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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 765, 766, 767

[Docket ID FSA–2026–0463]

RIN 0560–A189

Driving Efficiency in Farm Loan Delivery; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farm Service Agency (FSA) is issuing a correction to a final rule published in the **Federal Register** on September 4, 2026, which will be effective October 1, 2026. The final rule amended FSA's Farm Loan Program (FLP) regulations to permanently implement the Application Fast Track (AFT) process and to make other regulatory changes intended to improve program efficiency and support IT modernization efforts. This document corrects three amendatory instructions. These corrections do not include any substantive changes to the final rule.

DATES: *This correction is effective:* October 1, 2026.

FOR FURTHER INFORMATION CONTACT: Matthew Henderson; telephone: (202) 720–5847; email: matthew.henderson2@usda.gov. Individuals with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY mode)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION: FSA is making three corrections for inadvertent errors in the amendatory instructions for the final rule (91 FR 56741):

- Instruction 59 was intended to revise only the introductory text of paragraph (a) of 7 CFR 765.153, but the instruction inadvertently revised the

entirety of paragraph (a) of 7 CFR 765.153.

- Instruction 87.a was intended to revise only the introductory text of paragraph (a)(3) of 7 CFR 766.253, but the instruction inadvertently revised the entirety of paragraph (a)(3) of 7 CFR 766.253.

- Instruction 95 was intended to replace all references to both “chattel” and “chattel inventory property” in 7 CFR 767.155 with the words “personal property”, but the instructions inadvertently only replaced the word “chattel”.

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions of that Act do not apply when the rule involves specified actions, including matters related to loans, grants, benefits, or contracts. Because the original rule and this correction govern a loan program, they fall within that exemption.

The original rule and this correction are exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule by section 553 of the APA or any other law; in addition, the definition of “rule” in 5 U.S.C. 601 is tied to the publication of a proposed rule. The exemption under section 553 for matters related to loans extends to the regulatory analysis requirement for this rule.

The Office of Management and Budget (OMB) has determined that the original rule did not meet the criteria in 5 U.S.C. 804(2) of the Congressional Review Act (CRA). Under 5 U.S.C. 808(2), an agency may make a rule effective immediately upon publication if it finds good cause. USDA finds good cause because this rule makes technical corrections to the amendatory instructions for the original rule that relates to loans, and delaying its effective date would postpone benefits to American farmers and ranchers. Therefore, USDA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this correction is effective

on October 1, 2026 to coincide with the effective date of the original rule.

Correction

For the reasons discussed above, FSA is making the following corrections in FR Doc. 2026–18164 appearing on page 56741 in the **Federal Register** of Friday, September 4, 2026:

§ 765.153 [Corrected]

■ 1. On page 56756, in the third column, amendatory instruction 59 is corrected to read: “59. Amend § 765.153 by revising the introductory text of paragraph (a) as follows:”.

§ 766.253 [Corrected]

■ 2. On page 56758, in the second column, amendatory instruction 87.a is corrected to read: “a. Revise the introductory text of paragraph (a)(3); and”.

§ 767.155 [Corrected]

■ 3. On page 56775, in the first column, amendatory instruction 95 is corrected to read:

“95. Amend § 767.155 as follows:

- a. In the section heading, remove the word “chattel” and add in its place “personal”; and
- b. In paragraphs (a)(2) and (b), remove all instances of the words “chattel inventory property” and add “personal property” in their place; and
- c. In paragraphs (a)(1) and (2), remove all instances of the word “chattel” and add “personal property” in their place.”.

Trina Brake,

Acting Administrator, Farm Service Agency.

[FR Doc. 2026–19696 Filed 9–24–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 31687; Amdt. No. 594]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the

required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en-route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: Effective 0901 UTC, October 29, 2026.

FOR FURTHER INFORMATION CONTACT: Brian Murphy, Manager, Aeronautical Information Services, Aeronautical Information Group, Aeronautical Data Team, Federal Aviation Administration. Mailing Address: FAA Headquarters, Aeronautical Information Group, 800 Independence Ave. SW, Bldg. 10A, Room 507L, Washington, DC 20591. Telephone (202) 267-4389.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed

changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a

“significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on September 23, 2026.

