapter” to “parts 182, 184, or 186 of this chapter,” and “Federal Food, Drug, and Cosmetic Act” to “the Act” (as defined in § 170.3(d) for use throughout part 170) (see proposed §§ 170.30(c)(2) and (d),

170.38(b)(3), 170.39(e), 170.203, and 170.225(c)(6)). We propose changing “Commissioner” and “he” or “his” to “FDA” and “its,” respectively, adding “of this chapter” after “§ 171.130(b),” and adding “under the conditions of its intended use” after “substance is GRAS” (see proposed § 170.38(a), (b)(1), and (b)(3)).

Proposed §§ 170.203 and 170.225(c)(6) would clarify that “premarket approval requirements of the Federal Food, Drug, and Cosmetic Act” means “premarket review and approval requirements for food additives under section 409 of the Act.” As defined in § 170.3(d), “the Act” means the FD&C Act and as discussed in the prior paragraph, we propose using this term throughout part 170 consistent with this definition. In creating the premarket approval requirement for food additives in the 1958 amendment, Congress excluded a substance that is GRAS under the conditions of its intended use from the definition of food additive. The creation of the GRAS provision reflected Congress’ determination that many substances intentionally added to food for a specific use do not need premarket review by FDA to ensure their safety, either because their safety has been established by a long history of use in food, or because their safety has been established by information that is generally available to and accepted by qualified experts, regarding the intended conditions of use of a substance in food. This revision would help avoid any confusion with the mandatory GRAS notification submission and with other premarket submissions (*e.g.*, new dietary ingredient notifications).

P. Table Summarizing the Proposed Changes to Part 170

In table 1, we briefly summarize the proposed changes to part 170 and how they would impact the existing GRAS regulations at part 170. Table 1 provides the current section citation in part 170, the corresponding proposed section citation in part 170, and a summary of the proposed revision which includes a cross-reference to the section of this document that discusses the reasons for the proposed revision.

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Table 1.--Summary of Proposed Changes to Part 170 and How They Would Impact Existing Part 170

Current Regulatory Section in Part 170 (§)		Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
170.3(m)		170.3(m)	Amend definition of “food” to align with existing part 507 (see § 507.3) and use the term “animal food” rather than the previous terms that distinguished “pet food” and “animal feed” (see section V.A)
N/A		170.3(p)	Define “we, our, us, and FDA” to mean the Food and Drug Administration (see section V.A)
170.30(c)(2)		170.30(c)(2)	Remove the recommendation that a person notify FDA if they conclude that a use of a substance is GRAS through experience based on its common use in food outside of the U.S.; make non-substantive changes (see sections V.B and V.O)
170.30(d)		170.30(d)	Make non-substantive changes to update terms and improve clarity (see section V.O)
170.30(e)		170.30(e)	Remove discussion of historical context for substances listed or affirmed as GRAS in our regulations (see section V.B)
170.30(i)		170.30(i)(1) and (i)(2)	Amend and divide the provision to clarify the circumstances when our regulations in part 184 or 186 can be relied on to regard a substance as GRAS under the conditions of its intended use; make non-substantive edits (see section V.B and V.O)
170.38(a)		170.38(a)	Remove unnecessary provisions and add new provisions to clarify the steps we may take when we determine that a substance is not GRAS under the conditions of its intended use; make non-substantive edits (see sections V.C and V.O)
170.38(b)		170.38(b)	Clarify that this paragraph applies to substances listed or affirmed as GRAS in parts 182, 184 or 186; explain what FDA will do if there is a lack of convincing evidence that a substance is GRAS under the conditions of its intended use; remove language stating that we will review all comments; make non-substantive edits (see sections V.C and V.O)
170.38(c)		170.38(c)	Amend existing language to provide that FDA may send a notifier questions about a substance after providing a no questions letter; explain that FDA may update or rescind no questions letters (see section V.C)
170.38(d)		170.38(d)	Replace existing language covering prior sanctioned uses of substances with a new paragraph to cover how we would handle uses of substances not covered by proposed § 170.38(b) or (c) (see section V.C)
170.39		170.39	Amend title and expanded scope of TOR exemption program to include substances used in food and as food contact substances generally, not just in food contact articles; make non-substantive edits (see section V.D)

Current Regulatory Section in Part 170 (§)		Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
170.39(a)		170.39(a)	Amend to update scientific terminology and provide updated approaches for the assessment of cancer risk of carcinogenic compounds; remove existing paragraph (a)(3) given change in scope of regulation; existing paragraph (a)(4) would be renumbered to (a)(3) (see section V.D)
170.39(b)		170.39(b)	Amend to clarify the term “requestor” (see section V.D)
170.39(c)		170.39(c)	Amend to clarify that requests under this section may be to exempt a use of a substance from regulation as a food additive or from the GRAS notice submission requirement under § 170.205; remove requirement to submit three copies of a request (see section V.D)
170.39(d)		170.39(d)	Amend to specify that data to be reviewed is to be electronically submitted through COSM and include an opportunity to request a waiver from the electronic data submission requirement (see section V.D)
170.39(e)		170.39(e)	Amend to remove reference to informing the requestor “by letter” to provide flexibility in how information will be communicated to the requestor and the public; replace language providing that the list of substances and their use will be on display at the Dockets Management Staff and what the list will include with language providing that FDA will maintain a publicly available list of substances and their uses that are exempted from regulation as food additives or from the GRAS notification requirement under proposed § 170.205 (see section V.D)
170.39(f)		N/A	Remove unnecessary provision related to petition for reconsideration (see section V.D)
170.39(g)		170.39(f)	Renumber paragraph (see section V.D)
170.39(h)		N/A	Remove outdated provision related to availability of guidance documents from the program office, as FDA guidance documents are publicly available online (see section V.D)
170.203		170.203	Remove the definition for “We, our, and us;” clarify the definitions of “GRAS” and “GRAS notice;” define “Inventory” and “No questions letter;” remove the introductory text; make non-substantive edits (see sections V.E and V.O)
170.205		170.205(a)	Replace voluntary GRAS notification program with the GRAS notice submission requirement; allow for submission of an FCN instead of a GRAS notice, if the conditions of use of a substance meet the definition of an FCS (see section V.F.1)

Current Regulatory Section in Part 170 (§)		Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
N/A		170.205(b)	Establish exceptions from the GRAS notice submission requirement when: (1) a no questions letter covers the substance under the conditions of its intended use; (2) the substance is listed or affirmed as GRAS under the conditions of its intended use in parts 182, 184, or 186; (3) the substance is considered GRAS under the conditions of its intended use in accordance with § 170.30(d) or (i)(1); (4) the intended use of the substance has been considered by FDA through an established process to evaluate the potential presence of unapproved food additives, and documentation made publicly available by FDA through that process does not recommend or otherwise identify the need to submit a GRAS notice; (5) the intended use of the substance is the subject of an exemption under the TOR process described in § 170.39; (6) there is an effective FCN which covered the substance under conditions of its intended use and the substance in interstate commerce originates from the manufacturer or supplier listed in the effective FCN; or (7) information about the conditions of use of the substance has been submitted in accordance with §§ 170.305 and the submission is included on a public list maintained by FDA, unless FDA issues a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance (see section V.F.2)
N/A		170.205(c)	State that uses of substances excepted from the definition of a food additive under section 201(s)(1) through (6) of the FD&C Act cannot be the subject of a GRAS notice
170.210		170.210	Amend to require electronic submission of mandatory GRAS notices through COSM and provide an opportunity to request a waiver from the electronic submission requirement (see section V.G)
N/A		170.220(c)	Add a requirement that any material submitted in or referenced by a GRAS notice that is in a foreign language must be accompanied by an accurate and complete English translation (see section V.H)
170.225(c)(6)		170.225(c)(6)	Make non-substantive edits for clarity (see section V.O)
170.250(d)		170.250(d)	Amend to clarify how we intend to handle data and information that is not identified as exempt under FOIA (see section V.I)
170.250(e)		170.250(e)	Amend to require the notifier to explain how there could be a basis for a conclusion of GRAS status for any non-public, safety related data and information (see section V.I)

Current Regulatory Section in Part 170 (§)		Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
170.265(a)(1)		170.265(a)(1)	Amend to state that, within 45 days of receiving a GRAS submission, we will conduct an initial evaluation to determine whether to file it as a GRAS notice (see section V.J)
170.265(a)(2)		170.265(a)(2)	Amend to state that we will inform a submitter of our decision to file a submission as a GRAS notice within two business days and that if we file a submission as a GRAS notice, we will consider the notification requirement of proposed § 170.205 to be met (see section V.J)
170.265(a)(3)		170.265(a)(3)	Amend to state that we will inform a submitter of our decision to not file a submission as a GRAS notice within two business days (see section V.J)
N/A		170.265(a)(5)	Add to clarify that FDA may contact a notifier with questions about their GRAS notice (see section V.J)
170.265(b)(1)		170.265(b)(1)	Amend to extend the 180-day evaluation timeframe by 90 days up to two times on an as needed basis (see section V.J)
170.265(b)(2)		170.265(b)(2)	Amend to state that, if a second extension is needed, we will inform the notifier in writing no later than the end of the initial 90-day extension (see section V.J)
170.265(b)(3)		170.265(b)(3)	Amend to clarify that if FDA ceases to evaluate a GRAS notice, we will not consider the mandatory GRAS notification requirement to be met (see section V.J)
170.275(a)		170.275(a)	Amend to reflect the change from a voluntary to a mandatory submission requirement for GRAS notices and combine the information in a single paragraph (a) (see section V.K)
170.275(b)		170.275(b)	Amend to clarify the information listed in paragraphs (b)(1) through (3) will be accessible to the public through the “inventory” (see proposed § 170.203) (see section V.K)
170.275(c)		N/A	Remove this paragraph, as the language would be covered by proposed paragraph (a) (see section V.K)
170.285		N/A	Remove outdated section related to GRAS affirmation petitions
N/A		Subpart F (170.303 through 170.305)	Establish a new subpart F which would provide definitions that would apply only to subpart F (proposed § 170.303) and describe the time-limited option that firms can choose to participate in to qualify for an exception from the GRAS notice submission requirement under proposed § 170.205(b)(7) (proposed § 170.305) (see section V.M)

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Q. Proposed Revisions to Part 570 for Food Substances Used in Animal Food and Incorporation by Reference

FDA is also proposing to amend certain provisions of part 570. The proposed revisions to the animal food regulations in part 570 largely track the proposed revisions to the human food regulations in part 170 because parts 170 and 570 implement the same statutory provisions, and the rationale for proposing these revisions is the

same. However, there are some proposed revisions to part 570 that are different from the proposed revisions to their counterpart regulation in part 170, some proposed revisions to part 570 that have no counterpart in part 170, and some proposed revisions to part 170 that have no counterpart in part 570.

1. Proposed Revisions to Part 570 That Parallel the Proposed Revisions to Part 170

See table 2 for a summary of the proposed revisions to part 570 that are

parallel to the proposed revisions to part 170. Table 2 provides the proposed revision section in part 570, the parallel proposed revision section in part 170, and a summary of the proposed revision which includes a cross-reference to the section of this document that discusses the reasons for the proposed revision.

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Table 2.-- Summary of Proposed Revisions to Part 570 That Parallel the Proposed Revisions to Part 170

Proposed Regulatory Section in Part 570 (§)	Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
570.3(m)	170.3(m)	Revise definition of “food” to align with existing part 507 (see § 507.3) and use the term “animal food” rather than the previous terms that distinguished “pet food” and “animal feed” (see section V.A)
570.3(o)	170.3(p)	Define “we, our, us, and FDA” (see section V.A)
570.30(c)(2)	170.30(c)(2)	Remove the recommendation that a person notify FDA if they conclude that a use of a substance is GRAS through experience based on its common use in food outside of the U.S.; make non-substantive changes (see sections V.B and V.O)
570.30(d)	170.30(d)	Make non-substantive changes to update terms and improve clarity (see sections V.B and V.O)
570.30(h)	170.30(i)	Divide the provision to clarify the circumstances when our regulations in part 584 can be relied on to regard a substance as GRAS under the conditions of its intended use; make non-substantive edits (see section V.B and V.O)
570.38(a)	170.38(a)	Remove unnecessary provisions and add new provisions to clarify the steps we may take when we determine that a substance is not GRAS under the conditions of its intended use; make non-substantive edits (see sections V.C and V.O)
570.38(b)	170.38(b)	Clarify that this paragraph applies to substances listed or affirmed as GRAS in parts 582 or 584; explain what FDA will do if there is a lack of convincing evidence that a substance is GRAS under the conditions of its intended use; remove language stating that we will review all comments; make non-substantive edits (see sections V.C and V.O)
570.38(c)	170.38(c)	Replace existing language to provide that FDA may send a notifier questions about a substance after providing a no questions letter; explain that FDA may update or rescind no questions letters (see section V.C)
570.38(d)	170.38(d)	Replace existing language covering prior sanctioned uses with a new paragraph to cover how we would handle uses of substances not covered by proposed § 170.38(b) or (c) or § 570.38(b) or (c) (see section V.C)
570.203	170.203	Remove the definition for “We, our, and us”; clarify the definitions of “GRAS” and “GRAS notice”; define “Inventory” and “No questions letter”; remove the introductory text; make non-substantive edits (see sections V.E and V.O)
570.205(b)(1)	170.205(b)(1)	Create an exception from the GRAS notice submission requirement when a no questions letter covers the substance under the conditions of its intended use (see section V.F.2)
570.205(b)(2)	170.205(b)(2)	Create an exception from the GRAS notice submission requirement when the substance is listed or affirmed as GRAS under the conditions of its intended use in parts 182, 184, 186, 582, or 584 (see section V.F.2)
570.205(b)(3)	170.205(b)(3)	Create an exception from the GRAS notice submission requirement when the substance is considered GRAS under the conditions of its intended use in accordance with § 170.30(d) or (i)(1) or § 570.30(d) or (h)(1) (see section V.F.2)

Proposed Regulatory Section in Part 570 (§)	Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
570.205(b)(4)	170.205(b)(4)	Create an exception from the GRAS notice submission requirement when the intended use of the substance has been considered by FDA through an established process to evaluate the potential presence of unapproved food additives, and documentation made publicly available by FDA through that process does not recommend or otherwise identify the need to submit a GRAS notice (see section V.F.2)
570.205(b)(7)	170.205(b)(7)	Create an exception from the GRAS notice submission requirement when information about the conditions of use of the substance has been submitted in accordance with §§ 170.305 or 570.305 and the submission is included on a public list maintained by FDA, unless FDA issues a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance (see section V.F.2)
570.220(c)	170.220(c)	Add a requirement that any material submitted in or referenced by a GRAS notice that is in a foreign language must be accompanied by an accurate and complete English translation (see section V.H)
570.225(c)(6)	170.225(c)(6)	Make non-substantive edits for clarity (see section V.O)
570.250(d)	170.250(d)	Amend to clarify how we intend to handle data and information that is not identified as exempt under FOIA (see section V.I)
570.250(e)	170.250(e)	Amend to require the notifier to explain how there could be a basis for a conclusion of GRAS status for any non-public, safety related data and information (see section V.I)
570.265(a)(1)	170.265(a)(1)	Amend to state that, within 45 days of receiving a GRAS submission, we will conduct an initial evaluation to determine whether to file it as a GRAS notice (see section V.J)
570.265(a)(2)	170.265(a)(2)	Amend to state that we will inform a submitter of our decision to file a submission as a GRAS notice within two business days and that if we file a submission as a GRAS notice, we will consider the notification requirement to be met (see section V.J)
570.265(a)(3)	170.265(a)(3)	Amend to state that we will inform a submitter of our decision to not file a submission as a GRAS notice within two business days (see section V.J)
570.265(a)(5)	170.265(a)(5)	Add to clarify that FDA may contact a notifier with questions about their GRAS notice (see section V.J)
570.265(b)(1)	170.265(b)(1)	Amend to extend the 180-day evaluation timeframe by 90 days up to two times on an as needed basis (see section V.J)
570.265(b)(2)	170.265(b)(2)	Amend to state that, if a second extension is needed, we will inform the notifier in writing no later than the end of the initial 90-day extension (see section V.J)
570.265(b)(3)	170.265(b)(3)	Amend to clarify that if FDA ceases to evaluate a GRAS notice, we will not consider the mandatory GRAS notification requirement to be met (see section V.J)
570.275	170.275	Amend to reflect the change from a voluntary to a mandatory submission requirement for GRAS notices and combine the information in a single paragraph (a); amend to clarify what information we will make accessible to the public in FDA's inventory (see section V.K)

Proposed Regulatory Section in Part 570 (§)	Proposed Regulatory Section in Part 170 (§)	Summary of proposed changes (cross-reference to section of this document that contains the description of the proposed revision)
570.303	170.303	Add to define “Cease to evaluate letter,” “GRAS,” “GRAS notice,” “Insufficient basis letter,” and “Submitter” (see section V.M.1)
570.305(a)	170.305(a)	Add to describe the substances that could be the subject of a streamlined submission exception from the GRAS notification requirement (see section V.M.2)
570.305(b)	170.305(b)	Add to provide that a streamlined submission is not allowed if the use of the substance was the subject of an insufficient basis letter or a determination by FDA that the substance is not GRAS under the conditions of its intended use (see section V.M.2)
570.305(d)	170.305(d)	Add to outline what FDA will do with streamlined submissions (see section V.M.2)

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Related to proposed § 570.205(b)(1), we are seeking comment on our tentative conclusion that, in light of existing regulations providing for the incorporation of data and information previously submitted to FDA into a new GRAS notice (see 21 CFR 570.215), it is unnecessary to provide for an alternate procedure (e.g., abbreviated animal food GRAS notice submission) for substances that exist in our animal food GRAS notice inventory. For example, this would involve situations where the use of an animal food substance differs from the uses discussed in an existing animal food GRAS notice that received a no questions letter or when there is a change in manufacturing process related to the uses of an animal food substance discussed in an existing animal food GRAS notice that received a no questions letter. We also invite comment on additional ways in which we could facilitate or make more efficient a notifier's ability to incorporate data and information already submitted to FDA into a new animal food GRAS notice, as well as on other specific animal food scenarios for which FDA could consider providing an alternate procedure (e.g., abbreviated GRAS notice submission) or that FDA could consider to be covered by an existing no questions letter. Refer to section V.F.2 of this document for additional discussion of this tentative conclusion and these requests for comment.

Our regulations, at § 570.38(d), provide that if we are aware of a prior sanction for use of a substance, FDA will concurrently propose a separate regulation for such use. This proposed rule would remove § 507.38(d). Prior sanctioned uses of substances for human food use are almost all for use

in manufacturing food packaging materials (see 21 CFR part 181, subpart B). The prior sanctioned substances for human food use were placed in the then-new part 181 in 1977 (42 FR 14302, 14638–40, March 15, 1977). At the same time, FDA amended part 570 to include § 570.13, which incorporates the regulations in part 181 for use in the manufacture of animal food-packaging materials (42 FR 14091, March 15, 1977). Since then, the only prior sanctioned uses of a substance for animal food that we are aware of are menadione and menadione sodium bisulfite complex (certain vitamin K active substances) for use in poultry feed (48 FR 16748, April 19, 1983). A person wishing to assert that an animal food use of a substance is prior sanctioned should contact CVM at animalfood-premarket@fda.hhs.gov to discuss their situation.

2. Proposed Revisions to Part 570 That Are Different From Parallel Proposed Revisions to Part 170

The proposed changes to parts 170 and 570 also differ slightly regarding the administration of the mandatory GRAS notification program. Where proposed § 170.205(a) would reference FCNs as an alternate pathway for conditions of use of a substance that meet the definition of an FCS in accordance with § 170.3(e)(3), proposed § 570.205(a) would not include this language because the FCN program is specific to human foods.

Our regulations, at § 570.210, specify where a GRAS notice is to be submitted. Proposed § 570.210 would be revised to include a technical change to replace “Division of Animal Feeds (HFV–220)” with “Division of Animal Food Ingredients” to bring our regulations up to date with FDA's current structure.

The proposed changes would also instruct notifiers to contact CVM's Division of Animal Food Ingredients by email prior to submitting a GRAS notice for the most current instructions on submission, while we consolidate our physical location, including our mailing address, and transition from paper submissions to online submissions. If the proposed rule is finalized, we also anticipate making additional information on how to submit an animal food GRAS notice available on our website.

In proposed subpart F of part 570, in which we would provide definitions that would apply only to this subpart (see proposed § 570.303) and describe the time-limited option that firms can choose to participate in to qualify for an exception to the GRAS notice submission requirement (see § 507.305), the definitions and requirements are identical to those applicable to human food under proposed subpart F of part 170, with the exception of proposed § 570.305(c)(1)(iii) and (iv).

Proposed § 570.305(c)(1)(iii) would specify that submissions must include: the intended conditions of use of the substance, including the target animal species; foods in which the substance is used; the levels of use in such foods; the purposes for which the substance is used; and, when the intended use is in food for food-producing animals, the quantities of any residues that humans may be exposed to in edible animal tissues. Therefore, we propose limiting these submissions, when applicable, to substances for which the submitter had data or information to support human food safety related to such use.

Proposed § 570.305(c)(1)(iv) would require that the submission include evidence of presence of the substance under the conditions of its intended use

in interstate commerce before the effective date of any final rule resulting from this rulemaking. The conditions of intended use include, when applicable, being marketed for a particular target animal species and use.

Proposed § 570.305(c)(3) would detail how the submission must be made and by when. We propose that a submission under this section must be submitted to CVM by email within one year after the effective date of any final rule.

3. Proposed Revisions to Part 570 That Have No Counterpart in Part 170

We are proposing an exception in § 570.205(b)(5) from the requirement to submit a GRAS notice if the intended use of the substance has been the subject of an established animal food ingredient consultation process with FDA and a summary document made publicly available by FDA through the consultation process indicates that FDA has no questions or concerns about the safety of the substance for the intended use.

An example of such a consultation process is the Animal Food Ingredient Consultation (AFIC), described in our Guidance for Industry (GFI) #294 (Ref. 43). This guidance describes an interim, voluntary process that helps FDA become aware of some new animal food ingredients that are marketed in interstate commerce and any potential safety concerns associated with them. Upon completion of a consultation under AFIC, FDA intends to provide a letter summarizing the information that FDA reviewed in order to conclude whether the agency has questions about the safe use of the ingredient, and to post the letter to an FDA web page. The consultation provides FDA with the opportunity to express our concerns to a person regarding their plan to market an animal food ingredient without further evaluation through a GRAS notice or an animal food additive petition when we have questions about the public health impact. Because AFIC enables FDA to examine intended uses of substances in animal food, we propose that a GRAS notice would not be required for anyone marketing a substance for a particular use that was reviewed by FDA under AFIC, so long as FDA provided a publicly available summary that indicates it has no questions or concerns about the safety of the substance for the intended use.

In addition, for animal food ingredients that are listed in and used in accordance with Chapter 6 “Official Feed Terms, Common or Usual Ingredient Names and Ingredient Definitions” of the “Official Publication” (OP) of the Association of

American Feed Control Officials, Inc. (AAFCO), 2024 ed., (Ref. 44) and for which FDA has not publicly expressed a concern about the GRAS status of the use of the ingredient, we provide an exception in proposed § 570.205(b)(6) from the requirement to submit a GRAS notice. This exception would be applicable if the ingredient is introduced in interstate commerce for use in animal food under the GRAS provision of section 201(s) of the FD&C Act and may overlap with other exceptions (e.g., inclusion in part 582, coverage by a GRAS notification that has received a no questions letter from FDA).

We are proposing to except these ingredients from the requirement to submit a GRAS notice because we are aware of their use given their listing in AAFCO’s 2024 OP, and we have reviewed many of them for safety for their intended use in animal food through our former participation in the AAFCO ingredient definition request process under a memorandum of understanding (MOU) that expired in October 2024 (Ref. 45). Moreover, for ingredients that were reviewed as part of the AAFCO ingredient definition request process but that we did not specifically review as part of the MOU process, we are not aware of any safety issues concerning them and many have a long history of use in animal food. For animal food ingredients listed and used in accordance with editions of the AAFCO OP other than the 2024 edition, and for animal food ingredients that are used in accordance with the AAFCO 2024 OP but that are the subject of a public FDA statement of concern regarding their GRAS status, the exception in § 570.205(b)(6) would not apply, and proposed § 570.205(a) would require a GRAS notice if the substance is being introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act.

Proposed § 570.205(b)(5) and proposed § 570.205(b)(6) have therefore been added to structure a mandatory GRAS notification program for animal food ingredients that takes into account the unique circumstances of how animal food has historically been regulated by States and FDA, as well as how we anticipate we will continue to regulate animal food ingredients.

4. Proposed Revisions to Part 170 That Have No Counterpart in Part 570

Proposed § 170.39 would expand the scope of the TOR exemption to include uses in human food and FCSs generally, not just food contact articles. There is no TOR exemption for animal food, and we do not propose one at this time

because we are unaware that there is a need for such a regulation for animal food and because of the complexities involved in determining appropriate TOR criteria for animal species with differing body sizes, diets, feeding practices, and physiologies. As there is no TOR provision or FCN program for animal food, the exceptions we are proposing in § 170.205(b)(5) and (b)(6) would not apply to animal food GRAS notices. The changes we are proposing to § 570.205(b) would therefore not contain these two exceptions.

5. Incorporation by Reference

In § 570.205(b)(6), FDA is proposing to incorporate by reference the “Official Common or Usual Names and Definitions of Food Ingredients” section of Chapter 6 of the “Official Publication” of AAFCO, 2024 edition, pages 367–549.

You may obtain a free copy of the material from the Docket for GFI #293, FDA Enforcement Policy for AAFCO-Defined Animal Feed Ingredients, at <https://www.regulations.gov/document/FDA-2024-D-2977-0003> or you may inspect a copy at the Dockets Management Staff (HFA-306), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville MD 20852; phone 240-402-7500, between 9 a.m. and 4 p.m., Monday through Friday. You may also purchase a copy from AAFCO, 1800 S Oak Street, Suite 100, Champaign, IL, 61820-6974; phone: 217-356-4221; website (including links for purchasing AAFCO publications): <https://www.aafco.org>.

Chapter 6 of the 2024 edition of the “Official Publication” contains a comprehensive list of animal food ingredients, many of which include definitions established through AAFCO’s ingredient definition request process. Because most States adopt the ingredient definitions listed in the “Official Publication” under their State laws, the publication facilitates the marketing of animal food ingredients under those State laws. As explained above, for animal food ingredients that are listed in and used in accordance with Chapter 6 of the 2024 edition of AAFCO’s “Official Publication,” we are proposing an exception in proposed § 570.205(b)(6) from the requirement to submit a GRAS notice, as long as FDA has not publicly expressed a concern about the GRAS status of the use of the ingredient.

We are proposing to incorporate by reference the “Official Common or Usual Names and Definitions of Feed Ingredients” section of Chapter 6 of the 2024 edition of AAFCO’s “Official Publication,” pages 367–549, for the

sole purpose of providing a list of ingredients that would be covered by proposed § 570.205(b)(6).

VI. Request for Comments on Alternatives

In addition to seeking comments on the overall proposed rule, FDA is specifically seeking comments on potential alternatives to the proposed rule that could reduce regulatory burdens (*e.g.*, allowing streamlined submissions for all substances purported to be GRAS under the conditions of their intended use under section 201(s) of the FD&C Act). FDA is seeking comments on any alternatives that would still meet our goals of helping FDA fulfill its statutory responsibility to prohibit the use of unsafe additives in food and of increasing transparency about the substances being added to the U.S. food supply. In addition, FDA is interested in comments on whether such alternatives would enhance our ability to protect public health by helping FDA identify the use of potentially unsafe substances in food or additives that require FDA review and approval to be lawfully marketed, so we can take action as appropriate. FDA is seeking data and other information to support any suggested alternatives, including how such an alternative would meet FDA's goals of protecting public health and increasing transparency.

VII. Proposed Effective/Compliance Dates

We intend that any final rule resulting from this rulemaking become effective 60 days after the date of the final rule's publication in the **Federal Register**.

We also propose that §§ 170.205 and 570.205, if finalized, have a compliance date of 18 months after the effective date of the final rule. Based on our experience reviewing GRAS notices under the voluntary GRAS notification program, we think that a compliance period of 18 months would provide industry with sufficient time to come into compliance with these proposed requirements and for FDA to make available on a public list the information that is submitted under the time-limited option to make a streamlined submission to FDA for certain substances already in interstate commerce in proposed Subpart F that has a period of one year from the effective date. The availability of this information on a public list would be necessary to inform industry whether the exception in proposed §§ 170.205(b)(7) and 570.205(b)(7) applies.

VIII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. Rules are economically significant under Executive Order 12866 if they have an annual effect on the economy of \$100 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions “shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.” This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 regulatory action.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because we estimate that the economic impact of this proposed rule is more than 3 percent of annual revenue for small entities, we find that the proposed rule would have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (Section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$193 million, using the most current (2025) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would result in an expenditure in at least one year that meets or exceeds this amount.

The primary benefits of the proposed rule, if finalized, would come from increased information being made available to FDA and the public regarding substances used in human and animal foods. A mandatory GRAS notification program would allow FDA to ensure that GRAS conclusions have a scientific basis and that appropriate documentation supporting those conclusions exists. The proposed rule, if finalized, is in part intended to help strengthen public confidence in FDA's ability to oversee the safety of the U.S. food supply.

One-time costs of the proposed rule to persons who introduce a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act include reading the rule and revising standard operating procedures regarding GRAS notices. Other one-time costs of the proposed rule are preparing and submitting streamlined submissions related to uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act before the effective date of a final rule, for firms that choose to submit this information during the window of availability for this time-limited option for such submissions. Costs associated with these activities may include translation costs for manufacturers in non-English speaking countries. Recurring costs to affected manufacturers include preparing and submitting GRAS notices for new uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act after the effective date of a final rule that would otherwise have been the subject of an independent conclusion of GRAS status.

Costs to FDA would include one-time costs of reviewing streamlined submissions related to uses of substances introduced into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act before the effective date of a final rule during the time-limited period for such submissions and annual costs of evaluating ongoing submissions of GRAS notices regarding uses of substances that would otherwise have been the subject of an independent conclusion of GRAS status.

We estimate that the present value of the costs of the proposed rule would be approximately \$89.6 million, with a lower bound of \$34.9 million and an upper bound of \$210.0 million, discounted at 3 percent at 10 years in 2024 dollars. At a 7 percent discount rate, the present value of costs would be approximately \$82.3 million, with a lower bound of \$31.5 million and an upper bound of \$195.9 million. We

estimate that the annualized costs of the proposed rule would be approximately \$10.5 million, with a lower bound of \$4.1 million and an upper bound of \$24.6 million, discounted at 3 percent

over 10 years. At a 7 percent discount rate, annualized costs would be approximately \$11.7 million, with a lower bound of \$4.5 million and an upper bound of \$27.9 million. The

estimated benefits and costs of the proposed rule are summarized in table 3.

Table 3.--Summary of Benefits, Costs, and Distributional Effects of the Proposed Rule (millions of 2024 dollars)

Category		Primary Estimate	Low Estimate	High Estimate	Units			Notes
					Year Dollars	Discount Rate	Period Covered	
Benefits	Annualized Monetized (\$millions/year)					7%		
						3%		
	Annualized Quantified					7%		
						3%		
	Qualitative	Increased information regarding substances used in human and animal foods						
Costs	Annualized Monetized (\$millions/year)	\$11.7	\$4.5	\$27.9	2024	7%	10 years	
		\$10.5	\$4.1	\$24.6	2024	3%	10 years	
	Annualized Quantified					7%		
						3%		
	Qualitative							
Transfers	Federal Annualized Monetized (\$millions/year)					7%		
						3%		
	Other Annualized Monetized (\$millions/year)	From:			To:			
						7%		
						3%		
		From:			To:			
Effects	State, Local or Tribal Government: None Small Business: Costs of approximately \$7,800 to \$53,100 per affected small entity Wages: None Growth: None							

Note: Benefits encompass positive and negative benefits. Costs encompass costs and cost savings.

In line with Executive Order 14192, we estimate present and annualized values of costs, cost savings, and net costs over an infinite time horizon in table 4. The net present value of the

costs of the proposed rule are approximately \$86.0 million, with a lower bound of \$37.8 million and an upper bound of \$189.7 million, discounted at 7 percent over an infinite

time horizon in 2024 dollars. The annualized costs of the proposed rule are approximately \$6.0 million, with a lower bound of \$2.6 million with an upper bound of \$13.3 million.

Table 4.--EO 14192 Summary Table (millions of 2024 dollars, discounted over an infinite time horizon at a 7 percent discount rate)

	Primary Estimate	Low Estimate	High Estimate
Present Value of Costs	\$86.0	\$37.8	\$189.7
Present Value of Cost Savings	\$0	\$0	\$0
Present Value of Net Costs	\$86.0	\$37.8	\$189.7
Annualized Costs	\$6.0	\$2.6	\$13.3
Annualized Cost Savings	\$0	\$0	\$0
Annualized Net Costs	\$6.0	\$2.6	\$13.3

We have developed a Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 46)

and at <https://www.fda.gov/economics-staff/regulatory-impact-analyses-ria>.

IX. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that

does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

X. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). A description of these provisions is given in the *Description* section below with an estimate of the annual reporting. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Substances Generally Recognized as Safe: Notification Procedure; OMB Control Number 0910–0342—Revision.

Description: The FD&C Act requires that all food additives (as defined by section 201(s) of the FD&C Act) be reviewed and approved by FDA before they are marketed. Section 409 of the FD&C Act establishes a premarket review and approval requirement for “food additives.” Section 201(s) of the FD&C Act provides an exclusion to the definition of food additive, and thus from the food additive premarket review and approval requirement, for uses of substances that are GRAS by qualified experts. The GRAS provision of section 201(s) of the FD&C Act is implemented in parts 170 and 570 for human food and animal food, respectively. The provisions include an administrative procedure for a person to voluntarily notify FDA about a conclusion that a substance is GRAS under the conditions of its intended use in food for humans or animals.

A GRAS notice will include the following information:

- signed statements and a certification;
- the identity, method of manufacture, specifications, and physical or technical effect of the notified substance;

- dietary exposure to the notified substance (and human exposures when used in food for food-producing animals);

- self-limiting levels of use in circumstances where the amount of the notified substance that can be added to human food or animal food is limited because the food containing levels of the notified substance above a particular level would become unpalatable or technologically impractical;

- evidence of substantial history of consumption of the substance for food use by a significant number of consumers (or animals in the case of animal food) prior to January 1, 1958, if a conclusion of GRAS status is based on common use of the substance in food prior to 1958;

- a narrative that provides the basis for the notifier's conclusion of GRAS status, including why the data, information, methods, and principles described in the notice provide a basis for the conclusion that the notified substance is generally recognized, among qualified experts, to be safe under the conditions of its intended use; and

- a list of the data and information the notifier cites in the GRAS notice.

This proposed rule, if finalized, would amend our regulations in parts 170 and 570 to require the submission of GRAS notices for the use of a human or animal food substance that is purported to be GRAS under the conditions of its intended use under section 201(s) of the FD&C Act. This proposed rule would require any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the FD&C Act to notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use unless an exception to the requirement to submit a GRAS notice applies. In short, the proposed rule would convert the voluntary GRAS notification program to a mandatory GRAS notification program. This change would provide greater transparency about substances that are added to food (including substances already in the food supply and those being introduced into interstate commerce for use in food for the first time) so that FDA can more efficiently determine if the use of a substance constitutes a food additive use that is subject to the premarket review and approval requirements of the FD&C Act. This will therefore enable FDA to more effectively regulate the safety of food substances and ultimately help identify the use of potentially unsafe substances in food, so we can take action as appropriate.

The proposed rule would establish certain exceptions to the requirement to submit a GRAS notice, including a time-limited option to make a streamlined submission to FDA for certain substances already in interstate commerce under the GRAS provision of the FD&C Act instead of initially submitting a GRAS notice. The submission must include: (1) the name and address of the submitter; (2) the name of the substance, using an appropriately descriptive term; (3) the intended conditions of use of the substance, including the foods in which the substance is used or is in contact with, the levels of use, and the purposes for which the substance is used (and the target animal species for animal food as well as human exposures when used in food for food-producing animals); (4) evidence of presence in interstate commerce before the effective date of the final rule; and (5) if applicable, where FDA sent a cease to evaluate letter in response to a notifier's previous GRAS notice (GRN or AGRN), provide that file number (GRN No. or AGRN No.) as part of the submission.

The proposed rule would revise our procedural regulations for a TOR exemption for human food to reflect updated scientific guidance and to include substances used in food and as an FCS. FDA has an existing information collection for information submitted in support of a TOR exemption for a food contact substance under OMB control number 0910–0495 (Food Additives; Food Contact Substances Notification System). The proposed rule would allow manufacturers and suppliers to also seek the TOR exemption for substances used in food. A request for a TOR exemption will include: (1) the chemical composition of the substance for which the request is made; (2) detailed information on the conditions of use of the substance; (3) a clear statement of the basis for the request for exemption from regulation as a food additive; (4) data that will enable FDA to estimate the daily dietary concentration resulting from the proposed use of the substance; (5) results of a literature search for toxicological data on the substance and its impurities; and (6) information on the environmental impact that would result from the proposed use.

HFP would require notifiers or submitters to submit data electronically using the Centralized Online Submission Module (COSM) (Form FDA 3667) (<https://www.fda.gov/food/registration-food-facilities-and-other-submissions/centralized-online-submission-module-cosm>) for GRAS

notices, the time-limited option to submit information for certain substances already in interstate commerce, and requests for a TOR exemption. Notifiers may request a waiver from HFP to submit on paper at Office of Pre-Market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr.,

College Park, MD 20740. CVM would require notifiers to contact CVM by email at animalfood-premarket@fda.hhs.gov before submitting a GRAS notice. For the time-limited option to submit information for certain substances already in interstate commerce, CVM would require

submitters to send data by email at animalfood-premarket@fda.hhs.gov.

Description of Respondents:

Respondents to the collection of information are manufacturers of substances used in food for humans and animals.

We estimate the burden of this collection of information as follows:

Table 5.--Estimated Annual Reporting Burden¹

Activity; 21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Average Burden per Response (Hours)	Total Hours
GRAS notification procedure for human food; 170.205-170.280 (part 170, subpart E)	194	1	194	180	34,920
Request for waiver to submit paper; §§ 170.39(d), 170.210, and 170.305(c)(3)	58	1	58	1	58
GRAS notification procedure for animal food; 570.205-570.280 (part 570, subpart E)	16	1	16	180	2,880
Threshold of regulation for substances used in food; § 170.39	7	1	7	48	336
Total					38,194

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates in tables 5 and 6 are consistent with the estimates found in the Preliminary Regulatory Impact Analysis (PRIA) (Ref. 46). The existing information collection for annual voluntary GRAS notices, OMB control number 0910–0342 (Substances Generally Recognized as Safe: Notification Procedure), estimates 100 firms for human foods and 12 firms for animal food that voluntarily submitted GRAS notices for a total of 112 firms. These annual estimates are based on our experience with the voluntary GRAS notice program, and we include with them our annual estimates for additional firms that will submit GRAS notices to comply with the proposed rule, if finalized.

In table 15 of the PRIA, we estimate that a total of approximately 98 additional firms, including GRAS substance producers and food manufacturers, will submit a GRAS notice annually. Of the new firms, we estimate that 94 produce human food, and 4 produce animal food. For this analysis, we estimate that 194 firms (100 voluntarily submitting + 94 due to rulemaking) annually will submit a

GRAS notice for human food, and 16 firms (12 voluntarily submitting + 4 due to rulemaking) will submit a GRAS notice for animal food. In table 14 of the PRIA, we estimate that it will take 180 hours to prepare and submit a GRAS notice for either human or animal food. Accordingly, we estimate the annual burden for submitting a GRAS notice to be 34,920 hours for human food (194 notices × 180 hours) and 2,880 hours for animal food (16 notices × 180 hours).

We estimate that approximately 58 respondents will request a waiver to submit in paper format either a GRAS notice, TOR exemption, or the time-limited option to submit information for certain substances already in interstate commerce for human food. This annual estimate is based on our experience with the voluntary GRAS notice program and the annual estimate in the existing information collection approved under OMB control number 0910–0342, where we estimate that approximately 30 percent of submissions are in paper format annually. For this analysis, we will assume approximately 30 percent of firms will choose to submit in paper

format. Thus, 30 percent of the estimated 194 firms for human food is about 58 (194 firms × 0.30). We believe respondents will need no longer than an hour to prepare such a request as respondents should already have any information needed to request a waiver. Accordingly, we estimate the annual burden to request a waiver to submit a GRAS notice for human food in paper format to be 58 hours.

The existing information collection for food contact substances covers TOR exemption under OMB control number 0910–0495 (Food Additives; Food Contact Substances Notification System). For this analysis, we will use the same annual estimates for TOR exemption from that information collection to apply to the TOR exemption for food substances. Thus, we estimate that 7 respondents annually will each submit 1 request for a TOR exemption, which will take approximately 48 hours to prepare and submit. Accordingly, we estimate the annual burden to request a TOR exemption for a food substance will be 336 hours (7 requests × 48 hours).

Table 6.--Estimated One-Time Reporting Burden¹

Activity; 21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total One-Time Responses	Average Burden per Response (Hours)	Total Hours
Time-limited option to submit information for certain substances already in interstate commerce for human food; § 170.305	967	2.5	2,418	32	77,376
Time-limited option to submit information for certain substances already in interstate commerce for animal food; § 570.305	62	2.5	155	32	4,960
Total					82,336

¹ There are no capital costs or operating and maintenance costs associated with this collection of information.

In table 7 of the PRIA, we estimate that there are 1,028 unique firms with independent conclusions of GRAS status. Based on table 6 of the PRIA, we calculate that 94 percent of the independent conclusions of GRAS status are for human foods (1,885 human food independent conclusions of GRAS status ÷ 2,000 total human and animal independent conclusions of GRAS status). We assume the same distribution for the number of unique firms preparing a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status. Accordingly, we calculate the number of respondents preparing a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status for human food to be 966 (1,028 × 0.94).

In table 10 of the PRIA, we estimate that each respondent will prepare approximately 2.5 submissions for certain substances purported to be GRAS based on an independent conclusion of GRAS status that were already introduced into interstate commerce before the effective date of a final rule. In table 10 of the PRIA, we estimate that there are 1,740 association expert panel-concluded GRAS substances. As discussed in the PRIA, this category includes substances evaluated by the Flavor and Extract Manufacturers Association and introduced into interstate commerce under section 201(s) of the FD&C Act but can include other independent conclusions of GRAS status made by other expert panels selected and convened by associations. For efficiency purposes, we assume that there will be one submission by one respondent to cover all submissions for certain substances purported to be GRAS based on an association expert panel GRAS conclusion that were already introduced

into interstate commerce before the effective date of a final rule.

Accordingly, we calculate the total number of respondents to be 967 (966 respondents preparing a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status + 1 respondent preparing a submission for certain substances purported to be GRAS based on an association expert panel GRAS conclusion). Although we believe that one respondent will have one submission for 1,740 substances, we estimate that on average each respondent will submit 2.5 responses. Thus, we calculate that 2,418 submissions (rounded up from 2,417.5) will be submitted for certain substances purported to be GRAS based on an association expert panel GRAS conclusion that were already introduced into interstate commerce before the effective date of a final rule (967 respondents × 2.5 responses).

In table 10 of the PRIA, we estimate that it will take approximately 32 hours (rounded up from 31.5) to prepare a submission for certain substances purported to be GRAS under section 201(s) of the FD&C Act that were already introduced into interstate commerce before the effective date of a final rule (we assume, in the PRIA, that a streamlined submission would require between 10 percent and 25 percent of the time expenditure of a GRAS notice (180 hours), with a central estimate of 17.5 percent to arrive at the estimate of 31.5 hours to prepare a streamlined submission (180 hours × 17.5 percent). Accordingly, we calculate the burden for this activity to be 77,376 hours (2,418 submissions × 32 hours). We believe that this will be a one-time burden because these streamlined submissions are time-limited and would

only be available for 1 year after the effective date of a final rule.

We estimate the remaining 62 respondents would be preparing a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status for animal food (1,028 unique firms with independent conclusions of GRAS status—966 respondents preparing a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status for human food). In table 10 of the PRIA, we estimate that each respondent will prepare approximately 2.5 submissions for certain substances purported to be GRAS based on an independent conclusion of GRAS status that were already introduced into interstate commerce before the effective date of the final rule. Provided that each respondent will prepare 2.5 submissions, we calculated that there will be 155 responses (62 respondents × 2.5 submissions per respondent). In table 10 of the PRIA, we estimate that it will take approximately 32 hours (rounded up from 31.5) to prepare a submission for certain substances purported to be GRAS based on an independent conclusion of GRAS status that were already introduced into interstate commerce before the effective date of a final rule. Accordingly, we estimate the burden for this activity to be 4,960 hours (155 submissions × 32 hours). We believe that this will be a one-time burden because the option to make streamlined submissions would only be available for 1 year after the effective date of a final rule.

To ensure that comments on information collection are received, OMB recommends that written comments be submitted through [reginfo.gov](https://www.reginfo.gov) (see **ADDRESSES**). All

comments should be identified with the title of the information collection.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3407(d)), we have submitted the information collection provisions of this proposed rule to OMB for review. These information collection requirements will not be effective until FDA publishes a final rule, OMB approves the information collection requirements, and the rule goes into effect. FDA will announce OMB approval of these requirements in the **Federal Register**.

XI. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

XII. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, or the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. FDA invites comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XIII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at <https://www.regulations.gov>. References without asterisks are not on public display at <https://www.regulations.gov> because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff.

Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

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List of Subjects

21 CFR Part 170

Administrative practice and procedure, Food additives, Reporting and recordkeeping requirements.

21 CFR Part 570

Animal feeds, Animal foods, Food additives, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA proposes that 21 CFR parts 170 and 570 be amended as follows:

PART 170—FOOD ADDITIVES

■ 1. The authority citation for part 170 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 2. Revise the heading to read as follows:

PART 170—FOOD ADDITIVES AND GENERALLY RECOGNIZED AS SAFE (GRAS) SUBSTANCES

■ 3. Amend § 170.3 by:

- a. Revising paragraph (m); and
- b. Adding paragraph (p).

The revision and addition read as follows:

§ 170.3 Definitions.

* * * * *

(m) *Food* includes human food, substances migrating to food from food contact articles, and animal food.

* * * * *

(p) *We, our, us,* and *FDA* refer to the United States Food and Drug Administration.

■ 4. Amend § 170.30 by:

- a. Revising paragraph (c)(2);
- b. Revising paragraph (d);
- c. Revising paragraph (e);
- d. Revising paragraph (i); and
- e. Adding paragraphs (i)(1) and (2).

The revisions and additions read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c) * * *

(2) A substance used in food before January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the substance is safe under the conditions of its intended use within the meaning of section 201(u) of the Act (see also § 170.3(i)). Common use in food before January 1, 1958, that occurred outside of the United States must be documented by published or other information and must be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in the United States.

(d) The food ingredients listed as GRAS in part 182 of this chapter or affirmed as GRAS in part 184 or part 186 of this chapter do not include all substances that are generally recognized as safe for their intended use in food. Because of the large number of substances, the intended use of which results or may reasonably be expected to result, directly or indirectly, in their

becoming a component or otherwise affecting the characteristics of food, it is impracticable to list in part 182 of this chapter or affirm in part 184 or part 186 of this chapter all such substances that are GRAS. A food ingredient of natural biological origin that has been widely consumed for its nutrient properties in the United States before January 1, 1958, without known detrimental effects, which is subject only to conventional processing as practiced before January 1, 1958, and for which no known safety hazards exists, will ordinarily be regarded as GRAS without specific inclusion in parts 182, 184, or 186 of this chapter.

(e) All affirmations of GRAS status or determinations of food additive status or prior sanction status must be handled pursuant to §§ 170.35, 170.38, 180.1, and 181.1 of this chapter. Affirmation of GRAS status must be announced in part 184 or part 186 of this chapter.

* * * * *

(i) If a substance is affirmed as GRAS in part 184 or part 186 of this chapter with no limitation other than good manufacturing practice:

(1) It will be regarded as GRAS if its conditions of use are not significantly different from those reported in the regulation as the basis on which the GRAS status of the substance was affirmed; or

(2) If the conditions of use are significantly different, the regulation may not be relied on as authorizing such use.

* * * * *

■ 5. Amend § 170.38 by:

- a. Revising paragraph (a);
- b. Adding introductory text to paragraph (b);
- c. Revising paragraphs (b)(1) through (3); and
- d. Revising paragraphs (c) and (d).

The revisions and addition read as follows:

§ 170.38 Determination of food additive status.

(a) FDA may determine that a substance is not GRAS under the conditions of its intended use and is not otherwise excepted from the definition of a food additive. If FDA determines that a substance is a food additive under the conditions of intended use, the substance and its use or intended use are subject to section 409 of the Act.

(b) For substances listed or affirmed as GRAS in parts 182, 184, or 186 of this chapter:

(1) FDA, on its own initiative or on the petition of any person, pursuant to part 10 of this chapter, may issue a notice in the **Federal Register** proposing to determine that a substance is not

GRAS under the conditions of its intended use and is a food additive subject to section 409 of the Act. Any petition must include all relevant data and information of the type described in § 171.130(b) of this chapter. FDA will place all the data and information on which it relies on public file in the office of the Dockets Management Staff and will include in the **Federal Register** notice the name of the substance, its known uses, and a summary of the basis for the determination.

(2) The **Federal Register** notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Dockets Management Staff. Copies of all comments are available for examination in the Dockets Management Staff's office.

(3) If FDA concludes that there is a lack of convincing evidence that the substance is GRAS under the conditions of its intended use, FDA will amend or repeal the relevant regulation in parts 182, 184, or 186 of this chapter, as appropriate.

(c) For a use of a substance for which FDA has issued a no questions letter as defined in § 170.203 in response to a GRAS notice, FDA may send the notifier (see § 170.203) questions about their GRAS conclusion in accordance with § 170.265(c). If FDA later determines that such substance is not GRAS under the conditions of its intended use, FDA will make public the basis for this determination and update or rescind the no questions letter.

(d) For a use of a substance not covered by paragraphs (b) or (c) of this section, if FDA determines that such substance is not GRAS under the conditions of its intended use, FDA will make public the basis for this determination. The fact that FDA has not made such a determination does not mean that a substance is GRAS under the conditions of its intended use.

■ 6. Amend § 170.39 by:

- a. Revising the section heading;
- b. Revising the introductory text of paragraph (a);
- c. Revising paragraphs (a)(1), (a)(2)(i) and (ii);
- d. Removing paragraph (a)(3);
- e. Redesignating paragraph (a)(4) as paragraph (a)(3);
- f. Revising paragraph (b);
- g. Revising the introductory text of paragraph (c);
- h. Revising paragraphs (c)(2) through (5);
- i. Revising paragraphs (d) and (e);
- j. Removing paragraph (f);
- k. Redesignating paragraph (g) as paragraph (f); and

- l. Removing paragraph (h).
The revisions read as follows:

§ 170.39 Threshold of regulation for substances used in food or as a food-contact substance.

(a) A substance used in food or as a food-contact substance will be exempted from regulation as a food additive or from the GRAS notification requirement under § 170.205 because the substance becomes a component of food at levels that are below the threshold of regulation if:

(1) The substance has not been shown to be a carcinogen in humans or animals, and there is no reason, based on the chemical structure of the substance, to suspect that the substance is a carcinogen. The substance must also not contain a carcinogenic impurity or, if it does, must not contain a carcinogenic impurity with a lifetime cancer risk greater than one in one million, when calculated using a TD₅₀ value or another approach based on chronic feeding studies reported in the scientific literature or otherwise available to FDA, when present in the diet at 0.025 micrograms per kilogram bodyweight per day. (The TD₅₀, for purposes of this section, is the feeding dose that causes cancer in 50 percent of the test animals when corrected for tumors found in control animals. A TD₅₀ of 6.25 milligrams per kilogram bodyweight per day equates to a lifetime cancer risk of less than one in one million when present in the diet at 0.025 micrograms per kilogram bodyweight per day. If more than one TD₅₀ value has been reported in the scientific literature for a substance, FDA will use the lowest appropriate TD₅₀ value in its review.);

(2) The substance presents no other health or safety concerns because:

(i) The use in question has been shown to result in or may be expected to result in dietary exposure levels at or below 0.025 micrograms per kilogram bodyweight per day; or

(ii) The substance is currently regulated for direct addition into food, and the dietary exposure to the substance resulting from the proposed use is at or below 1 percent of the acceptable daily intake as determined by safety data in FDA's files or from other appropriate sources; and

(3) The substance use has no significant adverse impact on the environment.