Brian Murphy,

Manager, Aeronautical Information Services, Aeronautical Information Group, Aeronautical Data Team, Federal Aviation Administration.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, 29 Oct 2026.

PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113 and 14 CFR 11.49(b)(2).

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 594 effective date October 29, 2026]

From	To	MEA	MAA
§ 95.3000 Low Altitude RNAV Routes			
§ 95.3234 RNAV Route T234 Is Amended To Read in Part			
* FAIRBANKS, AK VORTAC * 4300—MCA FAIRBANKS, AK VORTAC, W BND	TOLLO, AK FIX	5200	17500
§ 95.3269 RNAV Route T269 Is Amended To Read in Part			
ANCHORAGE, AK VOR/DME * 3300—MCA YONEK, AK FIX, W BND	YONEK, AK FIX	* 3000	17500
YONEK, AK FIX * 8800—MCA TORTE, AK FIX, W BND	* TORTE, AK FIX	5000	17500
TORTE, AK FIX ICEVO, AK FIX	ICEVO, AK FIX * VEILL, AK FIX	10000 10500	17500 17500
* 8100—MCA VEILL, AK FIX, E BND VEILL, AK FIX	* FAMEK, AK FIX	7300	17500
* 6500—MCA FAMEK, AK FIX, E BND FAMEK, AK FIX	SPARREVOHN, AK VOR/DME	6000	17500
§ 95.3285 RNAV Route T285 Is Amended To Read in Part			
THEDFORD, NE VOR/DME	MARSS, NE FIX	5000	17500
§ 95.3300 RNAV Route T300 Is Amended To Read in Part			
MINNK, RI FIX	NEWBE, RI FIX	2000	17500

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 594 effective date October 29, 2026]

From		To		MEA	MAA	
§ 95.3368 RNAV Route T368 Is Amended To Read in Part						
CIXUL, AK WP		OSBOE, AK FIX		4700	17500	
OSBOE, AK FIX		KODIAK, AK VOR/DME		4700	17500	
§ 95.3369 RNAV Route T369 Is Amended To Read in Part						
BETHEL, AK VORTAC		BIBNE, AK WP		* 3000	17500	
* 1500—MOCA						
BIBNE, AK WP		JOPES, AK WP		* 3000	17500	
* 1900—MOCA						
ZIPIX, AK WP		NOME, AK VOR/DME		3000	17500	
§ 95.3373 RNAV Route T373 Is Amended by Adding						
KING SALMON, AK VORTAC		NIRRI, AK FIX		1900	17500	
NIRRI, AK FIX		* KOWOK, AK FIX		2000	17500	
* 2400—MCA KOWOK, AK FIX, NW BND						
Is Amended To Read in Part						
RAGES, AK FIX		* ZUDSO, AK WP		5600	17500	
* 6500—MCA ZUDSO, AK WP, W BND						
ZUDSO, AK WP		* MAYHW, AK WP		7200	17500	
* 7200—MCA MAYHW, AK WP, E BND						
MAYHW, AK WP		* FEXOP, AK WP		7000	17500	
* 5300—MCA FEXOP, AK WP, SE BND						
§ 95.3388 RNAV Route T388 Is Amended by Adding						
BAILY, AK WP		OSBOE, AK FIX		5100	17500	
OSBOE, AK FIX		KODIAK, AK VOR/DME		4700	17500	
Is Amended To Read in Part						
JUDAX, AK WP		* BAILY, AK WP		** 10000	17500	
* 10000—MCA BAILY, AK WP, W BND						
** 4800—MOCA						
§ 95.3581 RNAV Route T581 Is Added To Read						
MISSOULA, MT VOR/DME		* ARLEE, MT FIX		9800	17500	
* 9400—MCA ARLEE, MT FIX, S BND						
ARLEE, MT FIX		EMIBE, MT FIX		8400	17500	
EMIBE, MT FIX		* SKOTT, MT FIX		8700	17500	
* 8300—MCA SKOTT, MT FIX, S BND						
SKOTT, MT FIX		* ANGIL, MT FIX		7200	17500	
* 7500—MCA ANGIL, MT FIX, N BND						
ANGIL, MT FIX		KALISPELL, MT VOR/DME		9500	17500	
§ 95.4000 High Altitude RNAV Routes						
§ 95.4010 RNAV Route Q10 Is Amended by Adding						
MIDDLETON ISLAND, AK VOR/DME		SNOUT, AK WP		* 18000	45000	
* GNSS REQUIRED						
SNOUT, AK WP		EEDEN, AK WP		* 18000	45000	
* GNSS REQUIRED						
EEDEN, AK WP		EURKA, OP WP		* 18000	45000	
* GNSS REQUIRED						
From/to	Total distance	Changeover point distance	From	Track angle	MEA	MAA
§ 95.5000 Ground-Based High Altitude RNAV Routes Is Amended To Delete						
J804R:						
ANCHORAGE, AK VOR/DME.	60.0				18000	45000
NOWEL, AK RP				133/314 TO NOWEL		
NOWEL, AK RP	90.5				18000	45000