(b) Notwithstanding paragraph (a) of this section, FDA may decline to grant an exemption in those cases in which available information establishes that the proposed use may pose a public health risk. The reasons for FDA's

decision to decline to grant an exemption will be explained in FDA's response to the person who submitted the request (the requestor) to exempt a use of a substance from regulation as a food additive or from the GRAS notification requirement under § 170.205.

(c) A request for FDA to exempt a use of a substance from regulation as a food additive or from the GRAS notification requirement under § 170.205 must include the following information (if part of the submitted material is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate in accordance with § 10.20(c)(2) of this chapter):

(1) * * *

(2) Detailed information on the conditions of use of the substance;

(3) A clear statement as to whether the request for exemption from regulation as a food additive is based on the fact that the use of the substance results in a dietary exposure level at or below 0.025 micrograms per kilogram bodyweight per day, or on the fact that it involves the use of a regulated direct food additive for which the dietary exposure is at or below 1 percent of the acceptable dietary intake (ADI);

(4) Data that will enable FDA to estimate the dietary exposure resulting from the proposed use of the substance;

(5) The results of an analysis of existing toxicological information on the substance and its impurities. This information on the substance is needed to show whether an animal carcinogen bioassay has been carried out, or whether there is some other basis for suspecting that the substance is a carcinogen or potent toxin. This type of information on the impurities is needed to show whether any of them are carcinogenic, and, if carcinogenic, whether their lifetime cancer risk is less than one in one million when present in the diet at 0.025 micrograms per kilogram bodyweight per day in accordance with paragraph (a)(1) of this section; and

(6) * * *

(d) Data to be reviewed under this section must be submitted electronically through the Centralized Online Submission Module, unless provided with a waiver to submit on paper. Send a request for a waiver to the Office of Pre-market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.

(e) FDA will inform the requestor whether the use is exempt from regulation as a food additive or from the GRAS notification requirement under

§ 170.205. Although a use that results in a dietary exposure at or below the threshold of regulation will not be the subject of a regulation published in the **Federal Register** and will not appear in the Code of Federal Regulations, FDA will maintain a publicly available list of substances and their use exempted from regulation as food additives or from the GRAS notification requirement under § 170.205. The list will not include any trade names. The list will enable interested persons to see the types of uses being exempted under the regulation. Interested persons may also obtain a copy of the list of exempted substances by contacting the Food and Drug Administration's Office of Food Additive Safety (HFS-200), 5001 Campus Dr., College Park, MD 20740. For actions requiring an environmental assessment, FDA's finding of no significant impact and the evidence supporting that finding, contained in the petitioner's environmental assessment, also will be available for public inspection at the Dockets Management Staff in accordance with § 25.51(b)(2) of this chapter. Requests for copies of releasable information contained in submissions requesting exemptions from the food additive regulations or from the GRAS notification requirement under § 170.205 will be handled in accordance with the Freedom of Information Act procedures in part 20 of this chapter. Data and information that fall within the definitions of a trade secret or confidential commercial or financial information are not available for public disclosure in accordance with § 20.61(c) of this chapter.

(f) If FDA receives significant new information that raises questions about the dietary exposure or the safety of a substance that FDA has exempted from regulation, FDA may reevaluate the substance. If FDA tentatively concludes that the information that is available about the substance no longer supports an exemption for the proposed use of the substance from the GRAS or food additive regulations, FDA will notify any persons that requested an exemption for the substance of its tentative decision. FDA will give the requestor an opportunity to show why the use of the substance should not be regulated under the food additive provisions of the Act. If the requestor fails to respond adequately to the new evidence, FDA will notify them that further use of the substance in question for the particular use will require a food additive regulation, an effective premarket notification for a food-contact substance, or a GRAS notice. This

notification will be made publicly available. FDA recognizes that manufacturers other than those that made a request for exemption may also be using exempted substance under conditions of use that are similar to those for which the exemption was issued. Because only the requestor will be notified as part of the revocation process described in this section, FDA plans to notify other manufacturers by means of a notice published in the **Federal Register** of its decision to revoke an exemption issued for a specific use of a substance in food or as a food-contact substance.

■ 7. Amend § 170.203 by:

- a. Removing the introductory text;
- b. Revising the definition of “GRAS”;
- c. Revising the definition of “GRAS notice”;
- d. Adding the definition of “Inventory”;
- e. Adding the definition of “No questions letter”; and
- f. Removing the definition of “We, our and us”.

The revisions and additions read as follows:

§ 170.203 Definitions.

* * * * *

GRAS means generally recognized as safe (see § 170.3(i)).

GRAS notice means a submission under § 170.205 that informs us of your view that a substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on your conclusion that the substance is GRAS under the conditions of its intended use in accordance with § 170.30.

Inventory means an online repository where FDA makes public certain information related to GRAS notices.

No questions letter means a letter from FDA, sent in response to a GRAS notice, which states that, based on the information you provided, as well as other information available to FDA, we have no questions at this time regarding your conclusion that the notified substance is GRAS under the conditions of its intended use. A no questions letter is neither an affirmation by FDA that the notified substance is GRAS for its intended conditions of use under § 170.35, nor a published finding under section 721(b)(4) of the Act declaring the use of such substance exempt from the term “food additive” because of its being GRAS.

* * * * *

■ 8. Amend § 170.205 by:

- a. Revising the section header; and
- b. Adding paragraphs (a) through (c).

The revision and additions read as follows:

§ 170.205 Submission of a GRAS notice.

(a) Any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the Act must notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use, except as provided under paragraph (b) of this section. For the conditions of use that meet the definition of a food-contact substance in accordance with § 170.3(e)(3), a manufacturer or supplier may alternatively submit a food-contact notification as specified under § 170.100.

(b) A GRAS notice is not required when:

(1) A no questions letter covers the substance under the conditions of its intended use;

(2) The substance is listed or affirmed as GRAS under the conditions of its intended use in parts 182, 184, or 186 of this chapter;

(3) The substance is considered GRAS under the conditions of its intended use in accordance with § 170.30(d) or (i)(1);

(4) The intended use of the substance has been considered by FDA through an established FDA process to evaluate the potential presence of unapproved food additives, and documentation made publicly available by FDA through that process does not recommend or otherwise identify the need to submit a GRAS notice;

(5) The intended use of the substance is the subject of an exemption under the threshold of regulation process described in § 170.39;

(6) There is an effective premarket notification for a food-contact substance (FCN) which covered the substance under conditions of its intended use, and the substance in interstate commerce originates from the manufacturer or supplier listed in the effective FCN; or

(7) Information about the conditions of use of the substance has been submitted in accordance with § 170.305 and the submission is included on a public list maintained by FDA, unless FDA issues a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance.

(c) Uses of substances that are excluded from the definition of a food additive in section 201(s)(1) through (6) of the Act cannot be the subject of a GRAS notice.

■ 9. Revise § 170.210 to read as follows:

§ 170.210 How to send your GRAS notice to FDA.

You must submit your GRAS notice electronically through the Centralized

Online Submission Module unless you seek a waiver to submit your GRAS notice on paper. Send a request for a waiver to the Office of Pre-market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740.

■ 10. Amend § 170.220 by adding paragraph (c) to read as follows:

§ 170.220 General requirements applicable to a GRAS notice.

* * * * *

(c) Any material submitted in or referenced by a GRAS notice that is in a foreign language must be accompanied by an accurate and complete English translation.

■ 11. Amend § 170.225 by revising paragraph (c)(6) to read as follows:

§ 170.225 Part 1 of a GRAS notice: Signed statements and certification.

* * * * *

(c) * * *

(6) State your view that the notified substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on your conclusion that the notified substance is GRAS under the conditions of its intended use;

* * * * *

■ 12. Amend § 170.250 by revising paragraphs (d) and (e) to read as follows:

§ 170.250 Part 6 of a GRAS notice: Narrative.

* * * * *

(d) If you view any data and information in your notice as exempt from disclosure under the Freedom of Information Act, you must identify the specific data and information at the time of submission. If you do not, we will consider such data and information to not be exempt from disclosure or that you have waived any claim of confidentiality; and

(e) For any non-public, safety-related data and information considered in reaching a conclusion of GRAS status that you identify, under paragraph (d) of this section, as exempt from disclosure under the Freedom of Information Act, you must explain how there could be a basis for a conclusion of GRAS status despite the fact that qualified experts do not have access to such data and information.

■ 13. Amend § 170.265 by:

- a. Revising paragraphs (a)(1) through (3);
- b. Adding paragraph (a)(5);
- c. Revising paragraphs (b)(1) and (2); and
- d. Adding a sentence to the end of paragraph (b)(3).

The revisions and additions read as follows:

§ 170.265 What FDA will do with a GRAS notice.

(a) * * *

(1) Within 45 days of receiving your submission, we will conduct an initial evaluation to determine whether to file it as a GRAS notice for evaluation of your view that the notified substance is GRAS under the conditions of its intended use.

(2) If we file your submission as a GRAS notice, we will send you a letter within two business days that informs you of the date of filing. If we file your submission as a GRAS notice, we will consider the notification requirement of § 170.205 to be met, except as provided by § 170.265(b)(3).

(3) If we do not file your submission as a GRAS notice, we will send you a letter within two business days that informs you of that fact and provides our reasons for not filing the submission as a GRAS notice.

* * * * *

(5) During our evaluation of a GRAS notice, we may contact you with questions related to the notice, including the data and information used to support your GRAS conclusion.

(b) * * *

(1) Within 180 days of filing, we will respond to you by letter based on our evaluation of your notice. We may extend the 180-day timeframe by 90 days up to two times on an as needed basis.

(2) If we extend the timeframe, we will inform you in writing of an initial extension as soon as practicable but no later than within 180 days of filing. If a second extension is needed, we will inform you in writing as soon as practicable but no later than the end of the initial 90-day extension.

(3) * * * If we cease to evaluate your GRAS notice, we will not consider the notification requirement of § 170.205 to be met.

* * * * *

■ 14. Amend § 170.275 by:

■ a. Revising paragraph (a);

■ b. Revising the introductory text of paragraph (b); and

■ c. Removing paragraph (c).

The revisions read as follows:

§ 170.275 Public disclosure of a GRAS notice.

(a) The data and information in a GRAS notice (including data and information submitted in any amendment or supplement to your GRAS notice or incorporated into your GRAS notice) are available for public disclosure as of the date that we receive your GRAS notice, in accordance with part 20 of this chapter.

(b) We will make the following readily accessible to the public through inclusion in the inventory:

* * * * *

§ 170.285 [Removed]

■ 15. Remove § 170.285.

■ 16. Add subpart F to part 170 to read as follows:

Subpart F—Submissions for Substances Introduced into Interstate Commerce Under the GRAS Provision of Section 201(s) of the Act Before [EFFECTIVE DATE OF THE FINAL RULE]

Sec.

170.303 Definitions.

170.305 Option for Submissions for Pre-[EFFECTIVE DATE OF THE FINAL RULE] Substances.

§ 170.303 Definitions.

Cease to evaluate letter means a letter from FDA granting a request to cease to evaluate a GRAS notice (see § 170.265(b)(3)).

GRAS means generally recognized as safe (see § 170.3(i)).

GRAS notice means a submission under § 170.205 that informs us of the view that a substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on a conclusion that the substance is GRAS under the conditions of its intended use in accordance with § 170.30.

Insufficient basis letter means a letter from FDA, sent in response to a GRAS notice, which states that, based on the data and information provided, as well as other available information, the notice does not provide a sufficient basis for a conclusion that the notified substance (as defined in § 170.203) is GRAS under the conditions of its intended use.

Submitter means the person (e.g., an individual, partnership, corporation, association, or other legal entity) who is responsible for the submission under this subpart, even if another person (such as an attorney, agent, or qualified expert) prepares or submits the information.

§ 170.305 Option for Submissions for Pre-[EFFECTIVE DATE OF THE FINAL RULE] Substances.

(a) *Submissions for pre-[EFFECTIVE DATE OF THE FINAL RULE] substances.* For a substance introduced into interstate commerce before [EFFECTIVE DATE OF THE FINAL RULE] under the GRAS provision of section 201(s) of the Act, a person may submit information regarding the substance and its conditions of use in

accordance with this subpart instead of submitting a GRAS notice under § 170.205.

(b) *When a submission is not allowed.* A submission under this subpart may not concern any conditions of use of a substance that are the subject of:

(1) An insufficient basis letter (see § 170.303); or

(2) A determination by FDA that the substance is not GRAS under the conditions of its intended use.

(c) *Parts of a submission and how to submit.*

(1) A submission must include the following:

(i) The name and address of the submitter;

(ii) The name of the substance, using an appropriately descriptive term;

(iii) The intended conditions of use of the substance, including the foods in which the substance is used or is in contact with, the levels of use, and the purposes for which the substance is used;

(iv) Evidence of presence in interstate commerce before [EFFECTIVE DATE OF THE FINAL RULE]; and

(v) If applicable, where FDA sent a cease to evaluate letter in response to a submitter's previous GRAS notice (GRN), provide that file number (GRN No.) as part of the submission.

(2) A submission may inform us of the statutory basis for the conclusion of GRAS status (i.e., through scientific procedures in accordance with § 170.30(a) and (b) or through experience based on common use in food in accordance with § 170.30(a) and (c)).

(3) This information must be submitted to FDA electronically through the Centralized Online Submission Module by [DATE 1 YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE], unless provided with a waiver to submit on paper. Send a request for a waiver to the Office of Pre-market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Submissions under this subpart will not be accepted after [DATE 1 YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE].

(d) *What FDA will do with a submission.*

(1) FDA will post information that meets the requirements for a submission as specified in § 170.305(c)(1) and (c)(2) in a publicly available list in accordance with part 20 of this chapter. The posting of this information does not mean that FDA has reviewed the GRAS status of the substance's conditions of intended use.

(2) FDA may ask the submitter questions about their submission.

(3) FDA may issue a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance in accordance with subpart E of this part or section 409 of the Act. Such a determination will be made publicly available.

PART 570—FOOD ADDITIVES

■ 17. The authority citation for part 570 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 346a, 348, 371.

■ 18. Revise the part heading to read as follows:

PART 570—FOOD ADDITIVES AND GENERALLY RECOGNIZED AS SAFE (GRAS) SUBSTANCES

■ 19. Amend § 570.3 by revising paragraph (m) and adding paragraph (o) to read as follows:

§ 570.3 Definitions.

* * * * *

(m) *Food* includes human food, substances migrating to food from food contact articles, and animal food.

* * * * *

(o) *We, our, us,* and *FDA* refer to the United States Food and Drug Administration.

■ 20. Amend § 570.30 by:

- a. Revising paragraph (c)(2);
- b. Revising paragraphs (d) and (h); and
- c. Adding paragraphs (h)(1) and (2).

The revisions and addition read as follows:

§ 570.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(c) * * *

(2) A substance used in food before January 1, 1958, may be generally recognized as safe through experience based on its common use in food when that use occurred exclusively or primarily outside of the United States if the information about the experience establishes that the substance is safe under the conditions of its intended use within the meaning of section 201(u) of the Act (see also § 570.3(i)) for both the target animal and for humans consuming human food derived from food-producing animals. Common use in food before January 1, 1958, that occurred outside of the United States must be documented by published or other information and must be corroborated by information from a second, independent source that confirms the history and circumstances of use of the substance. The information

used to document and to corroborate the history and circumstances of use of the substance must be generally available; that is, it must be widely available in the country in which the history of use has occurred and readily available to interested qualified experts in the United States.

(d) The food ingredients listed as GRAS in part 582 of this chapter or affirmed as GRAS in part 584 of this chapter do not include all substances that are generally recognized as safe for their intended use in food. Because of the large number of substances, the intended use of which results or may reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of food, it is impracticable to list in part 582 of this chapter or affirm in part 584 of this chapter all such substances that are GRAS. A food ingredient of natural biological origin that has been widely consumed for its nutrient properties in the United States before January 1, 1958, without known detrimental effects, which is subject only to conventional processing as practiced before January 1, 1958, and for which no known safety hazard exists, will ordinarily be regarded as GRAS without specific inclusion in parts 582 or 584 of this chapter.

* * * * *

(h) If a substance is affirmed as GRAS in part 584 of this chapter with no limitation other than good manufacturing practice:

(1) It will be regarded as GRAS if its conditions of use are not significantly different from those reported in the regulation as the basis on which the GRAS status of the substance was affirmed; or

(2) If the conditions of use are significantly different, the regulation may not be relied on as authorizing such use.

* * * * *

■ 21. Amend § 570.38 by:

- a. Revising paragraph (a);
- b. Adding introductory text to paragraph (b);
- c. Revising paragraphs (b)(1) through (3); and
- d. Revising paragraphs (c) and (d).

The revisions and addition read as follows:

§ 570.38 Determination of food additive status.

(a) FDA may determine that a substance is not GRAS under the conditions of its intended use and is not otherwise excepted from the definition of a food additive. If FDA determines that a substance is a food additive under

the conditions of intended use, the substance and its use or intended use are subject to section 409 of the Act.

(b) For substances listed or affirmed as GRAS in parts 582 or 584 of this chapter:

(1) FDA, on its own initiative or on the petition of any interested person, pursuant to part 10 of this chapter, may issue a notice in the **Federal Register** proposing to determine that a substance is not GRAS under the conditions of its intended use and is a food additive subject to section 409 of the Act. Any petition must include all relevant data and information of the type described in § 571.130(b) of this chapter. FDA will place all the data and information on which it relies on public file in the office of the Dockets Management Staff and will include in the **Federal Register** notice the name of the substance, its known uses, and a summary of the basis for the determination.

(2) The **Federal Register** notice will allow a period of 60 days during which any interested person may review the data and information and/or file comments with the Dockets Management Staff. Copies of all comments are available for examination in the Dockets Management Staff's office.

(3) If FDA concludes that there is a lack of convincing evidence that the substance is GRAS under the conditions of its intended use, FDA will amend or repeal the relevant regulation in part 582 or 584 of this chapter, as appropriate.

(c) For a use of a substance for which FDA has issued a no questions letter as defined in § 570.203 in response to a GRAS notice, FDA may send the notifier (see § 570.203) questions about their GRAS conclusion in accordance with § 570.265(c). If FDA later determines that such substance is not GRAS under the conditions of its intended use, FDA will make public the basis for this determination and update or rescind the no questions letter.

(d) For a use of a substance not covered by paragraphs (b) or (c) of this section, if FDA determines that such substance is not GRAS under the conditions of its intended use, FDA will make public the basis for this determination. The fact that FDA has not made such a determination does not mean that a substance is GRAS under the conditions of its intended use.

■ 22. Amend § 570.203 by:

- a. Removing the introductory text;
- b. Revising the definition of “GRAS”;
- c. Revising the definition of “GRAS notice”;
- d. Adding the definition of “Inventory”;

- e. Adding the definition of “No questions letter”; and
- f. Removing the definition of “We, our and us”.

The revisions and additions, read as follows:

§ 570.203 Definitions.

* * * * *

GRAS means generally recognized as safe (see § 570.3(i)).

GRAS notice means a submission under § 570.205 that informs us of your view that a substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on your conclusion that the substance is GRAS under the conditions of its intended use in accordance with § 570.30.

Inventory means an online repository where FDA makes public certain information related to GRAS notices.

No questions letter means a letter from FDA, sent in response to a GRAS notice, which states that, based on the information you provided, as well as other information available to FDA, we have no questions at this time regarding your conclusion that the notified substance is GRAS under the conditions of its intended use. A no questions letter is neither an affirmation by FDA that the notified substance is GRAS for its intended conditions of use under § 570.35, nor a published finding under section 721(b)(4) of the Act declaring the use of such substance exempt from the term “food additive” because of its being GRAS.

* * * * *

- 23. Amend § 570.205 by:
 - a. Revising the section heading and removing the existing text; and
 - b. Adding paragraphs (a) through (c).
 The revision and additions read as follows:

§ 570.205 Submission of a GRAS notice.

(a) Any person introducing a substance into interstate commerce under the GRAS provision of section 201(s) of the Act must notify FDA of the basis for their conclusion that the substance is GRAS under the conditions of its intended use, except as provided under paragraph (b) of this section.

(b) A GRAS notice is not required when:

- (1) A no questions letter covers the substance under the conditions of its intended use;
- (2) The substance is listed or affirmed as GRAS under the conditions of its intended use in part 582 or 584 of this chapter;
- (3) The substance is considered GRAS under the conditions of its intended use in accordance with § 570.30(d) or (h)(1);

(4) The intended use of the substance has been considered by FDA through an established FDA process to evaluate the potential presence of unapproved food additives, and documentation made publicly available by FDA through that process does not recommend or otherwise identify the need to submit a GRAS notice;

(5) The intended use of the substance has been the subject of an established animal food ingredient consultation process with FDA, and a summary document made publicly available by FDA through the consultation process indicates FDA has no questions or concerns about the safety of the substance for the intended use;

(6)

(i) The substance is listed in and used in accordance with the “Official Common or Usual Names and Definitions of Feed Ingredients” section of Chapter 6 of the “Official Publication” of the Association of American Feed Control Officials (AAFCO), Inc., 2024 ed., pp. 354–549, which is incorporated by reference into this section, with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This incorporation by reference (IBR) material is available for inspection at FDA and at the National Archives and Records Administration (NARA). Contact FDA at: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m. Monday through Friday; phone: 240–402–7500; email: IBR_Material_Inquiries@fda.hhs.gov. For information on the availability of this material at NARA, visit <https://www.archives.gov/federal-register/cfr/ibr-locations.html> or email fr.inspection@nara.gov. The material may be obtained from AAFCO, 1800 S. Oak Street, Suite 100, Champaign, IL 61820–6974; phone: 217–356–4221; website: <https://www.aafco.org>; and

(ii) The use of the substance is not the subject of a public FDA statement of concern regarding its GRAS status; or

(7) Information about the conditions of use of the substance has been submitted in accordance with § 570.305 and the submission is included on a public list maintained by FDA, unless FDA issues a determination that a GRAS notice or food additive petition must be submitted for the intended use of a substance.

(c) Uses of substances that are excluded from the definition of a food additive in section 201(s)(1) through (6) of the Act cannot be the subject of a GRAS notice.

- 24. Revise § 570.210 to read as follows:

§ 570.210 How to send your GRAS notice to FDA.

Contact the Division of Animal Food Ingredients by email at animalfood-premarket@fda.hhs.gov prior to sending your GRAS notice.

- 25. Amend § 570.220 by adding paragraph (c) to read as follows:

§ 570.220 General requirements applicable to a GRAS notice.

* * * * *

(c) Any material submitted in or referenced by a GRAS notice that is in a foreign language must be accompanied by an accurate and complete English translation.

- 26. Amend § 570.225 by revising paragraph (c)(6) as follows:

§ 570.225 Part 1 of GRAS notice: Signed statements and certification.

* * * * *

(c) * * *

(6) State your view that the notified substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on your conclusion that the notified substance is GRAS under the conditions of its intended use;

* * * * *

- 27. Amend § 570.250 by revising paragraphs (d) and (e) to read as follows:

§ 570.250 Part 6 of a GRAS notice: Narrative.

* * * * *

(d) If you view any data and information in your notice as exempt from disclosure under the Freedom of Information Act, you must identify the specific data and information at the time of submission. If you do not, we will consider such data and information to not be exempt from disclosure or that you have waived any claim of confidentiality; and

(e) For any non-public, safety-related data and information considered in reaching a conclusion of GRAS status that you identify, under paragraph (d) of this section, as exempt from disclosure under the Freedom of Information Act, you must explain how there could be a basis for a conclusion of GRAS status despite the fact that qualified experts do not have access to such data and information.

- 28. Amend § 570.265 by:
 - a. Revising paragraphs (a)(1) through (3);
 - b. Adding paragraph (a)(5);
 - c. Revising paragraphs (b)(1) and (2); and
 - d. Adding a sentence to the end of paragraph (b)(3).

The revisions and additions read as follows:

§ 570.265 What FDA will do with a GRAS notice.

(a) * * *

(1) Within 45 days of receiving your submission, we will conduct an initial evaluation to determine whether to file it as a GRAS notice for evaluation of your view that the notified substance is GRAS under the conditions of its intended use.

(2) If we file your submission as a GRAS notice, we will send you a letter within two business days that informs you of the date of filing. If we file your submission as a GRAS notice, we will consider the notification requirement of § 570.205 to be met, except as provided by § 570.265(b)(3).

(3) If we do not file your submission as a GRAS notice, we will send you a letter within two business days that informs you of that fact and provides our reasons for not filing the submission as a GRAS notice.

* * * * *

(5) During our evaluation of a GRAS notice, we may contact you with questions related to the notice, including the data and information used to support your GRAS conclusion.

(b) * * *

(1) Within 180 days of filing, we will respond to you by letter based on our evaluation of your notice. We may extend the 180-day timeframe by 90 days up to two times on an as needed basis.

(2) If we extend the timeframe, we will inform you in writing of an initial extension as soon as practicable but no later than within 180 days of filing. If a second extension is needed, we will inform you in writing as soon as practicable but no later than the end of the initial 90-day extension.

(3) * * * If we cease to evaluate your GRAS notice, we will not consider the notification requirement of § 570.205 to be met.

* * * * *

■ 29. Amend § 570.275 by:

■ a. Revising paragraph (a);

■ b. Revising the introductory text of paragraph (b); and

■ c. Removing paragraph (c).

The revisions read as follows:

§ 570.275 Public disclosure of a GRAS notice.

(a) The data and information in a GRAS notice (including data and information submitted in any amendment or supplement to your GRAS notice, or incorporated into your GRAS notice) are available for public disclosure as of the date that we receive

your GRAS notice, in accordance with part 20 of this chapter.

(b) We will make the following readily accessible to the public through inclusion in the inventory:

* * * * *

■ 30. Add subpart F to part 570 to read as follows:

Subpart F—Submissions for Substances Introduced into Interstate Commerce Under the GRAS Provision of Section 201(s) of the Act Before [EFFECTIVE DATE OF THE FINAL RULE]

Sec.

570.303 Definitions.

570.305 Option for Submissions for Pre-[EFFECTIVE DATE OF THE FINAL RULE] Substances.

§ 570.303 Definitions.

Cease to evaluate letter means a letter from FDA granting a request to cease to evaluate a GRAS notice (see § 570.265(b)(3)).

GRAS means generally recognized as safe (see § 570.3(i)).

GRAS notice means a submission under § 570.205 that informs us of the view that a substance is not subject to the premarket review and approval requirements for food additives under section 409 of the Act based on a conclusion that the substance is GRAS under the conditions of its intended use in accordance with § 570.30.

Insufficient basis letter means a letter from FDA, sent in response to a GRAS notice, which states that, based on the data and information provided, as well as other available information, the notice does not provide a sufficient basis for a conclusion that the notified substance (as defined in § 570.203) is GRAS under the conditions of its intended use.

Submitter means the person (e.g., an individual, partnership, corporation, association, or other legal entity) who is responsible for the submission under this subpart, even if another person (such as an attorney, agent, or qualified expert) prepares or submits the information.

§ 570.305 Option for Submissions for Pre-[EFFECTIVE DATE OF THE FINAL RULE] Substances.

(a) *Submissions for pre-[EFFECTIVE DATE OF THE FINAL RULE] substances.* For a substance introduced into interstate commerce before [EFFECTIVE DATE OF THE FINAL RULE] under the GRAS provision of section 201(s) of the Act, a person may submit information regarding the substance and its conditions of use in accordance with this subpart instead of

submitting a GRAS notice under § 570.205.

(b) *When a submission is not allowed.* A submission under this subpart may not concern any conditions of use of a substance that are the subject of:

(1) An insufficient basis letter (see § 570.303); or

(2) A determination by FDA that the substance is not GRAS under the conditions of its intended use.

(c) *Parts of a submission and how to submit.*

(1) A submission must include the following:

(i) The name and address of the submitter;

(ii) The name of the substance, using an appropriately descriptive term;

(iii) The intended conditions of use of the substance, including the target animal species, foods in which the substance is used, the levels of use in such foods, the purposes for which the substance is used, and, when the intended use is in food for food-producing animals, the quantities of any residues that humans may be exposed to in edible animal tissues;

(iv) Evidence of presence in interstate commerce before [EFFECTIVE DATE OF THE FINAL RULE]; and

(v) If applicable, where FDA sent a cease to evaluate letter in response to a submitter's previous GRAS notice (AGRN), provide that file number (AGRN No.) as part of the submission.

(2) A submission may inform us of the statutory basis for the conclusion of GRAS status (i.e., through scientific procedures in accordance with § 570.30(a) and (b) or through experience based on common use in food in accordance with § 570.30(a) and (c)).

(3) This information must be submitted to Center for Veterinary Medicine, Food and Drug Administration, by email at animalfood-premarket@fda.hhs.gov by [DATE 1 YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE]. Submissions under this subpart will not be accepted after [DATE 1 YEAR AFTER EFFECTIVE DATE OF THE FINAL RULE].

(d) *What FDA will do with a submission.*

(1) FDA will post information that meets the requirements for a submission as specified in § 570.305(c)(1) and (c)(2) in a publicly available list in accordance with part 20 of this chapter. The posting of this information does not mean that FDA has reviewed the GRAS status of the substance's conditions of intended use.

(2) FDA may ask the submitter questions about their submission.

(3) FDA may issue a determination that a GRAS notice or food additive

petition must be submitted for the
intended use of a substance in
accordance with subpart E of this part

or section 409 of the Act. Such a

determination will be made publicly
available.

Robert F. Kennedy, Jr.,
*Secretary, Department of Health and Human
Services.*

[FR Doc. 2026–16296 Filed 8–10–26; 11:15 am]

BILLING CODE 4164–01–P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 153

August 11, 2026

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington; Proposed Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 217**

[Docket No. 260804–0184]

RIN 0648–BO18

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

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

ACTION: Proposed rule; request for comments.

SUMMARY: Pursuant to the Marine Mammal Protection Act (MMPA), NMFS has received a request from the Washington State Parks and Recreation Commission (State Parks) for authorization to take marine mammals incidental to the Marine Facilities Replacement Program (MFRP) in North Puget Sound in Western Washington (WA) over the course of 5 years from the date of effectiveness. NMFS is proposing incidental take regulations setting forth permissible methods of taking, other means of effecting the least practicable adverse impact on such marine mammal stocks (*i.e.*, mitigation measures), and requirements pertaining to monitoring and reporting such takes, and requests comments on the proposed regulations. NMFS will consider public comments before making any final decision on promulgating the requested MMPA regulations.

DATES: Comments and information must be received no later than September 10, 2026.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2026-1255>. You may submit comments on this document, identified by NOAA–NMFS–2026–1255, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA–NMFS–2026–1255 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to: Permits and Conservation Division, Office of Protected Resources, 1315

East-West Highway, Silver Spring, MD 20910.

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), 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).

Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-parks-and-recreation-commissions-marine>. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Krista Graham, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:**Purpose of Regulatory Action**

These proposed regulations, promulgated under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), would provide a framework for authorizing the take of marine mammals incidental to activities associated with State Parks' MFRP in North Puget Sound, WA.

NMFS received an application from State Parks requesting 5-year regulations and a Letter of Authorization (LOA) issued thereunder to take 10 species of marine mammals, by Level A and Level B harassment only, incidental to State Parks' MFRP activities. No serious injury or mortality is anticipated or proposed for authorization. Please see Background below for definitions of harassment.

The proposed regulations include mitigation, monitoring, and reporting requirements. These requirements, proposed by State Parks, are expected to minimize the number and/or intensity of incidents of marine mammal take, provide information to better understand the impacts of the action, and document compliance. State Parks has agreed that all the mitigation measures are practicable. As required by the MMPA, NMFS concurred that these measures are sufficient to achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat.

Legal Authority for the Proposed Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and promulgates regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the “least practicable adverse impact” on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this proposed rule containing 5-year regulations and for any subsequent LOAs.

Summary of Major Provisions Within the Proposed Rule

The following is a summary of the major provisions of this proposed rule regarding State Parks' MFRP activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Establishment of shutdown zones;
- Bubble curtains required for impact driving of steel piles;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power; and
- Submittal of monitoring reports, including a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed.

Through adaptive management, the proposed regulations would allow NMFS to modify (*e.g.*, remove, revise, or add to) the existing mitigation, monitoring, or reporting measures summarized above and required by the LOA.

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of

marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made, regulations are promulgated, and public notice and an opportunity for public comment are provided.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (collectively referred to as “mitigation”); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms used above are included in the relevant sections below and can be found in section 3 of the MMPA (16 U.S.C. 1362) and NMFS regulations at 50 CFR 216.103.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.*, promulgation of regulations and subsequent issuance of an LOA thereunder) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (Incidental Take Authorization (ITAs) with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed

regulations and LOA qualifies to be categorically excluded from further NEPA review.

Summary of Request

On April 30, 2025, NMFS received an application from State Parks requesting authorization to take marine mammals incidental to the MFRP (*e.g.*, for the repair and improvement of six marine facilities in four State Parks within North Puget Sound, WA). Following NMFS’ review of the application, State Parks submitted a revised application on July 25, 2025. Following additional communication with the applicant, NMFS was notified that State Parks was substantially modifying its application. State Parks submitted a revised application on March 23, 2026, that we deemed adequate and complete on March 24, 2026. We published a notice of receipt in the **Federal Register** on March 30, 2026 (91 FR 15597). No public comments were received.

The regulations under which we would issue the requested LOA would be valid for 5 years, from 2026 to 2031. State Parks plans to remove and/or replace timber support pilings with aluminum and steel structures at existing piles, floats, piers, and components at six marine facilities in four state parks. In-water construction work may incidentally expose 10 species of marine mammals (10 stocks) to elevated noise, resulting in take by Level A harassment and/or Level B harassment. Therefore, State Parks requests authorization to incidentally take 10 species (10 stocks) by Level A harassment and/or Level B harassment. Neither State Parks nor NMFS expect serious injury or mortality to result from these activities.

Description of Proposed Activity

Overview

State Parks is proposing construction activities that include pile driving (vibratory, impact, rock-socket drilling, and down-the-hole drilling (DTH)) and pile removal (pulling with a crane or, potentially, a vibratory extractor). Of these activities, only pile removal and installation are anticipated to result in take due to elevated underwater noise.

The purpose of the Washington State Parks MFRP is to remove and/or replace and improve six marine facilities at four State Parks. This includes Reid and

Prevost Harbors at Stuart Island Marine State Park (MSP), Fossil Bay at Sucia Island MSP, Bowman Bay and Rosario Pier at Deception Pass State Park, and Olga Pier at Olga State Park. These proposed improvements would make the facilities more accessible to visitors while minimizing environmental impacts. This includes removing and/or replacing degraded and unsafe timber piles, piers, ramps, and float assemblages. Facilities to be replaced would have galvanized steel piles installed and aluminum components added (*e.g.*, platforms, walkways, a gangway, and floats).

Dates and Duration

State Parks anticipates that in-water construction activities associated with the MFRP would occur at each location within the annual in-water work windows established by the Washington Department of Fish and Wildlife to protect various fish species. Activities are planned to occur at Reid Harbor and Bowman Bay sometime between September 1, 2026, and February 15, 2027 (Year 1); at Prevost Harbor and Fossil Bay sometime between September 1, 2027, and February 15, 2028 (Year 2); at Rosario Pier sometime between August 1, 2028, and February 15, 2030 (Years 3 or 4); and finally, at Olga Pier sometime between September 1, 2030, and February 15, 2031 (Year 5) (see table 1). In-water construction delays may occur due to several factors, including project funding, permitting requirements, equipment and/or material availability, weather-related delays, equipment maintenance and/or repair, and other contingencies.

Specific Geographic Region

The MFRP activities are in bays and harbors around North Puget Sound, specifically in Reid Harbor and Prevost Harbor in Stuart Island MSP, Fossil Bay in Sucia Island MSP, Bowman Bay and Rosario Pier in Deception Pass State Park, and Olga Pier in Olga State Park. Each of these four state parks is situated within a group of islands known as the San Juan Islands and Deception Pass, located in San Juan, Skagit, and Island Counties in Western Washington (see figures 1 and 2 of this notice and figure 1 of the application).

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Figure 1 -- MFRP activities in the North Puget Sound, WA, project area are denoted by a circle

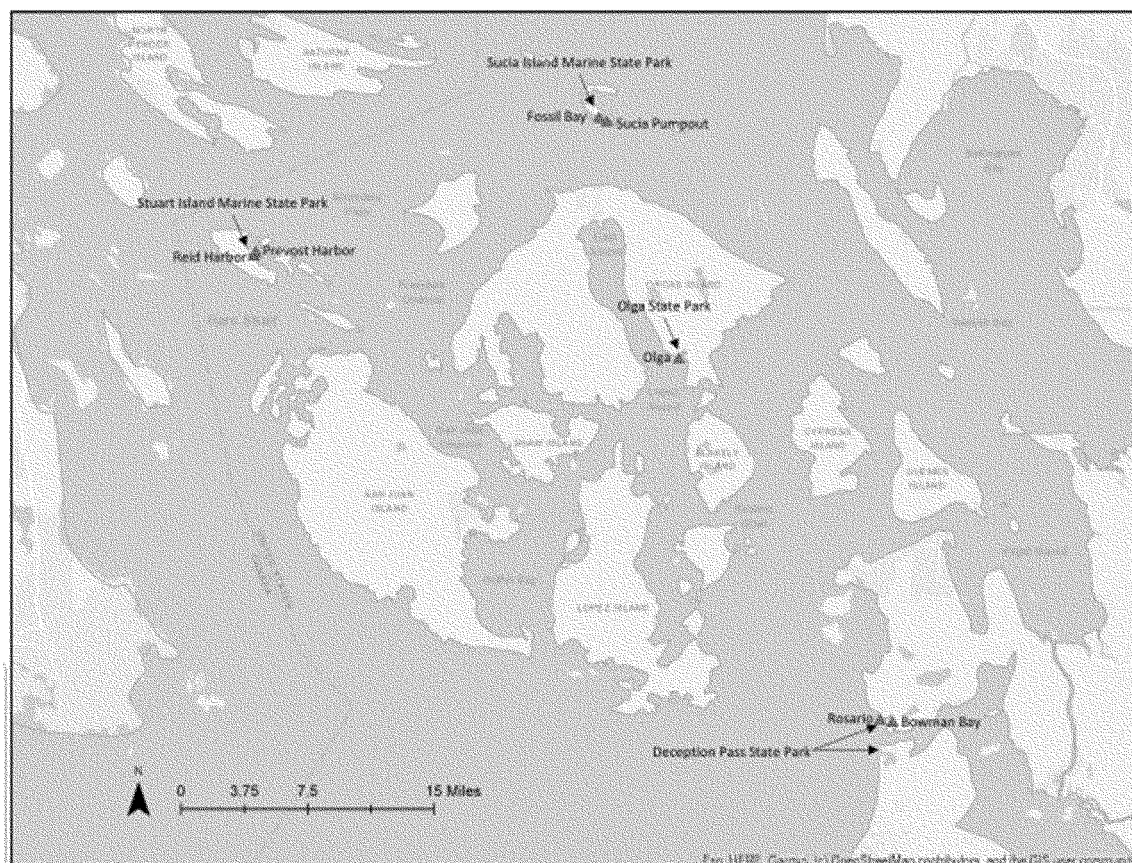


Figure 2 -- Zoomed in vicinity map of State Parks' project sites in North Puget Sound

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Detailed Description of the Specified Activity

Stuart Island MSP is a 433-acre marine camping park with 33,030 feet of shoreline, located within the San Juan Island cluster, just northwest of the other islands. Reid Harbor is located on the central-southern portion of Stuart Island, within a protected cove that faces south/southeast at the mouth of the harbor. State Parks proposes a few components for this project, including demolishing and replacing the existing timber moorage facility (piles, floats, pier, and components), removing and replacing one offshore island floating timber dock, and replacing the creosote-treated timber dolphins at the existing pumpout with galvanized steel piles. Work at Reid Harbor is estimated to take up to 30 days and would occur sometime between September 1, 2026, and February 15, 2027 (during Year 1).

Also within the Stuart Island MSP is Prevost Harbor, which is located on the northeast side of Stuart Island and contains a relatively open cove. State Parks proposes removing the existing

timber moorage facility at Prevost Harbor and replacing it with new galvanized steel piles and aluminum structures (*i.e.*, platforms, walkways, a gangway, and floats), along with a concrete abutment. Work is estimated to take up to 30 days and would occur sometime between September 1, 2027, and February 15, 2028 (during Year 2).

The second marine park, Sucia Island MSP, is an 814-acre marine park with 77,700 feet of shoreline and abundant camping and moorage for vessels. The main island and several smaller islands comprise the "Sucia group." For the Fossil Bay project, the existing timber moorage facility would be demolished and replaced with steel pipe piles and aluminum components for the new facility. Work is expected to take up to 30 days and occur sometime between September 1, 2027, and February 15, 2028 (during Year 3).

The third State Park, Deception Pass State Park, is a 3,854-acre marine and camping area with 77,000 feet of saltwater shoreline along Rosario Strait and Skagit Bay. Bowman Bay is located within Deception Pass State Park on the

southwestern shore of Fidalgo Island on Rosario Strait. For the Bowman Bay pier removal activity, State Parks proposes to demolish the storm-damaged moorage facility. No new structures are proposed for installation. Work is expected to take up to 30 in-water construction days and occur sometime between September 1, 2026, and February 15, 2027 (during Year 1).

Also within Deception Pass State Park is Rosario Pier, located within Sharpe Cove, a smaller bay just north of Gull Rocks and at the mouth of Bowman Bay. At Rosario Pier, State Parks proposes to demolish the timber pier, floating dock, and steel gangway. Work is anticipated to take up to 10 days and occur sometime between August 1, 2028, and February 15, 2030. Because the timing of the Rosario Pier project is uncertain, estimated exposures would occur either during Year 3 or Year 4.

At the fourth and final State Park—Olga State Park located on Orcas Island—State Parks proposes to replace the timber moorage facility with a steel and aluminum moorage facility. Work is expected to take up to 30 days and

occur sometime between September 1, 2030, and February 15, 2031 (during Year 5). See table 1 for estimated dates and durations of each proposed project.

Table 1 -- Summary of estimated dates, duration, and relevant seasonal issues for projects within the MFRP

Project	In-Water Work Window	Projected Year of In-Water Construction	Project Duration of In-Water Construction ¹	Important Seasonal Issues
<i>Stuart Island MSP</i>				
Reid Harbor	Sept 1-Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	None
Prevost Harbor	Sept 1-Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None
<i>Sucia Island MSP</i>				
Fossil Bay	Sept 1-Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None
<i>Deception Pass State Park</i>				
Bowman Bay	Sept 1-Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	- Northern elephant seal pupping – Jan-Feb - Northern elephant seal haul out (single animals) – Jan-June
Rosario Pier	Aug 1-Feb 15	LOA Years 3 or 4 (2028–2030) ²	Up to 10 days	- Northern elephant seal pupping – Jan-Feb - Northern elephant seal haul out (single animals) – Jan-June
<i>Olga State Park</i>				
Olga Pier	Sept 1-Feb 15	LOA Year 5 (2030–2031)	Up to 30 days	None

¹ The project dates and duration reflect the total estimated duration of the in-water work portions of the project (e.g., in addition to pile driving or removal, in-water work may include moving equipment around the site, floating in new floats, or direct pulling of piles with a crane). See table 2 for the estimated number of days of pile driving/removal at each project location.

² Because the timing of construction is uncertain, estimated exposures would occur either during Year 3 or Year 4.

During these construction activities, each timber pile is anticipated to be removed by crane pulling or, if necessary, a vibratory extractor. Due to water levels and access at some project sites, a floating barge is expected to be used to extract the piles. A debris boom or similar containment measure would be installed around the work area to capture any floating debris generated during demolition and new construction, if needed. Additionally, a silt curtain would be used, if necessary, to meet water-quality requirements based on results from water-quality monitoring conducted throughout the in-water pile work. Finally, the tops of all piles may be cut off or terminated at the design height, and fiberglass (or similar) bird caps would be installed.

Depending on soil conditions, the installation of steel piles would use one or more methods: a vibratory hammer, an impact hammer, or drilling (such as a rock-socket drill or a DTH drill to create a hole in the bedrock for placing a pile that provides lateral and longitudinal strength when the overlying sediments are too shallow for other methods) for four of the six projects (all except Bowman Bay and Rosario Pier) (see *Description of Sound Sources for Specified Activities* for details on these pile installation/removal methods). Not all piles would require each type of installation; some may need only one method, like vibratory pile driving, while others may need two, such as vibratory and impact pile driving (see table 2). Since the exact methods cannot be determined

beforehand, we assume that all methods are necessary for the four projects involving pile installation, while Bowman Bay and Rosario Pier would only include pile removal).

The estimated time to install each pile depends on the site substrate. Depending on soil conditions and the chosen pile-driving equipment, it may take up to 45 minutes per pile for vibratory pile driving or 120 minutes per pile for either rock-socket drilling or DTH drilling through very dense material. A load-bearing pile may require proof loading with an impact hammer. Impact proofing is estimated to need up to 400 strikes per pile (see table 2). Any impact driving would use a bubble curtain or a similar attenuation method. Pile removal and installation

would occur during daylight hours only, up to 14 hours a day.

The total estimated time to complete each of the six MFRP projects (*i.e.*, the duration of in-water construction) is up to 160 days over 5 years (table 1). However, the estimated duration of in-water construction days (up to 160 days) includes not only the time needed for actual pile driving/removal, but all in-

water work. For example, the Reid Harbor project has an estimated in-water construction duration of up to 30 days. This includes, for instance, mobilizing equipment, floating new floats to support a pier, using a crane from a barge to pull timber piles out of the substrate, and pile driving. Therefore, except for work at Rosario Pier (up to 10 in-water construction days), while each

of the other five projects has an estimated duration of up to 30 in-water construction days (totaling up to 160 days of in-water construction), State Parks anticipates that the maximum total number of pile driving/removal days is up to 69 days across all 5 years of work (table 2).

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Table 2 -- Estimated pile type, number, duration, piles per day/activity, and maximum total number of days of pile driving and/or removal at each project site

Site/Activity	Total # of Piles	Mins/Pile (vibratory/ drilling) or Strikes/ Pile (impact)	Piles/ Day	# of Pile Driving Days Per Pile Type	Maximum Total # of Pile-Driving Days
Reid Harbor – Up to 30 days of in-water construction					
Vibratory Hammer Removal 14-inch timber pile	18	15 mins	10	2	13
Vibratory Hammer Installation 16-inch steel pile	20	45 min	8	3	
Impact Hammer Embedment/Proofing 16-inch steel pile		400 strikes	8	3	
Rock Drilling (max) Embedment 16-inch steel pile		120 min	4	5	
Prevost Harbor – Up to 30 days of in-water construction					
Vibratory Hammer Removal 14-inch timber pile	30	15 min	10	3	11
Vibratory Hammer Installation 16-inch steel pile	15	45 min	8	2	
Impact Hammer Embedment/Proofing 16-inch steel pile		400 strikes	8	2	
Rock Drilling (max) Embedment 16-inch steel pile		120 min	4	4	
Fossil Bay – Up to 30 days of in-water construction					
Vibratory Hammer Removal 16-inch timber pile	16	15 min	10	2	13
Vibratory Hammer Installation 16-inch steel pile	20	45 min	8	3	
Impact Hammer Embedment/Proofing 16-inch steel pile		400 strikes	8	3	
Rock Drilling (max) Embedment 16-inch steel pile		120 min	4	5	
Bowman Bay – Up to 30 days of in-water construction					
Vibratory Hammer Removal 12-inch (18-inch proxy) timber pile	153	15 mins	10	16	16
Rosario Pier – Up to 10 days of in-water construction					
Vibratory Hammer Removal 14-inch timber pile	14	15 min	10	2	2
Olga Pier – Up to 30 days of in-water construction					
Vibratory Hammer Removal 16-inch timber pile	26	15 mins	10	3	14

Vibratory Hammer Installation 16-inch steel pile	20	45 min	8	3	
Impact Hammer Proofing 16-inch steel pile		400 strikes	8	3	
Rock Drilling (max) Embedment 16-inch steel pile		120 mins	4	5	
Maximum total # of pile driving days across all 5 years					69

Note: The maximum total number of pile-driving days for each project in this table includes only the days spent on in-water pile work. In other words, these estimated days are less than the expected total in-water construction duration (see table 1). Additionally, not all piles will require every type of installation, so the maximum total number of pile-driving days is likely conservative.

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Lastly, only pile removal and installation activities are anticipated to result in marine mammal takes due to increased underwater noise. Pier, ramp, or float removal and installation, as well as abutment replacement, are not anticipated to result in take of marine mammals and will therefore not be discussed further. While no physical takes are expected, underwater sound from these in-water activities could result in Level A harassment and/or Level B harassment of marine mammal species.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all this information, and we refer the reader to these descriptions in the application rather than reprinting them

here. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and information regarding species occurrence, group size, and density may be found in the U.S. Navy Marine Species Density Database Phase III for the Northwest Training and Testing Study Area (U.S. Navy, 2019; https://nwtteis.com/portals/nwtteis/files/NWTT_Marine_Species_Density_Technical_Report_September_2019.pdf). Finally, more general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS' website (<https://www.fisheries.noaa.gov/find-species>).

Table 3 lists all species for which take is likely and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA), as well as the potential biological removal (PBR), where known. The MMPA defines PBR as the maximum number of animals, not including

natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality or serious injury (M/SI) is anticipated or proposed to be authorized here, the PBR and M/SI from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific or Alaska SARs. All values presented in table 3 are the most recent available at the time of publication and are available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>.

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Table 3 -- Species, stocks, and the status of marine mammals with estimated take from the specified activities

Common name ¹	Scientific name	Stock	ESA/MMPA status; Strategic (Y/N) ²	Stock abundance (CV, N _{min} , most recent abundance survey) ³	PBR	Annual M/SI ⁴
Order Artiodactyla – Infraorder Cetacea – Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals)						
Minke whale	<i>Balaenoptera acutorostrata</i>	CA/OR/WA	-, -, N	915 (0.792, 509, 2018)	4.1	≥0.19
Family Eschrichtiidae						
Gray whale	<i>Eschrichtius robustus</i>	Eastern North Pacific	-, -, N	25,960 (0.05, 25,849, 2016)	801	131
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae						
Orca or killer whale	<i>Orcinus orca</i>	West Coast Transient	-, -, N	349 (N/A, 349, 2018) ⁵	3.5	0.4
Pacific white-sided dolphin	<i>Aethalodelphis obliquidens</i>	CA/OR/WA	-, -, N	34,999 (0.222, 29,090, 2018)	279	7
Family Phocoenidae (porpoises)						
Dall's porpoise	<i>Phocoenoides dalli</i>	CA/OR/WA	-, -, N	16,498 (0.61, 10,286, 2018)	99	≥0.66
Harbor porpoise	<i>Phocoena phocoena</i>	WA Inland Waters	-, -, N	11,233 (0.37, 8,308, 2015)	66	≥7.2
Order Carnivora – Pinnipedia						
Family Phocidae (earless seals)						
Northern elephant seal	<i>Mirounga angustirostris</i>	California Breeding	-, -, N	194,907 (N/A, 88,794, 2023)	5,328	11.2
Harbor seal	<i>Phoca vitulina</i>	WA Northern Inland Waters	-, -, N	15,898 (UNK, UNK, 1999) ⁶	UND	9.8
Family Otariidae (eared seals and sea lions)						
Steller sea lion	<i>Eumetopias jubatus</i>	Eastern U.S.	-, -, N	36,308 (N/A, 36,308, 2022) ⁷	2,178	92.3
California sea lion	<i>Zalophus californianus</i>	U.S.	-, -, N	257,606 (N/A, 233,515, 2014)	14,011	≥321

¹ Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (<https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/>).

² Endangered Species Act (ESA) status: Endangered (E), Threatened (T); MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

³ NMFS marine mammal stock assessment reports online at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region>. CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, a CV is not applicable. N/A indicates data are unknown. UND (undetermined) PBR indicates data are available to calculate a PBR level, but a determination has been made that calculating a PBR level using those data is inappropriate (see the SAR for details).