From/to	Total distance	Changeover point distance	From	Track angle	MEA	MAA
MIDDLETON ISLAND, AK VOR/DME.	170.9	121	MIDDLETON ISLAND	095/275 TO COP	24000	45000
SNOUT, AK RP .....	.....	.....	.....	120/300 TO SNOUT .....	.....	.....
SNOUT, AK RP	196.9	197	SNOUT	096/276 TO COP	24000	45000
EEDEN, AK RP .....	.....	.....	.....	125/305 TO EEDEN .....	.....	.....
EEDEN, AK RP	153.9	112	EEDEN	102/282 TO COP	24000	45000
FRIED, AK RP .....	.....	.....	.....	129/309 TO FRIED .....	.....	.....

Is Amended To Delete

J889R:						
NOWEL, AK RP	75.0	10	NOWEL	112/294 TO COP	18000	45000
ARISE, AK RP .....	.....	.....	.....	112/294 TO ARISE .....	.....	.....
ARISE, AKRP	71.0	.....	.....	112/293 TO KONKS	18000	45000
KONKS, AK WP .....	.....	.....	.....	293/113 TO KONKS .....	.....	.....
KONKS, AK WP	116.0	40	KONKS	111/294 TO COP	18000	45000
LAIRE, AK RP				294/114 TO LAIRE		

From	To	MEA
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§ 95.6001 Victor Routes—U.S.
§ 95.6003 VOR Federal Airway V3 Is Amended To Read in Part

HARTFORD, CT VOR/DME	JEWIT, CT FIX	2600 MAA—17500
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§ 95.6045 VOR Federal Airway V45 Is Amended To Read in Part

NEW BERN, NC VOR/DME	KINSTON, NC VORTAC	2500 MAA—17500
KINSTON, NC VORTAC	WADUG, NC FIX	1900 MAA—17500
WADUG, NC FIX	BRADY, NC FIX	* 3000 MAA—17500
* 1700—MOCA .....	.....	.....

§ 95.6101 VOR Federal Airway V101 Is Amended To Read in Part

OGDEN, UT VORTAC	BLIDA, UT FIX	9600 MAA—17500
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§ 95.6108 VOR Federal Airway V108 Is Amended by Adding

SCAGGS ISLAND, CA VORTAC	CROIT, CA FIX	3000 MAA—17500
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Is Amended To Delete

SCAGGS ISLAND, CA VORTAC	CONCORD, CA VOR/DME	3000 MAA—17500
CONCORD, CA VOR/DME	OAKEY, CA FIX	3500 MAA—17500

§ 95.6167 VOR Federal Airway V167 Is Amended To Read in Part

HARTFORD, CT VOR/DME	JEWIT, CT FIX	2600 MAA—17500
PROVIDENCE, RI VOR/DME	ZUNUX, MA FIX.	.....
.....	NW BND	* 2500
.....	SE BND	* 3000
* 1800—MOCA .....	.....	MAA—17500

§ 95.6178 VOR Federal Airway V178 Is Amended To Read in Part

LEXINGTON, KY VOR/DME	TRENT, KY FIX.	.....
.....	W BND	3400
.....	E BND	10000
TRENT, KY FIX	SLINK, WV FIX	MAA—17500
* 4200—MOCA .....	.....	* 10000
* 4200—GNSS MEA .....	.....	MAA—17500
SLINK, WV FIX	BLUEFIELD, WV VOR/DME.	.....
.....	E BND	6300