⁴ These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (e.g., commercial fisheries, vessel strikes). Annual M/SI is often not precisely determined and is sometimes presented as a minimum value or range.

⁵ Nest is based on the count of individuals identified from photo-ID catalogs in the analysis of a subset of data from 1958 to 2018.

⁶ Abundance estimates are greater than 8 years old, so stock abundance is considered unknown in the most recent SAR. However, Pearson *et al.* (2024) report the peak abundance estimate as 15,898.

⁷ Nest is the best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

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As indicated above, table 3 lists all 10 species (with 10 managed stocks) that temporally and spatially co-occur with the specified activities to the degree that incidental take is reasonably likely to occur. In addition to what is included in sections 3 and 4 of State Parks' application (<https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-parks-and-recreation-commissions-marine>), the SARs (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>), and NMFS' website, we provide further detail below informing the baseline for species likely to be found in the project area (e.g., information regarding current Unusual Mortality Events (UMEs), and known important habitat areas, such as biologically important areas (BIAs; <https://oceannoise.noaa.gov/biologically-important-areas>) (Calambokidis *et al.*, 2024)).

While humpback whales (the Central America/Southern Mexico—CA/OR/WA stock; Mainland Mexico—CA/OR/WA stock; and Hawaii stock; *Megaptera novaeangliae*), fin whales (CA/OR/WA stock; *Balaenoptera physalis*), and the Eastern North Pacific southern resident stock of killer whales (*Orcinus orca*) have been documented in the area, take is not proposed for authorization. Because these animals are highly conspicuous and can be seen from several kilometers (km) away, and because the Orca Network (an online forum available to the public to report and compile marine mammal sightings; <https://www.orcanetwork.org>) provides real-time updates on movement patterns of these species, State Parks proposes, with NMFS' concurrence, to avoid take of these species by implementing mitigation measures and monitoring (see Proposed Mitigation and Proposed Monitoring and Reporting sections below). Therefore, these five marine mammal stocks are not discussed further beyond the explanation provided here.

Additionally, although the ranges of both the short-beaked common dolphin (CA/OR/WA stock; *Delphinus delphis*) and the bottlenose dolphin (CA/OR/WA offshore stock; *Tursiops truncatus*) include the Pacific Northwest, neither species has been documented in the San Juan Islands or the greater Salish Sea region in recent years, according to the Orca Network's sightings archive. Therefore, no take authorization is proposed, and these two marine mammal species are not discussed further.

Minke Whale

Minke whales seem to establish home ranges in the inland waters of Washington (Dorsey, 1983; Dorsey *et al.*, 1990). They are reported in these waters year-round, although most sightings occur from March through November (Calambokidis and Baird, 1994). Minke whales are more frequently seen during late summer and early fall in the San Juan Islands (Dorsey *et al.*, 1990). According to the Orca Network's sightings archive, between 2019 and 2023, minke whales were observed on 136 days within a 15-mile radius of the San Juan Islands. Peak sightings happened between April and October, with an average of 2 to 5 days of sightings per year. From November through March, the average number of sighting days drops to less than 1.

Gray Whale

During migration from Mexico to the Arctic, a subpopulation of the Eastern North Pacific stock of gray whales, commonly called the Pacific Coast Feeding Group (PCFG), stops and feeds along the coasts of Oregon and Washington, including North Puget Sound (Calambokidis *et al.*, 2024). A subgroup of the PCFG that feeds in Puget Sound, recently named "Sounders" gray whales, occurs in the highest concentrations at the southern ends of Whidbey and Camano Islands in North Puget Sound (Calambokidis *et al.*, 2024). However, they typically arrive in March and usually leave the area before June 1, when project activities are not scheduled. There is a BIA for feeding gray whales that overlaps with the project area, but it is active from February to June (Calambokidis *et al.*, 2024), which overlaps very minimally with the planned project period (August/September to February 15 annually).

Transient Killer Whale

Eight killer whale stocks are recognized within the Pacific U.S. Exclusive Economic Zone, including the West Coast Transient stock, which, along with the Southern Resident stock, is most likely to occur in inland Washington (Carretta *et al.*, 2017; Muto *et al.*, 2017). Transient killer whales are commonly observed year-round in the waters around Vancouver Island, the San Juan Islands, and the Strait of Juan de Fuca, but their occurrences vary from pod to pod (Baird, 2000). According to Orca Network's sightings archive, between 2019 and 2023, sightings from November through February averaged only 5–8 days. Similar trends were noted in the greater North Salish Sea

(Strait of Juan de Fuca, San Juan Islands, and Strait of Georgia).

Pacific White-Sided Dolphin

Pacific white-sided dolphins are known to enter the inshore passes of Washington, and small groups have been seen in Haro Strait off San Juan Island. The species is generally rare in Puget Sound, with one stranding in southern Puget Sound recorded in the 1980s (Osborne *et al.*, 1988) and a few incidental sightings reported to the Orca Network.

Dall's Porpoise

Within the inland waters of Washington and British Columbia, this species is most abundant in the Strait of Juan de Fuca, extending eastward to the San Juan Islands (Nysewander *et al.*, 2005). Dall's porpoises may be most abundant in Puget Sound during the winter (Nysewander *et al.*, 2005; WDFW, 2007). While sightings appear to be decreasing (Evenson *et al.*, 2016), Dall's porpoises may occur in all areas of inland Washington at all times of year, but with different distributions throughout Puget Sound from winter to summer.

Harbor Porpoise

Harbor porpoises were historically among the most frequently observed marine mammals in Puget Sound; however, the species declined precipitously in the area between the 1940s and the 1990s, and sightings have increased seasonally more recently (Carretta *et al.*, 2019). Annual winter aerial surveys conducted by the Washington Department of Fish and Wildlife from 1995 to 2015 revealed an increasing trend in harbor porpoises in Washington's inland waters, including Puget Sound. The data suggest that harbor porpoises were already present in Juan de Fuca, Georgia Straits, and the San Juan Islands from the mid-1990s to mid-2000s and then expanded into Puget Sound from the mid-2000s to 2015 (Evenson *et al.*, 2016). Sighting data collected from 2013 to 2016 confirm that harbor porpoises are present in Puget Sound year-round and have reoccupied these waters (Smultea *et al.*, 2017).

Northern Elephant Seal

Northern elephant seals are generally considered rare in Puget Sound, though sightings have increased in the last decade. However, a female elephant seal has been reported hauled out in Mutiny Bay on Whidbey Island (south of the project sites) periodically since 2010. She was observed alone for her first three visits to the area, but in March

2015, she was seen with a pup. Since then, she has produced three more pups between 2018 and 2022 (Orca Network, 2026). Northern elephant seals generally give birth in January, but this individual has given birth in March on multiple occasions. Her most recent pup was born in late January 2022, where she pupped at the beach at Bowman Bay. She typically returns to Mutiny Bay in April and May to molt (when project activities are not planned). Her pups have also repeatedly returned to haul out on nearby beaches, and one has also had a pup (Orca Network, 2026). Reports from iNaturalist include sightings of this female and her pups, as well as of solo juveniles from March through June (iNaturalist, 2026). Additionally, State Parks' IHA application references newspaper reports of an adult male northern elephant seal, which has been seen on rare occasions in Deception Pass State Park (State Parks, 2026).

Harbor Seal

Harbor seals are the most common and the only pinniped that breed and remain in the inland marine waters of Washington year-round (Calambokidis and Baird, 1994). Harbor seals haul out on rocks, reefs, and beaches. However, they are also commonly found on man-made structures such as docks, piers, and floats. Harbor seals display strong fidelity for haul-out sites (Pitcher and McAllister, 1981).

Steller Sea Lion

Steller sea lions mainly occur along the Washington coast; however, smaller numbers are seasonally present in the San Juan Islands and Puget Sound (Wiles, 2015). An estimate of several dozen to a few hundred Steller sea lions (mostly males) is present in Puget

Sound at any given time, with peak abundance in fall and winter (Jeffries, 2014; Smultea *et al.*, 2017; Wiles, 2015). Jeffries (2014) identified five winter haul-out sites in Puget Sound used by Steller sea lions, though they are south of the San Juan Islands. Numbers of animals observed at these sites ranged from a few animals to just under 100.

California Sea Lion

Only male California sea lions migrate into Pacific Northwest waters from August to mid-June (Wright *et al.*, 2010). In July, nearly all males are expected to be on or near breeding sites off Southern California (DeLong *et al.*, 2017; Wright *et al.*, 2010). Female California sea lions remain in waters near their breeding rookeries off the coast of California and Mexico (Jeffries *et al.*, 2000; Lowry and Forney, 2005). An estimated 2,256 California sea lions in Puget Sound and Hood Canal combined transit through the Strait of Juan de Fuca in approximately September and May/June (DeLong *et al.*, 2017; Gearin *et al.*, 2017). California sea lions are hauled out 44 percent of the time (56 percent in-water) (DeLong *et al.*, 2017), with haul-out sites located on jetties, offshore rocks and islands, log booms, marina docks, and navigation buoys.

There are no active UMEs for any of the species listed in table 3. Recent Pacific Coast UMEs have primarily involved Eastern North Pacific gray whales. The most recent UME, from 2019 to 2023, saw nearly 700 strandings primarily due to malnutrition and emaciation, indicating a lack of food in their Arctic feeding grounds. Ship strikes and entanglements also contributed to this UME. A UME for California sea lions (2013–2016) was likely caused by environmental factors affecting food availability.

An independent group of cetacean experts compiled and interpreted the best available information, using the methodology described in Harrison *et al.* (2023), to develop BIAs. While there exist BIAs for migrating gray and fin whales near the mouth and inland of the Salish Sea (Calambokidis *et al.*, 2015; 2024), these BIAs are far to the west and do not overlap with any of the proposed MFRP project sites.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of sound exposure, it is necessary to understand the frequency ranges that marine mammals can hear. Not all marine mammal species have equal hearing capabilities or hear over the same frequency range (*e.g.*, Richardson *et al.*, 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007; 2019) recommended that marine mammals be divided into hearing groups based on directly measured hearing ranges (behavioral or auditory-evoked potential techniques) or on estimated hearing ranges (*e.g.*, behavioral response data, anatomical modeling). Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from composite audiograms, previous analyses in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). We note that the names of two hearing groups and the generalized hearing ranges of all marine mammal hearing groups have been recently updated (NMFS, 2024), as reflected in table 4.

Table 4 -- Marine Mammal Hearing Groups (NMFS, 2024)

Hearing Group	Generalized Hearing Range*
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 36 kHz
High-frequency (HF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz
Very High-frequency (VHF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i>)	200 Hz to 165 kHz
Phocid pinnipeds (PW) (underwater) (true seals)	40 Hz to 90 kHz
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 68 kHz

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges may not be as broad. Generalized hearing range chosen based on approximately 65 dB threshold from composite audiogram, previous analysis in NMFS (2018), and/or data from Southall *et al.* (2007) and Southall *et al.* (2019). Additionally, animals can detect very loud sounds above and below the “generalized” hearing range.

For more details concerning these groups and associated frequency ranges, please see NMFS (2024) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section discusses how components of the specified activities may affect marine mammals and their habitat. The Estimated Take of Marine Mammals section includes a quantitative analysis of the number of individuals that are expected to be taken by these activities. The Negligible Impact Analysis and Determination section considers the content of this section, as well as the Estimated Take of Marine Mammals section and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified project activities are likely to result from vibratory pile installation and removal, impact pile driving, and rock-socket drilling and/or DTH. The effects of underwater noise from State Parks' proposed activities have the potential to result in takes from Level A harassment and Level B harassment of marine mammals in the proposed project areas.

There are a variety of types and degrees of effects on marine mammals, prey species, and habitats that could result from the specified activities. Below, we provide a brief description of

the types of sound generated by the specified activities, the general impacts on marine mammals and their habitat from these activities, and a related project-specific analysis that considers the proposed mitigation measures.

Description of Sound Sources for Specified Activities

Activities associated with the MFRP project that have the potential to incidentally take marine mammals through sound exposure include vibratory removal of timber piles, vibratory installation of steel piles, impact installation of steel piles, rock-socket drilling, or DTH drilling of steel piles. Because the rock-drilling method will not be determined until the project goes out to bid, either rock-socket drilling or DTH drilling may be used. For project activities involving drilling, State Parks used the maximum rock-socket drilling source level (183 dB root-mean-squared (RMS)) rather than the average (154 dB RMS) in their analysis (Dazey *et al.*, 2012), and instead of the DTH source-level guidance (167 dB RMS (Heyvaert and Reyff, 2021); however, this applies only to rock-socket drilling. Therefore, the “max” source level was used to determine the isopleths for this installation method, thereby providing coverage for both rock-socket drilling and DTH drilling.

Impact hammers typically operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is impulsive, characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005).

Vibratory hammers install piles by vibrating the piles and using the hammer's weight to drive them into the substrate. Vibratory hammers typically produce less sound (*i.e.*, lower levels) than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.*, 2009; California Department of Transportation (CALTRANS), 2015, 2020). Sounds produced by vibratory hammers are non-impulsive; compared to sounds produced by impact hammers, they have a slower rise time, reducing the probability and severity of injury, and the sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.*, 2005).

DTH systems use a combination of drilling and percussive mechanisms to advance a hole into the rock, with or without simultaneously advancing a pile/casing into that hole. A DTH system is essentially a drill bit that drills through the bedrock using a rotating function like a normal drill, integrated with a hammering mechanism to increase the speed of progress through the substrate (*i.e.*, it is like a “hammer drill” hand tool). The sound produced by the DTH methods simultaneously contains both a continuous non-impulsive component from the drilling action and an impulsive component from the hammering effect. Therefore, for purposes of evaluating Level A harassment and Level B harassment under the MMPA, NMFS treats DTH systems as both impulsive (Level A harassment thresholds) and continuous,

non-impulsive (Level B harassment thresholds) sound sources.

Typical activities for which DTH systems are used include rock-socket drilling. Rock-socket drilling involves using DTH techniques to create a hole in the bedrock, into which a pile is placed to provide lateral and longitudinal strength, as described above. Rock-socket drillings are used in bedrock when the overlaying sediments are too shallow to adequately secure the bottom portion of a pile using other methods.

The likely or possible impacts of State Parks' proposed activities on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel. However, given that there are no consistent or dedicated pinniped haul-out sites within the immediate vicinity of any of the six project sites, we have determined that visual and other non-acoustic stressors would be limited, and any impacts on marine mammals are primarily expected to be acoustic (underwater) in nature.

Potential Effects of Underwater Sound on Marine Mammals

The introduction of anthropogenic noise into the aquatic environment from vibratory pile removal, and vibratory, impact, rock-socket/DTH drilling pile installation is the primary means by which marine mammals may be harassed by State Parks' specified activities. Anthropogenic sounds span a broad range of frequencies and sound levels and can have highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, exposure duration, behavioral context, and other factors. Broadly, underwater sound from active acoustic sources, such as those in the MFRP project, can potentially result in one or more of the following: temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.*, 1995; Gordon *et al.*, 2003; Nowacek *et al.*, 2007; Southall *et al.*, 2007; Götz *et al.*, 2009).

We describe the more severe effects of certain non-auditory physical or physiological effects only briefly, as we do not expect that the use of vibratory, impact, or rock-socket/DTH drilling is reasonably likely to result in such effects (see below for further discussion). For non-auditory physical effects, while harbor seals, northern elephant seals, California sea lions, and Steller sea lions are known to haul out

in Puget Sound, their occurrence is seasonal for all except harbor seals, and there are no rookeries or known dedicated haul-outs for any of these four species in the immediate vicinity of any of the six project areas (see Description of Marine Mammals in the Area of Specified Activities section). Ultimately, we expect that any visual and/or other non-acoustic stressors would be limited and that any impact on marine mammals would be acoustic in nature.

Potential physiological effects from sound sources, particularly impulsive sound, can range from behavioral disturbance or tactile perception to physical discomfort, slight injury to the internal organs and the auditory system, or mortality (Yelverton *et al.*, 1973). Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to high level underwater sound or as a secondary effect of extreme behavioral reactions (*e.g.*, change in dive profile as a result of an avoidance reaction) caused by exposure to sound include neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.*, 2006; Southall *et al.*, 2007; Zimmer and Tyack, 2007; Tal *et al.*, 2015). However, the project activities considered here do not involve the use of devices such as explosives or mid-frequency tactical sonar that are associated with these types of effects.

In general, animals exposed to natural or anthropogenic sounds may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.*, 2007, 2019). Exposure to anthropogenic noise can result in auditory threshold shifts and behavioral responses (*e.g.*, avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). It can also lead to non-observable physiological responses, such as increased stress hormone levels. Additional noise in a marine mammal's habitat can mask acoustic cues used in daily functions, such as communication and predator-prey detection.

The degree of effect of an acoustic exposure on marine mammals is dependent on several factors, including, but not limited to, sound type (*e.g.*, impulsive vs. non-impulsive), signal characteristics, the species, age, and sex class (*e.g.*, adult male vs. mom with calf), duration of exposure, the distance between the noise source and the animal, received levels, behavioral state at time of exposure, and previous history with exposure (Wartzok *et al.*, 2004; Southall *et al.*, 2007). In general, sudden, high-intensity sounds can cause hearing loss, as can longer exposures to

lower-intensity sounds. Moreover, any temporary or permanent loss of hearing, if it occurs at all, would occur almost exclusively for noise within an animal's hearing range. Below, we describe the specific acoustic effects that may occur depending on the activities proposed by State Parks.

Richardson *et al.* (1995) described zones of increasing effect intensity that might be expected to occur with distance from a source, assuming that the signal is within an animal's hearing range. First (at the greatest distance) is the area within which the acoustic signal would be audible (potentially perceived) to the animal but not strong enough to elicit any overt behavioral or physiological response. The next zone (closer to the receiving animal) corresponds to the area where the signal is audible to the animal and sufficiently intense to elicit behavioral or physiological responsiveness. The third is a zone within which, for high-intensity signals, the received level is sufficient to cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to some extent is the area within which masking (*i.e.*, when a sound interferes with or masks an animal's ability to detect a signal of interest above the absolute hearing threshold) may occur; the masking zone may vary widely in size.

Below, we provide additional details regarding potential impacts on marine mammals and their habitats from noise in general, starting with hearing impairment, as well as from the specific activities State Parks plans to conduct, to the extent it is available.

Hearing Threshold Shifts

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the audibility threshold at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018, 2024). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018, 2024), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.*, impulsive or non-impulsive), the likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, the time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.*, spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.*, how the animal uses

sound within the frequency band of the signal; *e.g.*, Kastelein *et al.*, 2014), and the overlap between the animal and the source (*e.g.*, spatial, temporal, and spectral).

Temporary Threshold Shift

A temporary threshold shift (TTS) is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2024). It is not considered an auditory injury (AUD INJ). Based on data from marine mammal TTS measurements (see Southall *et al.*, 2007, 2019), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Finneran *et al.*, 2000, 2002; Schlundt *et al.*, 2000). As described by Finneran (2015), marine mammal studies have shown that the amount of TTS increases with the 24-hour cumulative sound exposure level (SEL₂₄) in an accelerating fashion: at low exposures with lower SEL₂₄, the amount of TTS is typically small, and the growth curves have shallow slopes. At higher SEL₂₄ exposures, the growth curves become steeper and approach a linear relationship with the sound exposure level (SEL).

Depending on the degree (elevation of threshold in dB), duration (*i.e.*, recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to more impactful (similar to those discussed in auditory masking, below). For example, a marine mammal may readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range while traveling through the open ocean, where ambient noise is lower and competing sounds are fewer. Alternatively, a larger amount and a longer duration of sustained TTS during critical communication periods (*e.g.*, for successful mother-calf interactions) could have more severe impacts. We note that reduced hearing sensitivity, as a simple function of aging, has been observed in marine mammals, as well as in humans and other taxa (Southall *et al.*, 2007), suggesting that strategies exist to cope with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold

risks, so the sound must be louder to be heard. In terrestrial and marine mammals, TTS can last from minutes to hours (in cases of strong TTS) (Finneran, 2015). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For cetaceans, published data on the onset of TTS are limited to captive bottlenose dolphins, beluga whales (*Delphinapterus leucas*), harbor porpoises, and Yangtze finless porpoises (*Neophocoena asiakororientalis*) (Southall *et al.*, 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, northern elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*), and California sea lions (Kastak *et al.*, 1999, 2007; Kastelein *et al.*, 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.*, 2019; Sills *et al.*, 2020). TTS was not observed in spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to single airgun impulse sounds at levels matching previous predictions of TTS onset (Reichmuth *et al.*, 2016). These studies examine hearing thresholds in marine mammals before and after exposure to intense or long-duration sound. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times.

The amount and onset of TTS depend on the exposure frequency. Sounds below the region of best sensitivity for a species or hearing group are less hazardous than those near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.*, a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.*, 2019a, 2019c). Note that in general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS would be lower than that from a single, continuous exposure with the same SEL (Mooney *et al.*, 2009; Finneran *et al.*, 2010; Kastelein *et al.*, 2014, 2015). This means that TTS predictions based on the total, SEL₂₄, will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca*

crassidens)) when a warning sound preceded a relatively loud sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that enable conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle-ear structures, as well as placement of inner-ear structures (Ketten *et al.*, 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2024). Additionally, the existing marine mammal TTS data are limited to a small number of individuals within these species.

Relationships between TTS and AUD INJ thresholds have not been studied in marine mammals, and there are no measured PTS data for cetaceans, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. AUD INJ typically occurs at exposure levels at least several dB above that inducing mild TTS (*e.g.*, a 40-dB threshold shift approximates AUD INJ onset) (Kryter *et al.*, 1966; Miller, 1974), while a 6-dB threshold shift approximates TTS onset (Southall *et al.*, 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the AUD INJ thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis, and AUD INJ cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.*, 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause AUD INJ as compared with TTS, it is considerably less likely that AUD INJ could occur.

Auditory Injury

NMFS (2024) defines AUD INJ as damage to the inner ear that can result in tissue destruction, such as loss of cochlear neuron synapses or auditory neuropathy (Houser, 2021; Finneran, 2024). AUD INJ may or may not result in a permanent threshold shift (PTS). PTS is subsequently defined as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's

hearing range above a previously established reference level (NMFS, 2024). PTS generally affects only a limited frequency range, and animals with PTS have some level of hearing loss at the relevant frequencies; typically, animals with PTS or other AUD INJ are not functionally deaf (Au and Hastings, 2008; Finneran, 2016). Available data from humans and other terrestrial mammals indicate that a 40-dB threshold shift approximates the onset of PTS (see Ward *et al.*, 1958, 1959; Ward, 1960; Kryter *et al.*, 1966; Miller, 1974; Ahroon *et al.*, 1996; Henderson *et al.*, 2008). However, a variety of terrestrial and marine mammal studies (see Ward *et al.*, 1958; Ward *et al.*, 1959; Ward, 1960; Miller *et al.*, 1963; Kryter *et al.*, 1966; Finneran *et al.*, 2007; Kastelein *et al.*, 2013) indicate that threshold shifts of up to 40 to 50 dB (measured a few minutes after exposure) may be induced without resulting in PTS. PTS levels for marine mammals are estimates; with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.*, 2008), no empirical data have measured PTS in marine mammals, largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing AUD INJ are not typically pursued or authorized (NMFS, 2024). NMFS has set the PTS onset as a threshold shift of 40 dB.

However, after sound exposure ceases or between successive sound exposures, there is potential for recovery from hearing loss. Thus, because a threshold shift is measured a few minutes after noise exposure does not mean that those initial shifts are persistent (*i.e.*, no recovery). When initial threshold shifts fully recover back to baseline hearing levels, these are considered TTS. PTS indicates there is no full recovery back to baseline hearing levels; however, it does not mean there is no recovery. Rather, PTS indicates incomplete hearing recovery. Recovery depends on the initial threshold shift amount, the frequency of the shift, the temporal pattern of exposure (*e.g.*, exposure duration; continuous vs. intermittent), and the physiological mechanisms underlying the shift (*e.g.*, mechanical vs. metabolic). Since recovery is complicated, our current AUD INJ onset criteria do not account for the potential for recovery.

Behavioral Effects

Exposure to noise can also behaviorally disturb marine mammals to a level that rises to the definition of harassment under the MMPA. NMFS

considers a behavioral disturbance that rises to the level of harassment under the MMPA a non-minor response. In other words, not every response qualifies as a behavioral disturbance, and for responses that do, those of higher level or longer duration have the potential to affect foraging, reproduction, or survival. Behavioral disturbance may include subtle changes (*e.g.*, minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses may include changing durations of surfacing and dives, changing direction and/or speed, reducing/increasing vocal activities, changing/cessation of certain behavioral activities (such as socializing or feeding), eliciting a visible startle response or aggressive behavior (such as tail/fin slapping or jaw clapping), and avoiding areas where sound sources are located. In addition, pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006).

Behavioral responses to sound are highly variable and context-specific, and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.*, species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.*, Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007, 2019; Weilgart, 2007; Archer *et al.*, 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.*, 2012), and can vary depending on characteristics associated with the sound source (*e.g.*, whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant, or at least habituate more quickly, to potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) and Gomez *et al.* (2016) for reviews of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.*, 2004). Animals are most likely to habituate to predictable,

unvarying sounds. It is important to note that habituation is appropriately considered as a "progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial," rather than a general moderation in response to human disturbance (Bejder *et al.*, 2009). The opposite process is sensitization, in which an unpleasant experience leads an animal to respond at lower levels of exposure in the future, often in the form of avoidance.

As noted above, behavioral state may affect the type of response. For example, resting animals may show greater behavioral change in response to disturbing sound levels compared to animals that are highly motivated to remain in an area for feeding (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; National Research Council (NRC), 2005). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.*, 1997; Finneran *et al.*, 2003). Observed responses of wild marine mammals to loud pulsed sound sources (*e.g.*, seismic airguns) have been varied but often consist of avoidance behavior or other behavioral changes (Richardson *et al.*, 1995; Morton and Symonds, 2002; Nowacek *et al.*, 2007).

Available studies show wide variation in responses to underwater sound; therefore, it is difficult to predict how any given sound in a particular instance might affect marine mammals perceiving it (*e.g.*, Erbe *et al.*, 2019). If a marine mammal briefly reacts to an underwater sound by changing its behavior or moving a small distance, the resulting change is unlikely to be significant to the individual, let alone the stock or population. If a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005). However, there are broad categories of potential responses, which we describe in greater detail here, including alterations in dive and foraging behavior, effects on breathing, interference with or alteration of vocalizations, avoidance, and flight.

Avoidance and Displacement

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.*, Frankel and Clark, 2000; Costa *et al.*, 2003; Ng and Leung, 2003; Nowacek *et al.*, 2004; Goldbogen *et al.*, 2013a, 2013b; Blair *et al.*, 2016). Variations in

dive behavior may reflect interruptions in biologically significant activities (e.g., foraging) or they may be of little biological significance. The impact of an alteration in dive behavior resulting from acoustic exposure depends on what the animal is doing at the time of exposure and on the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (e.g., bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (e.g., Croll *et al.*, 2001; Nowacek *et al.*, 2004; Madsen *et al.*, 2006; Yazvenko *et al.*, 2007). Determining whether foraging disruptions incur fitness consequences would require information on, or estimates of, the energetic requirements of affected individuals; the relationships between prey availability, foraging effort, and success; and the animal's life history stage.

Respiration rates vary naturally with different behaviors, and alterations in breathing rate, as a function of acoustic exposure, can be expected to co-occur with other behavioral responses, such as a flight response or changes in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance of understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (e.g., Kastelein *et al.*, 2001; 2005; 2006; Gailey *et al.*, 2007). For example, harbor porpoise respiration rates increased in response to pile driving sounds at and above a received broadband SPL of 136 dB (zero-peak SPL: 151 dB re 1 μ Pa; SEL of a single strike (SEL_{ss}): 127 dB re 1 μ Pa² – s) (Kastelein *et al.*, 2013).

Avoidance is the displacement of an individual from an area or migration path due to the presence of a sound or other stressors and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.*, 1995). Avoidance may be short-term, with animals returning to the area once the noise has ceased (e.g., Bowles *et al.*,

1994; Goold, 1996; Stone *et al.*, 2000; Morton and Symonds, 2002; Gailey *et al.*, 2007). Longer-term displacement is possible, however, which may lead to changes in the abundance or distribution patterns of the affected species in the affected region if habituation to the sound does not occur (e.g., Blackwell *et al.*, 2004; Bejder *et al.*, 2006; Teilmann *et al.*, 2006).

A flight response is a dramatic change in normal movement, with directed, rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in its intensity (e.g., directed movement and travel rate). Relatively little information exists on the flight responses of marine mammals to anthropogenic signals, although observations of flight responses to the presence of predators have been made (Connor and Heithaus, 1996; Bowers *et al.*, 2018). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (England *et al.*, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also affect marine mammals in more subtle ways. Increased vigilance may incur costs through attentional diversion (i.e., when a response requires heightened vigilance, it may come at the expense of reduced attention to other critical behaviors, such as foraging or resting). These effects have generally not been demonstrated in marine mammals, but studies of fishes and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (e.g., Beauchamp and Livoreil, 1997; Fritz *et al.*, 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reductions in fitness (e.g., declines in body condition) and subsequent reductions in reproductive success, survival, or both (e.g., Harrington and Veitch, 1992; Daan *et al.*, 1996; Bradshaw *et al.*, 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not result in sleep deprivation or stress.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors, such as sound exposure, is more likely

to be significant if it lasts more than one diel cycle or recurs on subsequent days (Southall *et al.*, 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.*, 2007). Note that there is a difference between multi-day substantive (i.e., meaningful) behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts multiple days does not necessarily mean that individual animals are exposed to activity-related stressors for multiple days, or, further, that they are exposed in a manner that results in sustained, multi-day, substantive behavioral responses.

Physiological Stress Responses

An animal's perception of a threat may be sufficient to trigger stress responses that include some combination of behavioral, autonomic nervous system, neuroendocrine, and immune responses (e.g., Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical response (in terms of energetic costs) is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in pituitary hormone secretion have been implicated in reproductive failure, altered metabolism, reduced immune competence, and behavioral disturbances (e.g., Moberg, 1987; Blecha, 2000). Increases in glucocorticoid levels are also associated with stress (Romano *et al.*, 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and "distress" is the cost of the response. During a stress response, an animal uses its glycogen stores, which can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response,

energy resources must be diverted from other functions. This state of distress would last until the animal replenishes its energy reserves to a sufficient level to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (e.g., Holberton *et al.*, 1996; Hood *et al.*, 1998; Jessop *et al.*, 2003; Krausman *et al.*, 2004; Lankford *et al.*, 2005; Ayres *et al.*, 2012; Yang *et al.*, 2022). Stress responses from exposure to anthropogenic sounds or other stressors, and their effects on marine mammals, have also been reviewed (Fair and Becker, 2000; Romano *et al.*, 2002b) and, more rarely, studied in wild populations (e.g., Romano *et al.*, 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales (*Eubalaena glacialis*). In addition, Lemos *et al.* (2022) observed a correlation between higher levels of fecal glucocorticoid metabolite concentrations (indicative of a stress response) and vessel traffic in gray whales. Yang *et al.* (2022) studied behavioral and physiological responses in captive bottlenose dolphins exposed to playbacks of “pile-driving-like” impulsive sounds, finding significant changes in cortisol and other physiological indicators, but only minor behavioral changes. These and other studies lead to a reasonable expectation that some marine mammals would experience physiological stress responses upon exposure to acoustic stressors, and that some of these responses may be classified as “distress.” In addition, any animal experiencing TTS would likely also exhibit stress responses (NRC, 2005); however, distress is unlikely to result from the proposed activities by State Parks based on observations of marine mammals during previous, similar construction projects.

Vocalizations and Auditory Masking

Since many marine mammals rely on sound to find prey, moderate social interactions, and facilitate mating (Tyack, 2008), noise from anthropogenic sound sources can interfere with these functions, but only if the noise spectrum overlaps with the hearing sensitivity of the receiving marine mammal (Southall *et al.*, 2007; Clark *et al.*, 2009; Hatch *et al.*, 2012). Chronic exposure to excessive, though not high-intensity, noise could cause masking at specific frequencies for marine mammals that

rely on sound for vital biological functions (Clark *et al.*, 2009). Acoustic masking is when other noises, such as from human sources, interfere with an animal’s ability to detect, recognize, or discriminate between acoustic signals of interest (e.g., those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.*, 1995; Erbe *et al.*, 2016). Therefore, under certain circumstances, marine mammals whose acoustic sensors or environment are severely masked could also be impaired in maximizing their performance fitness in survival and reproduction. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (e.g., signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal’s hearing abilities (e.g., sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age, or TTS hearing loss), and existing ambient noise and propagation conditions (Hotchkin and Parks, 2013).

The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. For example, low-frequency signals may have less effect on high-frequency echolocation sounds produced by odontocetes (toothed whales) but are more likely to affect the detection of mysticete communication calls and other potentially important natural sounds such as those produced by surf and some prey species. The masking of communication signals by anthropogenic noise may be considered a reduction in the communication space of animals (e.g., Clark *et al.*, 2009), and may result in energetic or other costs as animals change their vocalization behavior (e.g., Miller *et al.*, 2000; Foote *et al.*, 2004; Parks *et al.*, 2007; Di Iorio and Clark, 2010; Holt *et al.*, 2009). Masking can be reduced in situations where the signal and noise come from different directions (Richardson *et al.*, 1995), through amplitude modulation of the signal, or through other compensatory behaviors, including modifications of the signal’s acoustic properties or the signaling behavior (Hotchkin and Parks, 2013). Masking can be tested directly in captive species (e.g., Erbe, 2008), but in wild populations it must be either modeled or inferred from evidence of masking compensation. Few studies have addressed real-world masking sounds likely to be experienced by marine

mammals in the wild (e.g., Branstetter *et al.*, 2013).

Masking occurs in the frequency band the animals use and is more likely to occur in the presence of broadband, relatively continuous noise sources, such as vibratory pile removal or installation. The energy distribution of pile-driving sound spans a broad frequency spectrum and is expected to fall within the audible range of marine mammals present in the project area. Since noises generated from the proposed construction activities are mostly concentrated at low frequencies (<2 kHz), these activities likely have less effect on mid-frequency echolocation sounds produced by odontocetes (toothed whales). However, lower-frequency noises are more likely to affect the detection of communication calls and other potentially important natural sounds, such as surf and prey noise. Low-frequency noise may also affect communication signals when they occur near the noise band, thereby reducing the available communication space for animals (e.g., Clark *et al.*, 2009) and increasing stress levels (e.g., Holt *et al.*, 2009). Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect species at the population, community, or even ecosystem levels, in addition to the individual level. Masking affects both senders and receivers of signals and, at higher levels and for longer durations, could have long-term chronic effects on marine mammal species and populations. However, the noise generated by State Parks’ proposed activities would occur only intermittently, spanning less than 60 in-water construction days (and less for actual pile-driving days; see tables 2 and 3) in a single year during the 5-year authorization period, and in relatively small areas focused on the proposed construction sites. Thus, while State Parks’ proposed activities may mask some acoustic signals relevant to the daily behavior of marine mammals, the short-term duration and limited areas affected make it very unlikely that the fitness of individual marine mammals would be affected.

While in some cases marine mammals have exhibited little to no obviously detectable response to certain common or routine industrialized activities (Cornick *et al.*, 2011; Horsley and Larson, 2023), some animals may, at times, be exposed to received levels of sound above AUD INJ and Level B harassment thresholds during the proposed activities.

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation

click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur across any of these modes and may reflect a need to compete with increased background noise, increased vigilance, or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.*, 2000; Frstrup *et al.*, 2003) or vocalizations (Foote *et al.*, 2004), respectively, while North Atlantic right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.*, 2007). Fin whales have also been documented to lower the bandwidth, peak frequency, and center frequency of their vocalizations in the presence of increased background noise from large vessels (Castellote *et al.*, 2012). Other alterations to communication signals have also been observed. For example, gray whales, in response to playback experiments that exposed them to vessel noise, have been observed to increase their vocalization rate and produce louder signals during periods of increased outboard engine noise (Dahlheim and Castellote, 2016). Alternatively, in some cases, animals may cease sound production during the production of aversive signals (Bowles *et al.*, 1994; Wisniewska *et al.*, 2018).

Under certain circumstances, marine mammals that experience significant masking may also be impaired in maximizing their performance, survival fitness, and reproductive fitness. Therefore, when the coincident (masking) sound is human-made, it may be considered harassment if it disrupts or alters critical behaviors. It is important to distinguish TTS and PTS, which persist after the sound exposure, from masking, which occurs during the sound exposure. Because masking (without resulting in TS) is not associated with abnormal physiological function, it is not considered a physiological effect but rather a potential behavioral effect (though not necessarily one associated with harassment). Therefore, under certain circumstances, marine mammals whose acoustic sensors or environments are severely masked could also be impaired in maximizing their fitness performance for survival and reproduction.

Airborne Acoustic Effects

Pinnipeds near the project site could be exposed to airborne sounds associated with construction activities, depending on their distance from the activities, potentially leading to

behavioral harassment. Airborne noise would primarily be an issue for pinnipeds swimming or hauled out near the project site, within the range of noise levels above the airborne acoustic harassment criteria. However, sightings of Steller sea lions, California sea lions, harbor seals, and northern elephant seals are lower during the late fall and winter months when in-water work would occur (State Parks, 2026). Cetaceans are not expected to be exposed to airborne sounds that would constitute harassment under the MMPA.

We recognize that pinnipeds in the water may be exposed to airborne sounds that could result in behavioral harassment when they lift their heads above the water or when they haul out. Most likely, airborne sound would cause behavioral responses similar to those discussed above for underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as a reduction in vocalizations, or to flush from haulouts, temporarily abandon the area, and/or move further from the source. However, these animals would previously have been “taken” because of exposure to underwater sound above behavioral harassment thresholds, which are, in all cases, larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of additional incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Potential Effects on Marine Mammal Habitat

State Parks’ proposed project activities could have localized, temporary impacts on marine mammal habitat, including prey, due to increased in-water noise levels. Increased noise levels may affect the acoustic habitat and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). Elevated levels of underwater noise would ensonify the project areas where both fishes and mammals occur and could affect foraging success. Additionally, marine mammals may avoid the area during the proposed construction activities; however, any displacement due to noise is expected to be temporary and not to result in long-term effects on individuals or populations.

The total area likely impacted by State Parks’ proposed activities is relatively small compared to the available habitat in Puget Sound and beyond. Avoidance

by potential prey (*i.e.*, fish) of the immediate areas due to increased noise is possible. The duration of fish and marine mammal avoidance of this area after construction stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by fish or marine mammals of either disturbed area would still leave significant foraging habitat nearby.

The proposed projects would occur within the same footprint as the existing marine infrastructure at each of the four State Parks. Most marine mammals do not generally use the relatively shallow areas within the footprint of each project area. Although temporary, intermittent, and short-term habitat alteration may result from increased noise levels during the proposed construction activities, the potential effects on marine mammal habitat would be limited to temporary displacement from pile removal and installation noise, and effects on prey species would be similarly limited in time and space.

Water Quality

A temporary, localized reduction in water quality would occur due to in-water construction activities. Most of this effect would occur during the installation and removal of piles when the bottom sediments are disturbed. The installation and removal of piles would disturb the bottom sediments and may temporarily increase suspended sediment in the project area. During pile extraction, sediment attached to the pile moves vertically through the water column until gravity causes it to slough off. The small resulting sediment plume is expected to settle out of the water column within a few hours. Studies of the effects of turbid water on fish (marine mammal prey) suggest that suspended sediment concentrations can reach thousands of milligrams per liter before an acute toxic reaction is expected (Burton, 1993). Where necessary, a silt curtain will be used to meet water-quality requirements based on results from water-quality monitoring conducted throughout the in-water pile work.

Impacts on water quality from rock-socket/DTH drilling are expected to be similar to those described for pile driving. Impacts on water quality would be localized and temporary, with negligible impacts on marine mammal habitat. Drilling would have negligible impacts on water quality from sediment resuspension because the system would operate within a casing set into the bedrock. The drill would collect excavated material inside the apparatus,

which would then be lifted to the surface and placed onto a barge for subsequent disposal. Additionally, the contractor would deploy a silt curtain around the pile to contain turbidity from rock-socket or DTH drilling, as necessary.

Effects on turbidity and sedimentation are expected to be short-term, minor, and localized. Following completion of sediment-disturbing activities, suspended sediments in the water column should dissipate and return to background levels quickly in all construction scenarios. Although turbidity in the water column can reduce dissolved oxygen levels and irritate the gills of prey fish in the proposed project areas, turbidity plumes associated with the project would be temporary and localized. Additionally, fish in the proposed project areas would be able to move away from areas where plumes may form. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the areas likely impacted by the proposed construction activities are relatively small compared to the available marine mammal habitat in Puget Sound.

Potential Effects on Prey

Sound may affect marine mammals by altering the abundance, behavior, or distribution of prey species (e.g., crustaceans, cephalopods, fishes, zooplankton). Marine mammal prey varies by species, season, and location, and for some, it is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

Fishes use the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (e.g., Zelick *et al.*, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure- and particle-motion sensitivity and detect the motion of surrounding water (Fay *et al.*, 2008). The potential effects of noise on fishes depend on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts on fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects.

Short-duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on their physiological state, past exposures, motivation (e.g., feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fishes (e.g., Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (e.g., Fewtrell and McCauley, 2012; Pearson *et al.*, 1992; Skalski *et al.*, 1992; Santulli *et al.*, 1999; Paxton *et al.*, 2017). However, some studies have shown no or slight reaction to impulse sounds (e.g., Peña *et al.*, 2013; Wardle *et al.*, 2001; Jorgenson and Gyselman, 2009; Cott *et al.*, 2012). More commonly, though, the impacts of noise on fishes are temporary.

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.*, 2014). However, in most fish species, hair cells in the ear continuously regenerate, and auditory function is likely restored when damaged cells are replaced with new ones. Halvorsen *et al.* (2012b) showed that a TTS of 4–6 dB was recoverable within 24 hours in one species. Impacts would be most severe when the individual fish is near the source, and the exposure duration is long. Injury caused by barotrauma can range from slight to severe and can cause death and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.*, 2012a; Casper *et al.*, 2013, 2017).

Fish populations in the proposed project areas that serve as prey for marine mammals could be temporarily affected by noise from pile removal and installation. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially in response to strong and/or intermittent sounds that could harm fish. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

Zooplankton is a food source for several marine mammal species, as well as a food source for fish that are then preyed upon by marine mammals. Population effects on zooplankton could indirectly affect marine mammals. Data are limited on the effects of underwater sound on zooplankton species, particularly construction-related sound (Erbe *et al.*, 2019). Popper and Hastings (2009) reviewed information on the effects of human-generated sound and concluded that no substantive data are available on whether sound levels from pile driving, seismic activity, or other human-made sources would have physiological effects on invertebrates. Any such effects would be limited to the area very near (1 to 5 m) the sound source and would result in no population effects because of the relatively small area affected at any one time and the reproductive strategy of most zooplankton species (short generation, high fecundity, and very high natural mortality). No adverse impact on zooplankton populations is expected from the specified activities, due in part to their high reproductive capacity and naturally high levels of predation and mortality. Any mortality or impacts would be negligible.

The greatest potential impact on marine mammal prey during construction would occur during impact pile driving and rock-socket/DTH drilling. While vibratory pile driving may elicit behavioral responses in fishes, such as temporary avoidance of the area, it is unlikely to cause injuries to fishes or have persistent effects on local fish populations. However, in-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Moreover, construction would have minimal permanent and temporary impacts on benthic invertebrate species, which are also a marine mammal prey source.

Potential Effects on Foraging Habitat

State Parks' proposed MFRP projects are not expected to result in any habitat-related effects that could cause significant or long-term negative consequences for individual marine mammals or their populations, since installation and removal of in-water piles would be temporary and intermittent. The total seafloor area affected by pile installation and removal is relatively small compared to the available foraging habitat just outside the project areas, extending into Puget Sound and beyond. Additionally, any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and

marine mammal foraging habitat throughout the rest of Puget Sound. As described in the preceding, the potential for project construction to affect the availability of prey for marine mammals or to meaningfully impact the quality of physical or acoustic habitat is insignificant. Therefore, the impacts of the MFRP projects are not likely to adversely affect marine mammal foraging habitat in the proposed project areas.

In summary, given the relatively small areas being affected, as well as the temporary and mostly transitory nature of the proposed construction activities, any adverse effects from State Parks' activities on prey habitat or prey populations are expected to be minor and temporary. The most likely impact on fishes at the project sites would be temporary avoidance of the area. Any behavioral avoidance by fish in the disturbed areas would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. Thus, we preliminarily conclude that the impacts of the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impact on marine mammal habitat is not expected to result in significant or long-term consequences for individual marine mammals or to contribute to adverse impacts on their populations.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization under the regulations, which would inform NMFS' consideration of "small numbers," the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines "harassment" as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would predominantly be by Level B harassment, as the use of acoustic sources (*i.e.*, vibratory, impact, and rock-socket/DTH drilling) can potentially disrupt behavioral patterns

in individual marine mammals. There is also potential for AUD INJ (Level A harassment) to occur for two species—the harbor porpoise and the harbor seal. However, the proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As previously described, no M/SI is anticipated or proposed to be authorized for these MFRP projects. Below, we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic criteria above which NMFS believes the best available science indicates that there is some reasonable potential for marine mammals to be behaviorally harassed or incur some degree of AUD INJ; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. While these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is sometimes available (*e.g.*, previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Criteria

NMFS recommends the use of acoustic criteria that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur AUD INJ of some degree (equated to Level A harassment).

Level B Harassment

Though significantly driven by the received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors. These factors are related to the source or exposure context (*e.g.*, frequency, predictability, duty cycle, exposure duration, signal-to-noise ratio, distance to the source) and the environment (*e.g.*, bathymetry, other noises in the area, predators in the area). Therefore, the receiving animal's hearing, motivation, experience, demography, life stage, and depth can be difficult to predict (*e.g.*, Southall *et al.*, 2007; Southall *et al.*, 2021; Ellison *et al.*, 2012). Based on available science and the practical need to use a threshold based on a predictable, measurable

metric for most activities, NMFS typically uses a generalized acoustic threshold based on the received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared sound pressure levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μ Pa)) for continuous (*e.g.*, vibratory pile driving, rock-socket/DTH drilling) and above RMS SPL 160 dB re 1 μ Pa for non-explosive impulsive (*e.g.*, seismic airguns) or intermittent (*e.g.*, scientific sonar) sources. Generally, Level B harassment estimates are based on these behavioral harassment thresholds, potentially including TTS, as TTS is likely to occur at distances from the source that are less than those at which behavioral harassment may occur. TTS of a sufficient degree can manifest as behavioral harassment and reduced hearing sensitivity, and the potential reduction in opportunities to detect important signals (conspecific communication, predators, or prey) may result in behavior patterns that would not otherwise occur.

State Parks' proposed activities include the use of continuous (vibratory pile driving and rock-socket/DTH drilling) and impulsive (impact pile driving and rock-socket/DTH drilling) sources; therefore, the RMS SPL thresholds of 120 and 160 dB re 1 μ Pa are applicable.

Level A Harassment

NMFS' Updated Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 3.0) (NMFS, 2024) identifies dual criteria to assess AUD INJ (Level A harassment) to five different underwater marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). It includes updated thresholds and updated weighting functions for each hearing group, provided in table 5. The references, analysis, and methodology used to develop the criteria are described in NMFS' 2024 Updated Technical Guidance, available at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance-other-acoustic-tools>.

Table 5 -- Thresholds Identifying the Onset of Auditory Injury

Hearing Group	AUD INJ Onset Acoustic Thresholds* (Received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	<i>Cell 1</i> $L_{pk,flat}$: 222 dB $L_{E,LF,24h}$: 183 dB	<i>Cell 2</i> $L_{E,LF,24h}$: 197 dB
High-Frequency (HF) Cetaceans	<i>Cell 3</i> $L_{pk,flat}$: 230 dB $L_{E,HF,24h}$: 193 dB	<i>Cell 4</i> $L_{E,HF,24h}$: 201 dB
Very High-Frequency (VHF) Cetaceans	<i>Cell 5</i> $L_{pk,flat}$: 202 dB $L_{E,VHF,24h}$: 159 dB	<i>Cell 6</i> $L_{E,VHF,24h}$: 181 dB
Phocid Pinnipeds (PW) (Underwater)	<i>Cell 7</i> $L_{pk,flat}$: 223 dB $L_{E,PW,24h}$: 183 dB	<i>Cell 8</i> $L_{E,PW,24h}$: 195 dB
Otariid Pinnipeds (OW) (Underwater)	<i>Cell 9</i> $L_{pk,flat}$: 230 dB $L_{E,OW,24h}$: 185 dB	<i>Cell 10</i> $L_{E,OW,24h}$: 199 dB
*Dual metric criteria for impulsive sounds: Use whichever criterion results in the larger isopleth for calculating AUD INJ onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level criteria associated with impulsive sounds, the PK SPL criteria are recommended for consideration for non-impulsive sources. Note: Peak sound pressure level ($L_{p,0-pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1 μPa²s. In this table, criteria are abbreviated to better reflect International Organization for Standardization (ISO) standards (ISO, 2017). The subscript “flat” is being included to indicate that peak sound pressures are flat weighted or unweighted within the generalized hearing range of marine mammals underwater (<i>i.e.</i>, 7 Hz to 165 kHz). The subscript associated with cumulative sound exposure level criteria indicates the designated marine mammal auditory weighting function (LF, HF, and VHF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level criteria could be exceeded in multiple ways (<i>e.g.</i>, through varying exposure levels, durations, and duty cycles). When possible, applicants should indicate the conditions under which these criteria would be exceeded.		

Ensonified Area

Here, we describe the operational and environmental parameters of the activities used to estimate the area ensonified above acoustic thresholds, including source levels and the transmission-loss coefficient.

The sound field in the project area consists of existing background noise and additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.*, vibratory, impact, and rock-socket/DTH drilling). The source levels assumed for both removal and installation activities are based on reviews of measurements of piles of the same or similar types and dimensions available in scientific literature and from similar coastal construction projects and are presented in table 6. The maximum (underwater) area ensonified is determined by the topography of the project areas within

North Puget Sound, including intersecting landmasses that would reduce the overall area of potential impact.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, bottom composition, and topography. The general formula for underwater TL is:

$$TL = B \times \log_{10} (R_1/R_2)$$

Where:

TL = transmission loss in dB;

B = transmission loss coefficient; for practical spreading equals 15;

R_1 = the distance of the modeled SPL from the driven pile; and,

R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to

which underwater sound propagates away from a sound source depends on various factors, most notably water bathymetry and the presence or absence of reflective or absorptive conditions, including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source ($20 \times \log[\text{range}]$). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 \times \log[\text{range}]$). A practical spreading value of 15 is often used under conditions such as at the project sites. In these environments, sound waves repeatedly reflect off the surface and bottom, reflecting an expected propagation environment between

spherical and cylindrical spreading-loss conditions. Practical spreading loss is assumed here.

The intensity of pile-driving sounds is strongly influenced by factors such as pile type, hammer type, and the physical environment in which the

work is performed. To calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other

locations to develop proxy source levels for the various pile types, sizes, and methods (table 6). Generally, we choose source levels from similar pile types from locations (*e.g.*, geology, bathymetry) similar to the project.

Table 6 -- Underwater proxy sound source levels and references

Pile Driving Method	Pile Diameter (inches)		Distance (m) ¹	Peak	RMS	SELss	Location / Source
	Actual	Proxy					
Continuous							
Vibratory hammer removal (timber)	12–16	N/A	10	N/A	153	N/A	Based on five measured project averages ²
Vibratory hammer installation (steel)	16, 18	24	10	N/A	162	N/A	Friday Harbor Terminal, WA (Laughlin, 2010a; WSDOT, 2020)
Rock drilling (max) ³ (steel)	16, 18	18	1	N/A	183	N/A	Santa Rosa Island, CA (Dazey <i>et al.</i> , 2012)
Impulsive							
Impact hammer installation (steel) ⁴	16, 18	18	12	195	169	166	Wahkiakum Ferry Terminal, WA (Laughlin, 2006 <i>in</i> WSDOT, 2020)

¹ Hydrophone distance in meters (m) from the source.

² NOAA Fisheries analyzed the within- and between-project averages from the following five citations: Caltrans (2020), Greenbusch (2018), Greenbusch (2024), Laughlin (2011), and U.S. Navy (2016).