From	To	MEA
	W BND	10000 MAA—17500

§ 95.6257 VOR Federal Airway V257 Is Amended To Read in Part

STACO, UT FIX	MOINT, UT FIX	* 13000
* 9300—MOCA		MAA—17500
MOINT, UT FIX	* KREBS, UT FIX	** 13000
* 13000—MCA KREBS, UT FIX, S BND		
** 9600—MOCA		MAA—17500

§ 95.6358 VOR Federal Airway V358 Is Amended To Read in Part

GUADA, TX FIX	STONEWALL, TX VORTAC	4100 MAA—17500
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§ 95.6407 VOR Federal Airway V407 Is Amended To Read in Part

PALACIOS, TX VORTAC	GLAND, TX FIX	* 4000
* 1800—MOCA		MAA—17500
GLAND, TX FIX	HUMBLE, TX VORTAC	* 2500
* 2000—MOCA		MAA—17500

§ 95.6532 VOR Federal Airway V532 Is Amended To Read in Part

SALINA, KS VORTAC	LINCOLN, NE VORTAC	* 6000
* 3300—MOCA		MAA—17500

§ 95.6568 VOR Federal Airway V568 Is Amended To Read in Part

GUADA, TX FIX	STONEWALL, TX VORTAC	4100 MAA—17500
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§ 95.6319 Alaska VOR Federal Airway V319 Is Amended To Read in Part

ANCHORAGE, AK VOR/DME	* YONEK, AK FIX	** 3000
* 3200—MCA YONEK, AK FIX, W BND		MAA—17500
** 2400—MOCA		
YONEK, AK FIX	* TORTE, AK FIX.	
	W BND	12300
	E BND	7000
* 11500—MCA TORTE, AK FIX, W BND		MAA—17500
TORTE, AK FIX	* VEILL, AK FIX	12300
* 8000—MCA VEILL, AK FIX, E BND		MAA—17500
VEILL, AK FIX	* SPARREVOHN, AK VOR/DME.	
	E BND	12300
	W BND	6600
* 5300—MCA SPARREVOHN, AK VOR/DME, E BND		MAA—17500

§ 95.6445 Alaska VOR Federal Airway V445 Is Amended To Read in Part

* FAIRBANKS, AK VORTAC	WILTS, AK FIX	5200
* 4000—MCA FAIRBANKS, AK VORTAC, W BND		MAA—17500
WILTS, AK FIX	TOLLO, AK FIX	* 5000
* 4400—MOCA		MAA—17500

Airway segment		Changeover points	
From	To	Distance	From

**§ 95.8003 VOR Federal Airway Changeover Point
V184 Is Amended To Add Changeover Point**

PHILIPSBURG, PA VORTAC	HARRISBURG, PA VORTAC	21	PHILIPSBURG.
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V45 Is Amended To Add Changeover Point

KINSTON, NC VORTAC	RALEIGH/DURHAM, NC VORTAC	32	KINSTON.
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Airway segment		Changeover points	
From	To	Distance	From
§ 95.8005 Jet Routes Changeover Points J2 Is Amended To Add Changeover Point			
MISSION BAY, CA VORTAC	IMPERIAL, CA VORTAC	40	MISSION BAY.
J18 Is Amended To Add Changeover Point			
MISSION BAY, CA VORTAC	IMPERIAL, CA VORTAC	40	MISSION BAY.

[FR Doc. 2026–19722 Filed 9–24–26; 8:45 am]
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DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2021–F–1157]

Food Additives Permitted for Direct
Addition to Food for Human
Consumption; Vitamin D₂ Inactive
Bakers Yeast

AGENCY: Food and Drug Administration,
HHS.

ACTION: Final amendment; order.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the food additive regulations to provide for the safe use of vitamin D₂ inactive bakers yeast as a source of vitamin D₂ in specific food categories. We are taking this action in response to a food additive petition filed by Lallemand Inc. (Lallemand or petitioner).