³ Since the rock-drilling method will not be decided until the project goes out to bid, either rock-socket drilling or DTH drilling might be used. Therefore, State Parks decided to use the “maximum” rock-socket drilling source level (183 dB RMS) vs. the average rock-socket drilling source level (154 dB RMS) (both from Dazey *et al.*, 2012) vs. the DTH source-level guidance of 167 dB RMS (Heyvaert and Reyff, 2021) to determine the isopleths for this installation method, ensuring coverage for both rock-socket drilling and DTH drilling.

⁴ A bubble curtain would be used for attenuation during all impact installations. The Wahkiakum Ferry Terminal project reported attenuated values; therefore, no additional attenuation is applied here.

rms = root mean square; *dB peak* = peak sound level; *SS SEL* = single strike sound exposure level

The ensonified area associated with Level A harassment is more technically challenging to predict because it requires considering a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the 2024 Updated Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence

to help predict potential takes. We note that, because of assumptions in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are likely to be overestimates to some degree, which may lead to an overestimate of potential take by Level A harassment.

However, this optional tool provides a practical alternative for estimating isopleth distances when more

sophisticated modeling methods are unavailable or impractical. For stationary sources such as pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur AUD INJ. The inputs used in the optional User Spreadsheet tool (table 7) and the calculated Level A and Level B

harassment isopleths (table 8) are reported below.

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Table 7 -- NMFS user spreadsheet input

	Vibratory Pile Removal	Vibratory Pile Installation	Impact Pile Driving	Rock Drilling (max)
Equipment Type	12–16-inch timber pile	16, 18-in steel pile (24-inch steel proxy)	16, 18-in steel pile	16-in steel pile
Spreadsheet Tab Used	A.1) Vibratory	A.1) Vibratory	E.1) Impact	A.1) Vibratory
Source Level (dB re: 1 μPa)	153 RMS	162 RMS	166 SEL 169 RMS 195 peak	183 RMS
Weighting Factor Adjustment (kHz)	2.5	2.5	2	2.5
Duration to drive a single pile	15 minutes	45 minutes	--	120 minutes
Number of strikes per pile	--	--	400 strikes	--
Number of piles per day	10	8	8	4
Propagation (xLogR)	15	15	15	15
Distance of sound pressure level measurement (m)	10	10	12	1

Table 8 -- Calculated Level A harassment and Level B harassment isopleths (m) and ensonified areas (km²)

Pile size/type	Level A harassment zone (m/km ²)					Level B harassment zone (m/km ²) (all hearing groups)
	LFC	HFC	VHFC	Phocids	Otariids	
Reid Harbor						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.79]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [1.39]
Impact 16" steel	191 [0.06]	24 [0.00]	295 [0.15]	169 [0.05]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel	108 [0.03]	42 [0.01]	88 [0.02]	139 [0.04]	47 [0]	15,849 [2.53]
Prevost Harbor						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.89]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [3.79]
Impact 16" steel	191 [0.07]	24 [0.00]	295 [0.14]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel	108 [0.03]	42 [0.01]	88 [0.02]	139 [0.05]	47 [0.00]	15,849 [4.85]
Fossil Bay						
Vib removal 16" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.71]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [9.58]
Impact 16" steel	191 [0.09]	24 [0.00]	295 [0.15]	169 [0.07]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel	108 [0.03]	42 [0.01]	88 [0.02]	139 [0.05]	47 [0.00]	15,849 [36.38]
Olga Pier						
Vib removal 16" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [2.46]
Vib install 16" steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [21.24]
Impact 16" steel	191 [0.08]	24 [0.00]	295 [0.16]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16" steel	108 [0.03]	42 [0.01]	88 [0.02]	139 [0.05]	47 [0.00]	15,849 [43.08]
Bowman Bay						
Vib removal 12" (18" proxy) timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.06]
Rosario Pier						
Vib removal 14" timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.36]

Note: For all Level A harassment isopleths <10 m, a 10 m physical interaction radius has been applied. Standard rounding has been applied. The ensonified area (km²) is in brackets.

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Marine Mammal Occurrence

In this section, we present information about the occurrence of marine mammals to inform take calculations. For clarity, this information is summarized in tables 9 and 10, which include the density, frequency, likelihood of occurrence, and group size for each marine mammal species for which take is requested. The available data on marine mammal density near the project area includes

site-specific and nearby survey information reported by the Navy. Specifically, to calculate take, State Parks used (and we concurred with) density data obtained from the U.S. Navy's Marine Species Density Technical Report, particularly the "Inland Waters" and "Strait of Juan de Fuca and San Juan Islands" sections (U.S. Department of the Navy, 2019). State Parks also considered the frequency and likelihood of occurrence information based on historical sightings data and seasonal patterns

within and around the project areas, derived from a 5-year review of sightings reported by the Orca Network.

To accurately describe species' presence near the action area, marine mammals were categorized as either rare (few confirmed sightings), infrequent (confirmed but irregular sightings), likely (confirmed and consistent sightings throughout the year), or seasonal (confirmed and regular sightings during specific seasons).

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Table 9 -- Density, frequency, and likelihood of occurrence of marine mammal species

Species	Density	Project Locations			
		Stuart Island MSP (Reid & Prevost Harbors)	Sucia Island MSP (Fossil Bay)	Olga State Park (Olga Pier)	Deception Pass MSP (Bowman Bay & Rosario Pier)
Minke whale	0.010	Seasonal, Infrequent	Seasonal, Infrequent	Seasonal, Infrequent	Seasonal, Infrequent
Gray whale	0.008	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely
Transient killer whale	0.004	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely
Pacific white-sided dolphin	0.110	Rare	Rare	Rare	Rare
Dall's porpoise	0.079	Rare	Rare	Rare	Rare
Harbor porpoise	2.160	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely
Northern elephant seal	0.003	Seasonal, Rare	Seasonal, Rare	Seasonal, Rare	Seasonal
Harbor seal	0.760	Likely	Likely	Likely	Likely
Steller sea lion	0.003	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely	Seasonal, Likely
California sea lion	0.025	Seasonal, Infrequent	Seasonal, Infrequent	Seasonal, Infrequent	Seasonal, Infrequent

Notes: Rare = Few confirmed sightings; Infrequent = Confirmed, but irregular sightings; Likely = Confirmed and regular sightings of the species in the area year-round; and Seasonal = Confirmed and regular sightings of the species in the area on a seasonal basis. The likelihood of occurrence information is based on a 5-year review of Orca Network sightings. Density data is from the "Inland Waters" and "Strait of Juan de Fuca and San Juan Islands" sections of the U.S. Navy's Marine Species Density Technical Report (U.S. Department of the Navy, 2019).

Table 10 -- Group size and geographic region of marine mammal occurrence

Species	Group Size	Geographic Region	Source / Additional Information
Minke whale	1-3	Salish Sea	Orca Network
Gray whale	1-2	Salish Sea	Orca Network
Transient killer whale	4-6	Salish Sea - 4; Puget Sound - 6	Houghton <i>et al.</i> , 2015; Houghton, 2012; pers. comm. in the U.S. Navy's Marine Structure Maintenance LOA Application (2017)
Pacific white-sided dolphin	10-200	Strait of Georgia	The Whale Trail; one group of 100-200 increasingly seen in the Strait of Georgia
Dall's porpoise	1-3; up to 25	Salish Sea	U.S. Navy's Marine Structure Maintenance LOA Application (2017)
Harbor porpoise	1.9	San Juan Islands	Raum-Suryan and Harvey, 2012; Anderson <i>et al.</i> , 2023
Northern elephant seal	2-10	Puget Sound	Jeffries, 2012; pers. comm. in the U.S. Navy's Marine Structure Maintenance LOA Application (2017); no haulouts in the San Juan Islands
Harbor seal	1-500 at haulouts	Puget Sound	The Whale Trail; inland waters are not breeding grounds; adult males are usually solitary
Steller sea lion	1-2 to <100 at haulouts	Salish Sea	Jeffries, 2012; pers. comm. in the U.S. Navy's Marine Structure Maintenance LOA Application (2017)
California sea lion	1	Salish Sea	Jeffries <i>et al.</i> , 2000

BILLING CODE 3510-22-C*Take Estimation*

In this section, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that could occur and is proposed for authorization. NMFS carefully considered all information and analyses the applicant presented, as well as information in recent IHAs and monitoring reports for projects elsewhere in Puget Sound.

The number of marine mammals that may be exposed to noise exceeding harassment thresholds was determined by calculating the ensonified area for each source, pile type, and pile size within each marine mammal hearing

group at each of the six project locations.

The potential for Level A and Level B harassment exposures was calculated by using the following equation:

Exposure estimate = density × ensonified area (km²) × days of pile removal/installation (per activity and at each location)

Standard rounding was applied at the end to all calculations.

As shown in table 11, State Parks calculated exposure estimates for Level A and Level B harassment for all 10 species for each year of the MFRP, and NMFS agrees with these estimates (see tables 13–16 from State Parks' IHA application). Not all animals passing through any of the six project areas are

expected to be exposed to noise levels equivalent to Level A or Level B harassment. When considering species density within the San Juan Islands and Deception Pass, multiplied by the Level A harassment ensonified area, and further multiplied by the number of in-water days for each potential pile driving or removal activity at each site, the calculated Level A harassment exposures were determined to be zero for all species except the harbor porpoise (four Level A harassment exposures across all 5 years), which has the highest density of any species that are likely to occur in any of the project areas. Level B harassment exposures were similarly calculated for all 10 species and are included in table 11.

Table 11 -- Calculated Level A and Level B harassment exposure estimates by species and by year

Common name	Stock	Calculated Level A Harassment Exposures					Calculated Level B Harassment Exposures				
		Yr 1	Yr 2	Yrs 3 or 4 ¹	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4 ¹	Yr 5	Total
Minke whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	4	6
Gray whale	Eastern N. Pacific	0	0	0	0	0	0	2	0	3	5
Killer whale	Transient	0	0	0	0	0	0	1	0	1	2
Pacific white-sided dolphin	CA/OR/WA	0	0	0	0	0	4	29	0	33	66
Dall's porpoise	CA/OR/WA	0	0	0	0	0	3	21	0	25	49
Harbor porpoise	WA Inland Waters	1	2	0	1	4	79	525	6	620	1,230
Northern elephant seal	California Breeding	0	0	0	0	0	0	1	0	1	2
Harbor seal	WA Northern Inland Waters	0	0	0	0	0	29	187	3	219	438
Steller sea lion	Eastern U.S.	0	0	0	0	0	0	0	0	1	1
California sea lion	U.S.	0	0	0	0	0	0	6	0	8	14

¹Because the timing of construction is uncertain, estimated exposures would occur either during years 3 or 4 of the project.

Using the calculated Level A and Level B harassment exposure estimates as a basis (table 11), State Parks then considered the size of the animals, the species' frequency and likelihood of occurrence in the project areas (table 9), and the monitoring zones for each project location. Additionally, State Parks considered the proximity of pinniped haulouts to certain sites, the potential for large group sizes of certain species (table 10), and the cryptic nature of both harbor porpoises and harbor seals, which affects their detectability.

Based on these factors, State Parks modified their take requests for each year of the MFRP (tables 12 and 13). For example, State Parks increased its request for the number of Level A takes for harbor porpoises and added a request for Level A takes for harbor seals (see table 12), although no takes were originally calculated (see table 11). State Parks also considered the aforementioned factors and decided, in some instances, to increase its request for Level B takes.

Based on the best available science, NMFS generally finds that State Parks' estimates of the types and amounts of take for each species and each project site are a reasonable representation of the amount of take that could occur from the six proposed projects. Table 13 below summarizes the number of takes by Level A harassment and/or Level B harassment, and the maximum annual proposed authorized takes as a percentage of stock abundance.

Table 12 -- Proposed authorized incidental takes by Level A harassment and Level B harassment by species and by year

Common name	Stock	Proposed Level A Harassment Authorized Takes					Proposed Level B Harassment Authorized Takes				
		Yr 1	Yr 2	Yrs 3 or 4 ¹	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4 ¹	Yr 5	Total
Minke whale	Eastern N. Pacific	0	0	0	0	0	1	2	0	3	6
Gray whale	Eastern N. Pacific	0	0	0	0	0	1	2	0	3	6
Killer whale	Transient	0	0	0	0	0	0	30	0	30	60
Pacific white-sided dolphin	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Dall's porpoise	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Harbor porpoise	WA Inland Waters	5	10	0	10	25	250	550	10	650	1,460
Northern elephant seal	California Breeding	0	0	0	0	0	20	5	5	5	35
Harbor seal	WA Northern Inland Waters	5	10	0	5	20	150	250	10	300	710
Steller sea lion	Eastern U.S.	0	0	0	0	0	0	0	0	10	10
California sea lion	U.S.	0	0	0	0	0	10	10	0	15	35

¹Because the timing of construction is uncertain, estimated exposures would occur either during years 3 or 4 of the project.

Table 13 -- Total proposed authorized incidental takes by Level A harassment and Level B harassment for the 5-year effective period of this LOA, and as a maximum annual percentage of stock abundance

Species	Stock	Total Level A	Total Level B	Total Level A + Level B	Maximum Annual Percent of Stock Abundance
Minke whale	Eastern N. Pacific	0	6	6	0.00
Gray whale	Eastern N. Pacific	0	6	6	0.00
Killer whale	Transient	0	60	60	0.09
Pacific white-sided dolphin	CA/OR/WA	0	120	120	0.00
Dall's porpoise	CA/OR/WA	0	120	120	0.00
Harbor porpoise	WA Inland Waters	25	1,460	1,485	0.06
Northern elephant seal	California Breeding	0	35	35	0.00
Harbor seal	WA Northern Inland Waters	20	710	730	0.02
Steller sea lion	Eastern U.S.	0	10	10	0.00
California sea lion	U.S.	0	35	35	0.00

Proposed Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and the manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts on marine mammals, marine mammal species or stocks, and their habitat. This considers

the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure would be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

The mitigation requirements described in the following were proposed by State Parks in their adequate and complete application or are the result of subsequent coordination between NMFS and State Parks. State Parks has agreed that all the mitigation measures are practicable. As required by the MMPA, NMFS concurred that these measures are sufficient to achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat. NMFS describes these below as proposed mitigation requirements and has included them in the proposed regulations.

In addition to the measures described later in this section, State Parks would follow these general mitigation measures:

- A copy of any issued LOA must be in the possession of State Parks, its

designees, and work crew personnel operating under the authority of this LOA.

- Authorized take, by Level A harassment and Level B harassment only, would be limited to the species and numbers listed in table 13.

- The taking by serious injury or death of any marine mammal species listed in table 13 or the taking of any other marine mammal species would be prohibited and may result in the modification, suspension, or revocation of the incidental take regulation and associated LOA, if issued. Any taking exceeding the authorized amounts listed in table 13 would be prohibited and may result in the modification, suspension, or revocation of the incidental take regulation and associated LOA, if issued.

- State Parks must ensure that construction supervisors and crews, the monitoring team, and relevant State Parks staff are trained prior to the start of activities subject to the LOA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

Additionally, the following mitigation measures apply to State Parks' in-water construction activities:

Establishment of Shutdown Zones

State Parks would establish shutdown zones with radial distances as identified in table 14 for all in-water construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area) to minimize potential instances of AUD INJ and more severe behavioral disturbances by

delaying the start of an activity if marine mammals are near the activity.

If a marine mammal is observed entering or within the shutdown zones indicated in table 14, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left the area and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

Pile-driving supervisors and crews, Protected Species Observers (PSOs), and relevant State Parks staff must avoid direct physical interaction with marine mammals during construction activities. If a marine mammal comes within 10 m of such activity, operations must cease, and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

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Table 14 -- Proposed shutdown zones and Level B harassment zones

Site, Activity, Pile Size/Type	Minimum Level A Shutdown Zones (m)					Level B Harassment Zones (m) (all hearing groups)
	LFC Minke, Gray	HFC Transient, PWSD	VHFC Dall's, Harbor porpoise	PW NOES, Harbor seal	OW Steller, CASL	
<i>Reid Harbor</i>						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel	110	50	90	140	50	15,850
<i>Prevost Harbor</i>						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel	110	50	90	140	50	15,850
<i>Fossil Bay</i>						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel	110	50	90	140	50	15,850
<i>Olga Pier</i>						
Vib removal 12"–16" timber	10	10	10	10	10	1,590
Vib install 16", 18" steel	40	20	30	50	20	6,310
Impact 16", 18" steel	200	30	300	170	70	50
Rock drilling (max) 16", 18" steel	110	50	90	140	50	15,850
<i>Bowman Bay</i>						
Vib removal 12" timber pile	10	10	10	10	10	1,590
<i>Rosario Pier</i>						
Vib removal 14" timber pile	10	10	10	10	10	1,590

Note: LFC = low-frequency cetacean; HFC = high-frequency cetacean; VHFC = very high-frequency cetacean; PW = phocid (in-water); OW = otariid (in-water); Transient = Transient killer whale; PWSD = Pacific white-sided dolphin; NOES = Northern elephant seal; CASL = California sea lion.

driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile driving activity. Additionally, monitoring would be conducted for 30 minutes whenever a break in the specified activity (*i.e.*, vibratory pile driving/removal, impact pile driving, rock-socket drilling, or DTH drilling) occurs for 30 minutes or longer. Pre-start clearance monitoring would be conducted during periods of sufficient visibility for the lead PSO to determine that the shutdown zones indicated in table 14 are clear of marine mammals.

Soft Start

State Parks would use soft-start techniques when using impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent sets of reduced energy strikes. A soft start would be implemented at the start of each day's impact pile driving and at any time following its cessation for a period of 30 minutes or longer. Soft-start procedures provide additional protection for marine mammals by giving them a warning and/or a chance to leave the area before the hammer operates at full capacity.

Noise Attenuation System

State Parks would use a bubble curtain during impact pile driving. The bubble curtain would be operated as necessary to achieve optimal performance. At a minimum, the bubble curtain would distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column, the lowest bubble ring would be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring would ensure 100 percent substrate contact. No parts of the ring or other objects would prevent full substrate contact. In addition, air flow to the bubble curtain would be balanced around the circumference of the pile.

In summary, based on our evaluation of State Parks' proposed mitigation measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to promulgate a rulemaking for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the

monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that would result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

The monitoring and reporting requirements described in the following were proposed by State Parks in its adequate and complete application and/or are the result of subsequent coordination between NMFS and State Parks. State Parks has agreed that all the requirements are practicable. NMFS describes these below as proposed requirements and has included them in the proposed regulations.

Visual Monitoring

State Parks would submit a Marine Mammal Monitoring and Mitigation Plan (4MP; Plan) to NMFS for approval at least 90 calendar days before the start of construction and, if approved, abide by the Plan. Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

- PSOs would be independent from State Parks and have no other assigned tasks during monitoring periods;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA or letter of concurrence;
- Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to an ITA issued by NMFS;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would have prior experience performing the duties of a PSO during construction activity pursuant to an ITA or Letter of Concurrence issued by NMFS; and
- PSOs would be approved by NMFS prior to beginning any activity subject to the LOA.

State Parks would establish monitoring locations as described in State Parks' 4MP (see Appendix C of State Parks' application and the monitoring plans for each of the six project locations), in accordance with the following conditions:

- For all pile-driving activities, a minimum of one PSO would be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones;
- Three PSOs would be assigned to each active vibratory pile-driving location;
- Four PSOs would be assigned to each active rock-socket drilling and DTH drilling location;
- PSOs would record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in any issued LOA; and
- PSOs would contact the Orca Network by phone or via social media (*e.g.*, its Facebook page) before any pile-driving activities to receive a daily update on killer whale and large cetacean sightings.

Reporting

State Parks would be required to submit an annual draft summary report

on all construction activities and marine mammal monitoring results to NMFS within 90 calendar days following the end of monitoring for all in-water construction, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. The draft comprehensive 5-year summary report would also be submitted to NMFS within 90 calendar days of the end of year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

- Dates and times (beginning and end) of all marine mammal monitoring;
- Activities occurring during each daily observation period, including: (a) the number and type of piles that were driven or removed and the method (*i.e.*, impact, vibratory, rock-socket drilling, and DTH drilling); and (b) the total duration of driving time for each pile and/or number of strikes for each pile;
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at the beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions, including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following minimum information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;
- Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition);
- Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);

- Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

- Number of marine mammals detected within the estimated harassment zones, by species; and
- Summary information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

If no comments are received from NMFS within 30 calendar days after the submission of the draft summary report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final summary report addressing NMFS' comments will be submitted within 30 calendar days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in State Parks' activities discover an injured or dead marine mammal, State Parks would report the incident to the NMFS Office of Protected Resources and to the NMFS West Coast regional stranding network as soon as feasible. If the specified activity clearly caused the death or injury, State Parks would immediately cease the specified activities until NMFS is able to review the circumstances of the incident. State Parks would not resume their activities until notified by NMFS. The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- Photographs or video footage of the animal(s) (if equipment is available); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the

specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual recruitment or survival rates (*i.e.*, population-level effects). An estimate of the number of takes alone is not enough information upon which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.*, intensity, duration), the context of any impacts or responses (*e.g.*, critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.*, as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in table 13, given that the anticipated effects of these activities on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

NMFS has identified key factors that may be used to assess the level of analysis required to determine whether potential impacts associated with a specified activity are negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the species or stock, and the status of the species or stock. The potential effects of the specified activities on all the species listed in table 13 are discussed below.

Pile driving associated with State Parks' MFRP, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the

specified activities may result in take, in the form of Level B harassment and, for harbor porpoises and harbor seals, Level A harassment, from underwater pile-driving sounds. Potential takes could occur if marine mammals are present in zones ensounded above the thresholds for Level A harassment or Level B harassment, identified above, during these activities.

No serious injury or mortality is expected over the 5-year LOA period, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for 11 marine mammal species due to the rarity of the species near the project area and/or the application of proposed mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species (see Proposed Mitigation section).

Level A harassment takes have been proposed for two species (harbor porpoise and harbor seal) that may occur in the project area. These takes account for the possibility that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for long enough to be taken by Level A harassment. Additionally, in some cases, this would account for the possibility that an animal could enter a shutdown zone without detection, given the various obstructions along the shoreline, and remain in the Level A harassment zone long enough to be taken by Level A harassment before being observed and a shutdown occurring. That said, any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ (*i.e.*, minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving, not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity). Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here to incur any more than a small degree of AUD INJ.

Additionally, the amount of take by Level A harassment proposed for authorization is low. As stated above, for 11 marine mammal species, NMFS anticipates no take by Level A harassment over the duration of State Parks' planned activities; NMFS expects no more than 25 takes by Level A harassment for the harbor porpoise and 20 takes by Level A harassment for harbor seals. However, in both species, if hearing impairment occurs, the affected animal is most likely to lose only a few dB in hearing sensitivity.

Due to the small degree anticipated, any AUD INJ potentially incurred would not be expected to affect the reproductive success or survival of any individual, much less result in adverse impacts on the species or stock.

Additionally, some individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. However, because the hearing sensitivity of those that incur TTS is expected to fully recover within minutes to hours, it is unlikely that the brief hearing impairment would impact their long-term ability to forage and communicate with conspecifics. Therefore, it would not likely impact the reproduction or survival of any marine mammal, nor would it likely impact the recruitment or survival rates of the species or stock.

Effects on individuals taken by Level B harassment in the form of behavioral disruption are expected to be mild, short-term, and temporary. Based on reports in the literature as well as monitoring of other similar activities, effects would likely be limited to reactions such as avoidance, increased swimming speeds, increased surface time, or decreased foraging (if such activity were occurring) (*e.g.*, Thorson and Reyff, 2006). Most likely, individuals would move away from the sound source and temporarily avoid the area where pile driving is occurring. We expect that any avoidance of the project areas by marine mammals will be temporary and that any marine mammals that avoid the project areas during construction will not be permanently displaced. Short-term avoidance of the project areas and the energetic impacts of interrupted foraging or other important behaviors are unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals are not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The potential for harassment is minimized by implementing the proposed mitigation measures. During all impact driving, soft-start procedures and monitoring of established shutdown zones shall be required, significantly reducing the possibility of injury. Given sufficient notice through soft start (for impact driving), marine mammals are expected to move away from an irritating sound source before it becomes potentially injurious. To reduce in-water noise, vibratory pile driving would be the primary installation method for the project, and impact hammers would be used only to

seat pile tips into fractured bedrock ahead of hammering or drilling operations or if the material is too dense to penetrate with a vibratory hammer.

The project is also not expected to have significant adverse effects on the habitats of affected marine mammals. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

There is a BIA for feeding gray whales that overlaps with the project area, but it is active from February to June (Calambokidis *et al.*, 2024), which overlaps very minimally with the planned annual project periods (August 1 to February 15). This indicates that the projects' impact on gray whales would be minimal or nonexistent and therefore would not affect their reproduction or survival.

Finally, it is unlikely that minor noise effects in small, localized areas of habitat would significantly affect the reproduction or survival of individual species, let alone the annual recruitment or survival rates of these stocks. Taken together, we believe that these factors, along with available evidence from similar activities, indicate that the potential effects of the specified activities would be only minor and short-term for individuals. The specified activities are not expected to impact recruitment or survival rates and therefore will not cause population-level impacts.

In summary, as discussed above, the following factors mainly support our initial determination that the impacts from these MFRP activities are unlikely to adversely affect any species or stocks through effects on annual recruitment or survival rates:

- No serious injury or mortality is anticipated or proposed for authorization;
- No take by Level A harassment is anticipated or proposed for 8 of the 10 species;
- Take by Level A harassment for two species would be very small amounts and be of low severity;
- Proposed takes by Level B harassment would be primarily in the

form of behavioral disturbance, leading to avoidance of the project areas around where pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints affecting their populations;

- The lack of anticipated significant or long-term negative effects on marine mammal habitat;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term, and therefore, any associated impacts on marine mammal feeding are not likely to cause significant or long-term effects on individuals or lead to adverse impacts on their populations;

- The ensnified areas are small relative to the overall habitat ranges of all species and stocks, and overlap with known areas of important habitat is minimal; and

- State Parks would implement mitigation measures, including visual monitoring and shutdown zones, to minimize the number of marine mammals exposed to injurious levels of sound.

Based on the analysis contained herein of the likely effects of the specified MFRP activities on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers, so, in practice, when estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate abundance estimate for the relevant species or stock to determine whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered a small number. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 13 shows the number of animals that could be exposed to the

received noise levels that could cause Level A and/or Level B harassment for the proposed MFRP project in North Puget Sound. We propose to authorize the incidental take of 10 marine mammal species (10 stocks) over the 5-year project period. The maximum annual number of takes proposed for authorization, which occurs in year 5 of the LOA, is less than 1 percent across all 10 species.

Based on the analysis contained herein of the proposed activities (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance when issuing incidental take authorizations, NMFS consults internally whenever we propose to authorize the take of ESA-listed species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from the proposed MFRP projects, nor will the proposed action destroy or adversely modify any designated critical habitat. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Regulations

As a result of these preliminary determinations, NMFS proposes to promulgate regulations that allow for the authorization of take, by Level A harassment and Level B harassment, incidental to in-water construction activities in North Puget Sound, WA, associated with State Parks' MFRP for a 5-year period from September 1, 2026, through August 31, 2031, provided the

previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed LOA can be found at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>.

Request for Information

NMFS requests that interested persons submit comments, information, and suggestions regarding State Parks' request and the proposed regulations (see **ADDRESSES**). All comments will be reviewed and evaluated as we prepare a final rule and make final determinations on whether to issue the requested authorization. This proposed rule and referenced documents provide all environmental information relating to our proposed action for public review.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this proposed rule is not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*), the Senior Lead Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. State Parks is a state governmental program focused on improving state parks throughout Washington. State Parks is the sole entity subject to the requirements of the proposed rule, and it is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA, because it is a department of the state government. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–

0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects

Acoustics, Administrative practice and procedure, Construction, Marine mammals, Mitigation and monitoring requirements, Reporting requirements, Wildlife.

Dated: August 4, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS proposes to amend 50 CFR part 217 as follows:

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

■ 1. The authority citation for part 217 continues to read as follows:

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

■ 2. Add Subpart AAA, consisting of §§ 217.520 through 217.528, to read as follows:

Subpart AAA—Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

Sec.

- 217.520 Specified activity and specified geographical region.
- 217.521 Effective dates.
- 217.522 Permissible methods of taking.
- 217.523 Prohibitions.
- 217.524 Mitigation requirements.
- 217.525 Requirements for monitoring and reporting.
- 217.526 Letters of Authorization.
- 217.527 Modifications of Letters of Authorization.
- 217.528 [Reserved]

Subpart AAA—Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

§ 217.520 Specified activity and specified geographical region.

(a) The incidental taking of marine mammals by the Washington State Parks and Recreation Commission's (State Parks) Marine Facilities Replacement Program (MFRP) may be authorized in a letter of authorization (LOA) only if it occurs at or around the specified state parks in North Puget Sound, WA, incidental to the specified activities outlined in paragraph (b) of this section.

Requirements imposed on State Parks in this subpart must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified activities are in-water construction activities associated with the MFRP at six marine facilities at four state parks in North Puget Sound, WA. This includes Reid and Prevost Harbors at Stuart Island Marine State Park, Fossil Bay at Sucia Island Marine State Park, Bowman Bay and Rosario Pier at Deception Pass State Park, and Olga Pier at Olga State Park.

§ 217.521 Effective dates.

Regulations in this subpart are effective from September 1, 2026, until August 31, 2031.

§ 217.522 Permissible methods of taking.

Under an LOA issued pursuant to § 216.106 of this chapter, State Parks and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within the specified geographical region by harassment associated with the specified activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.523 Prohibitions.

(a) Except for the takings permitted in § 217.522 and authorized by an LOA issued under § 216.106 of this chapter, it is unlawful for any person to do any of the following in connection with the specified activities:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

§ 217.524 Mitigation requirements.

(a) When conducting the specified activities identified in § 217.520(b), the mitigation measures contained in this section and any LOA issued under this subpart must be implemented.

(1) A copy of any issued LOA must be in the possession of State Parks, its designees, and work crew personnel operating under the authority of this LOA.

(2) State Parks must ensure that construction supervisors and crews, the monitoring team, and relevant State Parks staff are trained prior to the start of activities subject to the LOA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

(3) State Parks must employ Protected Species Observers (PSOs) and establish monitoring locations as described in any issued LOA and the relevant Marine Mammal Monitoring Plan (Monitoring Plan). State Parks must monitor the project area to the maximum extent possible based on the required number of PSOs, the required monitoring locations, and environmental conditions.

(4) Monitoring must take place from 30 minutes prior to initiation of pile driving activity (*i.e.*, pre-start clearance monitoring) through 30 minutes post-completion of pile-driving activity.

(5) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in the LOA are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

(6) If a marine mammal is observed entering or within the shutdown zones indicated in the LOA, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in any issued LOA.

(7) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in the LOA or 15 minutes have passed without re-detection of the animal.

(8) State Parks must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent sets of reduced energy strikes. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

(9) State Parks must use a bubble curtain during impact pile driving. The bubble curtain must be operated as necessary to achieve optimal performance. At a minimum, State Parks must adhere to the following performance standards:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column.

(ii) The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact.

(iii) Air flow to the bubblers must be balanced around the circumference of the pile.

(10) Pile driving activity must be halted (as described in any issued LOA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized, but the authorized number of takes has been met, entering or within the harassment zone (as shown in the LOA).

(11) State Parks, construction supervisors and crews, PSOs, and relevant State Parks staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease, and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

(b) [Reserved]

§ 217.525 Requirements for monitoring and reporting.

(a) State Parks must submit a Monitoring Plan to NMFS for approval at least 90 calendar days before the start of construction and abide by the Plan, if approved.

(b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent from State Parks and have no other assigned tasks during monitoring duties.

(2) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization or letter of concurrence.

(3) Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience

performing the duties of a PSO during construction activity pursuant to an incidental take authorization issued by NMFS.

(4) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to an incidental take authorization or Letter of Concurrence issued by NMFS.

(5) PSOs must be approved by NMFS prior to beginning any activity subject to the LOA.

(c) State Parks must establish monitoring locations as described in the Monitoring Plan. For all pile-driving activities, a minimum of one PSO must be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones; three PSOs must be assigned to each active vibratory pile-driving location; and four PSOs must be assigned to each active rock-socket drilling and DTH drilling location.

(d) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in any issued LOA.

(e) PSOs must contact the Orca Network before any pile-driving activities to get a daily update on the latest killer whale and large cetacean sightings.

(f) State Parks must submit a draft annual summary monitoring report on all monitoring conducted during each project year within 90 calendar days of the completion of marine mammal monitoring, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 calendar days of the end of year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

(1) Dates and times (beginning and end) of all marine mammal monitoring;

(2) Activities occurring during each daily observation period, including: (a) the number and type of piles that were driven or removed and the method (*i.e.*, impact, vibratory, rock-socket drilling, and DTH drilling); and (b) the total

duration of driving time for each pile and/or number of strikes for each pile;

(3) PSO locations during marine mammal monitoring; and

(4) Environmental conditions during monitoring periods (at the beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions, including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following minimum information must be reported:

(1) Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;

(2) Time of the sighting;

(3) Identification of the animal(s) (*e.g.*, genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(4) Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;

(5) Estimated number of animals (min/max/best estimate);

(6) Estimated number of animals by cohort (*e.g.*, adults, juveniles, neonates, group composition);

(7) Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);

(8) Description of any marine mammal behavioral observations (*e.g.*, observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.*, no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(9) Number of marine mammals detected within the estimated harassment zones, by species; and

(10) Summary information about implementation of any mitigation (*e.g.*, shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

If no comments are received from NMFS within 30 calendar days after submission of the draft summary report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final summary report addressing NMFS' comments must be submitted within 30 calendar days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

(g) State Parks must submit all PSO data electronically in a format that can

be queried, such as a spreadsheet or database (*i.e.*, digital images of data sheets are not sufficient).

(h) Reporting injured or dead marine mammals:

(1) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, State Parks must report the incident to the NMFS Office of Protected Resources (OPR) and to the NMFS West Coast regional stranding coordinator (1–866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, State Parks must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. State Parks must not resume their activities until notified by NMFS.

(2) The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location if known and applicable;

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

(3) [Reserved]

§ 217.526 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, State Parks must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the effective dates of this subpart.

(c) If an LOA expires prior to the end of the effective dates of this subpart, State Parks may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, State Parks must apply for and obtain a modification of the LOA as described in § 217.527.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.*, mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.527 Modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activities may be modified upon request by State Parks, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA were implemented.

(b) For LOA modification by State Parks that includes changes to the specified activity or the mitigation, monitoring, or reporting measures that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the

associated analysis of the change and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activity may be modified by NMFS under the following circumstances:

(1) NMFS may modify the existing mitigation, monitoring, or reporting measures, after consulting with State Parks regarding the practicability of the modifications, if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from State Parks' monitoring;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to § 216.106 of this chapter and § 217.526, an LOA may be modified without prior notice or opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 217.528 [Reserved]

[FR Doc. 2026–16329 Filed 8–10–26; 8:45 am]

BILLING CODE 3510–22–P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 153

August 11, 2026

Part IV

Department of Homeland Security

8 CFR Parts 1, 103, and 106

Mandatory Electronic Filing (e-Filing); Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 103, and 106

[CIS No. 2853–26; DHS Docket No. USCIS–2026–0232]

RIN 1615–AD19

Mandatory Electronic Filing (e-Filing)

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Interim final rule (IFR) with request for comments.

SUMMARY: This interim final rule (IFR) amends U.S. Department of Homeland Security (DHS) regulations to provide: USCIS may require mandatory electronic filing (e-filing) of certain benefit requests; the process USCIS will follow to require a benefit request to be e-filed; and how a waiver of the e-filing requirement for those individuals unable to file electronically may be requested. This rule is intended to increase digital intake and processing to move USCIS and requestors from a mostly paper process to an electronic process and further enhance the integrity of the immigration system and the security of the United States.

DATES: This IFR is effective August 11, 2026.

Comments must be received on or before October 13, 2026. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

Comments on the Paperwork Reduction Act section of this interim final rule must be submitted by October 13, 2026.

ADDRESSES: You may submit comments on the entirety of this interim final rule package, identified by DHS Docket No. USCIS–2026–0232, through the Federal eRulemaking Portal: <http://www.regulations.gov>. A summary of this rule found above may also be found at <https://www.regulations.gov>. Follow the website instructions for submitting comments. USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS also is not accepting mailed comments at this time. If you cannot submit your comment by using <http://www.regulations.gov>, please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Management Directorate, U.S.

Citizenship and Immigration Services (USCIS), DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 711.

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Table of Abbreviations

ACH—Automated Clearing House
 APA—Administrative Procedure Act
 BIA—Board of Immigration Appeals
 CBP—U.S. Customs and Border Protection
 CFR—Code of Federal Regulations
 DHS—Department of Homeland Security
 DOJ—Department of Justice
 DOL—Department of Labor
 DOS—Department of State
 ECAS—EOIR Courts and Appeals System
 ELIS—Electronic Immigration System
 EOIR—Executive Office of Immigration Review
 E.O.—Executive Order
 FCC—Federal Communications Commission
 FDNS—Fraud Detection and National Security Directorate
 FERC—Federal Energy Regulatory Commission
 FY—Fiscal Year

GPEA—Government Paperwork Elimination Act
 FOIA—Freedom of Information Act
 ICE—Immigration and Customs Enforcement
 IFR—Interim Final Rule
 INA—Immigration and Nationality Act
 INS—Immigration and Naturalization Service
 LCA—Labor Condition Application
 NEPA—National Environmental Policy Act
 NFTS—National File Tracking System
 NOID—Notice of Intent to Deny
 OCR—Optical Character Recognition
 OMB—Office of Management and Budget
 PDF—Portable Document Format
 PDFi—Portable Document Format Intake
 PRA—Paperwork Reduction Act
 RFE—Request for Evidence
 SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
 Secretary—Secretary of Homeland Security
 TPS—Temporary Protected Status
 UMRA—Unfunded Mandates Reform Act of 1995
 USAC—Universal Service Administrative Company
 U.S.C.—United States Code
 USCIS—U.S. Citizenship and Immigration Services
 VAWA—Violence Against Women Act

I. Public Participation

The U.S. Department of Homeland Security (DHS) invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this interim final rule. DHS also invites comments relating to the economic, environmental, or federalism effects possibly resulting from this interim final rule. Comments must be submitted in English, or an English translation must be provided. Comments providing the most assistance to U.S. Citizenship and Immigration Services (USCIS) in implementing these changes will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the interim final rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2026–0232 for this interim final rule. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider

limiting the amount of personal information you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at <http://www.regulations.gov>.

Docket: For access to the docket and to read background documents or comments received, go to <http://www.regulations.gov>, referencing DHS Docket No. USCIS–2026–0232. You may also sign up for email alerts on the online docket to be notified when comments are posted or additional rulemaking is published.

II. Executive Summary

A. Purpose of the Regulatory Action

DHS issues this rule to implement Executive Order (E.O.) 14247, Modernizing Payments To and From America's Bank Account, which directs the Secretary of Homeland Security to take appropriate action to eliminate the need for the U.S. Department of the Treasury's physical lockbox services and expedite requirements to receive the payment of Federal receipts, including fees, through electronic means. 90 FR 14001 (published Mar. 28, 2025). As long as USCIS intakes paper-based filings, USCIS must rely on physical lockbox services, which USCIS currently receives from Treasury, to intake and process these filings. This rule amends the regulations to provide when USCIS may use its discretion to require the use of electronic filing (e-filing) to submit a benefit request. This change will increase efficiency, promote the integrity of the immigration system, and reduce operational waste attributable to the submission and maintenance of paper benefit requests.¹ This rule will also speed up USCIS' transition to a fully electronic filing process, realize cost savings, and improve the availability of USCIS data for advanced analytics to reduce fraud, enhance national security, and protect the integrity of the lawful immigration system in support of E.O. 14161, Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats. 90 FR 8451 (Jan. 30, 2025).

B. Legal Authority

The authority for the Secretary of Homeland Security (Secretary) to issue

this IFR is found in section 103(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, and section 101(b)(1)(F) of the Homeland Security Act (HSA), 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to “ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.” As related to the fee established in 8 CFR 106.2 for requests to waive the e-filing requirement, INA section 286(m), 8 U.S.C. 1356(m) authorizes DHS to charge fees for adjudication and naturalization services at a level to “ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants.”

C. Summary of the Regulatory Action

This rule amends DHS regulations to permit USCIS to require e-filing for any benefit request USCIS has made available for e-filing for at least 180 days.² When USCIS decides to mandate e-filing of an eligible benefit request, USCIS will publish notification of the e-filing requirement on its website and provide an additional 60-day grace period for individuals to comply with the e-filing requirement. The e-filing requirement, when mandated, will require individuals to use an online account to submit benefit requests to USCIS, either by completing the form entirely online or uploading a Portable Document Format (PDF) of the completed form through their online account. This rule also establishes a process for certain individuals for whom e-filing creates an undue hardship to seek a waiver of the e-filing requirement.

For purposes of this rule, DHS uses the term “requestor” to refer to anyone submitting any benefit request to USCIS for any purpose. Attorneys and accredited representatives are included in the term “requestor.”

In this rule, DHS is amending:

- 8 CFR 1.2 to define e-file to include submitting a benefit request, supporting evidence, documents, notices, and communication electronically in any manner made available and approved by

USCIS, including by completing the form online, in a web portal, electronic interface, or by uploading a PDF of the completed form through an approved online account.

- 8 CFR 103.2(a)(1) by adding a new paragraph (a)(1)(i) that clarifies the weight of form instructions.
- 8 CFR 103.2(a)(1) by adding subparagraph (ii) to permit USCIS to require e-filing any time after a form has been available for e-filing for at least 180 days and to specify USCIS will inform the public of mandatory e-filing requirements on its website.
- 8 CFR 103.2(a)(1) by adding subparagraph (iii) to establish the process an individual must use to seek a waiver of the e-filing requirement.
- 8 CFR 106.2 by adding a new paragraph to establish a new form and fee for an individual to apply for a waiver of the e-filing requirement.
- 8 CFR 106.3 by adding a new paragraph to specify when a fee waiver may be available to a requestor applying for a waiver of the e-filing requirement.

D. Summary of Costs and Benefits

For the 10-year implementation period of the rule (fiscal years (FYs) 2027 through 2036), DHS estimates annual cost savings to requestors will be about \$533 million. These savings result from requestors no longer filing paper-based benefit requests, avoiding the need to re-file rejected paper forms, and reducing the time burden associated with paper filing. DHS also estimates requestors will incur about \$15 million annually in new costs related to the e-filing waiver form, including the opportunity cost of the time needed to complete the form, e-filing waiver form fee, and mailing expenses. On net, the rule is expected to generate approximately \$518 million in annual cost savings to requestors.

In addition to these cost impacts, the rule generates annual transfers between the government and requestors. On an annual basis, DHS estimates an e-filing fee discount will transfer about \$140 million from the government to requestors.

Over the FY 2027–2036 implementation period, DHS estimates total undiscounted net cost savings of about \$5,181 million and undiscounted transfers of about \$1,400 million (from the government to requestors). When discounted at 3 percent, the 10-year net cost savings are approximately \$4,420 million and net transfers are approximately \$1,194 million. When discounted at 7 percent, the 10-year net cost savings are approximately \$3,639 million and net transfers are approximately \$983 million. These

¹ Benefit request means any application, petition, motion, appeal, or other request relating to an immigration or naturalization benefit. 8 CFR 1.2.

² Many of the forms identified in section III.B.3 of this preamble will have been available for e-filing for at least 180 days as of this rule's publication date, meaning USCIS may mandate e-filing of these forms any time after this rule's publication subject to the waiver form being approved for use.

totals are equivalent to annualized net cost savings of about \$518 million and annualized transfers of about \$140 million at both the 3-percent and 7 percent discount rates.

DHS anticipates that some filers may experience unquantifiable costs to switch to electronic filing that are not fully captured in the quantified estimates. Although e-filing is expected to reduce filing time and other burdens on average, individual outcomes will vary based on the filer's circumstances, prior investments in paper-based processes, and familiarity with online systems. Organizations with established paper-based software and workflows may see smaller time savings and incur one-time transition costs to learn the new process, update procedures, train staff, and modify tools. These burdens can include search and evaluation costs, transfer costs, and learning costs; their magnitude will differ across filers. In addition, current e-filing constraints and preferences for paper packages, particularly in complex cases, may increase perceived risk and require extra effort to build confidence in online submissions. Because these costs are heterogeneous and difficult to measure, DHS has not quantified them.

DHS expects mandatory e-filing to generate substantial qualitative cost savings and operational benefits for both requestors and the Federal Government. For requestors, e-filing reduces preventable errors and adjudication delays, lowering the time and indirect costs of waiting to work, travel, or change status and reducing the risk of losing eligibility due to rejected or incomplete paper submissions. DHS believes e-filing will deliver non-monetary benefits by making the process faster, easier to use, more secure, and more transparent. For USCIS, e-filing is expected to significantly streamline operations, reduce the ongoing costs and risks of paper-based processing, and improve data quality, coordination, and security across the immigration system. While DHS will incur some information technology and operational expenses to maintain these systems and support users, these costs are modest relative to the long-term efficiencies and benefits gained.

III. Background and Purpose

A. Mandate for Reform

Historically, benefit requests handled by USCIS and the former Immigration and Naturalization Service (INS) existed in a purely paper world. Requestors mailed or hand-delivered paper forms and submitted supporting evidence by

mail or in person. USCIS stored requests in a physical file, known as an Alien File or A-File.³ USCIS reviewed and adjudicated benefit requests on paper and physically mailed, receipted, and stored requests, evidence, notices, and other materials.

More recently, both Congress and the Executive Branch have increased the use of internet and technology in government administration and delivery. In 1998, Congress passed the Government Paperwork Elimination Act (GPEA) recognizing the potential of technology and the internet to improve government services, increase efficiency, and encourage the use of technology to achieve these efficiencies. Public Law 105–277, title XVII (Oct. 21, 1998). The December 17, 1999, Presidential memorandum, “Electronic Government,” provides that, by October 2003, transactions with the Federal Government should be available online for online processing of services.⁴ Other guidance called on agencies to provide electronic maintenance, submission, or disclosure of information when practicable as a substitute for paper.⁵ Section 461 of the Homeland Security Act of 2002⁶ requires DHS to study online filing and establish a system for applicants to track their applications online.⁷ In addition, the E-Government Act of 2002 promotes use of the internet and emerging technologies by government agencies. Public Law 107–347, 116 Stat. 2899 (Dec. 17, 2002).⁸

DHS has facilitated some electronic processing through regulatory change.

³ A-Files are individual files identified by an individual's Alien Registration Number (A-Number), a unique eight- or nine-digit number generally assigned to an alien at the time the A-File is created. Immigration and Naturalization Service (INS) opened or consolidated A-Files for every immigrant who arrived after April 1, 1944, or naturalized after April 1, 1956, and for immigration law enforcement matters. See USCIS, A-Files Numbered Below 8 Million, <https://www.uscis.gov/records/genealogy/historical-record-series/a-files-numbered-below-8-million> (last updated Jan. 24, 2025).

⁴ Memorandum on Electronic Government (Dec. 17, 1999), <https://www.gpo.gov/fdsys/pkg/PPP-1999-book2/pdf/PPP-1999-book2-doc-pg2317.pdf>.

⁵ OMB Procedures and Guidance on Implementing Government Paperwork Elimination Act, Memoranda 00–10, (Apr. 25, 2000), <https://www.whitehouse.gov/wp-content/uploads/2017/11/2000-M-00-10-OMB-Procedures-and-Guidance-on-Implementing-the-Government-Paperwork-Elimination-Act.pdf>.

⁶ Homeland Security Act of 2002, Public Law 107–296, section 461, 116 Stat. 2135, 2202 (Nov. 25, 2002), 6 U.S.C. 278; see also INA sec. 103, 8 U.S.C. 1103.

⁷ Generally, requestors can use the receipt number of their filing to check the status of the filing online. See USCIS, Case Status Online, <https://egov.uscis.gov/> (last visited Dec. 17, 2025).

⁸ Section 2(b) of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2899, 2900–01 (Dec. 17, 2002).

See 68 FR 23010 (Apr. 29, 2003) (2003 rule); 76 FR 53764 (Aug. 29, 2011) (“Immigration Benefits Business Transformation, Increment I,” or 2011 rule). The 2003 rule permitted e-filing and electronic signatures as a first step toward implementing GPEA.⁹ 68 FR 23010 (Apr. 29, 2003).¹⁰ The 2011 rule added references to electronic processes in several regulations to facilitate the transition to an electronic environment. 76 FR 53764, 53766 (Aug. 29, 2011). However, to date, DHS has not published a rule focused on shifting to a fully e-filed process.¹¹

Consistent with GPEA and the E-Government Act, E.O. 13781, Comprehensive Plan for Reorganizing the Executive Branch, instructed the Director of the Office of Management and Budget (OMB) to propose a plan to improve the efficiency, effectiveness, and accountability of the Executive Branch. 82 FR 13959 (Mar. 16, 2017). The OMB Report, “Delivering Government Solutions in the 21st Century,” then recognized the outdated reliance on paper-based processes and prioritized the transition of Federal agencies’ business processes to an electronic environment.¹² The report noted that Federal agencies spend billions of dollars on paper processing, and paper records and highlighted data, accountability, and transparency.¹³ The report cites USCIS as an agency that has already taken critical steps toward electronic records management.¹⁴

In addition, E.O. 14247, Modernizing Payments To and From America's Bank Account, requires elimination of the Department of the Treasury's physical lockbox services, a goal that will be forwarded by mandatory e-filing. 90 FR 14001 (Mar. 28, 2025). Similarly, the Citizenship and Immigration Services (CIS) Ombudsman's 2025 Annual

⁹ Government Paperwork Elimination Act (GPEA), Public Law 105–277, title XVII, sec. 1704, 112 Stat. 2681, 2681–749 (Oct. 21, 1998) (codified at 44 U.S.C. 3504 note).

¹⁰ See 8 CFR 103.2(a)(2) (2004) (providing that “an acceptable signature on an application or petition that is being filed with [USCIS] is one that is either handwritten or, for applications or petitions filed electronically as permitted by the instructions to the form, in electronic format.”).

¹¹ A few tangential changes in rulemakings accommodate e-filings. See e.g., 81 FR 73292, 73315 (Oct. 24, 2016) (FY 2016/2017 USCIS fee schedule in which DHS clarified the fee refund policy).

¹² Office of Mgmt. & Budget (OMB), Delivering Government Solutions in the 21st Century: Reform Plan and Reorganization Recommendations, p. 18 (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/06/Government-Reform-and-Reorg-Plan.pdf>.

¹³ *Id.* at 100.

¹⁴ *Id.* at 101–02.

Report to Congress recommended DHS issue a regulation requiring e-filing.¹⁵

Therefore, to promote the objectives of GPEA, the E-Government Act, E.O. 13781, E.O. 14247, and reduce costs and burden on requestors and DHS, DHS is amending its regulations to provide USCIS discretion to mandate e-filing after a form has been available for e-filing at least 180 days.

B. Current USCIS Processes

USCIS plans to eventually receive and adjudicate all immigration benefit requests electronically.

The electronic environment brings many advantages:

- Electronic data is easier for employees to access quickly, such as

when reviewing cases and judicial decisions.

- USCIS can better distribute work, and assign cases based on experience, skills, and qualifications.
 - Decision-making is enhanced, such as systematically flagging potentially ineligible requests.
 - Better risk and fraud data analysis is available to inform assessments and decisions.
 - Facilitation of continuous vetting¹⁶ and updated background checks are conducted prior to interviews and decisions.
 - Manual activity is reduced and focus is placed on productive activity.
- An electronic benefits case management system allows USCIS to

process applicant information in a centralized system that allows USCIS to properly prioritize work and share information across the Government, and maintain consistent and accurate information to ensure the national security of the United States.

1. E-Filing Results FY2019–FY2025

In FY 2025, USCIS received approximately 44 percent of applications through an e-filing method. Table 1 and Figure 1 show a general trend of increasing adoption of e-filing across various forms.

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Table 1. Average Annual E-filing Rates							
Form	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025
I-90	52%	58%	59%	62%	63%	64%	68%
N-336	22%	29%	36%	41%	45%	49%	57%
N-400	36%	48%	49%	52%	55%	59%	62%
N-565	41%	52%	60%	63%	64%	68%	72%
N-600	11%	25%	32%	33%	33%	39%	48%
N-600K	15%	31%	44%	44%	48%	54%	54%
I-539	2%	28%	20%	20%	21%	20%	20%
I-130	-	15%	27%	31%	34%	39%	42%
I-765	-	-	2%	9%	29%	42%	48%
I-821	-	-	8%	38%	41%	78%	81%
I-821D	-	-	-	9%	30%	38%	50%
I-589	-	-	-	16%	59%	60%	67%
I-907	-	-	-	-	9%	17%	17%
I-131	-	-	-	-	2%	15%	10%
I-129 H-1B	-	-	-	-	-	5%	12%
Source: USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Oct. 2025, TRK #19285.							

¹⁵ See Citizenship and Immigration Services Ombudsman, 2025 Annual Reports (Dec. 2, 2025), <https://www.dhs.gov/publication/cis-ombudsman-2025-annual-report>.

¹⁶ Historically, vetting was the term associated with the background review process implemented

during the adjudication or processing of a benefit request before an eligibility decision. Under continuous vetting, the Government continues to monitor aliens in the United States for risk indicators, including overstays, criminal conduct, ties to certain groups, unauthorized employment,

and social media activity. See DHS, DHS/USCIS/PIA–076, Continuous Immigration Vetting (Feb. 14, 2019), <https://www.dhs.gov/publication/dhsuscispia-076-continuous-immigration-vetting>.

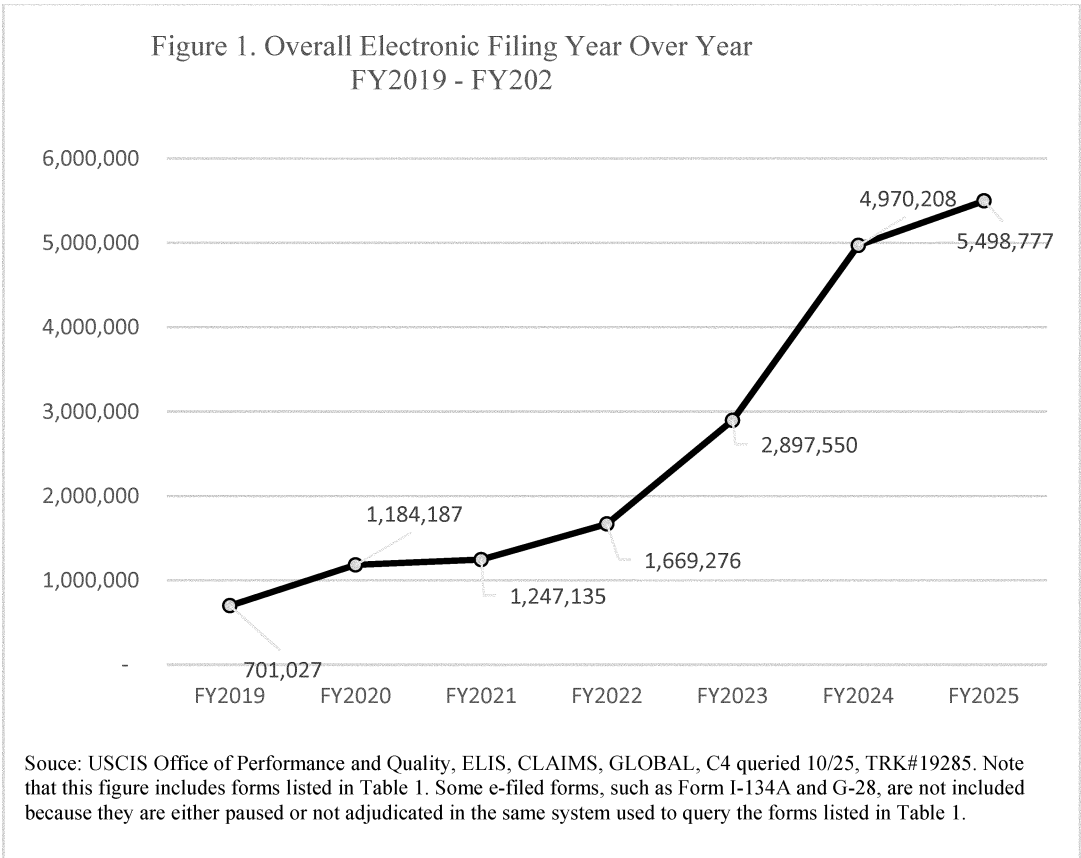


Table 2 shows the volume of filings submitted electronically in FY 2025.

Table 2. e-Filing Volumes (FY2025)

Form	Volume e-Filed
I-90	610,860
N-336	2,731
N-400	618,846
N-565	33,823
N-600	36,268
N-600K	4,009
I-539	80,339
I-130	423,905
I-765	2,308,522
I-821	766,764
I-821D	150,050
I-907	88,554
I-589	275,233
I-131	43,848
I-129 H-1B	55,025
Source: USCIS Analysis, USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Oct. 2025, TRK #19285.	

BILLING CODE 9111-97-C**2. Use of Lockbox**

USCIS first began to use a Lockbox facility in 2001 to accelerate the collection and deposit of receipts. USCIS Lockboxes receive, open, and sort mail, place the benefit requests into correct order, scan documents, and collect application data.¹⁷ The Lockbox verifies application and fee transactions for completeness and accuracy; deposits payments to the U.S. Treasury; sends receipt notices, returns rejected applications; and transmits application and payment data to the U.S. Department of the Treasury and USCIS.¹⁸ In 2007, USCIS began moving all benefit requests to a Lockbox environment and by February 2011, 85 percent of all applications came through the Lockbox.

When the Lockbox receives a benefit request, the package is opened, the form is reviewed for acceptance criteria, the payment is deposited, and the paper file is forwarded to the proper location. The

Lockbox determines whether each benefit request meets the requirements to be accepted but it does not make adjudicative decisions. If a benefit request is rejected, the Lockbox returns the entire package to the requestor with a notice explaining the reasons for rejection.¹⁹ After the application is opened, arranged, and scanned, and the information is transmitted electronically to relevant case management systems, the Lockbox may destroy the original application and supporting evidence after USCIS determines it has complied with the required disposition schedule and any retention requirements outlined by the National Archives and Records Administration, and incorporated into the USCIS Records Policy Manual. *See* 36 CFR 1236, Subparts D and E. Electronic records are stored in an approved digital repository. If retention

of the paper filing is necessary, for instance, to comply with a court order or litigation hold, the Lockbox ships the paper file to the appropriate office or storage facility.²⁰ USCIS also returns “hard to replace” originals, such as passports and documents issued by a foreign government, to the requestor or transmits the physical documents to the adjudicating office, when required. For certain forms, USCIS maintains the filing in paper form in a physical file. Most adjudication occurs electronically using electronic versions of scanned documents, as well as paper documents contained in physical files.

3. The Burden of Paper

The burden of paper-based processing has increased in recent years, and USCIS’ reliance on paper-based processes reduces its ability to adapt to new collections and supporting documentation to address the need for enhanced vetting and ensuring officers have a complete record to determine a requestor’s eligibility for the benefit

¹⁷ USCIS Lockbox staff is supported by a Case Resolution Unit staffed by USCIS employees in place to make decisions about the acceptability of a request where there is a question about whether to accept or reject a filing.

¹⁸ *See* U.S. Department of the Treasury, Bureau of the Fiscal Service, General Lockbox Network, <https://fiscal.treasury.gov/gln/> (last visited Jan. 20, 2026).

¹⁹ “In USCIS parlance, the term “rejected” means that the benefit request and fee payment are returned for failure to comply with all filing requirements without being fully considered, and can be re-filed when properly completed, while “denied” means that the request is fully adjudicated and considered, and the applicant is determined ineligible for the benefit sought.” 76 FR 53764, 53770 (Aug. 29, 2011). *See also* USCIS Policy Manual, Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section B, Intake Processing, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6> (current as of Feb. 3, 2026).

²⁰ USCIS policy is to maintain original source immigration records for all benefit requests for naturalization/citizenship, permanent or conditional resident status, asylum or refugee status, and each of these applications’ supplements and supporting documents in the event the original source record may be needed as evidence during litigation.

sought. For example, USCIS must modify its information collections to collect sufficient data to implement E.O. 14161, Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats. *See, e.g.,* 90 FR 11324 (Mar. 5, 2025) and 90 FR 22750 (May 29, 2025). Table 3 shows the increased volume of pages processed by the USCIS Lockboxes in the last 7 fiscal years.

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Table 3. Amount of pages processed by USCIS Lockboxes FY19-FY25 ²¹				
Fiscal Year	Total Receipts	Total Pages Processed	Percent Change Year over Year	Average Pages per Filing
FY2019	9,793,556	225,457,188	--	23
FY2020	9,552,614	238,404,773	6%	25
FY2021	11,748,247	301,507,654	26%	26
FY2022	9,360,902	221,586,026	-27%	24
FY2023	10,396,408	255,581,848	15%	25
FY2024	12,582,010	376,484,219	47%	30
FY2025	14,332,066	452,635,079	20%	32
NOTE: USCIS received nearly 2.5 million fewer receipts in FY2022 compared to FY2021. The amount of pages processed year over year decreased in line with this filing variation.				

The increased volume increases the labor required to process these filings and the costs to USCIS to receive paper-based filings. For instance, in FY 2025, USCIS spent \$10,864,781 on postage costs to support the paper-based process.

In addition, Table 4 illustrates the labor costs USCIS incurs to manage and facilitate a paper-based filing process.

²¹ Compiled from USCIS Receipt data (Jan. 9, 2026).

Table 4. FY25 Paper-Based Filing Labor Costs²²

FY25	Labor Cost
October	\$17,897,208
November	\$18,962,758
December	\$19,719,991
January	\$19,485,585
February	\$23,450,838
March	\$23,266,167
April	\$21,160,971
May	\$23,316,882
June	\$23,556,315
July	\$21,329,680
August	\$20,883,123
September	\$20,214,940
Total	\$253,244,458
Average	\$21,103,705

E-filing reduces the most labor-intensive and highest cost workload and processing requirements of paper-based filing by eliminating the need to extract, sort, scan, data enter, and ship paper-based filings. The labor cost savings will

occur quickly as USCIS rolls out mandatory e-filing consistent with this rule and DHS expects this rule to substantially decrease costs over time. Table 5 provides the overall costs to operate lockboxes for the last 5 fiscal

years, which includes facilities maintenance and technology development. As USCIS reduces paper filing, it will likewise decrease its physical footprint and further the objectives of E.O. 14247.

Table 5. Costs to Operate Lockboxes²³

Fiscal Year	Overall Cost	Total Volume
2021	\$214,940,795	11,748,247
2022	\$250,859,833	9,360,902
2023	\$272,323,178	10,396,408
2024	\$338,980,757	12,582,010
2025	\$395,991,902	14,332,066

BILLING CODE 9111-97-C**4. Availability of e-Filing**

USCIS has provided e-filing options since the early 2000s. These options have varied over time and initially

required USCIS to print out electronically submitted benefit requests and adjudicate them on paper. USCIS developed the USCIS Electronic Immigration System (ELIS) to change the way USCIS interacts with the public

using account-based e-filing and electronic processing.

Accompanying the development of ELIS, DHS changed USCIS regulations to provide more flexibility as the agency moved toward an electronic

²¹ Compiled from USCIS Receipt data (Jan. 9, 2026).

²² Compiled from USCIS Receipt data (Jan. 9, 2026).

²³ Compiled from USCIS Receipt data (Feb. 10, 2026).

environment. 76 FR 53764. The 2011 Rule codified new definitions of “benefit request” and “form” to acknowledge electronic alternatives. 8 CFR 1.2. DHS stated that it envisioned transitioning to a fully electronic environment and additional regulatory changes would be required over the next several years as USCIS increases the	electronic handling of immigrant benefit requests. 76 FR 53764 (Aug. 29, 2011). USCIS encourages requestors to e-file benefit requests whenever available and has expanded options for the implementation of electronic services by designing its website to focus on e-filing instead of paper. While technological advances have allowed USCIS to develop accessible, digital alternatives to traditional paper methods for	handling benefit requests, USCIS remains bound to the burden of paper submissions. As e-filing functions are developed, USCIS makes them available to the public, providing the option of using either e-filing or paper processes. As of December 16, 2025, USCIS accepts the following forms through guided online filing or PDF Intake (PDFi): BILLING CODE 9111–97–P

Table 6. USCIS Forms available for E-filing²⁴

Form Number	Form Name	Guided Online Filing	PDFi
AR-11	Alien's Change of Address Card	X	
G-28	Notice of Entry of Appearance as Attorney or Accredited Representative		X
G-325R	Biographic Information (Registration)	X	
G-639	Freedom of Information/Privacy Act and Online FOIA Request	X	
I-90	Application to Replace Permanent Resident Card	X	
I-129	Petition for a Nonimmigrant Worker	X	X
I-130	Petition for Alien Relative	X	X
I-131	Application for Travel Documents, Parole Documents, and Arrival/Departure Records	X	X
I-140	Immigrant Petition for Alien Workers		X
I-539	Application to Extend/Change Nonimmigrant Status	X	
I-589	Application for Asylum and Withholding of Removal	X	
I-751	Petition to Remove Conditions on Residence		X
I-765	Application for Employment Authorization	X	X
I-821	Application for Temporary Protected Status	X	
I-821D	Consideration of Deferred Action for Childhood Arrivals	X	
I-907	Request for Premium Processing Service	X	
I-912	Request for Fee Waiver		X
N-336	Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA)	X	
N-400	Application for Naturalization	X	X

Table 6. USCIS Forms available for E-filing²⁴

Form Number	Form Name	Guided Online Filing	PDFi
N-565	Application for Replacement Naturalization/Citizenship Document	X	
N-600	Application for Certificate of Citizenship	X	
N-600K	Application for Citizenship and Issuance of Certificate Under Section 322	X	

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USCIS also supports online submission for certain ancillary requests, such as: Employment Eligibility Verification (E-Verify);²⁵ G-845, Verification Request (SAVE);²⁶ G-1041, Genealogy Index Search Request; G-1041A, Genealogy Records Request;²⁷ and H-1B Registration.²⁸

Though USCIS permits e-filing these forms, USCIS has not required it.²⁹ In FY 2025, about 43 percent of individual

USCIS requestors voluntarily filed online when it was available, while less than six percent of attorneys and accredited representatives have similarly chosen to file online.³⁰

DHS recognizes people adopt new practices at varying rates.³¹ DHS believes that the complexity of the immigration benefit request system exacerbates the tendency toward the status quo.³² Those familiar with paper-based processes see no reason to change a method currently working for them. DHS believes the transition from paper to e-filing will languish if it remains entirely optional.³³ As the breadth and quality of digital solutions increase, preserving the inefficiencies and administrative burdens of a paper system becomes increasingly unjustifiable.

a. Guided Online Filing

USCIS offers guided online filing to requestors who create a USCIS online account at <https://my.uscis.gov>.³⁴

³⁰ USCIS received 68 percent of benefit requests from individuals and 32 percent of benefit requests from attorneys or accredited representatives. DHS, USCIS, Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Jan. 2026, PAER 0020170.

³¹ Brian Kennedy & Cary Funk, Pew Research Group, 28 percent of Americans are 'strong' early adopters of technology (July 12, 2016), <http://www.pewresearch.org/fact-tank/2016/07/12/28-of-americans-are-strong-early-adopters-of-technology/>; Charlie Wells, *Forget Early Adopters: These People are Happy to Be Late*, *The Wall Street Journal* (Jan. 26, 2016), <https://www.wsj.com/articles/forget-early-adopters-these-people-are-happy-to-be-late/1453827437>.

³² USCIS provides a \$50 reduction in fees for benefit requests filed online but that incentive has not meaningfully increased e-filing. 8 CFR 106.1(g).

³³ For example, events and fairs that are intended to encourage applying for citizenship or other benefits, where volunteers assist applicants with advice and form completion, are often geared toward in-person completion and mailing of paper forms.

³⁴ See USCIS, *How to Create a USCIS Online Account*, <https://www.uscis.gov/file-online-how-to-create-a-uscis-online-account> (last updated Jul. 29, 2024).

Requestors can complete the form(s) available for guided online filing, pay the required fee(s), and submit the form(s) all within their online account.³⁵ When a benefit request is filed via guided online filing, the request is ingested directly into USCIS electronic databases. The guided online filing process can alert a requestor when a filing does not meet requirements for acceptance and prevent the requestor from submitting a filing USCIS would reject.³⁶ Once USCIS accepts a filing via the guided online filing process, an electronic receipt notice is provided in the requestor's USCIS online account.³⁷

b. PDF Intake (PDFi)

In addition to offering guided online filing, USCIS has developed PDF intake (PDFi) as an innovative electronic process that enables upload of a completed PDF of the form in a USCIS online account, including upload of any supporting documents and electronic fee payment, with ingestion of the uploaded PDF occurring through the Lockbox.³⁸

PDFi filings are validated at the Lockbox using the same rules applied to paper filings. The Lockbox determines whether to accept the filing and deposit the fee or reject the filing.³⁹ This filing process eliminates the need for the Lockbox to physically open, prepare, scan, and enter data, as is necessary for paper-filed forms. PDFi filing is currently available for nine USCIS forms

³⁵ USCIS, *Tips for Filing Forms Online, How to Fill Out and File a Form Online*, <https://www.uscis.gov/file-online/tips-for-filing-forms-online> (last updated Aug. 21, 2025).

³⁶ USCIS, *Online Filing Engagement PowerPoint*, Slide 20, Apr. 3, 2024, <https://www.uscis.gov/sites/default/files/document/outreach-engagements/OnlineFilingEngagementPowerPoint.pdf>.

³⁷ See *id.*, Slide 31.

³⁸ See USCIS, *Tips for Filing Forms Online, How to Upload a Completed Form PDF and File Online*, <https://www.uscis.gov/file-online/tips-for-filing-forms-online> (last updated Aug. 21, 2025).

³⁹ See *Id.*, Step 12.

²⁴ USCIS, *Forms Available to File Online*, <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Dec. 16, 2025). Some forms listed here are e-filed and not adjudicated in the same systems queried to create Tables 1 and 2, which results in the discrepancy between Tables 1, 2 and 6.

²⁵ E-Verify is a voluntary web-based system allowing enrolled employers to confirm the eligibility of their employees to work in the United States and ensure they are complying with 8 CFR 274a.2. See USCIS, *About E-Verify, What is E-Verify*, <https://www.e-verify.gov/> (last visited Jan. 27, 2026).

²⁶ The Systematic Alien Verification for Entitlements Program (SAVE) is an online service allowing registered Federal, State, territorial, Tribal, and local benefit-granting agencies to verify a benefit applicant's immigration status or U.S. citizenship. See USCIS, *SAVE*, <https://www.uscis.gov/save> (last visited Jan. 27, 2026).

²⁷ The USCIS Genealogy Program allows the public to make requests for an Index Search request (Form G-1041, Genealogy Index Search Request) or to obtain copies (G-1041A, Genealogy Records Request) of USCIS historical records, by filing the appropriate form by mail or online. See USCIS, *Instructions on Making a Genealogy Request Online*, <https://www.uscis.gov/records/genealogy/requesting-records/instructions-on-making-a-genealogy-request-online> (last updated Apr. 1, 2024).

²⁸ See USCIS, *H-1B Electronic Registration Process*, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations/h-1b-electronic-registration-process> (last updated Jan. 30, 2026).

²⁹ USCIS requires online payment of the USCIS Immigrant Fee and the filing fee for Form I-131A, Application for Travel Document (Carrier Documentation). See USCIS, *USCIS Immigrant Fee*, <https://www.uscis.gov/forms/filing-fees/uscis-immigrant-fee> (last updated Apr. 8, 2024); see also I-131A, Application for Carrier Documentation, Filing Fee, <https://www.uscis.gov/i-131a> (last updated May 13, 2025).

with plans for additional forms to be added.⁴⁰

As of December 11, 2025, only 1 percent of requestors are utilizing PDFi to submit a benefit request.

C. Governmental Electronic Filing Requirements

As explained more fully in the examples that follow, across the Federal Government many departments, agencies, and offices have or are currently eliminating paper forms and transitioning to e-filing. Consistent with the E-Government Act, agencies are increasing use of the internet and many require e-filing.⁴¹ To inform its decision in making the changes in this rule, DHS examined how Federal agencies have successfully instituted e-filing, how long they have been in effect, the affected populations, and the complexity of the filing requirement. Cumulatively, the examples demonstrate government agencies are moving online, and they and their private and public stakeholders appreciate the benefits an e-filing environment provides.

1. USCIS Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens

The H-1B petition selection lottery is an online process. *See* 84 FR 888 (Jan. 31, 2019). Petitioners seeking to file H-1B petitions subject to the regular cap, including those eligible for the advanced degree exemption, must first electronically register with USCIS during a designated registration period. Those whose registrations are selected are eligible to file an H-1B cap-subject petition for the registered beneficiary during the associated filing period. USCIS introduced this electronic registration system on March 1, 2020. 85 FR 1176 (Jan. 9, 2020). Any petitioner

filing Form I-129, Petition for Nonimmigrant Worker, for an H-1B employee subject to the regular cap or advanced degree exemption must have first electronically registered. Therefore, since 2020 (for FY 2021 workers), H-1B petitioners have successfully electronically registered with USCIS each year since then.

2. Department of State

The U.S. Department of State (DOS) has required the online filing of visa applications since 2006, with few exceptions.⁴² Applicants submit electronic forms to DOS through its online system, Consular Electronic Application Center.

Recipients of approved USCIS immigration benefits who intend to enter the United States from another country must generally apply for a visa from DOS.⁴³ Over half of the lawful permanent residents admitted to the United States each year travel from another country and must, therefore, apply for and obtain an immigrant visa from DOS.⁴⁴ Those with a USCIS-approved immigrant petition file DOS form DS-260, Electronic Application for Immigrant Visa and Alien Registration.⁴⁵ In addition to requiring online filing, applicants in some cases must submit supporting documents in the Consular Electronic Application Center or via email, and include a PDF attachment with supporting documentation.⁴⁶

⁴² *See* DOS, Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 73 FR 23067 (Apr. 29, 2008) (nonimmigrant visa applications); *see also* DOS, Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended, 75 FR 45475 (Aug. 3, 2010) (immigrant visa applications).

⁴³ *See e.g.*, 8 CFR 204.2(a), which provides the petition process for a U.S. citizen or lawful permanent resident seeking to obtain an immigrant visa on behalf of a spouse. *See also* DOS, Bureau of Consular Affairs, Immigrant Visa for a Spouse of a U.S. Citizen (IR1 or CR1), The First Step toward an Immigrant Visa: Filing the Petition, <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/immigrant-visa-for-spouse.html> (last visited Jan. 28, 2026).

⁴⁴ For example, of the 1,172,910 people who obtained lawful permanent resident status in 2023, 564,660 were new arrivals who obtained visas from DOS. DHS, Office of Immigration Statistics, 2023 Yearbook of Immigration Statistics, tbl. 6 (2023), <https://ohss.dhs.gov/topics/immigration/yearbook/2023/table6>.

⁴⁵ DOS, Bureau of Consular Affairs, The Immigrant Visa Process, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html> (last visited Jan. 27, 2026).

⁴⁶ The method of submission depends on the visa classification and location of the applicant. *See* DOS, Processing EB-5 Petitions at NYC (June 21, 2018), https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/visas-news-archive/20180621_processing-eb-5-petitions-at

Aliens with a USCIS-approved nonimmigrant visa petition or application must file the DS-160, Online Nonimmigrant Visa Application, online. 22 CFR 41.103(a)(1). A paper version of this form exists as Form DS-156, Nonimmigrant Visa Application. However, individuals may file Form DS-156 only in limited circumstances, as directed by a consular officer.⁴⁷

3. Department of Labor

Before an employer can file an H-1B⁴⁸ petition with USCIS, it must first file Form ETA-9035, Labor Condition Application for Nonimmigrant Workers (LCA), with the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL). 8 CFR 214.2(h)(1)(ii)(B). Since January 14, 2002, DOL has allowed employers to submit LCAs online under the H-1B program. 66 FR 63298 (Dec. 5, 2001); 20 CFR 655. Starting in 2006, DOL has required employers, with very few exceptions, to file LCAs electronically. 70 FR 72556 (Dec. 5, 2005); 20 CFR 655.705(c)(1) and 20 CFR 655.720(b). Employers with physical disabilities or lacking internet access may file LCAs by mail under limited circumstances. 20 CFR 655.720(c). Because LCAs are filed with DOL as a prerequisite for filing a petition for an H-1B foreign worker with USCIS, H-1B filers must use the online filing process.

In addition, e-filing is available for several other DOL forms USCIS benefit requestors must file. Before an employer can file an H-2A⁴⁹ nonimmigrant petition with USCIS, the employer must first e-file Form ETA-9142A, H-2A Application for Temporary Employment Certification, with DOL. 20 CFR

nvc.html (last updated Apr. 10, 2024); *see also*, DOS, Immigrant Visa Process, Step 9: Upload and Submit Scanned Documents, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-8-scan-collected-documents/step-9-upload-and-submit-scanned-documents.html> (last visited Jan. 27, 2026).

⁴⁷ DOS, Foreign Affairs Manual, 9 FAM 403.2-5(A) Nonimmigrant Visa Application Forms (Dec. 10, 2024) https://fam.state.gov/FAM/09FAM/09FAM040302.html#M403_2_5_A.

⁴⁸ The H-1B nonimmigrant classification allows U.S. employers to temporarily employ foreign workers in the United States to perform services in a specialty occupation, services of an exceptional nature relating to a Department of Defense cooperative research and development project, or services as a fashion model of distinguished merit or ability. INA sec. 101(a)(15)(H), 8 U.S.C. 1101(a)(15)(H).

⁴⁹ The H-2A temporary agricultural program allows agricultural employers to, among other requirements, establish there is a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform agricultural labor or services of a temporary or seasonal nature. INA sec. 101(a)(15)(H)(ii)(a), 8 U.S.C. 1101(a)(15)(H)(ii)(a).

⁴⁰ *See* USCIS, Forms Available to File Online, <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Dec. 16, 2025).

⁴¹ *See, e.g.*, 68 FR 54981 (Sept. 22, 2003) (Office of the Comptroller of the Currency requiring electronic filing of all reports filed under 15 U.S.C. 78p(a)); 69 FR 59780 (Oct. 6, 2004) (Federal Deposit Insurance Corporation (FDIC) mandate of electronic filing of all beneficial ownership reports on the FDIC their system); 70 FR 11540 (Mar. 9, 2005) (Pension Benefit Guaranty Corporation (PBGC) required e-filing of all annual employer reports through PBGC's website); 71 FR 31077 (June 1, 2006) (PBGC required certain pension plans to submit premium filings electronically); 72 FR 64710 (Nov. 16, 2007) (DOL mandated reports required by the Employee Retirement Income Security Act and the Internal Revenue Code be filed electronically); 73 FR 31548 (June 2, 2008) (Department Of Commerce, Bureau of the Census, required mandatory filing of export information through its Automated Export System when a Shipper's Export Declaration is required).

655.130(c)(1). In most cases, before an employer can file an H-2B⁵⁰ nonimmigrant petition with USCIS, the employer must file Form ETA-9142B, H-2B Application for Temporary Employment Certification, with DOL. 20 CFR 655.15(c). Lastly, before an employer can petition USCIS to hire a foreign worker to work permanently in the United States in a category requiring DOL labor certification,⁵¹ the employer must file Form ETA-9089, Application for Permanent Employment Certification, with DOL. 20 CFR 656.17(a). These forms have been available for online filing since 2005. 69 FR 77325 (Dec. 27, 2004). DOL receives hardly any requests for exemption from mandatory electronic submissions in its Foreign Labor Application Gateway system in a typical year.

Before these petitioners file with USCIS, they are already required to e-file forms related to their immigration benefit requests⁵² and have established comfort doing so as evidenced by the lack of requests for exemption.

4. Department of Justice

The Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) successfully implemented EOIR Courts & Appeals System ("ECAS") before the Immigration Courts and the Board, which requires electronic filing for attorneys, accredited representatives, and DHS.⁵³

DOJ also recently issued an IFR to implement electronic filing and records applications for all cases before the Office of the Chief Administrative Hearing Officer ("OCAHO").⁵⁴ Furthermore, on September 23, 2025, EOIR announced expanded capabilities of the EOIR Payment Portal to enable electronic payment of relevant fees for

appeals, motions, and applications to EOIR.⁵⁵

5. Internal Revenue Service

The experience of the Internal Revenue Service (IRS) indicates broad acceptance of e-filing by the public. The IRS began offering tax return e-filing (refund-only) in 1986.⁵⁶ In 2025, the IRS received 94 percent of returns electronically,⁵⁷ up from approximately 69 percent in 2010.⁵⁸ Since 2012, income tax preparers who prepare more than 10 tax returns have been required to submit returns electronically. 26 U.S.C. 6011(e)(3); 76 FR 17521 (Mar. 30, 2011). The IRS provides for a hardship waiver but indicates it grants this waiver only in rare cases.⁵⁹ Corporations are required to file tax returns electronically if they file at least 10 returns a year. 26 CFR 301.6011-5.

D. Benefits of e-Filing

1. Effective Use of Resources

a. Intake

USCIS received more than thirteen million benefit requests in FY 2025.⁶⁰ As outlined previously, 8 CFR 103.2(a)(7)(ii) provides that USCIS will not accept a benefit request if it is not properly signed, executed (defined by 8 CFR 1.2 as completed), filed in compliance with the regulations governing the request, and the correct fee. USCIS undertakes this review process at intake. If a benefit request is accepted, information from the request is collected in USCIS systems. After intake, the benefit request is provided to adjudicators to process. For forms filed online, intake is automated: form completeness and filing fee payment are verified before or at the time of submission, form data are entered into USCIS systems, and benefit requests are routed to the appropriate queue for adjudication. After the benefit request and evidence have been digitized, the paper is either destroyed or shipped for

long-term storage at a USCIS facility. 36 CFR 1236.56(f).⁶¹

In contrast, the paper benefit request intake process is manual. USCIS ensures requests are complete and are accompanied by the correct filing fee. Once accepted, the paper is scanned and some form information, particularly significant identity information, is ingested into electronic systems to facilitate the adjudication process. Data is uploaded using optical character recognition (OCR) and transmitted to USCIS after manual inspection for errors. The paper file is then shipped to adjudicators who adjudicate the request on paper.

b. Shipping

To process millions of requests each year, USCIS maintains offices throughout the United States and the world. To accommodate the paper adjudication process, USCIS continually ships forms and files between these facilities. After intake, paper benefit requests must be forwarded to the correct office for adjudication. In FY 2025, USCIS spent \$10,864,781 on postage costs to ship received benefit requests to the appropriate location and return rejected benefit requests to the requestor.⁶² In addition to the benefit request itself, USCIS must also ship any related A-Files (with previously filed requests, supporting evidence, and documents) to the adjudicating office, often from another storage location. Once adjudication is complete, these documents and physical files are then shipped for long-term storage and retention. In FY 2025, USCIS transferred files 8.7 million times, averaging 718,331 transfers per 30 days.⁶³ In addition to the shipping costs USCIS incurs to move this many files annually, the higher cost of potentially losing an alien's immigration record and preventing DHS from accessing an alien's record to minimize risks from any potential threats surpasses the financial cost of these transfers.

In addition to file transfers, USCIS moves paper files within an office during processing, such as when an office receives an A-File in the mail room, matches the A-File with the benefit request, delivers the file to the processing queue, and out-processes the file for storage or next use following adjudication.

⁶¹ See also General Records Schedule 4.5: Digitizing Records, <https://www.archives.gov/files/records-mgmt/grs/grs04-5.pdf>, June 2023.

⁶² Extracted from USCIS receipt data on Sept. 26, 2025.

⁶³ Based on data from USCIS' internal file tracking system (NFTS/RAILS), generated Jan. 21, 2026.

⁵⁰ The H-2B temporary non-agricultural program allows non-agricultural employers to, among other requirements, establish there is a shortage of domestic workers to bring nonimmigrant foreign workers to the United States to perform non-agricultural labor or services of a temporary or seasonal nature. INA sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b).

⁵¹ To hire a foreign worker to permanently work in the United States, employers may file Form I-140, Immigrant Petition for Alien Worker. Form I-140 requires the employer to specify the immigrant category to which the worker belongs.

⁵² DOL transitioned electronic filings to a new system in 2023. DOL, Foreign Labor Application Gateway, <https://flag.dol.gov> (last visited Jan. 23, 2026).

⁵³ See 8 CFR 1003.1(a); see generally DOJ, EOIR, ECAS: Attorneys and Accredited Representatives, <https://www.justice.gov/eoir/ecas-attorneys-and-accredited-representatives> (last visited Dec. 17, 2025).

⁵⁴ See DOJ, Office of the Chief Administrative Hearing Officer Electronic Filing, 91 FR 9989 (Mar. 2, 2026).

⁵⁵ See DOJ, EOIR, Notice: Updates to the EOIR Payment Portal, <https://www.justice.gov/eoir/media/1414551> (Sep. 23, 2025).

⁵⁶ See Department of the Treasury, IRS, IRS E-File: A History (June 2011), <https://www.irs.gov/pub/irs-news/fs-11-10.pdf>.

⁵⁷ Department of the Treasury, IRS, Filing Season Statistics for Week Ending October 17, 2025, <https://www.irs.gov/newsroom/filing-season-statistics-by-year> (last updated Jan. 2, 2026).

⁵⁸ Department of the Treasury, IRS, 2010 Filing Statistics, <https://www.irs.gov/newsroom/2010-filing-season-statistics> (last updated May 29, 2025).

⁵⁹ Department of the Treasury, IRS, Rev. Proc. 2011-25, Section 5.02, https://www.irs.gov/irb/2011-17_IRB#RP-2011-25 (last updated Sept. 23, 2017).

⁶⁰ USCIS, Office of Performance and Quality, NPD, CLAIMS3, ELIS, HQRAIO, queried Jan. 2026, PAER0020178.

c. Storage

Additionally, USCIS must store paper files long-term. At the heart of USCIS operations are 58.6 million active files being reviewed, amended, and stored at 142 different facilities.⁶⁴ A few of these facilities are dedicated to storage. Many locations primarily serve adjudicative or other functions but must also store the files because of their work. When a benefit request is reviewed and adjudicated in a paper A-File, the A-File is kept at the office responsible for the adjudication. When files are not being actively used, USCIS keeps them at a storage-specific facility. USCIS must maintain A-Files until 100 years after the alien's year of birth, at which time they are permanently transferred to the custody of the U.S. National Archives and Records Administration (NARA) for preservation.⁶⁵ However, USCIS does not have sufficient space to continue storing all records until 100 years after an alien's year of birth.

As of December 31, 2022, NARA only accepts records in electronic format, which requires USCIS to digitize paper records not already in an electronic format once they reach the end of their 100-year mandatory retention period.⁶⁶ While NARA has granted USCIS a waiver for immigration records, USCIS is working to digitize its records in accordance with NARA requirements, which provides DHS users, including USCIS, ICE, and CBP with accelerated access to digitized records and permits multiple users to review the same record simultaneously.

To maintain operating space, USCIS sends A-Files belonging to immigrants who have naturalized and A-Files inactive for approximately 7 years to NARA for storage. These files, referred to as retired A-Files, are not old enough to permanently transfer custody to NARA, and, on average, USCIS must keep retired A-Files with NARA for 50 years. Although retired files are so designated because they are less likely

to be requested, there were 817,723 file retrievals in FY 2025 from the 58 million retired files.⁶⁷

2. Efficiency Gains

The many benefits of e-filing lie in the increased efficiency it brings to the benefit request process. For example, e-filing minimizes the risk a benefit request will be rejected. When benefit requests are physically mailed to USCIS, they undergo initial evaluation to determine if the request form is properly executed in accordance with the regulations to be accepted into the USCIS system. Deficiencies resulting in rejection include incorrect fee amount, lack of valid signature, or forms not executed or fully completed (missing information). 8 CFR 103.2(a)(7)(ii). In FY 2025, USCIS rejected over 1 million paper benefit requests.⁶⁸

In the case of benefit requests filed via guided online filing, filing deficiencies that may result in rejection are flagged. Users cannot submit a benefit request via guided online filing without first correcting certain flagged deficiencies (for example, a user cannot submit a form without signing).⁶⁹ The ability to flag and correct these errors in real time means both USCIS and the requestor save the resources spent on processing the rejection of the filing and the subsequent correction of the deficiency and resubmission of the benefit request. Additionally, rejection of submissions subject to a filing deadline can negatively impact immigration benefit eligibility, often with serious consequences for individual filers due to missing filing deadlines. Immediate notification of filing deficiencies and the ability to address and correct them in real time can mean certain mistakes no longer have the same potential negative consequences for requestors. For example, USCIS automatically terminates the conditional permanent resident status of any alien that does not file Form I-751 within the 90-day period immediately before the conditional permanent resident status expires making the alien amenable to removal from the United States. INA 216(c)(2), 8 U.S.C. 1186a(c)(2).

DHS believes e-filing may also reduce instances in which USCIS must issue a notice of intent to deny (NOID), request for evidence (RFE), or denial for missing

information or evidence. Even though a request is accepted by USCIS, it may be incomplete or need additional information. In such instances, USCIS may deny the request or issue a NOID or RFE to the requestor asking for additional or clarifying information. 8 CFR 103.2(b)(8)(ii)–(iii). After receiving a NOID or RFE, the requestor must compile information, evidence, and a response as needed and submit these to USCIS. USCIS may provide requestors up to 12 weeks to respond to an RFE and 30 days to respond to a NOID. 8 CFR 103.2(b)(8)(iv). Such an exchange not only requires time and resources from both parties but may also considerably extend the adjudication timeline.

Several attributes of e-filing may decrease the need to issue RFEs, NOIDs, and denials for missing information or evidence. For example, filing via online guided filing provides opportunities for USCIS to use parameters to help users provide complete and appropriate answers on forms.⁷⁰ Where certain categories of evidence are required for a benefit type, users are prompted to upload the required initial evidence before submitting their requests electronically. Additionally, form logic can alert users when an answer or information provided does not align with eligibility requirements. This feature may reduce the number of RFEs, NOIDs, and denials and the futile payment of fees due to incomplete, unclear, or misunderstood answers on the part of requestors.

E-filing also increases data integrity and standardization by allowing USCIS to enforce consistent data formats and ingest information provided directly into USCIS systems. In contrast, information submitted on paper must go through intake steps, including scanning and manual entry, for the data to be stored in agency systems. USCIS employees must interpret the information provided and, where unclear or erroneous, reject the filing, correct the data based on other information, or issue an RFE, denial, or other correspondence. Each automated step in the e-filing process decreases the risk of inaccuracy because, as mentioned previously, paper filings sometimes contain errors (e.g., wrong credit card expiration date or bank routing number). Instant ingestion of data also makes it easier to integrate and

⁶⁴ Based on data from USCIS' internal file tracking system (NFTS/RAILS), generated Jan. 21, 2026.

⁶⁵ After the 100th year after an alien's year of birth, A-File custody is transferred to the National Archives and Records Administration (NARA). See NARA, Standard Form 115, Request for Records Disposition Authority N1-566-08-11 (Apr. 9, 2009), https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/department-of-homeland-security/rg-0566/n1-566-08-011_sf115.pdf.

⁶⁶ *Transition to Electronic Records*, Memorandum M-19-21 (June 28, 2019), <https://www.archives.gov/files/records-mgmt/policy/m-19-21-transition-to-federal-records.pdf>; see also *Update to Transition to Electronic Records Memorandum*, Memorandum M-23-07 (Dec. 23, 2022), https://www.whitehouse.gov/wp-content/uploads/2022/12/m_23_07-m-memo-electronic-records_final.pdf.

⁶⁷ Based on data from USCIS' internal file tracking system (NFTS/RAILS), generated Jan. 21, 2026.

⁶⁸ Extracted from USCIS receipt data on Sept. 26, 2025.

⁶⁹ See USCIS, Benefits of a USCIS Online Account, <https://www.uscis.gov/file-online/benefits-of-a-uscis-online-account> (last updated Sep. 18, 2025).

⁷⁰ For example, when filing Form I-129 online, a user can only enter 9 numbers when entering a Federal Employer Identification Number. See USCIS, Online Filing Engagement PowerPoint, Slide 12, Apr. 3, 2024, <https://www.uscis.gov/sites/default/files/document/outreach-engagements/OnlineFilingEngagementPowerPoint.pdf>.

exchange information across USCIS and with external agency partners.

Receiving requests electronically improves USCIS' ability to manage workloads. Paper files must be shipped to where they are adjudicated. If an office experiences a surge in workload, shipping files to another office causes delays and administrative burden. Transferring electronic data avoids such delays or burdens, meaning workloads can be redistributed easily and in real-time to respond to office load and workforce availability. Similarly, electronic records allow the simultaneous use of files and case information by employees in different locations; if one office needs to access information in a file, it will not unnecessarily delay the work of another office. Electronic records also greatly decrease the risk of lost and mishandled files, since there are no paper files to physically move among offices and storage facilities.

For benefit requestors, e-filing provides several efficiencies. Through their accounts, users can log in and access their benefit request history at any time.⁷¹ During the submission of the benefit request, the guided online filing presents an interactive and more intuitive experience for requestors.⁷² Electronic forms make it easier for users to complete forms successfully and remove their reliance on physical mail. The account and online filing process also provides for nearly real-time submissions, correction of filing deficiencies, and case updates.⁷³

This provides benefit requestors with time savings as well. For instance, USCIS recently estimated the hour burden per response on Form I-131, Application for Travel Document, as 3.1 hours for respondents filing on paper compared to 2 hours for respondents e-filing. 90 FR 57777, 57778 (Dec. 12, 2025). DHS discusses the time savings across benefit request types in more detail in section V.B.4 of this preamble.

3. Enhanced Security

Increasing the use of e-filing has the potential to further enhance the integrity of immigration benefits and bolster USCIS in its national security responsibilities. E-filing will allow for

the development of enhanced digital and automated services, such as fraud detection and national security analysis, increased data integrity, increased speed of data ingestion and dissemination, improved identity management, and enhanced information protection.

The overall inefficiencies of paper have been specifically noted as a roadblock for USCIS' Fraud Detection and National Security (FDNS) Directorate. The CIS Ombudsman 2018 Annual Report highlighted the impact of paper processes on USCIS fraud detection functions.⁷⁴ The report criticized the limited progress in USCIS' effort to convert to electronic case filing and adjudication, and stated that it has restricted the agency's capacity to detect fraud. The report stated that a paper-based system hinders the availability of electronic tools and cross-comparison of applications for flagging boilerplate language and fraud.⁷⁵ The report recommended using technology to measure performance, improve training, and strengthen the agency's anti-fraud operations.⁷⁶ The CIS Ombudsman identified USCIS' reliance on paper as creating security risks, which permits fraud to go undetected and risks national security.⁷⁷

DHS agrees that a digital environment would optimize USCIS FDNS' ability to perform its essential functions. When forms are submitted on paper, only a portion of the information provided is reflected in an electronic system as data. As discussed in Part III, Section D of this preamble, although USCIS adjudicates the paper forms themselves, some form information is ingested into electronic systems to facilitate the adjudication process. The fields captured vary by form, but always include significant identity information, such as name, address, A-Number. Ingestion occurs using OCR scanning followed by a manual inspection for errors. Data received in electronic systems is provided by the requestors directly, ensuring the information is accurate. E-filed benefit requests capture more details about the alien from

information submitted, which improves the results of USCIS' data analysis and fraud prevention and detection. Electronic data can be searched, reviewed, retrieved, reported, monitored, and analyzed in a more efficient and thorough manner than information kept in individual paper files.⁷⁸ For example, if USCIS discovers a fraudulent submission, it could electronically search for additional occurrences of the same or similar submissions across benefit product lines and throughout government systems.⁷⁹ The ability to facilitate easier cross-referencing and comparison across all case materials is a significant advantage for ensuring the integrity of benefit requests and the adjudication process. Moreover, this advantage increases as more information is provided and stored in an electronic format and made available for analysis.⁸⁰

The transition to a digital environment is important for the development of electronic fraud detection tools and methods. E-filed forms aid in identifying fraud trends and practices that might go unnoticed in paper filings. With e-filing, USCIS adjudicators, who are trained to identify inconsistencies that may indicate fraud, can more easily use their skills and digital tools to identify fraud. Similarly, e-filing allows for automation of tasks, such as fraud and security check processes. The transition to a more digital ecosystem will result in time savings for USCIS enabling the reallocation of resources to other mission-specific tasks.

A fully digital environment would also enhance the ability to share information about individuals and

⁷⁸ These functions can be used to examine information on a large, macro scale. Although findings from large-scale analyses might impact an individual adjudication, large-scale assessments are distinct from the individualized case-by-case evaluation of evidence completed during adjudication.

⁷⁹ The CIS Ombudsman's Report states, "With text that has undergone OCR, FDNS can utilize automated queries that instantly flag records with data related to fraud or security trends." Citizenship and Immigration Services Ombudsman, 2025 Annual Reports (Dec. 2, 2025), p. 14. <https://www.dhs.gov/publication/cis-ombudsman-2025-annual-report>.

⁸⁰ Chen, et al., Deep Learning in Financial Fraud Detection: Innovations, Challenges, and Applications, "Automation significantly accelerates fraud detection by reducing manual intervention and enabling substantial cost savings." <https://www.sciencedirect.com/science/article/pii/S2666764925000372>, Aug. 20, 2025. Catherine Cote, Harvard Business School, 4 Types of Data Analytics to Improve Decision-Making, "Algorithms and machine learning also fall into the data analytics field and can be used to gather, sort, and analyze data at a higher volume and faster pace than humans can." <https://online.hbs.edu/blog/post/types-of-data-analysis>, Oct. 19, 2021.

⁷¹ USCIS, How to Manage Your Case After Filing Online: Applicant Account (Play Video), <https://www.uscis.gov/file-online/uscis-online-account-videos> (last visited Mar. 6, 2026).

⁷² USCIS, Apply for Citizenship Online: How to File Your Application for Naturalization Online (Play Video), <https://www.uscis.gov/file-online/uscis-online-account-videos> (last visited Mar. 6, 2026).

⁷³ USCIS, Benefits of Filing Online (Video), <https://www.uscis.gov/file-online/benefits-of-a-uscis-online-account> (last updated Sep. 18, 2025).

⁷⁴ DHS, Citizenship and Immigration Services Ombudsman, Annual Report 2018, p. 16 (June 28, 2018), https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2018-annual-report-to-congress.pdf.

⁷⁵ *Id.*, p. 17.

⁷⁶ *Id.*, p. 17.

⁷⁷ DHS, Citizenship and Immigration Services Ombudsman, Annual Report 2025, v (Aug. 18, 2025), https://www.dhs.gov/sites/default/files/2025-12/25_1202-cisomb-2025-Annual-Report-Redacted-508.pdf. DHS, Citizenship and Immigration Services Ombudsman, Annual Report 2025, v, p. 12 (Aug. 18, 2025), https://www.dhs.gov/sites/default/files/2025-12/25_1202-cisomb-2025-Annual-Report-Redacted-508.pdf.

potential concerns simultaneously and in real time.⁸¹ When a security incident occurs necessitating wide-spread information sharing, time and resources must be used to photocopy or digitize paper records for dissemination.⁸² In addition, electronic administrative records can simultaneously support adjudication and litigation activities in different physical locations. Electronic records can be accessed from anywhere, providing for more efficient dissemination of information.⁸³

Correspondingly, the protection and management of records and information is vitally important to combat fraud and ensure the integrity of the benefit request process. Both USCIS and requestors have an interest in properly identifying individuals submitting requests and limiting access to information to authorized individuals. E-filing and online accounts enable the use of tools for the authentication and verification of identities.⁸⁴

Online accounts use two-factor authentication with each log in, requiring users to enter their email and password as well as a single-use verification code sent to a user-specified email address or cellphone.⁸⁵ This authentication process helps ensure notices and communications sent by USCIS to requestors may only be accessed by the individual who submitted the request. Paper notices sent via mail are addressed to the requestor and any legal representatives, but after mailing, there are few safeguards to ensure receipt by the intended individual and limit access to others—addresses can be misread or out of date and postal packages can be incorrectly delivered or delivered to an unsecured or communal mailbox.⁸⁶ Online accounts give requestors a personal communication channel and

greater control over the accessibility of their notices and communications from USCIS, which may contain personal or sensitive information. This attribute of e-filing could be particularly significant for vulnerable immigrants, including immigrant victims of domestic violence, human trafficking, and other crimes, who have a heightened need for privacy and confidentiality.⁸⁷

IV. Discussion of Changes Made in This Rule

A. Definition of e-Filing

This rule defines e-filing to mean electronically filing or submitting a benefit request, supporting evidence, documents, notices, and communication in a manner made available and approved by USCIS, including by completing the form online, in a web portal, via an electronic interface, or by uploading a PDF of the completed form through an approved online account. Defining and using the term “e-file” will make this rule, as well as future rules, clearer and will simplify USCIS websites, guidance, and communications by avoiding the repetitive use of multiple words to describe the intent.

USCIS currently allows requestors to submit a benefit request through a guided online filing experience or by uploading a PDF of the benefit request online at <https://my.uscis.gov>. DHS defines e-file to account for the electronic filing methods currently available and to remain flexible enough to account for any future or additional types of e-filing USCIS may develop.

B. Mandatory e-Filing Requirement

1. Required Form Types

This rule provides USCIS authority, in its discretion, to mandate e-filing of immigration benefit requests. *See* 8 CFR 103.2(a)(1)(ii). The rule provides that a form must be available for e-filing for at least 180 days before USCIS mandates the e-filing of the form. USCIS will provide 60 days of advance notice of the requirement by publishing instruction on the official USCIS website, along with a clearly articulated ‘effective date’ allowing for a grace period. *See* 8 CFR 103.2(a)(1)(ii). This ensures transparency and allows requestors to stay informed of changes to filing procedures.

Requestors may meet the mandatory e-filing requirement in any manner made available by USCIS, including by completing the form online or by uploading a PDF of the completed form through an online account. Completing the form via guided online filing is the most efficient way to submit the form, particularly since the online account will prevent a requestor from submitting a benefit request if it does not meet defined acceptance criteria. This minimizes the possibility the requestor will submit a benefit request USCIS may ultimately reject. When a requestor submits a benefit request via PDFi, USCIS runs automated checks to determine if the submission meets defined acceptance criteria. The requestor will receive notification in the online system if the benefit request is rejected. Requestors submitting a form through PDFi will receive a mailed notification⁸⁸ once the filing is accepted and the filing fee is transacted.

As of December 16, 2025, USCIS offers 22 forms for e-filing, which have all been available for at least 180 days.⁸⁹ Of those, six are available for both guided online filing and PDFi. This rule does not impose or announce a requirement to e-file any benefit request, but this rule authorizes USCIS to do so and provides the procedures USCIS will follow to impose the requirement. USCIS may announce that some or all of these forms must be e-filed after this rule’s publication. USCIS may require mandatory e-filing for particular eligibility categories, classifications requested, or types of requests that may be filed using a form even though all benefit categories that may be requested with the form are not yet available for e-filing.

Before mandating e-filing of a particular form, USCIS will consider the form’s association with other forms that may not yet be available to e-file and system development to support e-filing the form. Each time e-filing is required, USCIS will also consider characteristics of the filing population, socioeconomic conditions, the availability of public technology resources, and similar criteria as they apply generally to the specific request. An e-filing mandate is not necessarily irreversible; if a mandate results in a great number of requests for waiver of the e-filing requirement or a sizeable decrease in filings of the request, USCIS may consider why that

⁸¹ *See* MITRE Corp., Person-Centric Identity Management: Rapidly Assimilating Data About a Person of Interest (Jan. 13, 2017), <https://www.mitre.org/sites/default/files/publications/17-0202-person-centric-identity-management.pdf>.

⁸² USCIS continuously maintains staff to respond to emergency requests for records.

⁸³ Regardless of format, USCIS will continue to comply with the Privacy Act and other applicable statutes.

⁸⁴ *See* USCIS, How to Create an Online Account, <https://www.uscis.gov/file-online/how-to-create-a-uscis-online-account> (last updated Jul. 29, 2024).

⁸⁵ *See* USCIS, How to Create an Online Account, Step 6, <https://www.uscis.gov/file-online/how-to-create-a-uscis-online-account> (last updated Jul. 29, 2024).