DATES: This order is effective September 25, 2026. See section VII for further information on the filing of objections. Either electronic or written objections and requests for a hearing on the final order must be submitted by October 26, 2026.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. The <https://www.regulations.gov> electronic filing system will accept objections until 11:59 p.m. Eastern Time at the end of October 26, 2026. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

Instructions: All submissions received must include the Docket No. FDA–2021–F–1157 for “Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D₂ Inactive Bakers Yeast.” Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9

a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

Sean Fischer, Office of Pre-market Additive Safety, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1225; or Meadow Platt, Office

of Policy, Regulations, and Information, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 29, 2021 (86 FR 74018), we announced that we filed a food additive petition (FAP 1A4829) submitted by Lallemand Inc. (Lallemand), 1620 rue Préfontaine, Montreal, Quebec, H1W 2N8, Canada. The petition proposed that FDA amend the food additive regulations in 21 CFR part 172 to provide for the safe use of vitamin D₂ inactive bakers yeast, produced by exposing bakers yeast (*Saccharomyces cerevisiae*) to ultraviolet (UV) light and then using heat to inactivate the bakers yeast, as a nutrient supplement in foods. The proposed use would allow for the safe use of vitamin D₂ inactive bakers yeast as a source of vitamin D₂ in the same foods and at the same use levels, on a D₂ basis, for which D₂ mushroom powder is currently authorized under § 172.382.

Vitamin D is essential for human health. Vitamin D comprises a group of fat-soluble seco-sterols and occurs in many forms. The two major physiologically relevant forms are vitamin D₂ and vitamin D₃. Vitamin D without a subscript represents vitamin D₂, vitamin D₃, or both. The major function of vitamin D is the maintenance of blood serum concentrations of calcium and phosphorus by enhancing the absorption of these minerals in the small intestine. Vitamin D deficiency can lead to abnormalities in calcium and bone metabolism, such as rickets in children or osteomalacia in adults. At high levels in the diet, vitamin D may be toxic. Excessive intake of vitamin D elevates blood plasma calcium levels (hypercalcemia) by increased intestinal absorption or mobilization from the bone that can lead to vascular and tissue calcification, with subsequent damage to the heart, blood vessels, and kidneys (Refs. 1 and 2).

To ensure that vitamin D is not added to the U.S. food supply at levels that could raise safety concerns, FDA affirmed vitamin D as generally recognized as safe (GRAS) with specific limitations as listed in 21 CFR 184.1950. Under § 184.1(b)(2), an ingredient affirmed as GRAS with specific limitations may be used in food only within such limitations, including the category of food, functional use of the ingredient, and level of use. Any addition of vitamin D to food beyond those limitations set out in § 184.1950

requires a food additive regulation. Vitamin D is affirmed as GRAS for use in certain foods as a nutrient supplement (as defined under 21 CFR 170.3(o)(20)) under § 184.1950(c)(1), in accordance with § 184.1(b)(2), as the sole source of added vitamin D only within the following specific limitations:

Category of food	Maximum levels in food (as served) (IU/100 g)
Breakfast cereals	350
Grain products and pasta	90
Milk	42
Milk products	89

IU: International Units.

Vitamin D is also affirmed as GRAS under § 184.1950(c)(2) and (3) for use in infant formula and margarine, respectively. Vitamin D₂ is an approved food additive under § 172.379 for use as a nutrient supplement in edible plant-based beverages intended as milk alternatives, edible plant-based yogurt alternatives, soy beverage products, soy-based butter substitute spreads, and soy-based cheese substitutes and soy-based cheese substitute products. Vitamin D₃ is an approved food additive under § 172.380 for use as a nutrient supplement in certain calcium-fortified 100 percent fruit juices and fruit juice drinks; meal replacement and other-type bars that are represented for special dietary use in reducing or maintaining body weight; soy-protein based meal replacement beverages that are represented for special dietary use in reducing or maintaining body weight; certain cheese and cheese products; certain meal replacement beverages that are not intended for special dietary use in reducing or maintaining body weight; foods represented for use as a sole source of nutrition for enteral feeding; milk that contains more than 42 IU vitamin D per 100 g and that meets the requirements for foods named by use of a nutrient content claim and a standardized term in accordance with 21 CFR 130.10; breakfast cereals; grain-based bars; and yogurt and other cultured dairy products fermented with *Lactobacillus delbrueckii*, subspecies *bulgaricus* (*L. delbrueckii*, subsp. *bulgaricus*), and *Streptococcus thermophilus* (*S. thermophilus*). Vitamin D₂ bakers yeast is an approved food additive under § 172.381 for use as a source of vitamin D₂ and as a leavening agent in yeast-leavened baked goods and baking mixes and yeast-leavened baked snack foods. Vitamin D₂ mushroom powder is an approved food additive under § 172.382 for use as a