⁸⁶ This reality is reflected in current USCIS policies on “safe mailing addresses” in the case of certain humanitarian benefit requests. *See* USCIS, Form I-360, Instructions for Petition for Amerasian, Widow(er), or Special Immigrant, p. 6, OMB No. 1615-0020 (expires Mar. 31, 2027) <https://www.uscis.gov/sites/default/files/document/forms/i-360instr.pdf>.

⁸⁷ *See* INA sec. 101(a)(15)(T)–(U), 8 U.S.C. 1101(a)(15)(T)–(U); INA sec. 204(a)(1)(A), 8 U.S.C. 1154(a)(1)(A). *See also* Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, 114 Stat. 1464 (codified as amended in various titles of U.S.C.), Violence Against Women Act of 1994, Public Law 103–322, 108 Stat. 1902 (codified as amended in various titles of U.S.C.).

⁸⁸ Currently, only H–2A petitioners receive a receipt notice in their account when filing through PDFi.

⁸⁹ *See* USCIS, Forms Available to File Online, <https://www.uscis.gov/file-online/forms-available-to-file-online> (last updated Dec. 16, 2025).

is occurring and whether additional actions are needed.

2. Required Fields

USCIS requires certain fields on its forms to be complete before accepting a benefit request. Just as USCIS rejects paper submissions, USCIS may reject a PDFi submission or prevent a form from being submitted online if the attempted submission is not consistent with the form instructions or regulations or if a required data element is incomplete.

Neither the INA nor DHS regulations define the term “reject” or “rejection” for immigration purposes. USCIS, however, has defined these terms through agency practice, using intake rules and procedures to review each submission for compliance with the filing requirements in 8 CFR 103.2(a)(7), compliance with other applicable regulations, including form instructions, and compliance with USCIS policy.⁹⁰ Generally, when a request is rejected, USCIS returns the entire contents of the received packet to the requestor, including the request, all supporting documentary evidence, and the filing fee(s).⁹¹ USCIS does not conduct a substantive review of the request or supporting evidence when assessing whether the request should be accepted or rejected, only that it meets minimum requirements for acceptance. Typically, a requestor can re-file a rejected request after correcting the filing deficiencies.

Conversely, if a request is accepted, USCIS will issue a receipt notice, deposit the filing fee, and prepare the request for a substantive review (generally called adjudication). The adjudication process may also include additional steps, such as requesting more evidence or interviewing the requestor, and ultimately, issuing a final determination approving or denying the request. In short, a request is rejected when USCIS determines the submission does not comply with all applicable acceptance criteria and returns the request to the requestor, while a request is generally denied only after it is accepted and adjudicated by USCIS.

Eliminating the need for a USCIS employee to physically review a filing for deficiencies as currently required for paper filings results in a much more efficient system for USCIS. Although the guided online filing process is

necessarily different from completing a paper form, forms submitted via guided online filing generally collect the same information from requestors and match the rejection criteria utilized for paper submissions. Requestors who continue to use the paper filing option (until e-filing becomes available or by seeking a waiver of the e-filing requirement) only know their filing is rejected after intake, review, and return of the rejected submission. If a requestor attempts to submit a rejectable filing to USCIS through the guided online filing interface, the filing platform will prevent the requestor from submitting the request and identify the data field(s) or data element(s) preventing submission. Requestors who utilize the guided online filing interface know instantaneously if their filing needs additional data or evidence before it can be submitted. Requestors who upload a PDF within their USCIS online account are notified of a rejection after submission intake and processing through existing business rules by an electronic rejection notice posted in their online account and a physical rejection notice issued through the mail.

Consistent with the requirements to follow form instructions regarding signatures and required data elements, DHS is making procedural and technical amendments to 8 CFR 103.2(a)(1)(i) restating in plainer language that requests must be completed as required by form instructions. USCIS ensures that form instructions are consistent with statutory and regulatory criteria. Clarifying the regulatory text in this manner will not change the effect of form instructions or result in fewer or more requests being rejected.

3. Signature

As stated earlier, GPEA generally directs Federal agencies to provide the option to use electronic forms, electronic filing, and electronic submissions to conduct agency business with the public. Public Law 105–277, 112 Stat. 2681–750, sec. 1704. GPEA also establishes the means for the use and acceptance of electronic signatures.

GPEA defines an electronic signature as “a method of signing an electronic message that identifies and authenticates a particular person as the source of the electronic message and indicates such person’s approval of the information contained in the electronic message.” *Id* at sec. 1710. It adds that “electronic signatures or other forms of electronic authentication used in accordance with such procedures shall not be denied legal effect, validity, or enforceability because such records are in electronic form.” *Id* at sec. 1707.

GPEA therefore generally directs agencies to enable requestors to sign completed forms electronically with the same legal force as a handwritten signature on paper.

The current process for signing a benefit request online occurs through the signer’s online account. Once users reach the signature portion of the electronic form, they are presented with the declaration or certification language identical to the paper version of the same form. They are presented with a check box to acknowledge acceptance and understanding of the language, as well as to grant authorization for USCIS to use the data provided in the benefit request, supporting documents, and other USCIS records to determine the requestor’s eligibility for the benefit and to administer and enforce U.S. immigration law. After typing their name in the signature box, users represent their intent to file the signed document by clicking a subsequent button presented on the screen. If, prior to submission, a user chooses to go back and change information on the form, they will be required to complete the signature process again before the form can be submitted. At the time the form is submitted, the electronic signature and the account information are combined with a date and time stamp.

A signature on a benefit request may be in an electronic format when the request is filed online, as permitted by the instructions to the form. 8 CFR 103.2(a)(2). USCIS does not permit signatures affixed to a paper form using a signature software program outside of an online account because this form of signature, unlike signatures collected through the USCIS online account, does not authenticate the requestor as the signatory.⁹² Considering the continued efforts to increase the number of forms available for e-filing, and that DHS is moving away from filings by mail, DHS has decided to not expend resources to change its rules regarding signing paper using signature programs.

USCIS only accepts electronic signatures for e-filing because the signatures occur within a secure account verifying the identity of the signer. USCIS e-filing options, including PDF upload, are designed with the goal of ease of access, completion, accuracy, and submission. E-filing options offer multiple advantages compared to being able to sign a paper form using a software program, including the ability to electronically sign and submit a benefit request submitted to USCIS

⁹⁰ See USCIS, Policy Manual, Volume 1, General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 6, Submitting Requests, Section B, Intake Processing, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6> (current as of Feb. 3, 2026).

⁹¹ USCIS does not refund the filing fee when it rejects an appeal filed by a person or entity not entitled to file an appeal. See 8 CFR 103.3(a)(2)(v)(A)(1).

⁹² See, e.g., <https://signaturely.com/how-electronic-signatures-work/> (last visited Mar. 10, 2026).

through a single workflow, signature capture and retention through a legally compliant agency solution, and identity verification managed through the USCIS online account, so USCIS will continue to focus its efforts on reducing paper filings.

4. Supporting Documents

In addition to the properly completed form and filing fees, most benefit requests require the requestor to submit certain supporting documentation with their filing, referred to as required initial evidence. 8 CFR 103.2(b)(8)(ii). The required initial evidence is dependent on the benefit being requested, but may include documentation of citizenship, a copy of a birth certificate, or documentation of a domestic relationship, such as spousal, sibling, or legal guardianship. When filing by mail, requestors generally photocopy supporting evidence and mail all paper copies together with the completed required form. When e-filing, requestors instead submit supporting evidence and documentation in either electronic or digital format and upload to the case using their online account from any device, including tablets and smartphones.⁹³

For those with access to a smartphone, this represents a convenience since photos can easily be emailed or transferred. Additionally, some types of supporting evidence may exist in a native digital format, such as school records and household bills. For those without access to a smartphone or with more voluminous supporting paperwork, most machines with photocopying capability can generally scan documents.⁹⁴ For example, an individual who previously had to go to a library to copy a document could potentially scan the document at the library instead. Nearly all libraries assist patrons with using digital platforms and completing government forms.⁹⁵

When uploading a document, users are prompted to categorize the image. Categorizing evidence helps users ensure they have submitted all required initial evidence with their filing by

alerting them when certain required evidence appears to be missing. Additionally, categorizing evidence at intake presents more efficient review options during the adjudication process; adjudicators can proceed straight to the document they must review, rather than flipping through a pile of paper or one large digital file of all evidence.

DHS is not changing the requirement that requestors submit an English translation of any supporting document that is not in English, including a certification from the translator that the translation is complete and accurate and that he or she is competent to translate the foreign language into English. 8 CFR 103.2(b)(3). DHS has explored the acceptance of document translations provided by automated translation tools but has determined they do not currently ensure sufficient accuracy and reliability in the translation to meet DHS requirements.

5. Fees

Each request must be filed with all required fees. 8 CFR 103.2(a)(1). When a request is e-filed, USCIS requires any fees associated with the request to be paid online.⁹⁶ The USCIS online system currently interfaces with the U.S. Department of the Treasury, Bureau of the Fiscal Service web-based system, *Pay.gov*.⁹⁷ *Pay.gov* is used to make secure electronic payments to Federal Government agencies. Required fee totals are automatically computed by USCIS, and individuals can pay in U.S. dollars using a credit card, debit card, bank account withdrawal, or prepaid card from a U.S. bank located in the United States.

While payments made online through *Pay.gov* are tabulated and verified nearly immediately, paper forms require the processing of credit card or automated clearing house (ACH) transaction forms through a time-intensive process requiring USCIS to input, verify, and clear the payment instruments. For requests submitted on paper, requestors are required to tabulate the total fee themselves according to the Form G-1055, Fee Schedule,⁹⁸ and include an ACH or credit card authorization form. Paying a filing fee by credit card for a paper request requires individuals to submit Form G-1450, Authorization for Credit

Card Transactions, to provide their credit card information. Paying a filing fee by ACH for a paper request requires requestors to submit Form G-1650, Authorization for ACH Transactions, to provide their bank account information.

In October 2025, USCIS began requiring requestors to pay filing fees through either an Automated Clearing House (ACH) or credit card payment.⁹⁹ By December 27, 2025, over 96 percent of requestors paid their filing fees by electronic means.¹⁰⁰ However, given the paper-based nature of many USCIS filings, the electronic payment can only be effectuated by having the requestor include USCIS Form G-1450 or Form G-1650 with the benefit request. Lockbox employees must then manually enter the information into the payment system.

This system is inefficient as it requires requestors to transcribe their fee information onto the form or payment instrument and then requires USCIS to manually enter the information into the Department of the Treasury's system for payment. Errors on the form or in a payment being processed could result in the request being rejected. E-filed benefit requests, conversely, do not require a paper-based form to permit an electronic payment. Rather, the requestor can make their payment directly online. USCIS uses the online system to calculate the correct fees for the benefit requests being submitted, which limits rejections for an incorrect fee as the online system pre-determines the correct amount based on the requestor's specific circumstance. Of the one million paper-filed benefit requests USCIS rejected in FY 2025, approximately 25 percent were solely due to a fee issue, including the requestor providing the incorrect fee.¹⁰¹ Additionally, paying online with a credit card or bank withdrawal requires entering the payment information one time, reducing the chance of transcription errors. It also provides the user with immediate notification if there is an error with the information provided. A requestor can correct errors in real time and resubmit the information immediately. As more benefit requests are filed online, it will free up USCIS resources currently used for processing payments.

⁹³ Online accounts currently accept Joint Photographic Experts Group (JPG or JPEG), Portable Document Format (PDF), and Tagged Image File Format (TIF or TIFF) formats.

⁹⁴ See M. David Stone, The Best All-in-One Printers for 2026, PCMag Digital Edition, <https://www.pcmag.com/picks/the-best-all-in-one-printers> (last updated Dec. 21, 2025) (stating, for home or office multi-function printers, "Printing and copying are a given, and scanning is almost always included as well.").

⁹⁵ See Kathy Rosa ed., American Library Association, The State of America's Libraries 2015, p. 10 (Apr. 2015), http://www.ala.org/news/sites/ala.org/news/files/content/0415_StateAmLib_0.pdf.

⁹⁶ See USCIS Fee Schedule, Form G-1055, "Filing Online," Mar. 1, 2026, <https://www.uscis.gov/sites/default/files/document/forms/g-1055.pdf>.

⁹⁷ See Department of the Treasury, Bureau of the Fiscal Service, *Pay.gov*, www.pay.gov/paygov (last visited Dec. 17, 2025).

⁹⁸ See USCIS, Form G-1055, Fee Schedule, <https://www.uscis.gov/g-1055> (last updated Feb. 1, 2026).

⁹⁹ See USCIS, USCIS to Modernize Fee Payments with Electronic Funds (Aug. 29, 2025), <https://www.uscis.gov/newsroom/news-releases/uscis-to-modernize-fee-payments-with-electronic-funds>.

¹⁰⁰ Source: USCIS Office of Intake and Document Production internal receipt data.

¹⁰¹ Extracted from USCIS receipt data on Jan. 22, 2026.

6. Receipts and Completeness

Submitting benefit requests via guided online filing provides users with immediate confirmation their request has been received by USCIS. A requestor cannot submit an electronic benefit request until the requestor completes the electronic form, provides a valid electronic signature, and pays the required fee.¹⁰² Once submitted, USCIS labels the case accepted and assigns a receipt number in the requestor's account.¹⁰³ Those who properly complete a request are immediately notified that their submission has been received and successfully ingested into USCIS systems. Requestors submitting a form through PDFi will receive a mailed notification¹⁰⁴ once the filing is accepted and the filing fee is transacted. Once a benefit request is received, USCIS will record the receipt date as the actual date of receipt of the online submission. 8 CFR 103.2(a)(7)(i).

A requestor filing on paper with a USCIS Lockbox facility can include Form G-1145, E-Notification of Application/Petition Acceptance, to request USCIS to send an email or text message once the form is accepted.

When a paper filer includes this form, USCIS will identify the receipt number and instruct the requestor how to get updated case status information, typically by checking in the online system. See Form G-1145 Instructions. USCIS does not re-send any undeliverable e-notifications and still mails a physical receipt notice to the requestor and his or her attorney or accredited representative within 10 days of the request's acceptance. This process is burdensome on both the requestor and USCIS and does not provide the same immediate notification as the USCIS online system.

7. Accessibility

DHS believes allowing USCIS to mandate e-filing will not restrict the public's access to the programs administered by USCIS to a meaningful extent. As the adoption of technology becomes increasingly widespread, the hurdle of accessibility and digital literacy associated with e-filing shrinks. Measures of internet usage in the United States vary by survey, but the consistent result is that internet usage is pervasive and trends show a steady increase over time. DHS describes its analysis of the effect of an e-filing mandate on the

specific sectors of the affected public in the following sections. DHS focused its accessibility analysis on the United States as USCIS filing populations are generally residing in the United States. With limited exceptions, most individuals seeking immigration benefits from outside the United States file with the Department of State and will be minimally impacted by this rule. In FY 2025, USCIS received 0.4 percent of its total receipts from outside the United States.¹⁰⁵

a. Individuals

The American Community Survey (ACS) indicates that among all households in 2021, 95 percent had at least one type of computer and 90 percent had a broadband internet subscription.¹⁰⁶ This number has increased over time, from 74 percent subscribed to any type of internet in 2013 to 90 percent in 2021.¹⁰⁷ Breaking down the most recent data by age of respondent similarly demonstrates the prevalence and progression of household internet use. As Table 7 shows, nearly 90 percent of respondents between the ages of 15 and 64 live in a household where the internet is used.

Table 7. U.S. Households Internet Use, 2023		
Age (years)	Use internet at home (percent in each group)	Use internet either at home or outside home ¹⁰⁸ (percent in each group)
15 – 24	83.6	88.5
25 – 44	84.4	87.5
45 – 64	81.8	86.0
65 and older	73.9	76.8
Source: NTIU Internet Use Survey, sorted by Table, Internet Use, By Demographic, https://www.ntia.doc.gov/page/download-digital-nation-datasets (last visited Dec. 23, 2025).		

¹⁰² USCIS Policy Manual, Volume 1, Part B, Chapter 6, Submitting Requests, Section A, How to Submit, Subsection 2, Submitting Requests Online, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6> (last updated Feb. 3, 2026).

¹⁰³ USCIS Policy Manual, Volume 1, Part B, Chapter 6, Submitting Requests, Section A, How to Submit, Subsection 2, Submitting Requests Online, <https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-6> (last updated Feb. 3, 2026).

¹⁰⁴ Currently, only H-2A petitioners receive a receipt notice in their account when filing through PDFi.

¹⁰⁵ USCIS Office of Performance and Quality, NPD, CLAIMS3, ELIS, HQRAIO, queried Jan. 2026, PAER0020178.

¹⁰⁶ Daniela Mejia, United States Census Bureau, Computer and internet Use in the United States: 2021 (June 2024), <https://www2.census.gov/library/publications/2024/demo/acs-56.pdf>.

¹⁰⁷ Daniela Mejia, United States Census Bureau, Computer and internet Use in the United States: 2021, p. 3 (June 2024), <https://www2.census.gov/library/publications/2024/demo/acs-56.pdf>.

¹⁰⁸ Outside home access includes internet use at work, school, coffee shop, public places (such as library, commercial center, community center, and other public places), someone else's home, and other locations not covered here.

The increasing prevalence of smartphones, tablets, and other mobile and handheld devices has expanded the reach of the internet in daily life and provided alternative methods for accessing the internet and interacting electronically. Eleven percent of households accessed the internet only through a cellular data plan for a smartphone or other mobile device.¹⁰⁹ These individuals do not necessarily need an internet subscription from an internet service provider to be able to access the internet personally. In addition to mobile internet service,

mobile devices provide additional options for accessing the internet from public spaces. As discussed in later sections, an increasing number of public places offer free Wi-Fi, including nearly all public libraries.

For many, mobile devices have moved beyond internet browsing to become essential tools of daily life, facilitating everything from mobile banking to the operation of household appliances. The USCIS website, including access to forms, and myUSCIS are accessible to users on mobile devices.¹¹⁰ Even the most basic mobile devices are multi-

functional machines capable of completing tasks, which once required separate tools, such as running digital applications, taking photographs, sending and receiving digital files and messages, screenshotting or copying digital documents, and scanning paper documents. The pervasiveness of these handheld technologies, particularly among working-age adults, becomes even starker when these data are aggregated by age. As shown in Table 8, over 80 percent of individuals between the ages of 15 and 64 reported internet-enabled mobile phone use in 2023.

Table 8. Mobile and Handheld Device Use, 2023

Age (years)	Tablet or e-book reader (percent in each group)	Internet-enabled mobile phone (percent in each group)
15 – 24	27.8	82.6
25 – 44	31.7	85.9
45 – 64	33.0	83.2
65 and older	31.9	71.7

Source: NTIU Internet Use Survey, sorted by Table, Device Use, By Demographic, <https://www.ntia.doc.gov/page/download-digital-nation-datasets> (last visited Dec. 23, 2025).

DHS believes nationwide internet accessibility data indicate that most requestors will be able to comply with the e-filing requirements. DHS does not have internet accessibility data specific to USCIS benefit requestors and understands that particular populations submitting requests may have attributes making compliance with the online submission requirements more or less challenging. DHS acknowledges, despite the prevalence of the internet, there are still requestors who do not use the internet, whether because of expense, interest, availability, or digital literacy. Although DHS expects this population to continue to shrink, DHS recognizes that requestors who do not use the internet will be uniquely impacted by requiring the e-filing of benefit requests. After analyzing and carefully considering these impacts DHS believes the benefits of e-filing, both immediate and long-term, justify the costs this limited population may incur. In

addition, as USCIS decides whether to mandate e-filing of a particular benefit request, USCIS may consider the characteristics of the population required to file a given form, which may make it more or less amenable to e-filing. Finally, as discussed in this preamble, DHS is providing a waiver process to mitigate adverse impacts to requestors for whom compliance with the e-filing requirements would be an undue hardship.¹¹¹

b. Legal Representatives

DHS has also determined this rule would not preclude access to USCIS programs due to no internet access when a requestor is legally represented. Requestors who file with the assistance of an attorney or accredited representative must file a Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, or Form G–28I, Notice of Entry of Appearance as Attorney in Matters Outside the Geographical Confines of

the United States. A review of USCIS records shows legal representatives submit 32 percent of benefit requests.¹¹²

Both attorneys and accredited representatives have licensing or accreditation requirements they must satisfy before they are able to take on those roles.¹¹³ The education and income of these individuals, as well as the demands of engaging in business, means they are likely to be familiar with the internet and online functionality. Increasingly, legal representatives are required to use the internet in a variety of situations. As noted previously in this preamble, EOIR already requires immigration attorneys and accredited representatives to register online before representing clients in Immigration Court or before the BIA. Registration requires the legal representative to go online and create an account with a user ID and password.¹¹⁴ This population of legal representatives most closely

¹⁰⁹ Daniela Mejia, United States Census Bureau, Computer and internet Use in the United States: 2021, p. 8 (June 2024), <https://www2.census.gov/library/publications/2024/demo/acs-56.pdf>.

¹¹⁰ USCIS, myUSCIS, <https://my.uscis.gov/> (last visited Apr. 20, 2026) (stating, “you can use myUSCIS anytime and on any device”). See also USCIS, USCIS website, E-Verify Now Optimized for Mobile Devices, <https://www.uscis.gov/archive/>

[uscis-website-e-verify-now-optimized-for-mobile-devices](https://www.uscis.gov/archive/) (last updated Feb. 29, 2016).

¹¹¹ See Part IV, Section C of this preamble.

¹¹² DHS, USCIS, Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Jan. 2026, PAER #0020170.

¹¹³ See, e.g., 8 CFR 1003.0(e)(3) (providing that EOIR administer a program to recognize

organizations and accredit representatives to provide representation before the Immigration Courts, the Board, and DHS, or DHS alone).

¹¹⁴ DOJ, EOIR, Attorneys and Fully Accredited Representatives Registration Process Instructions, <https://www.justice.gov/eoir/page/file/1132791> (May 2024).

approximates the population affected by this rule.

Attorneys are increasingly required to file documents online in various areas of the profession, including in Federal and State court systems. The majority of all Federal bankruptcy, district and appellate courts mandate parties file all pleadings associated with their case online in the Case Management/Electronic Case Filing (CM/ECF) system.¹¹⁵ In addition, State courts are increasingly requiring attorneys to e-file documents.¹¹⁶ Therefore, DHS analysis of the internet access use and capability of immigration practitioners indicates represented parties would not be prejudiced by being required to file a specific USCIS benefit request online.

c. Employers

Many requestors are not individuals but are U.S. businesses or legal entities. Employers may file both immigrant and nonimmigrant petitions on behalf of foreign workers.¹¹⁷ Some employers are well-positioned to comply with the e-filing mandate. As noted in previous sections, employers are accustomed to e-filing requirements in a variety of settings. Those applying for H-1B visas, for example, have been required to file an LCA online with DOL since 2006, with few exceptions. 71 FR 37801 (June 30, 2006).

There are increasing avenues in which employers are encouraged, if not required, to use government e-filing. The IRS and Social Security

Administration require businesses filing at least 10 information returns to e-file Forms W-2.¹¹⁸ Some States similarly require some or all businesses to e-file taxes.¹¹⁹

d. Available Assistance

Libraries are important public resources for internet access and digital literacy. In 2020, there were 9,025 public libraries in the United States.¹²⁰ The Digital Inclusion Survey 2014–2015 found that 98 percent of libraries in the United States at that time offered free Wi-Fi and technology training. Further, the proportion of libraries circulating internet hotspots and laptops has increased with 46.9 percent of libraries overall offering hotspots and 24.8 percent circulating laptops as of 2023.¹²¹ Perhaps more significantly, it reported that in 2015 nearly all libraries offered assistance in completing electronic government forms.¹²² DHS expects individuals who do not have personal access to the internet at home will be able, at a minimum, to create and access their USCIS online accounts at local libraries. Libraries also provide the advantage of knowledgeable librarians who can assist filers confused by any aspects of the technology. Over 95 percent of public libraries also provide at least one type of digital literacy training.¹²³

¹¹⁸ Internal Revenue Service, General Instructions for Forms W-2 and W-3 (2026) (Jan. 29, 2026), <https://www.irs.gov/pub/irs-pdf/iw2w3.pdf>.

¹¹⁹ Online filing requirements for businesses vary by state. Some States require all businesses to file online, while others have mandatory online filing once a business reaches an employee or income threshold. States with online filing requirements include Massachusetts (Massachusetts Department of Revenue, DOR E-File Information, <https://www.mass.gov/guides/dor-e-file-information> (last updated Oct. 25, 2024)), Michigan (Michigan Department of Treasury, Is E-File mandatory for Michigan Business Tax (MBT)?, https://www.michigan.gov/taxes/0,4676,7-238-43519_46621_47458_69295-337087-,00.html (last visited Dec. 17, 2025)), Missouri (Missouri Department of Revenue, Business Tax Electronic Filing FAQs, <https://dor.mo.gov/faq/business/telefile.php> (last visited Dec. 17, 2025)), New York (New York State Department of Taxation and Finance, Electronic filing mandate for business taxpayers, https://www.tax.ny.gov/bus/efile/elf_busrn_mandate.htm (last updated Mar. 23, 2025)), and Oregon (Oregon Department of Revenue, iWire, <https://www.oregon.gov/DOR/programs/businesses/pages/iwire.aspx> (last visited Dec. 17, 2025)).

¹²⁰ U.S. Department of Education, Digest of Education Statistics: 2020, ch. 7, Table 701.60, https://nces.ed.gov/programs/digest/d22/tables/dt22_701.60.asp (last visited Dec. 17, 2025).

¹²¹ American Library Association, 2023 Public Library Technology Survey: Summary Report, p. 4 (2024), https://www.ala.org/sites/default/files/2024-07/PLA_Tech_Survey_Report_2024.pdf.

¹²² Kathy Rosa ed., American Library Association, The State of America's Libraries 2015 10–11 (Apr. 2015), http://www.ala.org/news/sites/ala.org.news/files/content/0415_StateAmLib_0.pdf.

¹²³ American Library Association, 2023 Public Library Technology Survey: Summary Report, p. 7

The importance of making digital advances has been recognized on governmental and other levels and has resulted in numerous programs dedicated to improving access for groups that may be less likely to have it. Since 2009, the U.S. Department of Agriculture (USDA) has run a variety of programs providing loans and grants to strengthen access to high-speed broadband for rural parts of the United States. These include Community Connect Grants, Distance Learning and Telemedicine Grants, Rural Broadband Access Loan and Loan Guarantee, and Telecommunications Infrastructure Loans and Loan Guarantees.¹²⁴

In 2017, E.O. 13790 announced the creation of the Interagency Task Force on Agriculture and Rural Prosperity. 82 FR 20237 (Apr. 25, 2017). The report issued on October 21, 2017, pursuant to E.O. 13790, highlighted the importance of connectivity for rural United States, noting that “reliable and affordable high-speed internet connectivity will transform rural America as a key catalyst for prosperity.”¹²⁵ The report recognized digital connectivity is essential and impacts society on a variety of levels, affecting everything from wide-ranging economic development to the preparedness of the workforce to individuals’ quality of life.¹²⁶ As a result, it lists “Achieving e-Connectivity for Rural America” as “Call to Action #1.”¹²⁷ The report notes rural areas remain less connected to reliable high-speed internet today than metropolitan areas and have lower usage rates compared with urban areas. DHS notes the data are from 2014, and the USDA Community Connect Grant Program has very likely increased high speed internet access levels significantly since then.

In addition to the USDA programs noted above, the Federal Communications Commission (FCC) operates the universal service schools and libraries program, commonly known as the E-Rate program, which helps ensure schools and libraries can obtain high-speed internet access at affordable rates. The \$10 billion

(2024), https://www.ala.org/sites/default/files/2024-07/PLA_Tech_Survey_Report_2024.pdf.

¹²⁴ See U.S. Department of Agriculture (USDA) web page, Rural Development, Telecom Programs, <https://www.rd.usda.gov/programs-services/all-programs/telecom-programs> (last visited Feb. 17, 2026); see also 7 CFR 1739 (Community Connect Grant Program).

¹²⁵ Sonny Perdue, USDA, Report to the President of the United States from the Task Force on Agriculture and Rural Prosperity, p. 2 (Oct. 21, 2017), <https://www.usda.gov/sites/default/files/documents/rural-prosperity-report.pdf>.

¹²⁶ *Id.* at 26.

¹²⁷ *Id.* at 17.

¹¹⁵ See House of Representatives, Committee on the Judiciary, Federal Rules of Appellate Procedure, Rule 25.1 (Dec. 1, 2024), <https://www.uscourts.gov/file/78321/download>. See also PACER, Individual Court Sites, <https://pacer.uscourts.gov/file-case/court-cmecf-lookup> (last visited Dec. 17, 2025) (with links to all Federal courts’ individual CM/ECF sites).

¹¹⁶ Some State jurisdictions require attorneys to file documents electronically or register online, including in Alabama (Alabama Bar Association, AlaFile Registration is Now Mandatory!! (Apr. 19, 2011), <https://www.alabar.org/news/alafire-registration-is-now-mandatory/>); California (California Supreme Court Adopts Amendments to E-Filing Rules (Aug. 13, 2025), <https://courts.ca.gov/news/california-supreme-court-adopts-amendments-e-filing-rules/>); Maryland (Maryland Electronic Courts, FAQs For Attorneys, <https://mdcourts.gov/mdec/faq-attorneys> (last visited Dec. 17, 2025)); Texas (Texas Judicial Branch, Third Court of Appeals, Electronic Filing, Attorneys, <http://www.txcourts.gov/3rdcoa/practice-before-the-court/electronic-filing/attorneys/> (last visited Feb. 12, 2026)); and Wisconsin (Electronic Filing Rule, Wisconsin Statutes 801.18 (Apr. 28, 2016), <https://www.wicourts.gov/ecourts/efilecircuit/docs/eFilingRule.pdf>).

¹¹⁷ See, e.g., USCIS, Form I-140, Immigrant Petition for Alien Workers, <https://www.uscis.gov/i-140> (last updated Jan. 9, 2026); see also DHS, USCIS, Form I-129, Petition for a Nonimmigrant Worker, <https://www.uscis.gov/i-129> (last updated Feb. 10, 2026).

Universal Service Fund is administered by the Universal Service Administrative Company (USAC), a nonprofit designated by the FCC. With the guidance of FCC policy, USAC collects and delivers funding through four programs focused specifically on places where broadband and connectivity needs are acute.¹²⁸ In 2022, universal service disbursements totaled over \$7.4 billion.¹²⁹

e. Rehabilitation Act Compliance

The USCIS transition to mandatory e-filing and this rule comply with the requirements of sections 504 and 508 of the Rehabilitation Act of 1973, as amended, as they apply to federally funded programs and activities and access to electronic and information technology used by the Federal Government. Public Law 93–112, 87 Stat. 355 (Sept. 26, 1973) (codified as amended at 29 U.S.C. 794, 798). USCIS' e-filing system complies with the Rehabilitation Act and is accessible to employees and members of the public.

C. Waiver of e-Filing Requirement

This rule provides a process to request a waiver of the e-filing requirement. This waiver ensures DHS complies with the 21st Century IDEA Act, which requires each executive agency to maintain an accessible method of completing digital services through in-person, paper-based, or other means, such that individuals without the ability to use digital services are not deprived of or impeded from access to those digital services. Public Law 115–336, sec. 4(e), 132 Stat. 5025, 5027 (Dec. 20, 2018).

This rule is also consistent with the E-Government Act of 2002, which requires that, “When promulgating policies and implementing programs regarding the provision of Government information and services over the internet, agency heads shall consider the impact on persons without access to the internet, and shall, to the extent practicable—(1) ensure that the availability of Government information and services has not been diminished for individuals who lack access to the internet; and (2) pursue alternate modes of delivery that make Government information and services more accessible to individuals who do not own computers or lack access to the internet.” Public Law 107–347, sec. 202(c), 116 Stat. 2899 (Dec. 17, 2002).

While DHS believes most requestors could comply with an e-filing requirement, it is understood that access to the internet and relevant technology is not yet universal. Therefore, DHS is providing a waiver request process for requestors unable to e-file a benefit request USCIS requires to be e-filed.

1. Qualifying for a Waiver

Requestors may seek a waiver of the e-filing requirement by submitting Form I–936, Request for Waiver of E-Filing Requirement, before submitting a paper filing. See 8 CFR 103.2(a)(1)(iii). USCIS will determine, in its discretion, whether to approve the waiver and allow the requestor to submit his or her benefit request without using the required e-filing method. DHS has decided to implement this process to encourage greater participation in e-filing and provide USCIS with increased visibility into the expected amount of paper filings so USCIS can properly allocate resources and manage the operational burden of paper filings. USCIS may exercise its discretion to waive the e-filing mandate for individual cases if USCIS determines requiring e-filing would cause the requestor undue hardship.

The requestor must demonstrate the reason for the waiver request. In assessing whether a waiver is warranted, USCIS will consider all relevant evidence the requestor provided, such as information concerning geographical location, socioeconomic conditions, and the availability of public technology resources. If the requestor does not have personal access to the internet, the requestor must explain why he or she cannot find other ways to access the internet (for example, through public libraries, community centers, friends, or family). Being unfamiliar with the USCIS e-filing system or not having an online account will generally not be enough to establish a requestor qualifies for a waiver, particularly because as discussed previously in this preamble, public libraries provide patrons access to the internet and often offer digital literacy training.

Any person or entity may submit a waiver request. However, DHS expects certain groups will generally not be eligible for a waiver, such as requestors who have legal representation and requestors who are business entities (as opposed to individuals). As explained earlier in this preamble, access to the internet should not be a problem and expense for parties represented by counsel, or a business entity that must document its ability to pay wages to a

foreign national employee.¹³⁰ Nevertheless, USCIS will evaluate each request for a waiver on a case-by-case basis and consider if the circumstances justify a waiver of the e-filing requirement.

An individual who has previously e-filed a benefit request can still submit Form I–936 requesting a waiver of the e-filing requirement for a future benefit request. The individual's ability to e-file in the past would be considered as a factor in determining whether a waiver is warranted. However, DHS recognizes circumstances can change. USCIS will evaluate each waiver request on its own merits.

2. Submitting a Waiver Request

A requestor seeking a waiver of the e-filing requirements must first submit Form I–936, Request for Waiver of E-Filing Requirement, with the appropriate fee. Requestors must provide supporting documentation to demonstrate the reason they are unable to comply with the e-filing requirement.¹³¹ USCIS makes its forms available on its website.¹³² Information on how to complete and submit the waiver request, including themailing address for submission, are included in the form instructions.¹³³

Form I–936 requires waiver requestors to indicate the specific benefit request form they wish to file via paper.¹³⁴ Requestors must provide supporting documentation to demonstrate the reason they are unable to comply with the e-filing requirement.¹³⁵ If USCIS determines a waiver is warranted, it would mail a paper waiver approval notice to the requestor, as well as a paper version of the form the requestor lists on the Form I–936 and the appropriate address to submit the benefit request. A waiver approval notice will be valid for 30 days from its date of issue for new filings.¹³⁶ Thus, USCIS must receive any paper form submitted based on a given waiver approval notice within 33 calendar days from the day USCIS issued the waiver

¹³⁰ See Part IV, Section A.7 of this preamble discussing expectations of internet access for those with legal representation and entities.

¹³¹ See Instructions for Form I–936, What Evidence to Submit.

¹³² See USCIS, All Forms, <https://www.uscis.gov/forms> (last visited Dec. 18, 2025).

¹³³ See Instructions for Form I–936.

¹³⁴ See Form I–936, Part 2, Question 1. (“I want to request a waiver of the e-filing requirements for the following form”).

¹³⁵ See Instructions for Form I–936, What Evidence to Submit.

¹³⁶ Throughout this rule, where the preamble references a request that must be filed online, such characterization excludes those who receive waivers, which are available for all requests that must be filed online.

¹²⁸ Universal Service Administrative Co., <https://www.usac.org> (last visited Dec. 17, 2025).

¹²⁹ Universal Service Administrative Co., Universal Service FAQs, <https://www.usac.org/about/universal-service/faqs/general/> (last visited Dec. 17, 2025).

approval notice.¹³⁷ DHS believes the 30-day validity period will help ensure waivers of the e-filing requirements are used only when truly necessary, while at the same time allowing enough time for those granted waivers to submit paper forms.

An individual may only include one form in a single waiver request form, meaning requestors must submit a separate Form I-936 for each benefit request they are seeking to file by paper. Requestors should generally only submit Form I-936 for the benefit request they intend to submit within 30 days of waiver approval and include a separate Form I-936 for any additional forms they may file concurrently or within the same 30-day period.¹³⁸ If a requestor includes multiple Forms I-936 seeking a waiver of forms that may be filed concurrently and USCIS grants one waiver, USCIS will generally approve a waiver for the additionally submitted Forms I-936. However, there may be instances in which USCIS approves a waiver request for only certain forms. USCIS may not approve all Forms I-936 received together if the requestor could not reasonably and in good faith submit all of the forms for which a Form I-936 is submitted within 30 days of a waiver approval. For example, a requestor concurrently submitting a Form I-936 for Form I-589, Application for Asylum and for Withholding of Removal, and a Form I-936 for Form I-765, Application for Employment Authorization, would likely result in only the Form I-589 waiver request being considered because Form I-765 cannot be filed by the same person until the Form I-589 has been pending at least 150 days. 8 CFR 274a.12(c)(8); 8 CFR 208.7(a)(1).

Additionally, each individual seeking a waiver of the e-filing requirement will be required to obtain his or her own waiver approval notice. DHS considered allowing one Form I-936 to be submitted for more than one requestor if the benefit requests would be filed simultaneously and one is dependent on the other, such as Form I-485, Application to Register Permanent Residence or Adjust Status, of a child filed with Form I-485 of a parent or a Form I-485 filed by a requestor with an underlying Form I-130, Petition for Alien Relative, filed by a petitioning family member. However, this approach is unnecessarily complex and introduces additional challenges into the waiver process. For instance, USCIS

would have to associate one person's waiver approval with another person's subsequent filing. USCIS notes the possibility that two different, though sometimes related, adjudications of paper requests may be handled at different USCIS offices. Requiring a waiver request for each filing ensures USCIS can properly allocate resources to the expected volume of filings received through an approved waiver.

Requiring separate waiver requests will further allow USCIS to better track populations encountering difficulty with e-filing and understand why the population is unable or unwilling to adopt e-filing. While allowing dependent filings to be included in the same waiver approval would provide convenience and efficiencies to the requestor at the waiver stage, it may counter the operations or efficiencies of USCIS this rule intends to accomplish in anticipating receipt volume of paper filings and ensuring each filing received on paper includes an associated waiver approval since dependents may not always be required to submit their application at the same time as the principal applicant. For example, a child of a conditional permanent resident may have to file his or her own petition to remove conditions and may have a different filing window than his or her parent.¹³⁹

3. Fee Required To Waive e-Filing Requirement

DHS is establishing a fee for an e-filing waiver request. New 8 CFR 106.2(a)(64). The INA authorizes DHS to set fees for providing adjudication and naturalization services at a level to ensure recovery of the full costs of providing all such services. INA sec. 286(m), 8 U.S.C. 1356(m). Fees collected from individuals and entities filing benefit requests are deposited into the Immigration Examinations Fee Account (IEFA) and used to fund the cost of processing benefit requests. 89 FR 6194, 6195 (Jan. 4, 2023). In addition, DHS complies with the requirements and principles of the Chief Financial Officers Act of 1990, 31 U.S.C. 901-03, (CFO Act), and Office of Management and Budget (OMB) Circular A-25. USCIS reviews form fees deposited into the IEFA biennially and, if necessary, proposes adjustments to ensure it recovers the costs necessary to provide adequate service to requestors, meet national security and public safety

requirements, and achieve adjudicative processing requirements. USCIS uses projected volume data and completion rates (the average time for adjudication of an immigration benefit request) to set the fees for specific immigration benefit requests.

In the case of waiver requests, USCIS will need to expend resources to adjudicate and process them, so DHS is setting a \$25 fee for the Form I-936, Request for Waiver of E-Filing Requirement. The cost-recovery fee for Form I-936 cannot be determined at this time due to lack of data for a substantially similar process. Therefore, DHS is setting the fee at a small amount. Although it may not recover the full cost of intake and adjudication of the proposed Form I-936, the fee would provide some revenue to reduce the fiscal effects on USCIS. DHS estimates the time burden and estimated number of annual Form I-936 waivers in both the E.O.s 12866 and 13563 and the Paperwork Reduction Act sections of this rule. To recover at least some of the costs of adjudicating Form I-936, avoid other fee payers having to fund the e-filing waiver process entirely, encourage adoption of e-filing, and potentially deter frivolous waiver filings, DHS is establishing a \$25 fee for the waiver. See 8 CFR 106.2(a)(64).

USCIS will record data on the volume and adjudication time of e-filing waiver requests after this rule takes effect. Accordingly, once the e-filing waiver request process has been implemented and functional for a sufficient period of time, USCIS will analyze receipt volumes and the complexity of the reviews to determine if the fee is sufficient or needs to be adjusted. DHS may adjust the fee to an amount necessary to recover its relative costs in its next fee rule.

This rule provides that the fee for a Form I-936 may be waived for certain filings identified in 8 CFR 106.3(a)(3)(iii). See 8 CFR 106.3(a)(3)(ii)(H). This includes self-petitioners seeking Violence Against Women Act (VAWA) status, T nonimmigrant status, U nonimmigrant status, status available to certain battered spouses, and Temporary Protected Status (TPS), among others. The limited fee waiver is provided because INA section 245(l)(7), 8 U.S.C. 1255(l)(7) requires DHS to permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under 8 U.S.C. 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) (as in effect on March 31, 1997). DHS considered but

¹³⁷ USCIS allows for 3 additional days in cases of service by mail. 8 CFR 103.8(b).

¹³⁸ See Instructions for Form I-936, Who May File Form I-936.

¹³⁹ See, e.g., 8 CFR 216.6(a)(1)(ii) (specifying a spouse and each child of a conditional resident immigrant investor must submit his or her own petition to remove conditions when they are not included on the immigrant investor's petition to remove conditions).

decided to not permit fee waivers for a Form I-936 filed to waive e-filing for forms where the ability to request a fee waiver is not required by law.

4. Waiver Validity Period and Filing Date Preservation

An approved waiver request will be valid for the form type listed in the approval notice for a period of 30 days, unless otherwise specified in the waiver request approval notice. The 30-day validity period applies only to initial filings.

For those requesting immigration benefits, the date a request is receipted by USCIS may be important for a deadline or, in the case of an oversubscribed benefit category, obtaining a priority date. Requesting a waiver from e-filing will not effectively reserve a spot in line for the intending requestor. USCIS considers a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit. 8 CFR 103.2(a)(7). Since the waiver request is not a benefit request, its receipt can provide no such benefit to the requestor. USCIS recognizes requesting a waiver will require additional mailing and processing time and requestors seeking a waiver of the e-filing requirement must consider this timeframe when seeking a waiver.

Importantly, approval of a waiver request does not ensure USCIS will accept the benefit request once received. Any benefit request submitted on paper with an approved waiver must still meet all the requirements for acceptance. USCIS may reject any benefit request not consistent with the form instructions or regulations, such as missing a required data element. 8 CFR 103.2(a)(1), (a)(7)(ii). If a requestor seeks to resubmit a rejected benefit request for which he or she received a waiver approval, USCIS must receive the resubmitted benefit request within the same 30-day window of the waiver approval, or the requestor must submit a new waiver request.

D. Related Rulemaking

This rule may impact several rulemaking efforts DHS is undertaking. See DHS Spring 2025 Unified Agenda, <https://www.reginfo.gov/public/do/eAgendaMain>.

1. Freedom of Information Act (FOIA) Requests

DHS amended its regulations related to the procedures for submitting Freedom of Information Act (FOIA) and Privacy Act of 1974 (PA)/Judicial Redress Act (JRA) requests to clarify

requestors must generally submit their FOIA requests and Privacy Act requests electronically. 90 FR 59945 (Dec. 23, 2025). The rule generally requires requestors to submit their FOIA requests and Privacy Act requests electronically through the web portal at <https://www.dhs.gov/foia> or other acceptable Federal Government or DHS Component websites. USCIS no longer accepts hard copy (mail) or emailed FOIA or Privacy Act requests for USCIS records.¹⁴⁰ Individuals submitting requests to USCIS must make their request online at first.uscis.gov after creating a USCIS account. Upon request, DHS FOIA public liaisons may facilitate, in limited circumstances (e.g., incarceration), an alternative method to submit requests for requestors who are unable to submit electronic requests. 90 FR 59945 (Dec. 23, 2025).

DHS does not include FOIA requests or Privacy Act requests in this mandatory e-filing rule. This rule allows requestors to seek a waiver of the e-filing requirement by filing Form I-936 and obtaining approval before being permitted to file an immigration benefit request on paper. See Section IV.B of this preamble; see also 8 CFR 103.2(a)(1)(iii). This pre-approval is important to allow USCIS to anticipate receipts of paper-based immigration benefit requests, particularly where adjudicative resources may be required to facilitate receipt of those filings. USCIS handles FOIA requests differently than immigration benefit requests. The USCIS Privacy Office receives and manages FOIA and Privacy Act requests to ensure the request is proper and is routed to the appropriate offices for response. Additionally, USCIS must handle a FOIA request within specific timeframes to comply with statutory requirements. 5 U.S.C. 552(a)(6). Because this rule focuses solely on immigration benefit requests handled through USCIS intake channels, DHS does not include FOIA or Privacy Act requests in this rule. Any individual seeking to submit a FOIA or Privacy Act request will continue to follow the instructions provided on the USCIS website.¹⁴¹

2. Naturalization Fee Rule

DHS plans to propose a rule to adjust the fees for Form N-400, Application for

Naturalization, and Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings Under Section 336, in the USCIS Fee Schedule.¹⁴² DHS plans to propose fees for Form N-400 and Form N-336 to recover the full costs associated with adjudicating these forms according to the beneficiary-pays principle.

Because this rule will allow USCIS to mandate e-filing for forms available at least 180 days and Form N-400 and Form N-336 have been available for e-filing for at least 180 days, DHS may need to modify the filing procedures contained in the proposed naturalization fee rule after the comment period closes. DHS will not seek additional comments on the proposed naturalization fee rule to modify filing procedures to align with the requirements of this final rule.

E. Severability

DHS intends that this interim final rule be severable to the maximum extent permitted by law. The rule contains several distinct components, including:

- The definition of “e-file” in 8 CFR 1.2;
- The authority (and, separately, the process) for USCIS, in its discretion, to require e-filing for certain forms, as provided in 8 CFR 103.2(a)(1)(ii);
- The authority (and, separately, the process) for USCIS, in its discretion, to waive mandatory e-filing on a case-by-case basis upon request, in 8 CFR 103.2(a)(1)(iii);
- The creation of Form I-936, Request for Waiver of E-Filing Requirement, and, separately, associated fee provisions in 8 CFR 106.2(a)(64); and, among other provisions,
- The limited availability of fee waivers for Form I-936 in 8 CFR 106.3(a)(3)(ii)(H) and (a)(3)(iii).

These elements are independently useful and are designed to function even if one or more are held invalid or unenforceable. For example, if a court were to set aside the \$25 fee for Form I-936 or the associated fee-waiver provisions in 8 CFR part 106, DHS intends that the remaining provisions—including the authority to define “e-file,” the authority to require e-filing in appropriate circumstances, and the authority to waive mandatory e-filing on a case-by-case basis—would remain in effect to the extent permitted by law. Similarly, if a court were to conclude that the waiver process in 8 CFR 103.2(a)(1)(iii) requires modification, DHS intends that such a ruling would not disturb the definition of “e-file” or

¹⁴⁰ USCIS, Request Records through the Freedom of Information Act or Privacy Act, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act> (last updated Jan. 27, 2026).

¹⁴¹ USCIS, Request Records through the Freedom of Information Act or Privacy Act, <https://www.uscis.gov/records/request-records-through-the-freedom-of-information-act-or-privacy-act> (last updated Jan. 27, 2026).

¹⁴² See USCIS, Form G-1055, “Fee Schedule,” <https://www.uscis.gov/g-1055> (Oct. 28, 2025 ed.).

the general authority for USCIS to mandate e-filing pursuant to 8 CFR 103.2(a)(1)(ii), unless the court expressly provides otherwise.

DHS also intends that this rulemaking, which establishes the general regulatory framework for e-filing and waivers, be severable from any future, form-specific determinations to require e-filing for a particular benefit type. Under this rule, the decision whether to mandate e-filing for any particular form, category, or benefit type will be made separately by USCIS pursuant to 8 CFR 103.2(a)(1)(ii) and announced in a future notice. Any judicial determination regarding the application of mandatory e-filing to a specific benefit request, or to a specific form or category, would not disturb the validity of this rule's general framework—including the definition of “e-file,” the authority to require e-filing in appropriate circumstances, and the waiver and fee provisions—unless a court expressly provides otherwise.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act (APA)

The APA requires DHS to provide public notice and seek public comment on substantive regulations. See 5 U.S.C. 553. The APA, however, provides limited exceptions to this requirement for notice and public comment, including for “rules of agency organization, procedure, or practice.” 5 U.S.C. 553(b)(A). This final rule addresses requirements that are procedural in nature and does not alter the substantive rights of individuals. In this IFR, DHS authorizes USCIS to establish requirements for submitting a benefit request and when a request can no longer be submitted in physical, paper form. These changes to USCIS filing procedures do not alter a substantive right because requestors do not possess a substantive right to file a paper form to request immigration benefits. That a requestor must possess, obtain, or find the tools and technology to file online beyond what is required to complete a form by hand and mail it, does not mean the rule is not procedural. See, e.g., *James V. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000) (holding that even if the rule did impose a substantial burden, that burden would not convert the rule into a substantive one that triggers the APA's notice-and-comment requirement). Accordingly, this rule relates to agency procedure and practice (5 U.S.C. 553(b)(A)) and advance notice and comment is unnecessary. DHS nevertheless invites comments on this

IFR and will consider all timely comments submitted during the public comment period as described in the **ADDRESSES** and I. Public Participation sections of this rule.

The APA also provides that the publication or service of a substantive rule “shall be made not less than 30 days before its effective date, except . . . as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d)(3). Because this rule is procedural rather than substantive, the requirement for a 30-day delay does not apply. Even if the rule were substantive, DHS would for good cause find that a 30-day delay is unnecessary, in light of the rule's requirement that USCIS observe at least a 60-day delay before requiring e-filing for any form. Regardless of the effective date of the changes to 8 CFR part 103 codified in this rule, the changes will have no practical effect until Form I-936 is approved by OMB and USCIS issues a notice that a form or forms must be e-filed no earlier than 60 days in the future.

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

Executive Orders (E.O.) 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 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 designated this rule a “significant regulatory action” that is economically significant, under section 3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by OMB.

This rule is not an E.O. 14192 regulatory action, which does not apply to regulatory actions issued with respect to immigration-related functions of the United States. The primary purpose of this rule is to implement and administer

statutory authorities governing the filing and processing of immigration benefit requests and related procedures for aliens. Because the rule pertains to the Federal Government's performance of immigration functions with respect to aliens, it falls within the exemption described in OMB guidance. See OMB Memorandum M-25-20, “Guidance Implementing Section 3 of E.O. 14192, titled ‘Unleashing Prosperity Through Deregulation’” (Mar. 26, 2025).

1. Summary

This rule amends DHS regulations to permit USCIS to require e-filing for any benefit request USCIS has made available for e-filing for at least 180 days. These changes will increase efficiency, promote the integrity of the immigration system, and reduce operational waste attributable to the submission and maintenance of paper benefit requests. This rule will also speed up USCIS' transition to a fully electronic filing process, realize cost savings, and position USCIS to decrease its reliance on the U.S. Department of the Treasury's physical lockbox services.

For the 10-year implementation period of the rule (FY 2027 through FY 2036), DHS estimates that annual cost savings to immigration benefit requestors will be about \$533 million. These savings result from no longer filing paper-based benefit requests, avoiding the need to re-file rejected paper forms, and reducing the time burden associated with paper filing. DHS also estimates that requestors will incur about \$15 million annually in new costs related to the waiver of e-filing requirement form, including the opportunity cost of the time needed to complete the form, e-filing waiver form fee, and mailing expenses. On net, the rule is expected to generate approximately \$518 million in annual cost savings to requestors.

In addition to these cost impacts, the rule generates annual transfers between the government and requestors. On an annual basis, DHS estimates that an e-filing fee discount will transfer about \$140 million from the government to requestors.

Over the FY 2027–2036 implementation period, DHS estimates total undiscounted net cost savings of about \$5,181 million and undiscounted net transfers of about \$1,400 million (from the government to requestors). With a 3-percent discount rate, the 10-year net cost savings are approximately \$4,420 million and net transfers are approximately \$1,194 million. With a 7-percent discount rate, the 10-year net cost savings are approximately \$3,639

million and transfers are approximately \$983 million. These totals are equivalent to annualized net cost savings of about \$518 million and annualized transfers of about \$140 million at both the 3- and 7-percent discount rates.

DHS anticipates that some filers may experience unquantifiable costs to switch to e-filing that are not fully captured in the quantified estimates. Although e-filing is expected to reduce filing time and other burdens on average, individual outcomes will vary based on the requestor's circumstances, prior investments in paper-based processes, and familiarity with online systems. Organizations with established paper-based software and workflows may see smaller time savings and incur one time transition costs to learn the

new process, update procedures, train staff, and modify tools. These burdens can include search and evaluation costs, transfer costs, and learning costs, and that their magnitude differs across filers. In addition, current e-filing constraints and preferences for paper packages, particularly in complex cases, may increase perceived risk and require extra effort to build confidence in online submissions. Because these costs are heterogeneous and difficult to measure, DHS has not quantified them.

DHS expects mandatory e-filing to generate substantial qualitative cost savings and operational benefits for both requestors and the Federal Government. For requestors, e-filing reduces preventable errors and adjudication delays, lowering the time and indirect costs of waiting to work, travel, or

change status and reducing the risk of losing eligibility due to rejected or incomplete paper submissions. DHS believes e-filing will deliver non-monetary benefits by making the process faster, easier to use, more secure, and more transparent. For USCIS, e-filing is expected to significantly streamline operations, reduce the ongoing costs and risks of paper-based processing, and improve data quality, coordination, and security across the immigration system. While DHS will incur some information technology and operational expenses to maintain these systems and support users, these costs are modest relative to the long-term efficiencies and benefits gained.

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Table 9. Summary of Impacts of the Rule.		
Summary of the Change to Provision		
- Authorize USCIS to require e-filing any time after a form has been available for e-filing for at least 180 days. - Require USCIS to post public notice of mandatory e-filing requirements on its website. - Establish the process an individual must use to seek a waiver of the e-filing requirement. - Establish a new form and fee for an individual to apply for a waiver of the e-filing requirement. - Provide for when a fee waiver may be available to requestor applying for a waiver of the e-filing requirement. - Define “e-file” as submission of a benefit request electronically in any manner made available by USCIS, including by completing the form online or by uploading a PDF of the completed form through an online account.		
Estimated Quantifiable Impacts (\$ Annual, FY 2024)		
Cost Savings Benefit Requestors: - Not filing paper-based benefit request (\$71 million) - Not re-filing rejected paper forms (\$12 million) - Decrease PRA time burden from paper to e-filing (\$450 million) Federal Government *: - Reduced lockbox labor cost (\$220 million) - Reduced postage for paper-based processing (\$9 million)	Costs Benefit Requestors: - \$25 new waiver of e-filing requirement, Form I-936 fee (\$6 million) - New waiver of e-filing requirement, Form I-936 PRA time burden (\$6 million) - New waiver of e-filing requirement, Form I-936 mailing cost (\$3 million)	Transfers Federal Government to Benefit Requestor: - \$50 e-filing fee discount (\$140 million)
Estimated Unquantifiable Impacts		
Cost Savings Benefit Requestors: - Reduced adjudication delays from fewer preventable errors - Guided form completion and real-time error checks Federal Government: - Reduced system backlogs due to more effective fraud detection and processing	Costs Benefit Requestors: - Unquantifiable switching costs for the petitioners who have prior investments in paper-based processes and varying levels of familiarity with online systems. - For organizations with established paper practices,	Benefits Benefit Requestors: - Lower risk of losing eligibility due to missed deadlines or rejected/incomplete paper filings. - Faster feedback, near real-time submission confirmation, and status transparency

- Reduced growth and handling of paper A-files - Avoided future digitization costs to meet NARA electronic records requirement - Fewer missing/misplaced paper files and reduced need for physical file audits - Reduced rework from avoidable rejections, Requests for Evidence (RFEs), and Notices of Intent to Deny (NOIDs)	switching costs may include search and evaluation costs (understanding new requirements), transfer costs (reconfiguring processes and tools), and learning costs (training staff and adapting to the e-filing system). - Switching costs also include perceived risk about completeness, reliability, and control, and requiring additional effort to build confidence in the e-filing submission process. Federal Governments: - IT-related resource costs to support e-filing systems (operation, maintenance, accessibility, testing, contingency planning) - Increased demand for user assistance and technical support (online account access, uploads, navigation). - Administrative costs to review and adjudicate e-filing waiver requests and related fee waivers. Local communities: - Mandating e-filing may indirectly increase demand on local institutions—especially public libraries—for computer and internet access, printing/scanning, and staff assistance,	- Lower risk of identity fraud and misuse of personal information - Improved user experience and centralized access to information (myUSCIS accounts, updates, notices) - Security and Privacy enhancements Federal Government: - Improved fraud detection and national security - Improved data quality, standardization, and integrity - Ability to electronically redistribute work and manage case backlogs, more flexibly - Enhanced information sharing and litigation support across DHS, DOS, other partners, and courts

	shifting some resource burdens from individual requestors to locally funded entities, particularly in communities with more digitally underserved or immigrant populations.	

Source: USCIS analysis.

*Estimated government operational savings from reduced manual paper intake are discussed separately and are not included in the quantified accounting table because USCIS is primarily fee funded. These savings, together with any unquantified agency implementation and transition costs associated with the shift from paper to online filing, are expected to be addressed as part of future fee reviews.

In addition to the impacts summarized in Table 10, and as required by OMB Circular A–4, DHS

presents the accounting statement showing the anticipated costs, benefits,

and transfers associated with this regulation.¹⁴³

¹⁴³ OMB, Circular A–4, “Regulatory Analysis,” p. 44 (Sep. 17, 2003), <https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

Table 10. OMB A-4 Accounting Statement (\$ million, FY 2024) Time Period: FY 2027 through FY 2036				
Category	Primary Estimate	Minimum Estimate	Maximum Estimate	Source Citation
Benefits				
Annualized Monetized Benefits at 3%	N/A	N/A	N/A	Regulatory impact analysis (RIA)
Annualized Monetized Benefits at 7%	N/A	N/A	N/A	RIA
Annualized quantified, but unmonetized Benefits	N/A	N/A	N/A	
Qualitative (unquantified) Benefits	Benefit Requestors: - Reduced adjudication delays from fewer preventable errors. - Guided form completion and real-time error checks. - Lower risk of losing eligibility due to missed deadlines or rejected/incomplete paper filings. - Faster feedback, near real-time submission confirmation, and status transparency. - Lower risk of identity fraud and misuse of personal information. - Improved user experience and centralized access to information (myUSCIS accounts, updates, notices). - Security and Privacy enhancements. Federal Government: - Reduced system backlogs due to more effective fraud detection and processing. - Reduced growth and handling of paper A-files. - Avoided future digitization costs to meet NARA electronic records requirement. - Fewer missing/misplaced paper files and reduced need for physical file audits. - Reduced rework from avoidable rejections, Requests for Evidence (RFEs), and Notices of Intent to Deny (NOIDs). - Improved fraud detection and national security. - Improved data quality, standardization, and integrity. - Ability to electronically redistribute work and manage case backlogs more flexibly. - Enhanced information sharing and litigation support across DHS, DOS, other partners, and courts.			RIA
Costs/Cost Savings				

Annualized monetized costs at 3%	–\$518	N/A	N/A	RIA
Annualized monetized costs at 7%	–\$518	N/A	N/A	RIA
Annualized quantified, but unmonetized, costs	N/A	N/A	N/A	
Qualitative (unquantified) costs	Benefit Requestor: - Unquantifiable switching costs for the petitioners who have prior investments in paper-based processes and varying levels of familiarity with online systems. - For organizations with established paper practices, switching costs may include search and evaluation costs (understanding new requirements), transfer costs (reconfiguring processes and tools), and learning costs (training staff and adapting to the e-filing system). - Switching costs also include perceived risk about completeness, reliability, and control, and requiring additional effort to build confidence in the e-filing submission process. Federal Government: - IT-related resource costs to support e-filing systems (operation, maintenance, accessibility, testing, contingency planning). - Increased demand for user assistance and technical support (online account access, uploads, navigation). - Administrative costs to review and adjudicate waiver of e-filing requirement requests and related fee waivers.			RIA
Transfers				
Annualized monetized transfers at 3%	\$140	N/A	N/A	RIA
Annualized monetized transfers at 7%	\$140	N/A	N/A	RIA
From/To	Federal Government to Benefit Requestors			RIA
Annualized monetized transfers at 3%	N/A	N/A	N/A	RIA
Annualized monetized transfers at 7%	N/A	N/A	N/A	RIA
From/To	Benefit Requestors to Federal Government			RIA
Annualized unquantified	N/A	N/A	N/A	

monetized transfers				
Qualitative (unquantified) transfers	N/A	N/A	N/A	
From/To	N/A	N/A	N/A	
Effects on State, local, or Tribal government	No significant impacts to national labor force or to the labor force of individual States are expected; DHS does not expect impacts to Tribal government			RIA
Effects on small business	N/A	N/A	N/A	
Effects on wages	None	None	None	N/A
Effects on growth	None	None	None	N/A

BILLING CODE 9111-97-C**2. Background and Purpose of the Rule**

DHS seeks to modernize USCIS operations by shifting from using paper forms to using e-filing for all benefit requests. USCIS currently encourages people to file online but does not require them to do so. For submissions received on paper forms, the agency digitizes the paper benefit requests upon receiving them. This process is duplicative and costly as it requires manual receipting paper forms, as well as scanning and entering information into the digital systems. DHS defines “e-file” as submission of a benefit request, supporting evidence, documents, notices, and communication electronically in any manner made available and approved by USCIS, including by completing the form online, in a web portal, electronic interface, or by uploading a PDF of the completed form through an approved online account.

To reduce the inefficiencies arising from using paper forms and ultimately transition to a fully electronic environment, USCIS wants to develop initiatives allowing it to move away from systems that permit online submission of one form while requiring related or ancillary forms to be filed on paper. Mandating e-filing would allow USCIS to eliminate paper dependent systems, centralize processes, and expand automated functions for all benefit requests. These benefits would reduce labor costs and adjudication times by eliminating inefficient processes. Digital solutions would also enhance security, adjudicative integrity, and applicant services on an agency-wide basis. Moreover, consistent with the requirements to follow form instructions regarding signatures and

required data elements, DHS is making procedural and technical amendments to 8 CFR 103.2(a)(1)(i) by restating in plainer language that requests must be completed as required by form instructions. USCIS ensures that form instructions are consistent with statutory and regulatory criteria. Clarifying the regulatory text in this manner will not change the effect of form instructions or result in fewer or more requests being rejected.

For these reasons, moving to a fully electronic environment would enhance the mission, service, and stewardship of USCIS.

The costs and benefits of this rule would focus on requestors applying for benefits using the USCIS forms that would be subject to mandatory e-filing as well as costs and benefits to USCIS. DHS bases the estimation of the number of affected requestors on the number of requestors who filed for benefit requests from FY 2016 to FY 2025 using various USCIS forms.¹⁴⁴

3. Baseline and Population

This rule would affect requestors applying for immigration benefits using the USCIS forms available for e-filing. The estimated population affected by the rule is based on the total number of forms filed for immigration benefits in FY 2016 to FY 2025. In estimating the impacts of this rule, DHS uses a no-action baseline that reflects the current state of the world under existing regulations and filing practices, in which applicants and petitioners may submit benefit requests either electronically or on paper, depending on form eligibility and filer preference. Absent this rule, DHS would continue

to accept and process paper filings, and e-filing would remain voluntary where available. DHS estimates the impacts of the rule as the differences between outcomes under the rule and a no-action baseline, which reflects what would occur in the absence of the rule. This comparison shows how the rule changes costs, benefits, and transfers. Under the baseline, some requestors voluntarily submit electronically while others file on paper; under this rule, USCIS may require requestors to e-file a benefit request, while providing requestors an opportunity to seek a waiver of the e-filing requirement. The analysis measures the incremental effects rather than changes that would occur regardless of regulatory action.

Consistent with the no-action baseline, this analysis uses historical receipt data to reflect observed filing behavior under current regulations. Because e-filing is currently voluntary, past receipt volumes by filing channel provide the best evidence of filer choices absent regulatory change. Table 11 summarizes all USCIS application receipt volumes for the past 10 fiscal years (FY 2016–FY 2025), separated into paper and electronic submissions, and serves as the basis for estimating baseline filing patterns and identifying the population newly affected by the e-filing mandate.

Table 11 shows a clear shift from paper filing to e-filing over the period FY 2016–FY 2025. Paper filings remain the dominant channel but have declined from 91 percent of receipts in FY 2016 to 57 percent in FY 2025, while e-filing rose from 9 percent to 43 percent over the same period. USCIS annual receipts rose from approximately 9 million in FY 2016 to a peak of 15.8 million in FY 2024, with a dip in FY 2020 consistent with pandemic effects. A pronounced

¹⁴⁴ Of the total over 100 currently available USCIS forms, 22 forms are available for e-filing, through guided online filing or PDFi.

jump between FY 2022 and FY 2023 mostly driven by spikes in receipts for Forms I-134A, I-589, I-765, and I-821.¹⁴⁵ Use of PDFi emerges only in FY

2024 and FY 2025 and remains well under 1 percent of total receipts. These trends indicate that, under the no action baseline, e-filing adoption is increasing

but a substantial majority of requestors still use paper. A mandate would primarily affect this persistent paper-filing population.

Table 11. USCIS Form Receipt Counts by Filing Type for FY 2016 – FY 2025							
Fiscal Year	Paper (A)	E-File (B)	PDFi (c)	Total(D)	Paper % (A)/(D)	E-File % (B)/(D)	PDFi % (C)/(D)
2016	8,219,546	811,186		9,030,732	91%	9%	
2017	8,503,464	903,477		9,406,941	90%	10%	
2018	7,584,632	1,076,156		8,660,788	88%	12%	
2019	7,131,455	1,148,779		8,280,234	86%	14%	
2020	6,614,426	1,451,701		8,066,127	82%	18%	
2021	7,739,776	1,476,414		9,216,190	84%	16%	
2022	7,338,763	2,274,042		9,612,805	76%	24%	
2023	8,130,816	5,576,723		13,707,539	59%	41%	
2024	8,831,160	6,659,744	550	15,491,454	57%	43%	0.004%
2025	8,337,657	6,257,592	54,657	14,649,906	57%	43%	0.373%
10 Year Total	78,431,695	27,635,814	55,207	106,122,716	74%	26%	0.052%
10 Year Average	7,843,170	2,763,581	27,604	10,612,272			
Source: USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Oct. 2025, TRK #19285. Note that this table includes all forms receipts from the query.							

DHS uses estimates derived from the historical data in Table 11 for the 10-year period from FY 2016 through FY 2025 to estimate the baseline affected population. In Table 12, DHS estimates the historical 10-year average of total receipts for each benefit request and uses it as the projected annual receipts. We do this for all benefit requests currently available for e-filing, either through guided online filing or PDFi, during this analysis period. DHS uses a 10-year historical average because the most recent three years contain significant, atypical spikes in filing volumes driven by specific, non-recurring policy changes. Relying mostly on those recent years would overestimate future demand for immigration benefits. Using a 10-year period smooths these policy-driven fluctuations and provides a more stable and representative estimate of the affected population.

Once mandatory e-filing takes effect, requestors filing immigration benefit requests will be affected to the extent they are required to submit their requests electronically rather than by submitting papers. To estimate the

number of requestors required to switch from paper to e-filing, DHS uses as the no-action baseline the most recent complete fiscal year (FY 2025) percentage of paper filings. Table 12 shows that the estimated affected population of the rule is approximately 6 million petitioners annually. To estimate the economic impacts of this rule, DHS projects the affected population over the 10-year period beginning in FY 2027.

Additionally, there are approximately 1.2 million annual receipts associated with benefit requests that are not yet available for e-filing. These benefit requests would become subject to the e-filing requirement, and the associated waiver and fee provisions established by this rule, only after USCIS makes them available for electronic submission and they have been available for at least 180 days. As of this rulemaking, USCIS has not made public an implementation schedule to extend e-filing capability to these remaining benefit requests. Any associated impacts, including potential costs savings, additional costs, and transfers, on these benefit requests are

not included in the quantified benefits and costs presented in this analysis.

This rule provides a process to request a waiver of the e-filing requirement. This waiver process ensures DHS complies with the 21st Century IDEA Act, Public Law 115–336, sec. (4)(e) (Dec. 20, 2018), which requires each executive agency to maintain an accessible method of completing digital services through in-person, paper-based, or other means, such that individuals without the ability to use digital services are not deprived of or impeded in access to those digital services. DHS estimates that, among the total projected annual number of requestors who would be affected by the mandatory e-filing requirements, 4 percent of the requestors would apply for a waiver using new USCIS Form I–936.

In October 2025, USCIS implemented mandatory online payment for filing fees through either an Automated Clearing House (ACH) or credit card payment, approximately 96 percent of filers complied with the requirements by December 2025 and approximately 99 percent by February 2026.¹⁴⁶ While

¹⁴⁵ Form I–134A, Online Request to be a Supporter and Declaration of Financial Support. USCIS has paused acceptance of this form since January 2025. Form I–589, Application for Asylum

and for Withholding of Removal. Form I–765, Application for Employment Authorization. Form I–821, Application for Temporary Protected Status.

¹⁴⁶ Source: USCIS Office of Intake and Document Production internal receipt data (February 2026).

electronic payment and e-filing impose different technical requirements, both policies involve transitioning from legacy compliance mechanisms to electronic processing system. Therefore, DHS uses observed initial non-compliance rate (4 percent) from mandatory online payment as a reasonable and conservative proxy for estimating the percentage of requestors who may seek a waiver from mandatory e-filing. DHS uses the 96 percent compliance rate, rather than 99 percent, as a conservative estimate. This implies

a higher waiver filing, which is likely to overstate the number of waivers filed and avoids overstating the benefits of the transition to e-filing. Table 12 reflects the percentage of the waiver population, and the estimated affected population is calculated using 96 percent compliance rate. DHS estimates that the annual projected population of requestors who would apply for a waiver would be 248,905 for the forms

currently available electronically.¹⁴⁷ For consistency in the analysis, DHS assumes that, excluding the population that may seek a waiver, the affected population has internet access and is able to e-file forms.

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¹⁴⁷ Calculation: $5,973,727 \times (100/96) \times 0.04 = 248,905$. DHS multiplies by 100/96 because 5,973,727 represents 96% of the total affected population. Multiplying by 100/96 converts this 96% value back to the full 100% total population, and then multiplying by 0.04 takes 4% of that total, which equals 248,905.

Table 12. Estimates of Affected Populations, FY 2016 – FY 2025				
Available Channel	Forms	Historical 10-Year Average of Total Receipt (A)	Paper Filing Percentage (FY2025) (B)	Estimated Affected Annual Population (A)x(B)x96%
E-Filing and PDFi	I-765	2,899,269	52%	1,435,092
	N-400	904,331	37%	324,337
	I-131	569,814	90%	492,233
	I-130	894,524	58%	493,890
	I-539	530,290	80%	408,649
	I-589	218,108	33%	68,200
	I-129 H-1B	410,830	88%	346,958
	I-907	402,111	83%	318,482
E-filing	I-821D	331,898	50%	158,367
	I-821	364,211	19%	67,621
	I-90	752,902	32%	231,980
	G-325R	78,390	0%	-
	N-600	60,356	52%	30,072
	N-565	30,483	28%	8,048
	N-600K	5,437	46%	2,384
	N-336	5,181	43%	2,134
PDFi	I-140	170,965	100%	164,127
	I-485	774,643	100%	743,657
	I-485J	32,799	100%	31,487
	I-751	148,183	100%	142,217
	I-129 Others (excluding H-1B)	524,783	100%	503,791
	Sub-Total of E-Filing	10,109,507		5,973,727
Paper Only	All Other Forms	675,593	100%	648,570*
	Grand Total	10,785,100		6,622,296

Source: USCIS Analysis, USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Oct. 2025, TRK #19285.

Note: Forms I-140, I-485, I-751 and I-129 Others (excluding H-1B) are newly available for e-filing, and they were not available for e-filing in FY2025.

*The estimated 648,570 annual population represents the approximate number of benefit requests received each year for form types that, as of this rulemaking, are not yet available for e-filing. USCIS has not made public an implementation schedule to extend e-filing capability to these remaining benefit requests.

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4. Economic Impact

a. Quantifiable Impact

Cost Savings

Compared to the no-action baseline, this rule will result in cost savings to requestors from not filing paper-based benefit requests, not having to re-submit paper forms rejected due to filing deficiencies or missing information, and time burden cost savings to requestors. This rule will result in cost savings from

not sending a package containing paper-based benefit request forms via mail couriers to USCIS for processing. DHS estimates that each requestor would save an average of \$11.95 in postage costs from not submitting the paper-based package to USCIS.¹⁴⁸ DHS applies

¹⁴⁸ Most USCIS paper submissions include multiple pages, supporting documents, are larger than standard envelopes, and often weigh over 1 oz. Filers also commonly choose tracking, delivery confirmation, and faster deliver. Priority mail could be a good proxy between first class mail and express mail. See <https://www.usps.com/ship/>

the averagemailing cost per package to the annual affected population of 5,973,727 filings (Table 12) to estimate approximately \$71 million in annual cost savings from no longer mailing packages containing paper-based benefit requests.

This rule will also result in cost savings from not having to re-file paper-based forms that are ultimately rejected due to filing deficiencies, such as

[priority-mail.htm#flatrate](#) for the priority mail flat rate (last visited Jan. 29, 2026).

submitting an incorrect fee amount, lack of signature, use of outdated benefit request forms, or submission of benefit requests not executed or missing required data elements. DHS estimates that in the current filing system, on average, 1,005,297 paper-based benefit requests are rejected annually.¹⁴⁹ Paper-based benefit requests would then need to be re-filed after correcting the filing deficiencies. Mandating e-filing via PDFi would not eliminate the need to refile because USCIS still reviews PDFi submissions at intake and may reject them if they do not meet defined acceptance criteria. Therefore, not all the 1,005,297 paper-based benefit requests currently rejected for filing deficiencies would result in cost savings. DHS estimates that, under mandatory e-filing, 996,523 of these rejected requests¹⁵⁰ would no longer

require re-filing because filers using the guided online filing interface would be able to correct filing deficiencies immediately before submission, rather than waiting for a rejection notice and re-filing their paper-based benefit requests. DHS estimates cost savings from avoided re-filings of paper forms rejected due to filing deficiencies or missing information by multiplying 996,523 avoided re-filings by the averagemailing cost per package (\$11.95), resulting in approximately \$12 million in savings.

Overall, DHS estimates that e-filing reduces the average time a requestor requires to complete and submit a form compared to paper-based filing. These estimates consider the time savings that guided e-filing can achieve plus other efficiencies such as eliminating printing, assembling, packaging, and mailing activities as well as providing electronic features such as validation checks and automated data entry.

Estimated time burden per response for guided workflow e-filing and for PDFi filing differ. For example, guided workflow e-filing has prompts that result in a more fluid flow through the information collection process and may direct a respondent more quickly through areas of an information collection where questions do not require a response, whereas the PDFi filing requires the PDF version of the same form used for paper filing, which must be completed and submitted as a document upload. This lack of guided workflow limits the ability for PDFi filers to realize the same potential savings as a guided workflow filer.

Table 13 presents estimated time burden difference by filing channel. DHS considers estimated time burden savings per filing as a reduction in opportunity cost to requestors. The total time burden cost savings are calculated as the product of the time saved per filing, the number of filings shifting from paper to electronic, and compensation rate.

¹⁴⁹ Source: USCIS Office of Intake and Document Production internal database, Total Intake Rejections in FY2025 data queried January 2026.

¹⁵⁰ Source: USCIS Office of Intake and Document Production internal database, Total Intake Rejections by PDFi in FY2025 data queried January 2026. Of the 1,005,297 paper-based filings currently

rejected for deficiencies, DHS estimates that 8,774 would still be rejected even if filed via PDFi, due to issues that the system or filer does not correct before submission.

Table 13. Time Burden by Filing Channel					
Channel	Forms	Time Burden in Hours			
		Paper	E-File	PDFi	Time Burden Difference
Both	I-765	4.360	3.985	4.105	0.25*
	N-400	8.547	3.920	-	4.63
	I-131	3.100	2.000	-	1.10
	I-130	1.817	1.500	-	0.32
	I-539	1.667	1.170	-	0.50
	I-589	12.000	11.000	-	1.00
	I-129 H-1B	5.604	5.359	4.590	0.24
	I-907	0.397	0.470	-	(0.07)
E-filing	I-821D	2.817	2.500	-	0.32
	I-821	2.227	1.920	-	0.31
	I-90	1.817	1.590	-	0.23
	N-600	1.317	0.750	-	0.57
	N-565	0.967	0.737	-	0.23
	N-600K	1.530	1.140	-	0.39
	N-336	2.567	2.500	-	0.07
PDFi	I-140	0.981	-	**	0.25**
	I-485	6.860	-	**	0.25**
	I-485J	0.600	-	**	0.25**
	I-751	4.387	-	**	0.25**
	I-129 Others	5.604	5.359	4.590	0.25**

Source: PRA burden data for each form were collected from <https://www.reginfo.gov/public/do/PRAsearch> using OMB control number (last visited January 2026), USCIS Analysis.

* The time burden difference for Form I-765 is calculated between the paper and PDFi estimates rather than guided online filing burden because Form I-765 is often filed concurrently with other forms that are available for guided online filing or in PDFi. It is difficult to determine how frequently Form I-765 will be filed via guided online filing versus PDFi, so DHS uses the PDFi estimate as a conservative estimate.

** The time burden difference between paper and PDFi for these forms is assumed to be 0.25 hours. USCIS estimates a 15-minute reduction in time burden when Form I-765 is filed using PDFi rather than paper. Although Form I-140, I-485, I-751 and I-129 differ in length and complexity, the time savings associated with PDFi arise primarily from filing mechanics rather than the substantive content of the form. Therefore, DHS applies same 15-minute reduction as a reasonable proxy.

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To estimate the opportunity cost of additional time burden savings, DHS assumes four distinct types of requestors, differentiated by who files the immigration benefits: individual, HR specialist, in-house attorney, and outsourced attorney. Most forms are

filed by individuals, but employment-based immigration requests—such as Forms I-129, I-907, I-140, and I-485J—are filed by employers such as HR specialists. DHS assumes that requests submitted with a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, are prepared

by an in-house attorney, or outside attorney, and that requests submitted without a Form G-28 are submitted by individuals or HR specialists. Table 14 shows the hourly total compensation for different types of requestors based on their hourly mean wage rates and applicable benefit-to-wage multipliers.

Table 14. Hourly Total Compensation by Requestor Type

Requestor	Hourly Mean Wage Rate	Benefit-to-wage Multiplier	Hourly Total Compensation Rate
Individual	\$32.66	1.45	\$47.36
HR Specialist	\$38.33	1.45	\$55.58
In-house Attorney	\$87.86	1.45	\$127.40
Outsourced Attorney	\$87.86	2.5*	\$219.65

Source: See BLS, DOL, Occupational Employment and Wage Statistics, Occupational Employment and Wages, May 2024, 00-0000 All occupations, 13-1071 Human Resources Specialists, 23-1011 Lawyers, https://www.bls.gov/news.release/archives/ocwage_04022025.htm (last visited Jan. 2026). The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) ÷ (Wages and Salaries per hour) = (\$47.2 Total Employee Compensation per hour) ÷ (\$32.52 Wages and Salaries per hour) = 1.45 (rounded). See BLS, DOL, Economic News Release, Employer Costs for Employee Compensation - December 2024, Table 1. Employer Costs for Employee Compensation by ownership [Dec. 2023] (Mar. 13, 2024), https://www.bls.gov/news.release/archives/eccec_03142025.pdf. The Employer Costs for Employee Compensation measures the average cost to employers for wages and salaries and benefits per employee hour worked.

* The DHS analysis in Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 FR 24905 (May 31, 2018), used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney wages. The U.S. Immigration and Customs Enforcement rule, 72 FR 45611, (Aug. 15, 2007), Final Small Entity Impact Analysis: 'Safe-Harbor Procedures for Employers Who Receive a No-Match Letter' at G-4 (Aug. 25, 2008), <https://www.regulations.gov/document/ICEB-2006-0004-0922>, also used a multiplier of 2.5 to convert in-house attorney wages to the cost of outsourced attorney based on information received in public comment to that rule. The methodology used in that analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule.

Table 15 presents the estimated annual cost savings from reduced time burdens for benefit requestors who switch from paper filing to e-filing. Because the value of time differs by requestor type, DHS estimates these savings using different compensation

rates depending on whether the benefit request is filed directly by an individual/HR specialist for employer or by an in-house attorney or outsourced attorney acting on the requestor's behalf. By applying the appropriate hourly compensation rates to the reduction in

hours required to prepare and submit forms electronically rather than on paper, DHS estimates total annual cost savings of approximately \$450 million from reduced time burdens across all estimated affected population.

Table 15. Estimated Annual Cost Savings from Time Burden Change for Paper Filing Benefit Requestors							
Forms	Estimated Affected Population (A)	Percentage of Filings with G-28 (B)	Estimated G-28 filings (C) =(A)x(B)	Estimated No G-28 filings (D) =(A)-(C)	Change in Time Burden (E)	Opportunity Cost of Time with G-28 (F)	Opportunity Cost of Time without G-28 (G)
I-765	1,435,092	56%	805,838	629,254	0.25	\$45,060,330	\$7,586,225
N-400	324,337	39%	127,923	196,414	4.63	\$130,011,284	\$43,038,367
I-131	492,233	57%	280,348	211,885	1.10	\$67,736,362	\$11,037,652
I-130	493,890	56%	274,650	219,240	0.32	\$19,123,670	\$3,291,280
I-539	408,649	77%	313,710	94,939	0.50	\$34,246,558	\$2,234,520
I-589	68,200	51%	34,762	33,439	1.00	\$7,635,394	\$1,583,557
I-129 H-1B	346,958	84%	289,920	57,038	0.24	\$12,317,748	\$776,183
I-907	318,482		-	318,482	(0.07)	-	\$(1,292,120)
I-140	164,127	86%	140,970	23,156	0.25	\$6,115,415	\$321,748
I-821D	158,367	57%	90,109	68,257	0.32	\$6,274,323	\$1,024,701
I-821	67,621	26%	17,451	50,170	0.31	\$1,176,760	\$729,405
I-90	231,980	26%	61,284	170,697	0.23	\$3,055,635	\$1,834,994
N-600	30,072	24%	7,302	22,770	0.57	\$909,434	\$611,398
N-565	8,048	20%	1,626	6,422	0.23	\$82,155	\$69,936
N-600K	2,384	11%	272	2,112	0.39	\$23,331	\$39,013
N-336	2,134	57%	1,216	918	0.07	\$17,798	\$2,899
I-485	743,657	48%	359,035	384,623	0.25	\$19,715,487	\$4,553,645
I-485J	31,487	80%	25,181	6,306	0.25	\$1,092,393	\$87,619
I-751	142,217	32%	45,161	97,056	0.25	\$2,479,876	\$1,149,072
I-129 Others*	503,791	46%	231,253	272,539	0.25	\$10,031,942	\$3,786,821
Subtotal	5,973,727		3,108,012	2,865,715		\$367,105,897	\$82,466,916
Grand Total						\$449,572,813	
Source: Estimated Affected Population is from Table 12. USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL, C4 queried Jan. 2026, TRK #20170 were used to obtain the Percentage of Filings with G-28. This percentage is calculated among the FY2025 paper filings only. Column (E), Change in Time Burden is from Table 13. *Forms are filed by employers, and when a G-28 is submitted, DHS assumes employers will be equally likely to use in-house attorney or outside attorney, with a 50/50 split. Column (F) is calculated by column (C)x(E)x \$219.65 filed with outsourced attorney. Column (G) is calculated by column (D)x(E)x \$47.36. Column (F) with * is calculated by (C)x(E)x \$127.40x0.5 + (C)x(E)x \$219.65x0.5 assuming 50% filed with in-house attorney and 50% filed with outsourced attorney. Column (G) with * is calculated by (D)x(E)x \$55.58 filed by HR specialist. Wage rates used here are presented in Table 14. Totals and derived values may differ due to rounding. The numbers may vary slightly due to rounding.							

Table 16 summarizes total estimated annual cost savings to the requestors from mandating e-filing, broken into

three components that added up to approximately \$533 million.

Table 16. Total Estimated Annual Cost Savings to the Requestors

No filing paper-based benefit request, postage costs	\$	71,386,038
Not re-filing paper forms rejected, postage costs	\$	11,908,450
Time burden cost savings due to e-filing	\$	449,572,813
Total cost savings	\$	532,867,300

BILLING CODE 9111-97-C**Costs**

This rule allows requestors to request a waiver of the e-filing requirement because of undue hardship. DHS is not defining the factors that would qualify a requestor for a waiver, but such factors would generally include geographical location, socioeconomic conditions, and the availability of public technology resources. Requestors will submit the request for a waiver using the newly created Form I-936. In addition to demonstrating that e-filing would cause undue hardship, requestors seeking a waiver would also incur the additional time and cost associated with completing and submitting Form I-936.

DHS uses the observed waiver rate of 4 percent from the mandatory online payment requirement as a reasonable and conservative proxy for estimating the share of requestors who may qualify for an exemption from mandatory e-filing. Applying this rate to the affected filing population, DHS estimates that 248,905 requestors per year would apply for a waiver for the forms currently available electronically, as discussed in Section V.B.3. Baseline and Population. In this rule, DHS is establishing a \$25 filing fee for requestors submitting the Form I-936 to request a waiver of the e-filing requirement. The fee is collected to recover some of the costs of intake and review of the waiver request, which will be discussed separately in section V.B.4.c. of the preamble, Costs, Cost Savings, and Benefits to the Federal Government. DHS estimates that approximately 4 percent of the affected population will submit a waiver request.¹⁵¹ Among those requestors,

DHS estimates that 6 percent will request a fee waiver using Form I-912, Request for Fee Waiver, and therefore will not pay the \$25 fee.¹⁵² As a result, DHS estimates that 94 percent of waiver filers will remit the fee, producing approximately \$6 million in annual fee payments.¹⁵³ This amount represents an annual cost to the requestors seeking a waiver of the e-filing requirement.

The cost to requestors seeking a waiver consists of the opportunity cost of the time burden required to complete Form I-936 and the postage cost to mail the completed form. Using the hourly compensation rate for individuals of \$47.36 from Table 14 and estimated time burden of 30 minutes (0.5 hours) to complete Form I-936, DHS estimates an opportunity cost of approximately \$6 million per year. DHS further estimates postage costs of about \$3 million per year for mailing the waiver requests.¹⁵⁴ In total, the annual cost to waiver requestors is therefore approximately \$15 million.

DHS also quantifies a cost to requestors who would have preferred to continue filing by paper in the absence of this rule. When both paper and e-filing options were available and electronic filers received a \$50 discount, some requestors nonetheless chose to file by paper, thereby forgoing the \$50 discount. For requestors who were aware of and could access both options at the time of filing, this behavior indicates that the value they place on the familiar paper process and related non-monetary benefits is at least \$50 per filing. DHS recognizes that not all requestors had this choice clearly presented or practically available at the time of filing, and their costs may not

be fully reflected in this amount.

Moreover, DHS cannot reliably estimate which requestors had the e-filing option and discount effectively presented to them and therefore cannot aggregate this cost across the affected population. Under this rule, requestors who would have preferred paper filing and cannot establish eligibility for a waiver of the e-filing requirement will no longer have the option to file a paper benefit request and will be required to file electronically, which will result in the loss. Therefore, DHS treats \$50 as a conservative estimate of the per-filing cost imposed by mandatory electronic filing for those with a meaningful choice between paper and electronic filing.

Transfers

DHS currently provides a \$50 fee reduction for eligible forms e-filed. Although the amount of the discount reflects the fact that e-filing results in lower agency resource costs, the fee adjustment itself represents a transfer rather than cost savings to society. The reduction decreases the payment made by requestors while correspondingly decreasing fee revenue to USCIS. Because this change reflects a redistribution of payment rather than a change in the total use of economic resources, DHS treats the \$50 e-filing fee discount as a transfer from the government to requestors. Table 17 shows the estimated annual transfer of approximately \$140 million. Cost savings and benefits to USCIS associated with mandating e-filing are discussed greater in detail in Section V.B.4.c. Costs, Cost Savings, and Benefits to the Federal Government.

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¹⁵¹ DHS notes that when USCIS prohibited payment of filing fees using checks or money orders, about 96 percent of requestors successfully paid using the automated clearing house or credit card payment form. This is the most recent and only empirical estimate reflecting the share of requestors who were unable or unwilling to comply with a prior transition from legacy payment

methods to a new system. For mandatory e-filing DHS treats this 4 percent waiver rate as a reasonable, conservative estimate of how many requestors may need exemptions from a future mandatory e-filing requirement. Discussed in section V.B.3.

¹⁵² USCIS Office of Performance and Quality, METRICSMART, NPD, C3, ELIS PAER#20271 queried January 2026.

¹⁵³ Calculation: Affected population from Section V.3 (248,905) $\times$ 0.94 $\times$ \$25 = \$5,849,275.

¹⁵⁴ Opportunity cost of time burden to file waiver form = \$47.36 $\times$ 248,905 $\times$ 0.5 = \$5,893,704. Postage costs = \$11.95 $\times$ 248,905 = \$2,974,415.

Table 17. Estimated Total Fee Discounts from E-Filing				
Forms	Estimated Affected Population (A)	Percent of No Filing Fee Paid FY2025 (B)	Estimated Fee Paying Affected Population (C)=(A)x(100%-(B))	E-Filing Discount (C)x\$50
I-765	1,435,092	49%	730,608	\$ 36,530,385
N-400	324,337	38%	199,968	\$ 9,998,411
I-131	492,233	38%	306,809	\$15,340,448
I-130	493,890	0.17%	493,070	\$24,653,483
I-539	408,649	2%	400,777	\$20,038,839
I-589	68,200	92%	5,464	\$ -
I-129 H-1B	346,958	0.00248%	346,949	\$17,347,469
I-907	318,482		318,482	\$ -
I-140	164,127	0.00204%	164,123	\$8,206,162
I-821D*	158,367	0.00405%	158,360	\$ -
I-821*	67,621	26%	49,896	\$ -
I-90	231,980	38%	144,244	\$7,212,200
N-600	30,072	75%	7,569	\$ 378,451
N-565	8,048	49%	4,101	\$ 205,046
N-600K	2,384	80%	475	\$ 23,764
N-336	2,134	31%	1,468	\$ 73,416
I-485*	743,657	27%	544,392	\$ -
I-485J*	31,487	100%	-	\$ -
I-751*	142,217	3%	137,536	\$ -
I-129 Others*	503,791	37%	318,347	\$ -
Subtotal	5,973,727		4,332,638	\$140,008,073
Source: USCIS Office of Performance and Quality, ELIS, CLAIMS, GLOBAL queried Jan. 2026, TRK #20171. The Percent of No Filing Fee Paid FY2025 is calculated as the number of paper-filed receipts with no fee paid divided by total number of paper-filed receipts for FY2025. This percentage is rounded, and all calculations use unrounded values. Totals and derived values may differ due to rounding. *Some forms are available online but do not qualify for an online filing discount. The numbers may vary slightly due to rounding.				

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b. Unquantifiable Impact

This rule defines “e-file” to mean submission of a benefit request, supporting evidence, documents, notices, and communication electronically in any manner made available and approved by USCIS, including by completing the form online, in a web portal, electronic interface, or by uploading a PDF of the completed form through an approved online account. Defining and using the term “e-file” is not expected to have an economic impact, but it will make this rule, as well as future rules, clearer and will simplify drafting for websites, guidance, and communications by avoiding the repetitive use of multiple words to describe our intent. USCIS currently allows requestors to submit a benefit request through a guided online

filing experience or by uploading a PDF of the benefit request online at <https://my.uscis.gov>. DHS defines e-file to account for the electronic filing methods currently available and to remain flexible enough to account for any future or additional types of e-filing USCIS may develop.

E-filing will reduce the burden on requestors by lowering the likelihood of adjudication delays caused by preventable errors. This, in turn, can reduce the time and indirect costs associated with waiting to work, travel, or change status. In addition, e-filing decreases the risk that requestors will lose eligibility for an immigration benefit because of missed deadlines stemming from rejected or incomplete paper submissions.

E-filing will also provide non-monetary benefits to requestors. Nearly real-time submission, confirmation, and

status updates give requestors faster feedback and greater transparency into the progress of their cases. In addition, guided online filing, including prompted evidence categories and real-time error checks, makes it easier for requestors to correctly complete applications on the first attempt.

Improvements in fraud detection and national security also provide non-monetary benefits to requestors and the public. As explained more fully later, digital records support analytics, pattern detection, fraud analysis, and vetting and background checks to strengthen fraud prevention and national security screening. Stronger screening and analytic tools help prevent identity fraud and misuse of requestor personal information, lowering the risk that fraudulent activity of someone else will delay or complicate a legitimate case. More effective detection of fraudulent

filings can reduce overall system backlogs, allowing bona fide applications to be processed more efficiently. These enhancements increase the integrity and fairness of the immigration system, giving requestors greater confidence that their cases are evaluated accurately and that benefits are granted to eligible individuals.

There may be additional costs to some requestors associated with mandatory e-filing that are difficult to quantify. While DHS estimates that e-filing reduces filing time burden and other costs on average, individual experiences may differ depending on their circumstances, filing practices, and familiarity with e-filing. The continued use of paper filing over the past several years suggests that some requestors may perceive costs or disadvantages associated with e-filing that are not readily captured in the quantitative costs. Research on online services indicates that such perceived costs can include uncertainty about how a new channel will perform relative to an established process, and the time and effort required to change established practices and learn a new system.¹⁵⁵ DHS therefore recognizes that the monetized estimate presented in this analysis may not fully reflect all costs experienced by individual requestors.

One potential source of uncertainty is that the estimated time savings from e-filing represent average effects across the filing population. Although DHS expects e-filing to reduce filing time burden overall, some requestors may not experience the same reduction. For example, organizations that have developed internal software or established workflows for preparing paper filings may realize smaller time savings than estimated, because they have already invested in processes that make paper filing relatively efficient for their specific circumstances. Similarly, individual experiences may vary depending on the complexity of the filing, the extent of prior investments in paper-based procedures, or familiarity with the e-filing system.

Some requestors may also incur one time switching costs associated with adopting e-filing. These costs may include learning a new filing process, updating internal procedures, training staff, or modifying existing software or workflows. These switching costs can include search and evaluation costs associated with understanding new requirements, transfer costs associated with reconfiguring existing processes

and tools, and learning costs associated with gaining proficiency with the electronic system. The magnitude of these transition costs is expected to vary substantially across filers and is difficult to quantify. For many requestors, these costs may be temporary and offset over time by the recurring efficiencies associated with e-filing, while for others they may represent a more significant barrier to adoption.

In addition, some requestors have identified practical limitations of the current e-filing system, such as file size restrictions, limitations on submitting related forms together, and a preference for maintaining paper filing packages. Some requestors may also perceive greater confidence or control when assembling and submitting paper filings, particularly for complex cases involving extensive supporting documentation. Research on electronic tax filing adoption indicates that perceived risk and trust in the electronic provider are important determinants of willingness to use online systems, suggesting that some requestors may incur additional, non-monetized effort to gain confidence in the reliability, completeness, and security of electronic submissions.¹⁵⁶ These factors represent non monetized switching costs associated with transitioning from paper to e-, even with up to eight months implementation period provided before e-filing becomes mandatory. Although USCIS continues to improve its e-filing system, these considerations may affect some requestors' filing preferences and are difficult to monetize.

DHS recognizes that these factors may result in costs for some requestors that are not fully reflected in the quantified estimates presented in this analysis. Because the nature and magnitude of these costs vary across requestors and cannot be reliably measured, DHS has not quantified them. DHS welcomes public comment on the nature, magnitude, and duration of these potential switching costs and other unquantified costs associated with mandatory e-filing.

This rule may also indirectly affect nonprofit organizations, community-based organizations, legal service providers, refugee resettlement agencies, local libraries, and other entities that assist individuals in preparing and submitting immigration benefit requests. These organizations may see increased demand for technical assistance as individuals unfamiliar with electronic filing seek help creating online

accounts, navigating the electronic filing system, uploading supporting documentation, and completing electronic submissions. Where such assistance is provided without additional compensation, these entities may face higher staff time or resource demands during the transition to mandatory e-filing. At the same time, e-filing may lessen administrative burdens associated with paper applications, such as printing, copying, mailing, and maintaining physical records, which could improve operational efficiency over time. DHS requests public comments on the potential indirect impacts of mandatory e-filing on these organizations that assist applicants and petitioners in preparing or submitting benefit requests.

c. Costs, Cost Savings, and Benefits to the Federal Government

DHS anticipates that this rule would result in a reduction in paper-based processing and generate cost savings and operational efficiencies for USCIS. As discussed in preamble, the USCIS Lockbox network currently receives, opens, sorts, and scans millions of paper benefit requests and associated payments each year. These activities are labor-intensive and time-consuming. In FY 2025, USCIS incurred \$395,991,902 in lockbox costs. These costs include labor, facilities, technology, and postage. Of this total, \$253,244,458 represents labor costs associated with lockbox intake operations.¹⁵⁷ These labor costs are attributable to the manual intake of paper filings (e.g., extracting mail, sorting, scanning, keying data, performing quality control, and preparing shipments). When the rule is in effect, if USCIS can reduce or eliminate these manual steps through e-filing, DHS estimates that USCIS would avoid approximately \$220 million per year in labor expenditures currently devoted to paper intake.¹⁵⁸

Paper-based operations impose substantial postage and shipping costs. In FY2025, USCIS spent \$10,864,781 on postage alone to support paper-based processing. DHS estimates that mandatory e-filing would reduce these postage costs by approximately \$9.5

¹⁵⁷ See Section III.B.3. Table 4 and Table 5.

¹⁵⁸ From Table 12: Percentage of estimated paper filed receipts is $((6,622,296 * (100/96))/10,785,100) * 100 = 64\%$ (rounded). Percentage of ineligible e-filing receipts is $(675,593/10,785,100) * 100 = 6\%$ (rounded). Therefore, $64\% - 6\% = 58\%$ of total receipts can be switched to e-filing. Assuming \$253,244,458 is labor cost of 58% of paper receipts then the labor cost of 58% would be \$253,244,458 * $(58/64) = \$229,502,790$. Applying 96% compliance rate, the estimated annual labor cost saving is $\$229,502,790 * 0.96 = \$220$ million (rounded).

¹⁵⁵ Ray, Kim, and Morris, *Online Users' Switching Costs: Their Nature and Formation*. Vol. 23 Information Systems Research. PP. 197–213 (2012).

¹⁵⁶ Schaupp, Carter, and McBride, *E-file adoption: A study of U.S. taxpayers' intentions*, Vol. 26, Computers in Human Behavior pp. 636–644 (2010).

million annually.¹⁵⁹ This is annual cost savings to USCIS from mandating e-filing.

USCIS expects mandatory e-filing to generate cost savings by reducing reliance on paper A-Files and the infrastructure needed to store and manage them. USCIS currently maintains about 58.6 million active files across 142 facilities and 58 million retired A-Files with NARA or commercial vendors, often for 50 years after retirement, and processes over 800,000 retired-file retrievals annually. As more cases are “born” digital, the growth of paper files, retrievals, and associated handling, shipping, leasing, and long-term storage costs will decline. E-filing also avoids future conversion costs triggered by NARA’s requirement that, beginning December 31, 2022, all transferred records be electronic; records filed electronically now will not need later digitization at retirement.

E-filing is further expected to reduce costs due to missing or misplaced paper files and by physical file audits. In FY 2025, 86,384 files were reported missing or lost, requiring staff time to locate or recreate them, delaying adjudications, and increasing the risk of decisions made on incomplete records. Physical file audits, conducted to verify the location of files held by USCIS and external partners, also require labor intensive, manual inspection. By limiting the creation and movement of paper files, electronic records reduce the risk and cost of lost files and lessen the need for resource intensive audits, improving overall efficiency and reducing operational expenses.

E-filing will reduce USCIS processing costs by lowering the volume of avoidable rework. Fewer rejections for missing signatures, incorrect form versions, incorrect fee amounts, and incomplete data will decrease the number of filings that must be reviewed and handled more than once. In addition, better-structured electronic forms and real-time validation are expected to reduce the need for Requests for Evidence and Notices of Intent to Deny, cutting the staff time required to draft, issue, and process such notices.

E-filing will also provide operational benefits to USCIS. Direct electronic intake improves data quality and standardization, which supports more consistent, timely, and accurate adjudications. In addition, reducing processing delays caused by avoidable

filing errors will help USCIS better manage case backlogs and meet established service goals. Fully electronic records allow USCIS to redistribute work across offices in real time without shipping paper files and to give multiple offices simultaneous access to the same case. This flexibility helps USCIS reduce delays caused by localized surges in workload and improves the agency’s ability to manage caseloads with its existing workforce, lowering the operational cost per case.

Improvements in fraud detection and national security are primarily non-monetary benefits to USCIS and DHS. Under a paper-based process, fraud detection and national security vetting are constrained by limited, selectively keyed data. E-filing and fully digital records capture 100 percent of the information as structured data and support cross-case and cross-system text analytics, pattern detection, faster and broader fraud trend analysis, and continuous vetting and automated background checks. These capabilities strengthen fraud prevention and detection, enhance national security screening, and enable more effective use of FDNS staff time.

Enhanced information sharing and litigation support will provide operational benefits to USCIS, other DHS components, the Department of State, and other government partners, with indirect benefits to courts and requestors. Electronic records can be rapidly shared across agencies and used simultaneously for adjudications, security reviews, and litigation, eliminating delays tied to moving paper files. This allows faster responses to security incidents and more timely, efficient production of administrative records in litigation and other oversight processes.

Improvements in data quality and integrity are benefits that accrue to USCIS and partner agencies that rely on USCIS data. Online forms enforce standardized formats and definitions and remove many transcription errors that arise from manual data entry. As a result, USCIS data become more accurate, consistent, and complete, supporting better analytics, reporting, and decision support, and making it easier to interoperate with other systems that consume or share immigration data.

User experience and access to information improvements are benefits for requestors and the public. Centralized myUSCIS accounts provide requestors with consolidated access to their filing history, case status, and notices, as well as real-time updates and communications.

Security and privacy enhancements are benefits primarily for requestors, with risk reduction benefits for USCIS. Online accounts in myUSCIS use two factor authentication and give requestors more controlled and private access to their notices and personal information than physical mail, which may be misdelivered or accessible in shared mailboxes. This stronger protection of sensitive information is especially important for vulnerable populations, such as victims of crime or abuse, whose safety and wellbeing may depend on the confidentiality of their immigration records.

Mandating e-filing requires USCIS to incur information technology related resource costs. These costs arise from the operation and support of systems necessary to receive, store, process, and adjudicate electronic submissions. DHS expects costs associated with ensuring compliance with accessibility standards, system testing, and contingency planning to mitigate potential service disruptions or system downtime. DHS also anticipates increased demand for use assistance related to online account access, document uploads, and system navigation requiring technical support resources. This rule establishes a process for requesting a waiver from the e-filing requirement, which will incur administrative costs to review exemption requests, process associated documentation and adjudicate fee waiver submissions related to the exemption form.

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services by DHS, including administrative costs and services provided without charge to certain applicants and petitioners. INA sec. 286(m), 8 U.S.C. 1356(m). DHS generally establishes USCIS fees according to the estimated cost of adjudication based on its relative adjudication burden and use of USCIS resources.¹⁶⁰ Fees are established at an amount that is necessary to recover these assigned costs, such as clerical, officer, and managerial salaries and benefits, plus an amount to recover unassigned overhead and immigration benefits provided without a fee charge.

DHS established the current fee for most of its forms in FY 2024 fee rule based on empirical cost estimates. Over time, the operational efficiencies associated with increased e-filing may reduce USCIS adjudication and intake costs. To the extent these savings are sustained, they will be incorporated into

¹⁵⁹ Same methodology as labor cost savings, $\$10,864,781 * (58/64) = \$9,846,208$. Applying 96% compliance rate, the estimated annual labor cost saving is $\$9,846,208 * 0.96 = \$9.5$ million (rounded)

¹⁶⁰ 81 FR 6194, 6287 (explaining that DHS follows OMB Circular A–25 to the extent possible).

future fee reviews, potentially reducing the agency's overall cost recovery requirement and slowing the growth in the future fee levels relative to a paper-based operation.

Mandating e-filing may generate indirect impacts on local community institutions, particularly public libraries, which often serve as access points for individuals who lack reliable internet service or computing resources. As requestors shift from paper-based to online submission of immigration benefit requests, libraries may experience increased demand for public computers, internet bandwidth, and printing or scanning services, as well as additional staff time devoted to assisting patrons with basic digital navigation and document preparation. These effects represent a shift in resource utilization from immigration benefit requestors to locally funded institutions and may disproportionately affect communities with higher concentrations of digitally underserved or immigrant populations. Although these impacts are difficult to quantify due to data limitations, they are not expected to be substantial.

5. Alternatives Considered

Under this rule, USCIS may require e-filing for any benefit request that has been available for e-filing for at least 180 days. DHS also considered an alternative under which mandatory e-filing would begin only after a form reached a specified threshold of voluntary e-filings. DHS determined that tying a mandate to an e-filing adoption threshold is less appropriate than using a time-based threshold with advance notice. A usage threshold approach would make the effective date of mandatory e-filing unpredictable for requestors because the timing would depend on when overall usage happens to cross a specified percentage. This uncertainty would make it more difficult for USCIS to plan internal resources and internal system changes. It is difficult to determine an appropriate threshold in advance: a threshold that is too low may provide little assurance about usability and access, while a higher threshold could be unrealistic for certain forms or populations. In addition, some forms serving specific populations with more reserved adoption behavior might never reach the specified threshold, effectively locking USCIS into maintaining dual

paper and electronic processes indefinitely, even where e-filing is operationally viable and in the public interest.

However, the approach in this rule—allowing USCIS to mandate e-filing only after a form has been available electronically for at least 180 days and providing advance public notice with a 60-day grace period before the effective date—offers USCIS more control over the process. It gives requestors a defined minimum period to adjust to the availability of e-filing while preserving flexibility for USCIS to consider system performance and other operational factors before making e-filing mandatory. The mandate is also reversible should the affected population stop filing the applicable request altogether following the mandate.

DHS considered, but did not adopt, several alternative approaches to the waiver of e-filing requirement, such as allowing requestors to submit a waiver request together with the paper benefit request, allowing waiver requests without a standardized form, or providing waivers without a fee. DHS ultimately determined these alternatives are not superior to the chosen approach of requiring a separate, pre-filed waiver on a standardized newly created form with a fee.

Allowing requestors to submit a waiver request together with the paper benefit request would undermine one of the main purposes of the waiver process to give USCIS advance visibility into paper filing so that it can plan the disruption to electronic intake. If waiver requests arrived bundled with paper benefit requests, USCIS would still need to review the waiver before accepting the filing, which could increase rejection rates and create uncertainty for requestors about whether their filings would be treated as properly received. Mailing large request packages back to the requester would reduce the email savings from this rule. By contrast, requiring a pre-approved waiver before a paper filing is submitted provides clearer expectations for requestors and allows USCIS to more accurately anticipate and manage the volume of paper cases.

Similarly, not using a standardized waiver form would reduce the efficiency and consistency of the process. A dedicated form ensures that USCIS collects the specific information needed

to evaluate hardship claims in a uniform manner, supports more consistent adjudication, and facilitates tracking of waiver volumes and outcomes over time for program management and future fee reviews. Informal or unstructured waiver requests would increase adjudication time, make it more difficult to apply standards consistently, and complicate data collection and oversight.

Finally, although DHS considered providing waivers without a fee, a no-fee approach would shift the full cost of processing waiver requests onto other fee-paying requestors and would not discourage frivolous or speculative waiver filings. The \$25 fee is designed to recover at least part of the costs associated with intake of waiver requests, consistent with DHS's cost-recovery authority, while still allowing fee waivers for specified categories under existing regulations. DHS concluded that this approach better balances access to a paper-filing option for those who genuinely cannot comply with the e-filing requirement against the need to avoid imposing the full cost of the waiver process on other requestors and to discourage unnecessary waiver submissions.

6. Total Quantified Costs, Benefits, and Transfers

DHS estimates that requestors will experience total quantified cost savings of approximately \$533 million. These savings result from no longer filing paper-based benefit requests, avoiding the need to re-file rejected paper forms, and reducing the time burden associated with paper filing. DHS also estimates that requestors will incur about \$15 million in new costs related to the waiver of e-filing requirement form, including the opportunity cost of the time needed to complete the form and mailing expenses. On net, based on quantified impacts only, the rule is expected to generate approximately \$518 million in cost savings to requestors.

In addition to these cost impacts, the rule generates transfers between the government and requestors. DHS estimates that an e-filing fee discount will transfer about \$140 million from the government to requestors. Table 18 summarizes the annual quantified economic impact of the rule.

Table 18. Annual Quantified Cost Savings, Costs, and Transfers		
Cost Savings to Requestors	No filing paper-based benefit request, postage costs	\$ 71,386,038
	Not re-filing paper forms rejected, postage costs	\$ 11,908,450
	Time burden cost savings, due to e-filing	\$ 449,572,813
Total Cost Savings		\$ 532,867,300
Costs to Requestors	Waiver of e-filing requirement form opportunity cost of time burden	\$ 5,894,070
	Waiver of e-filing requirement form mailing	\$ 2,974,415
	Waiver of e-filing requirement form fee (\$25)	\$ 5,849,275
Total Costs		\$ 14,717,760
Net Cost Savings		\$ 518,149,540
Transfers	E-filing fee discount (Government to Requestors)	\$ 140,008,073
Net Transfers	Government to Requestors	\$ 140,008,073

Over the FY 2027–FY 2036 implementation period, Table 19 shows that DHS estimates total undiscounted net cost savings of about \$5,181 million and undiscounted net transfers of about \$1,400 million (from the government to requestors). When discounted at a 3-

percent rate, the 10-year net cost savings are approximately \$4,420 million and transfers are approximately \$1,194 million. When discounted at a 7-percent rate, the 10-year net cost savings are approximately \$3,639 million, and net transfers are approximately \$983

million. These totals are equivalent to annualized net cost savings of about \$518 million and annualized transfers of about \$140 million at both the 3- and 7-percent discount rates.

Table 19. Discounted Net Cost Savings and Net Transfers				
	Total Estimated Cost Savings		Total Estimated Transfers	
10-Year Undiscounted	\$5,181,495,401		\$1,400,080,729	
Fiscal Year	Discounted at 3%	Discounted at 7%	Discounted at 3%	Discounted at 7%
2027	\$503,057,806	\$484,251,907	\$135,930,168	\$130,848,666
2028	\$488,405,637	\$452,571,875	\$131,971,037	\$122,288,473
2029	\$474,180,230	\$422,964,369	\$128,127,220	\$114,288,293
2030	\$460,369,155	\$395,293,803	\$124,395,359	\$106,811,488
2031	\$446,960,345	\$369,433,461	\$120,772,194	\$99,823,821
2032	\$433,942,082	\$345,264,917	\$117,254,557	\$93,293,291
2033	\$421,302,993	\$322,677,492	\$113,839,376	\$87,189,991
2034	\$409,032,032	\$301,567,750	\$110,523,666	\$81,485,973
2035	\$397,118,477	\$281,839,019	\$107,304,530	\$76,155,115
2036	\$385,551,920	\$263,400,952	\$104,179,155	\$71,173,005
10-Year Discounted	\$4,419,920,677	\$3,639,265,545	\$1,194,297,260	\$983,358,116
Annualized	\$518,149,540	\$518,149,540	\$140,008,073	\$140,008,073

C. Regulatory Flexibility Act (Certification)

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules.

The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.¹⁶¹ An

¹⁶¹ A small business is defined as any independently owned and operated business not dominant in its field of operation that qualifies as

“individual” is not considered a small entity and costs to an individual from a rule are not considered for RFA purposes.

The RFA’s regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of

a small business per the Small Business Act, 15 U.S.C.632.

proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). DHS did not issue a notice of proposed rulemaking for this action. Accordingly, DHS is not required to either certify that this IFR would not have a significant economic impact on a substantial number of small entities nor conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments.¹⁶² Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a final rule that includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. *See* 2 U.S.C. 1532(a). The inflation adjusted value of \$100 million in 1995 is approximately \$206 million in 2024 based on the Consumer Price Index for All Urban Consumers (CPI-U).¹⁶³

The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6). The term “Federal intergovernmental mandate” means, in relevant part, a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). 2 U.S.C. 658(5). The term “Federal private sector mandate” means, in relevant part, a provision that would impose an enforceable duty upon

the private sector except (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

This rule does not contain a Federal mandate as the term is defined under UMRA because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to their voluntary choices and would not be a consequence of an enforceable duty. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. *See* 2 U.S.C. 1502(1), 658(6). The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by subtitle E of SBREFA, Public Law 104–121, title II, 110 Stat. 847, 868, *et seq.* (Mar. 29, 1996). This IFR meets the criteria set forth in 5 U.S.C. 804(2) because it is likely to result in an annual effect on the economy of \$100 million or more. *See* 5 U.S.C. 804(2)(A). DHS has complied with the CRA’s reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). As stated in this preamble, DHS has found that there is good cause to make this rule effective immediately upon publication because notice and comment is not required. 5 U.S.C. 808(2).

F. Executive Order 13132 (Federalism)

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

G. Executive Order 12988 (Civil Justice Reform)

This IFR is drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This IFR was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and

ambiguities so as to minimize litigation and undue burden on the Federal Court system. DHS has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

H. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999. *See* Public Law 105–277, 112 Stat. 2681 (1998). DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has no data that indicate that this IFR will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS acknowledges that this rule would impose a new, small fee that some families must submit. However, the IFR would provide USCIS and the Federal Government with funds that would be used to administer the affected programs and meet the rule’s intent. However, a fee of \$25 would have minute effect on the disposable income for the affected families. DHS also determined that this rule would not have any impact on the autonomy or integrity of the family as an institution.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This IFR does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

¹⁶² The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(5), (6).

¹⁶³ *See* DOL, BLS, Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month, Historical CPI-U, September 2025 (XLSX) (database), <https://www.bls.gov/cpi/tables/supplemental-files/home.htm>, (last updated Jan. 13, 2026). Calculation of inflation percentage: (1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2024); (2) Subtract reference year CPI-U from current year CPI-U; (3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; (4) Multiply by 100 = [(Average monthly CPI-U for 2024 – Average monthly CPI-U for 1995) ÷ (Average monthly CPI-U for 1995)] × 100 = [(313.689 – 152.383) ÷ 152.383] = (161.306 ÷ 152.383) = 1.059 × 100 = 105.86 percent = 106 percent (rounded).

Calculation of inflation-adjusted value: Convert 111% inflation percentage to an inflation factor = 1 + 106/100 = 2.06. \$100 million in 1995 dollars × 2.06 = \$206 million in 2024 dollars.

J. National Environmental Policy Act (NEPA)

DHS and its components analyze proposed regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies and, if so, what degree of analysis is required. DHS Directive 023–01, Revision 01 “Implementing the National Environmental Policy Act” and Instruction Manual 023–01–001–01, Revision 01 (“Instruction Manual”)¹⁶⁴ establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (“categorical exclusions”) that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement. *See* 42 U.S.C. 4336(a)(2) and 4336(e)(1). The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.¹⁶⁵

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.¹⁶⁶

This interim final rule is limited to amending the DHS regulations to expand the use of e-filing for USCIS forms. This rule is strictly administrative and procedural. DHS has reviewed this rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments in this rule.

Accordingly, DHS finds that the promulgation of this rule’s amendments to current regulations clearly fits within categorical exclusion A3 established in DHS’s NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, the

regulatory amendments made in this rule are categorically excluded from further NEPA review.

K. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act of 1995, Public Law 104–13 (May 22, 1995), all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule contains a proposed new collection of information that will be submitted to OMB upon completion of the comment period and response to comments. While the regulations codified in this rule will be effective as provided in the **DATES** section above, this rule provides that mandating electronic submission of a certain form entails an approved information collection that can be used to request a waiver from e-filing. Accordingly, USCIS will not require that any form be submitted only electronically until USCIS addresses the comments received during the 60-day comment period on the information collection that this rule creates, publishes a 30-day **Federal Register** Notice as required under 5 CFR 1320.12(d), and OMB concludes the collection request as required by the PRA.¹⁶⁷

DHS and USCIS invite the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, publication of this rule in the **Federal Register** satisfies the obligation to obtain comments regarding the new information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of this interim final rule. All submissions received must include the OMB Control Number 1615–NEW in the body of the letter and the agency name. Please follow the instructions as described under the **ADDRESSES** and I. Public Participation sections of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

¹⁶⁷ *See* 5 CFR 1320.5(a)(2) (providing that an agency shall not conduct or sponsor a collection of information unless, in advance of the adoption or revision of the collection of information OMB has approved the proposed collection of information). However, as previously stated, immediately upon approval of the Form I–936 by OMB, under this rule, USCIS may announce that a request that has been available for e-filing for 180 days must be e-filed in 60 days.

(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) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Request for Waiver of E-Filing Requirement.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–936; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–936 is 248,905 and the estimated hour burden per response is .5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 124,453 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$4,978,100.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

Accordingly, for the reasons set forth in the preamble, DHS amends chapter I

¹⁶⁴ The Instruction Manual contains DHS’s procedures for implementing NEPA and was issued on November 6, 2014, <https://www.dhs.gov/ocr/so/eed/epb/nepa> (last updated July 29, 2025).

¹⁶⁵ *See* Instruction Manual, Appendix A, Table 1.

¹⁶⁶ *See* Instruction Manual at V.B(2)(a) through (c).

of title 8 of the Code of Federal Regulations as follows:

PART 1—DEFINITIONS

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

Authority: 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Pub. L. 107–296, 116 Stat. 2135; 6 U.S.C. 1 *et seq.*

- 2. Section 1.2 is amended by adding in alphabetical order a definition for “E-filing” to read as follows:

§ 1.2 Definitions.

* * * * *

E-filing means electronically filing or submitting a benefit request, supporting evidence, document, notice, or communication in a manner made available and approved by USCIS for that purpose, including by completing the form online, in a web portal, via an electronic interface, or by uploading a PDF of the completed form through an approved online account.

* * * * *

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

- 3. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b, 1372, 1801–1815; 8 U.S.C. 1185 note; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; 31 CFR part 223.

- 4. Section 103.2 is amended by revising paragraph (a)(1) to read as follows:

§ 103.2 Submission and adjudication of benefit requests.

(a) * * *

(1) *Preparation and submission.* (i) Every form, benefit request, or other document must be submitted and executed in accordance with this section, other applicable provisions of this chapter, and the form instructions

designated by DHS for that request. DHS may prescribe the manner of submission and the format of benefit requests, including through form instructions and related materials, to implement and administer the requirements set forth in this section and other applicable regulations. A benefit request that does not comply with applicable statutes, regulations, or form instructions may be rejected or denied in accordance with this section. In the event of any inconsistency, the governing statute and regulations control, and DHS will construe form instructions in a manner consistent with those authorities.

(ii) A form filed with USCIS, as defined in 8 CFR 1.2, must be filed electronically, unless waived pursuant to paragraph (a)(1)(iii) of this section, where:

(A) The form has been available for e-filing for more than 180 days;

(B) USCIS has, in its discretion, mandated that the form be e-filed (either in general or in specified circumstances); and

(C) USCIS has published 60 days of advance notice on <https://www.uscis.gov> providing the date that the paper form will no longer be accepted and the request must be e-filed (either in general or in specified circumstances).

(iii) USCIS, in its discretion, may waive mandatory e-filing. Benefit requestors may request a waiver of mandatory e-filing by submitting a Request for Waiver of E-Filing Requirement.

(iv) Each form, benefit request, or other document must be filed with the fee(s) required by regulation. Except as otherwise provided in this chapter, fees must be paid when the request is filed or submitted.

(v) Filing fees generally are non-refundable regardless of the outcome of the benefit request, or how much time the adjudication requires, and any decision to refund a fee is at the discretion of USCIS.

* * * * *

PART 106—USCIS FEE SCHEDULE

- 5. The authority citation for part 106 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356, 1801–1815; 48 U.S.C. 1806; Pub. L. 107–609, 115 Stat. 1012; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note).

- 6. Section 106.2 is amended by:

- a. Redesignating paragraphs (a)(64) through (69) as paragraphs (a)(65) through (70); and

- b. Adding a new paragraph (a)(64).
The addition reads as follows:

§ 106.2 USCIS fees.

(a) * * *

(64) *Request for Waiver of E-Filing Requirement, Form I-936.* To request that USCIS waive the requirement that a benefit request must be e-filed: \$25.

* * * * *

- 7. Section 106.3 is amended by:

- a. Revising paragraph (a)(3)(ii) introductory text;

- b. Removing the word “and” at the end of paragraph (a)(3)(ii)(F);

- c. Removing the period at the end of paragraph (a)(3)(ii)(G) and adding “; and” in its place; and

- d. Adding paragraph (a)(3)(ii)(H).

The revision and addition read as follows:

§ 106.3 Fee waivers and exemptions.

(a) * * *

(3) * * *

(ii) The following form fees may be waived based on the conditions described in paragraphs (a)(3)(ii)(A) through (H) of this section:

* * * * *

(H) Request for Waiver of E-filing Requirement (Form I-936) if the form for which a waiver is requested is subject to paragraph (a)(3)(iii) of this section.

* * * * *

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–16313 Filed 8–10–26; 8:45 am]

BILLING CODE 9111–97–P



FEDERAL REGISTER

Vol. 91

Tuesday,

No. 153

August 11, 2026

Part V

The President

Proclamation 11052—Adjusting Imports of Polysilicon and Its Derivatives
Into the United States

Proclamation 11053—National Purple Heart Day, 2026

Executive Order 14418—Continuing To Protect the Meaning and Value of
American Citizenship

Executive Order 14419—Ending Birth Tourism

Presidential Documents

Title 3—

Proclamation 11052 of August 6, 2026

The President

Adjusting Imports of Polysilicon and Its Derivatives Into the United States

By the President of the United States of America

A Proclamation

1. Polysilicon is the base material underpinning the security of America's semiconductor and solar-power supply chains. Yet for decades, America has allowed foreign countries to weaken United States producers in the polysilicon sector—eroding our economic and national security. Today, I am taking action to put a stop to these practices and revitalize the United States polysilicon sector.

2. These actions are based on advice and information I received from the Secretary of Commerce (Secretary) in a report transmitted to me within the past 90 days detailing the findings of his investigation under section 232 of the Trade Expansion Act of 1962, as amended, 19 U.S.C. 1862 (section 232), into the effects of imports of polysilicon and its derivative products on the national security of the United States. After evaluating the facts considered in that investigation, and taking into account the close relation of the economic welfare of the Nation to our national security, the Secretary found and advised me of his opinion that polysilicon and its derivative products are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States.

3. Among other things, the Secretary found that polysilicon is essential to the national security and economy of the United States. Polysilicon is the base material for semiconductors, which enable all digital products and services and provide the technical foundation for the functioning of virtually every sector of the modern economy, including the defense industrial base. For example, semiconductors are critical inputs for United States defense systems, such as radar and communication systems, electronic warfare and cybersecurity systems, and guidance and control systems for missiles and drones. Without a secure and reliable domestic supply of polysilicon, the United States cannot sufficiently produce semiconductors. Nor can the United States sufficiently scale up its domestic production of semiconductors, as I determined was necessary in Proclamation 11002 of January 14, 2026 (Adjusting Imports of Semiconductors, Semiconductor Manufacturing Equipment, and Their Derivative Products Into the United States).

4. The Secretary also found that polysilicon is essential for the production of solar products. Solar-grade polysilicon and its derivative solar products are used to support various United States defense programs and artificial intelligence (AI) innovations.

5. For decades, foreign governments—recognizing the strategic importance of polysilicon and polysilicon derivatives—designed policies to increase the production of these products in their countries, which have come at the expense of the United States industry. These policies contributed to global oversupply in polysilicon and polysilicon derivative sectors. As the Secretary found, since 2020 alone, global production of polysilicon has grown by more than 270 percent and inventories reached a record high of 400,000 tons by the end of 2024.

6. The Secretary found that imports of polysilicon and polysilicon derivatives have eroded the capacity of United States industry to produce polysilicon and polysilicon derivatives. The United States' share of global polysilicon production capacity has fallen from 50 percent in 2005 to less than 2 percent in 2024. Meanwhile, the United States' share of global semiconductor wafer fabrication capacity has decreased from 37 percent in 1990 to 10 percent in 2024; and in the solar sector, the United States is virtually entirely dependent on imports of solar ingots, wafers, and cells.

7. The relative lack of United States downstream solar-related polysilicon derivative production is particularly concerning for the long-term commercial viability of the United States polysilicon sector. The Secretary found that, while semiconductor-grade polysilicon was once the primary output of the polysilicon industry, global semiconductor-grade polysilicon now accounts for only 2.4 percent of global polysilicon production. The overwhelming demand for solar-grade polysilicon relative to semiconductor-grade polysilicon means that polysilicon manufacturers are increasingly dependent on the production of lower purity, solar-grade polysilicon to achieve the production volumes necessary to sustain viable unit costs of production for all polysilicon, including semiconductor-grade polysilicon. Without a financially viable market for United States solar-grade polysilicon, United States polysilicon producers cannot thrive and ensure domestic manufacturing of solar- and semiconductor-grade polysilicon and their derivatives that meets United States economic and national security requirements.

8. In light of these findings and the other findings in the Secretary's report, the Secretary recommended a range of actions to adjust imports of polysilicon and polysilicon derivatives so that such imports will not threaten to impair the national security of the United States. The Secretary recommended the establishment of minimum import prices (MIP) for polysilicon and polysilicon derivatives to create a protected domestic market that allows United States producers to compete free from global distortions. The Secretary also recommended that I impose a 15 percent *ad valorem* rate of duty on downstream polysilicon derivatives. The Secretary recommended that these two remedies be accompanied by an onshoring program to encourage companies to build new United States polysilicon, ingot, wafer, and cell production facilities.

9. After considering the Secretary's report, the factors in section 232(d) (19 U.S.C. 1862(d)), and other relevant factors and information, I concur with the Secretary's finding that polysilicon and its derivative products are being imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States. In my judgment, and in light of the Secretary's report, the factors in section 232(d) (19 U.S.C. 1862(d)), and other relevant factors and information, I determine that it is necessary and appropriate to adjust imports of these articles and their derivatives, as detailed below, so that such imports will not threaten to impair the national security of the United States.

10. First, I determine that it is necessary and appropriate to establish a MIP program to adjust imports of polysilicon and its derivatives. This will create an economic environment conducive to increasing United States production of the full range of these goods by ensuring a commercially viable market for them. If foreign trading partners that have entered into trade deals with my Administration adopt substantially equivalent import-adjusting action modeled after our MIP, I also authorize the Secretary and the United States Trade Representative (Trade Representative) to enter into arrangements that would alter the applicability of the MIP and the tariffs established in this proclamation to imported polysilicon and derivatives from these trading partners.

11. Second, I determine that it is necessary and appropriate to impose a 15 percent *ad valorem* rate of duty on imports of polysilicon derivatives so that such imports will not threaten to impair the national security of

the United States. These tariffs—combined with the MIP program—will promote United States production of polysilicon derivatives by ensuring a commercially viable market for them. They will also replace a similar but narrower safeguard tariff on solar cells and modules that I imposed in my first term, and which expired in February 2026.

12. Third, I determine that it is necessary and appropriate to offer incentives for companies investing in United States production of polysilicon and polysilicon derivatives. The Secretary should have the authority to enter into company-specific deals with producers to incentivize such investments and the strengthening of the United States polysilicon supply chain.

13. In my judgment, based on current circumstances as well as the future needs of the United States, the plan of action detailed in this proclamation is necessary and appropriate to address the threatened impairment of the national security posed by imports of polysilicon and its derivative products. The plan of action in this proclamation will, among other things, help ensure the commercial viability of United States production of polysilicon and its derivatives that is necessary to meet United States economic and national security requirements. It will also enhance employment opportunities and related human resources and promote investment in the United States polysilicon industry.

14. Section 232 authorizes the President to take action to adjust the imports of an article and its derivatives that are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security so that such imports will not threaten to impair the national security.

15. Section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483) (section 604), authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTSUS) the substance of statutes affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by the authority vested in me by the Constitution and the laws of the United States, including section 232; section 604; and section 301 of title 3, United States Code, do hereby proclaim as follows:

(1)(a) The applicable minimum import prices for imported polysilicon and polysilicon derivatives shall be:

- (i) \$21 per kilogram for polysilicon;
- (ii) \$100 per kilogram for polysilicon ingots and wafers;
- (iii) \$0.22 per watt for solar cells; and
- (iv) \$0.38 per watt for solar modules.

(b) The Secretary is authorized to adjust these minimum import prices from time to time to reflect market conditions or other factors affecting the fair market value of covered products under non-distorted, free-market conditions.

(2) Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on December 4, 2026, imports of polysilicon and polysilicon derivatives specified in Annexes I and II to the proclamation shall be subject to the MIP program, as detailed in this clause.

(a) To implement the MIP program, U.S. Customs and Border Protection (CBP) shall permit importers of polysilicon and polysilicon derivatives to submit documentation at entry establishing or certifying either that any first arm's-length sale of the imported merchandise (or, if applicable, downstream products made from that merchandise) in the United States will occur at or above the applicable MIP, or that any first arm's-length sale of the imported merchandise is pursuant to fixed terms in a contract entered into prior to the date of the signing of this proclamation.

(b) If an importer fails to submit the documentation referenced in subclause (a) of this clause, the imported merchandise shall be subject to a specific tariff equal to the applicable MIP.

(c) For importers that submit the documentation referenced in subclause (a) of this clause, in the event that the entered value on the entry summary of the imported merchandise is less than the MIP, the imported merchandise shall be subject to a specific tariff equal to the difference between the entered value on the entry summary and the MIP.

(3) CBP shall monitor and enforce the accuracy of importer documentation submitted pursuant to clause (2) of this proclamation. If CBP determines that an importer's documentation was materially inaccurate or that an importer has materially failed to comply with its certification, that importer and its affiliates shall permanently be prohibited from importing polysilicon and polysilicon derivatives into the United States. CBP may also impose penalties on the noncompliant importer to the extent consistent with applicable law.

(4) Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on December 4, 2026, imports of polysilicon ingots and polysilicon derivatives specified in Annexes I and II of this proclamation shall be subject to an additional 15 percent *ad valorem* rate of duty, except as otherwise specified in this proclamation.

(5)(a) The duties imposed pursuant to clauses (2) and (4) of this proclamation shall continue in effect unless they are expressly reduced, modified, or terminated. These duties shall apply in addition to any other duties, taxes, fees, exactions, and charges applicable to such products, except as otherwise specified in this proclamation.

(b) For products of Japan, Korea, Taiwan, Switzerland, Liechtenstein, or a member nation of the European Union subject to tariffs under this proclamation, the sum of the additional section 232 tariff imposed pursuant to clause (4) of this proclamation and the applicable rate of duty under Column 1 of the HTSUS (Column 1 Duty Rate) shall be equal to 15 percent.

(c) For products of the United Kingdom subject to tariffs under this proclamation, the applicable rate of duty under clause (4) of this proclamation shall be 10 percent.

(6) The Secretary is authorized to establish a program to incentivize investment in United States production of raw polysilicon, as well as ingots, wafers, and cells (Covered Products).

(a) The Secretary is authorized to solicit and accept onshoring plans from companies. Any onshoring plan shall include: a commitment, if the plan is approved, to build, refurbish, or expand a facility in the United States that will produce Covered Products; a commitment that construction will start by January 20, 2029; and any other relevant information and analysis, including requirements set by the Secretary.

(b) The Secretary is authorized to approve onshoring plans described in subclause (a) of this clause. In determining whether an onshoring plan qualifies for approval, the Secretary, in consultation with any senior executive branch officials the Secretary deems appropriate, shall consider all relevant factors he deems appropriate, such as the anticipated start date of construction, whether the proposed plan's project timeline is commercially reasonable, whether the proposed plan's project milestones are commercially reasonable, the anticipated annual production of Covered Products from the onshoring project, whether the proposed plan's anticipated costs and Covered Product production projections are reasonable, and how the benefits of the reduced tariff rate will be allocated between the applicants of the onshoring plan. When approving onshoring plans, the Secretary shall act in a manner consistent with the need to address the national security threat found in this proclamation.

(c) If the Secretary approves a company's onshoring plan, the Secretary shall allow the company to import necessary production equipment and Covered Products, in volumes the Secretary deems commensurate with the company's newly committed investment, without paying applicable section 232 duties. These benefits shall be tied to the facility's construction period, shall be contingent on the company making sufficient progress under its approved onshoring plan, and may vary depending on whether the imports use United States polysilicon.

(d) The Secretary is authorized to take all actions that he deems appropriate to implement and effectuate this program, including, consistent with applicable law, the issuance of regulations, rules, guidance, and procedures. All approved onshoring plans shall be subject to monitoring and enforcement by the Secretary. The Secretary may require that companies with approved onshoring plans submit reports to the Department of Commerce to ensure compliance with domestic manufacturing commitments, and he may require that such reports be audited by external auditing firms. Should the Secretary determine that a company is substantially failing to meet its agreed-upon commitments that are the basis for granting tariff offsets or other tariff incentives, the Secretary is authorized to cease and rescind those benefits. In cases where the executive branch assesses that a company engaged in fraud or deliberately misled the United States Government with respect to onshoring commitments, the rescission of tariff benefits can be retroactive to the extent permitted by law, and the Commissioner of CBP may collect the additional tariffs owed because of the retroactive rescission of the tariff benefits and impose any appropriate fines and penalties to the extent consistent with applicable law.

(7) Any product subject to duties pursuant to this proclamation, except those eligible for admission under "domestic status" as described in 19 CFR 146.43, that is admitted into a United States foreign trade zone on or after the effective date of this proclamation may be admitted only under "privileged foreign status" as described in 19 CFR 146.41, and any product admitted in "privileged foreign status" prior to the effective date of this proclamation will be subject upon entry for consumption to any duties related to the classification under the applicable HTSUS subheading.

(8) Manufacturing drawback claims made in accordance with subsections (a) and (b) of section 313 of the Tariff Act of 1930, as amended, 19 U.S.C. 1313(a)-(b), shall be available with respect to the duties imposed pursuant to this proclamation on articles that meet the following conditions:

(a) the article is not of a type of merchandise subject to an antidumping or countervailing duty order, without regard to whether the article is from the country or countries listed in the order or orders;

(b) the article is a product of Trade Agreement Partners, composed of the United Kingdom, the European Union, Japan, the Republic of Korea, Switzerland, Liechtenstein, Mexico, Canada, and any trading partner with which the United States concludes a trade and security agreement; and

(c) the polysilicon content of the article is composed entirely of polysilicon from a Trade Agreement Partner country.

(9) The Secretary, in consultation with the Secretary of Homeland Security, the Trade Representative, the Chairman of the United States International Trade Commission, and any other senior executive branch official the Secretary deems appropriate, shall determine whether any modifications to the HTSUS are necessary to effectuate or implement this proclamation or any actions taken pursuant to this proclamation, and shall make such modifications through notice in the *Federal Register*, including any technical correction to Annex I or Annex II to this proclamation.

(10) The Secretary shall monitor actions taken by our trading partners to establish minimum import prices for polysilicon and polysilicon derivatives. Should the Secretary, in consultation with the Trade Representative and the Senior Counselor for Trade and Manufacturing, determine that a trading partner has established a substantially equivalent minimum import

price, then the Secretary may alter the applicability of the MIP and the tariffs established in this proclamation to polysilicon and polysilicon derivatives from that trading partner.

(11) The Secretary shall continue to monitor imports of polysilicon and polysilicon derivatives. If the Secretary determines that a company is stockpiling polysilicon or polysilicon derivatives before the date in clauses (2) and (4) of this proclamation, the Secretary shall take action in coordination with CBP to restrict imports by the company and its affiliates. The Secretary also shall, from time to time, in consultation with any senior executive branch officials the Secretary deems appropriate, review the status of such imports with respect to the national security. The Secretary shall inform the President of any circumstances that, in the Secretary's opinion, might indicate the need for further action by the President under section 232. The Secretary shall also inform the President of any circumstance that, in the Secretary's opinion, might indicate that the remedies provided for in this proclamation are no longer necessary.

(12) The Secretary and the Secretary of Homeland Security are directed and authorized to take all actions to implement and effectuate this proclamation—including, consistent with applicable law, through temporary suspension or amendment of regulations or through notices in the *Federal Register* and by adopting rules, regulations, or guidance—and to employ all powers granted to the President, including by section 232, as may be necessary to implement this proclamation. The head of each executive department and agency (agency) is authorized to and shall take all appropriate measures within the agency's authority to implement this proclamation. The head of each agency may, consistent with applicable law, including 3 U.S.C. 301, redelegate the authority to take such appropriate measures within the agency.

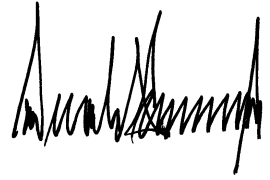
(13) The Secretary, in consultation with any senior executive branch officials he deems appropriate, may issue rules, regulations, and guidance consistent with this proclamation, including to address operational necessity and prevent circumvention and evasion, including through manipulation of related-party transactions or transfers of foreign subsidies.

(14) CBP may take any appropriate measures, consistent with applicable law, to administer the tariffs and MIPs imposed by this proclamation.

(15) Any provision of previous proclamations and Executive Orders that is inconsistent with this proclamation is superseded to the extent of such inconsistency.

(16) If any provision of this proclamation or the application of any provision of this proclamation to any individual or circumstance is held to be invalid, the remainder of this proclamation and the application of its provisions to any other individual or circumstance shall not be affected. If any fee, duty, tariff, or program described in this proclamation is held to be invalid by a court of competent jurisdiction, the remainder shall continue in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of August, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fifty-first.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

Annex I

Note: Pursuant to clause (1)(a) of this proclamation, this annex contains the applicable minimum import prices for imported polysilicon and polysilicon derivatives classifiable in the enumerated provisions of the HTSUS. The product descriptions that are contained in this annex are provided for informational purposes only and are not intended to limit in any way the scope of the Section 232 actions on polysilicon and polysilicon derivatives. Any questions regarding the scope of a particular HTSUS provision should be referred to U.S. Customs and Border Protection.

(i) \$21 per kilogram for polysilicon;

HTSUS	Description
2804.61.0000	Silicon: containing by weight not less than 99.99 percent of silicon

(ii) \$100 per kilogram for polysilicon ingots and wafers;

HTSUS	Description
3818.00.0020	Polycrystalline silicon wafers, doped
3818.00.0040	Monocrystalline silicon wafers, doped: round (circular) shaped, as described in statistical note 2 to chapter 38 of the HTSUS
3818.00.0045	Monocrystalline silicon wafers, doped: pseudo-square or rectangular in shape, as described in statistical note 3 to chapter 38 of the HTSUS
3818.00.0050	Monocrystalline silicon wafers, doped: other than provided for in statistical reporting numbers 3818.00.40 and 3818.00.45
3818.00.0091	Chemical compounds doped for use in electronics, not elsewhere specified or included

(iii) \$0.22 per watt for solar cells; and

HTSUS	Description
8541.42.0010	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Photovoltaic cells not assembled in modules or made up into panels: crystalline silicon photovoltaic cells of a kind described in statistical note 12 to chapter 85 of the HTSUS
8541.42.0080	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Photovoltaic cells not assembled in modules or made up into panels: other than provided for in statistical reporting number 8541.42.0010

(iv) \$0.38 per watt for solar modules.

HTSUS	Description
8541.43.0010	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Photovoltaic cells assembled in modules or made up into panels:

	crystalline silicon photovoltaic cells of a kind described in statistical note 12 to chapter 85 of the HTSUS
8541.43.0080	Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes (LED): Photovoltaic cells assembled in modules or made up into panels: other than provided for in statistical reporting number 8541.43.0010

Annex II

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern time on December 4, 2026, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified as follows:

1. The following new U.S. note 42 is inserted in numerical order:

“42. (a) Headings 9903.45.30–9903.45.36 provide the ordinary customs duty treatment of polysilicon and certain polysilicon derivative products. These products may be subject to both the applicable *ad valorem* rate of duty imposed by headings 9903.45.30–9903.45.32 and the applicable specific rate of duty imposed by headings 9903.45.33–9903.45.36. The rates of duty imposed by headings 9903.45.33–9903.45.36 will apply to products described in those headings if the importer of such products fails to submit documentation concerning the resale of those products in the United States to U.S. Customs and Border Protection (CBP) upon entry, or if the importer submits such documentation but CBP is required to adjust the customs duty assessed on those entries, as provided for in this proclamation.

Headings 9903.45.33–9903.45.36 do not apply to products described in those headings if the product’s entered value meets or exceeds the specific rate of duty provided in headings 9903.45.33–9903.45.36 for that product and:

1. the product will not be resold in the United States and any downstream product made from the product will be sold at or above the specific rate of duty provided in headings 9903.45.33–9903.45.36 for that downstream product;
 2. the product will be resold in the United States at a price at or above the specific rate of duty provided in headings 9903.45.33–9903.45.36 for that product; or
 3. the product will be resold in the United States pursuant to fixed terms in a time-limited contract entered into prior to August 6, 2026.
- (b) For imported articles provided for in headings 9903.45.30–9903.45.36 that are eligible for special tariff treatment under any of the free trade agreements or preference programs listed in general note 3(c)(i) to the tariff schedule, the duties provided in these headings shall be collected in addition to any special rate of duty otherwise applicable under the appropriate tariff subheading. Goods for which entry is claimed under a provision of chapter 98 to the HTSUS and that are subject to the additional duties prescribed herein shall be eligible for and subject to the terms of such provision and applicable CBP regulations. No claim for entry or for any duty exemption or reduction shall be allowed under a provision of chapter 99 to the HTSUS that may set forth a lower rate of duty or provide duty-free treatment, taking into account information supplied by CBP. All

antidumping, countervailing or other duties and charges applicable to such goods shall continue to be imposed.

- (c) For articles provided for in heading 9903.45.31 with a column 1 rate of duty less than 15 percent, the sum of the column 1 rate of duty and the additional *ad valorem* rate of duty pursuant to heading 9903.45.31 will total 15 percent *ad valorem*.”
2. The following new headings are inserted in numerical sequence, with the material in each new heading inserted in the columns of the HTSUS labeled “Heading/Subheading”, “Article Description”, “Rates of Duty 1-General”, “Rates of Duty 1-Special” and “Rates of Duty 2”, respectively:

Heading /Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
“9903.45.30	Except as provided for in headings 9903.45.31 and 9903.45.3232, polysilicon ingots and wafers (provided for in statistical reporting numbers 3818.00.0020, 3818.00.0040, 3818.00.0045, 3818.00.0050 and 3818.00.0091), solar cells (provided for in subheading 8541.42.00), and solar modules (provided for in subheading 8541.43.00), as provided for in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + 15%	The duty provided in the applicable subheading + 15%	The duty provided in the applicable subheading + 15%

9903.45.31	Polysilicon ingots and wafers (provided for in statistical reporting numbers 3818.00.0020, 3818.00.0040, 3818.00.0045, 3818.00.0050 and 3818.00.0091), solar cells (provided for in subheading 8541.42.00), and solar modules (provided for in subheading 8541.43.00), that are the product of Liechtenstein, Japan, South Korea, Switzerland, Taiwan or of a member nation of the European Union, as provided for in subdivisions (a)–(b) and (d) of U.S. note 42 to this subchapter	15%	15%	No change
9903.45.32	Polysilicon ingots and wafers (provided for in statistical reporting numbers 3818.00.0020, 3818.00.0040, 3818.00.0045, 3818.00.0050 and 3818.00.0091), solar cells (provided for in subheading 8541.42.00), and solar modules (provided for in subheading 8541.43.00) that are the product of the United Kingdom, as provided for in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + 10%	The duty provided in the applicable subheading + 10%	No change
9903.45.33	Polysilicon provided for in statistical reporting number 2804.61.0000 and in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + \$21/kg	The duty provided in the applicable subheading + \$21/kg	The duty provided in the applicable subheading + \$21/kg

9903.45.34	Polysilicon ingots and wafers provided for in statistical reporting numbers 3818.00.0020, 3818.00.0040, 3818.00.0045, 3818.00.0050 and 3818.00.0091 and in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + \$100/kg	The duty provided in the applicable subheading + \$100/kg	The duty provided in the applicable subheading + \$100/kg
9903.45.35	Polysilicon solar cells provided for in subheading 8541.42.00 and in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + \$0.22/watt	The duty provided in the applicable subheading + \$0.22/watt	The duty provided in the applicable subheading + \$0.22/watt
9903.45.36	Polysilicon solar modules provided for in subheading 8541.43.00 and in subdivisions (a)–(b) of U.S. note 42 to this subchapter	The duty provided in the applicable subheading + \$0.38/watt	The duty provided in the applicable subheading + \$0.38/watt	The duty provided in the applicable subheading + \$0.38/watt'

[FR Doc. 2026–16400

Filed 8–10–26; 11:15 am]

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Presidential Documents

Proclamation 11053 of August 6, 2026

National Purple Heart Day, 2026

By the President of the United States of America

A Proclamation

On National Purple Heart Day, we honor the immeasurable sacrifices of every valiant service member wounded or killed in combat in defense of our Nation and we reaffirm our eternal gratitude for their unrivaled heroism.

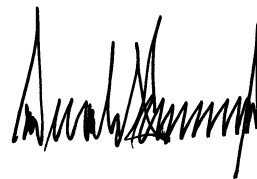
First bestowed by General George Washington in 1782, the Purple Heart stands as our Nation's oldest military decoration, reserved for those wounded or fallen in defense of our country. From the battlefields of our Revolution to the deserts and mountains of the War on Terror and across every conflict far and wide, its recipients have displayed valor beyond measure. Sustained by an abiding love of liberty and unfailing devotion to country, Purple Heart recipients endured grievous wounds and withstood the horrors of battle, and some even paid the ultimate price to preserve our freedom. The gallantry reflected in the purple fabric on their chest is forever woven into the red, white, and blue thread of our shared American story, and their service remains a solemn reminder of the immense cost of freedom and the sacred responsibility borne by those who wear our Nation's uniform.

While we can never fully repay the recipients of this hallowed medal, we are honoring their sacrifice by ensuring America remains the greatest beacon of freedom on Earth. My Administration has swiftly rebuilt our military into the strongest and most lethal fighting force in the world, restoring pride in military service and achieving record recruitment numbers. We are supporting our veterans beyond the battlefield by strengthening the Department of Veterans Affairs, eliminating bureaucratic waste and slashing its processing backlog by more than 74 percent since I returned to office. We are opening new veteran health clinics, fighting to eradicate veteran homelessness, and providing financial relief to senior veterans by ending taxes on Social Security. Under my leadership, our commitment to America's veterans is absolute, and we will always protect the freedoms they secured.

As we continue to celebrate 250 years since the founding of our great country, we recognize that the Independence we cherish today was secured by the blood, sweat, and tears of the men and women who answered the call to defend it. Today, and every day, we salute our American warriors who bear the Purple Heart and whose courage carried forward the enduring blessings of freedom. We recognize the families who share in their sacrifices. Above all, we pledge to never forget their service and to forever honor their indelible legacy.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim August 7, 2026, as National Purple Heart Day. I call on all Americans to observe this day by honoring the courage and sacrifice of our Purple Heart recipients and expressing gratitude to our veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of August, in the year of our Lord two thousand twenty-six, and of the Independence of the United States of America the two hundred and fifty-first.

A handwritten signature in black ink, appearing to be "Donald Trump", located in the lower right quadrant of the page.

Presidential Documents

Executive Order 14418 of August 6, 2026

Continuing To Protect the Meaning and Value of American Citizenship

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. Purpose. The privilege of United States citizenship remains a priceless and profound gift. Since my first day in office, my Administration has guarded against the risks posed by malign foreign actors who attempt to swindle American citizens by taking advantage of the generosity of our Nation.

On June 30, 2026, the Supreme Court decided in *Trump v. Barbara*, 609 U.S. ___, 146 S. Ct. 2438, 2449 (2026), that the Citizenship Clause of the Fourteenth Amendment to the United States Constitution extends the privilege of citizenship to children born to parents in the United States “for whom no extraterritorial fiction applie[s].” This order identifies, non-exhaustively, and prescribes action concerning certain categories of children of aliens who do not fall within the rule of birthright citizenship as announced by the Supreme Court.

Sec. 2. Policy. It is the policy of the United States that no executive department or agency shall issue documents recognizing United States citizenship to, or accept documents issued by State, local, or other governments or authorities purporting to recognize United States citizenship regarding, persons when neither parent of that person is a citizen and any of the following applies:

(a) either parent of that person is an alien enemy, defined to include any member of a designated Foreign Terrorist Organization under 8 U.S.C. 1189 or Specially Designated Global Terrorist, consistent with the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.*, and Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), as amended;

(b) either parent of that person is a foreign government employee, defined to include:

- (i) ambassadors;
- (ii) persons employed by a foreign embassy or consulate who are nationals of that foreign country;
- (iii) persons employed by a foreign government in an official capacity; and
- (iv) persons employed by an international organization that possess international-organization immunity;

(c) either parent of that person engaged in a commercial transaction to purchase or access birthright citizenship for the person, or engaged in fraudulent activity to obtain citizenship, to include:

- (i) when the parent(s) of the person engage in a commercial transaction to ensure that the person’s mother is present in the United States, or a territory of the United States, to give birth; or
- (ii) when the parent(s) engage in a commercial transaction with a surrogate present in the United States, or a territory of the United States, to give birth;

(d) the person is born in a territory or territorial waters of the United States where citizenship is not conferred by Federal statute.

Sec. 3. *Enforcement.* (a) The Secretary of State, the Attorney General, the Secretary of Homeland Security, and the Commissioner of Social Security shall take all appropriate measures to ensure that the regulations and policies of their respective departments and agencies are consistent with this order, and that no officers, employees, or agents of their respective departments and agencies act, or forbear from acting, in any manner inconsistent with this order.

(b) The heads of all executive departments and agencies shall issue public guidance within 30 days of the date of this order regarding this order's implementation with respect to their operations and activities.

Sec. 4. *Severability.* If any provision of this order, or the application of any provision to any individual or circumstance, is held to be invalid, the remainder of this order and the application of its other provisions to any other individuals or circumstances shall not be affected thereby.

Sec. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

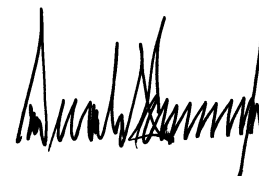
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The costs for publication of this order shall be borne by the Department of Justice.



THE WHITE HOUSE,
August 6, 2026.

Presidential Documents

Executive Order 14419 of August 6, 2026

Ending Birth Tourism

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose.* United States citizenship is among the greatest inheritances the Nation can bestow. It embodies a sacred bond between the American people and the Nation in which they live, and carries profound rights, privileges, and responsibilities reflective of the enduring allegiance of citizens to the United States and our Constitution. Citizenship is not a commodity to be acquired through calculated exploitation and evasion of the immigration laws, such as by entering the United States on a nonimmigrant visa for the purpose of giving birth within the Nation's borders.

Birth tourism operators use deceptive advertisements and inducements to entice foreign nationals to travel to the United States for the purpose of giving birth on American soil. They promise citizenship; access to public benefits; and short-term stays in specialized facilities, hotels, or rentals, but often fail to deliver on these promises. These operators coach their clients to misrepresent the purpose and duration of their travel to consular and border officials to obtain visas authorizing entry into the United States. Failure to appropriately combat these schemes has resulted in thriving industries around the world that profit by enabling the evasion of American immigration laws to obtain citizenship and other immigration benefits for foreign visitors, and the exploitation of the women who travel here for purposes of giving birth.

The immigration laws of the United States establish discrete categories of temporary nonimmigrant visas to allow foreign visitors into the United States for study, exchange, temporary employment, tourism, and other transitory activities that are now exploited by birth tourism operators. Participants in birth tourism schemes abuse these categories to establish a permanent foothold in the United States by securing the advantage of citizenship for their children and then potentially for themselves.

Birth tourism, defined in section 3 of this order, undermines the integrity of the Nation's immigration system by enabling foreign nationals to exploit their temporary admission to obtain permanent immigration-related benefits. Birth tourism also diverts limited consular inspection and enforcement resources away from legitimate visa applicants, erodes public confidence in the faithful enforcement of the immigration laws, and impairs the executive branch's ability to protect the national security.

The United States has a compelling interest in ensuring that each visa category is used only for the purpose for which it was established. Foreign nationals seeking temporary admission into the United States must adhere to the purposes for which the Congress has authorized their temporary admission, and cannot be permitted to circumvent the immigration laws in an attempt to vest themselves and their children with lasting benefits that are irreconcilable with their nonimmigrant status.

It is therefore the policy of the United States to promote the integrity of its immigration system, to ensure that nonimmigrant visa classifications are used only for their lawful and intended purposes, and to prevent the exploitation of those classifications by persons engaging in birth tourism.

Sec. 2. Authorities. Pursuant to section 301 of title 3, United States Code, the authority granted to the President under section 215(a) of the Immigration and Nationality Act, 8 U.S.C. 1185(a), is hereby delegated to the Secretary of State and the Secretary of Homeland Security to the extent necessary to implement this order, including the authority to issue or adopt rules, policies, operational guidance, or other guidance to carry out this order.

Sec. 3. Definition. For purposes of this order, “birth tourism” is defined as:

(a) the entry of any foreign national into the United States via a non-immigrant visa for the purpose of giving birth on American soil; or

(b) any effort by any foreign national to facilitate the entry of any foreign national into the United States via a nonimmigrant visa for the purpose of giving birth on American soil.

Sec. 4. Scope and Implementation. (a) The Secretary of State and the Secretary of Homeland Security shall take such actions and update any rules, policies, operational guidance, or other guidance as necessary to effectuate the policy set forth in this order. Such actions may include, within the Secretaries’ respective discretion and authority, appropriate action to prevent the entry into the United States of, or the granting of any visa or other travel authorization to, any alien entering or attempting to enter the United States for the purpose of engaging in birth tourism; revoking the visa or travel authorization and permanently barring entry of any alien who enters or attempts to enter the United States for the purpose of engaging in birth tourism; denial of entry to, or removal of, any alien who previously engaged or plans to engage in birth tourism; or other appropriate action against entities, organizations, or individuals, within or outside of the United States, responsible for facilitating or enabling birth tourism in any manner.

(b) All other relevant executive departments and agencies shall provide such records and information as are necessary for the Secretary of State and the Secretary of Homeland Security to implement the terms of this order and the rules, policies, operational guidance, or other guidance issued pursuant to it, subject to applicable law.

Sec. 5. Exemptions. Notwithstanding the restrictions imposed by this order, the Secretary of State or the Secretary of Homeland Security may exempt a foreign national from actions taken pursuant to this order on humanitarian grounds or when the foreign national’s entry is in the national interest, as determined by the Secretary of State or the Secretary of Homeland Security.

Sec. 6. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

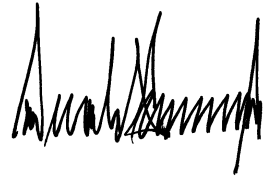
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) If any provision of this order, or the application of any provision to any person or circumstances, is held to be invalid, the remainder of this order and the application of any of its other provisions to any other persons or circumstances shall not be affected thereby.

(e) The costs for publication of this order shall be borne by the Department of Homeland Security.

A handwritten signature in black ink, appearing to be a stylized name, possibly "Donald Trump", written in a cursive script.

THE WHITE HOUSE,
August 6, 2026.

[FR Doc. 2026-16404
Filed 8-10-26; 11:15 am]
Billing code 9110-9M-P

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Tuesday, August 11, 2026

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