source of vitamin D₂ in: (1) foods to which vitamin D₂, vitamin D₃, and vitamin D₂ bakers yeast are currently allowed to be added under §§ 184.1950, 172.379, 172.380, and 172.381, excluding cheese and cheese products, foods represented for use as a sole source of nutrition for enteral feeding, infant formula, milk and milk products, margarine, and grain-based bars; (2) fruit smoothies; (3) vegetable juices; (4) extruded vegetable snacks; (5) certain soups and soup mixes; and (6) plant protein products (see § 172.382(f)).

Vitamin D₂, also known as ergocalciferol, is the chemical 9,10-seco(5Z,7E,22E)-5,7,10(19),22-ergostatetraen-3-ol. The additive that is the subject of this petition is vitamin D₂ inactive bakers yeast that is produced by exposing bakers yeast to UV light, resulting in increased conversion of endogenous ergosterol to ergocalciferol. Under section 402(a)(7) of the Federal Food, Drug, and Cosmetic Act (FD&C Act), sources of irradiation, such as UV light, must be used in accordance with a regulation or exemption in effect pursuant to section 409 of the FD&C Act.

To support their petition, Lallemand noted that the petitioned food uses and maximum use levels for vitamin D₂ inactive bakers yeast are the same, on a vitamin D₂ basis, as those for vitamin D₂ mushroom powder approved under § 172.382. Therefore, Lallemand concluded that the petitioned use of vitamin D₂ inactive bakers yeast would not increase the cumulative dietary exposure to vitamin D and referenced FDA's cumulative dietary exposure estimate for vitamin D in FAP 8A4821 (85 FR 41916, July 13, 2020). Lallemand compared the dietary exposure estimate to the Tolerable Upper Intake Level (UL) for vitamin D established by the Institute of Medicine (IOM) (now the National Academy of Medicine). Lallemand also submitted published scientific literature pertaining to clinical studies on vitamin D.

II. Evaluation of Safety

A. Vitamin D

To establish with reasonable certainty that a food additive is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information (such as published scientific literature) available to us. We compare the dietary exposure to the additive from all food sources to an acceptable intake level established by data. The dietary exposure is determined based on the amount of the

additive proposed for specific uses in foods and on data regarding the amount consumed from all food sources of the additive. We commonly use the 90th percentile dietary exposure for the consumer of a food additive as a measure of high chronic dietary exposure.

1. Acceptable Daily Intake for Vitamin D

In 2011, the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes of the Food and Nutrition Board at the IOM conducted an extensive review of relevant published scientific literature to update established dietary reference intakes (DRIs) for vitamin D; these DRIs are a family of nutrient reference values that includes ULs. Based on this information, the IOM revised the ULs for vitamin D and published a report on their findings (Ref. 3). In their 2011 assessment of vitamin D, the IOM established ULs for different age groups, including total consumption from food (including dietary supplements) and water:

UL IU/per person/day (p/d)	Age group
1,000	infants 0 months to 6 months of age.
1,500	infants 6 months to 12 months of age.
2,500	children 1–3 years of age.
3,000	children 4–8 years of age.
4,000	adolescents aged 9–18 years of age and adults.

The IOM considers the UL as the maximum daily intake level of a nutrient that is likely to pose no health hazard risk for almost all individuals in the general population when the nutrient is consumed over long periods of time. The UL is determined using a risk assessment approach developed specifically for nutrients. The dose-response assessment, which concludes with an estimate of the UL, is built upon three toxicological concepts commonly used in assessing the risk of exposures to chemical substances: no-observed-adverse-effect level (NOAEL), lowest-observed-effect level (LOEL), and application of an uncertainty factor. We considered the ULs established by the IOM relative to the cumulative dietary exposure estimates as the primary basis for assessing the safety of the petitioned uses of vitamin D₂. We also reviewed published scientific literature on the safety of vitamin D submitted in the petition, as well as other relevant

published studies available to FDA (Ref. 4).

2. Dietary Exposure Estimate for Vitamin D

Lallemand stated that the petitioned food uses and maximum use levels for vitamin D₂ inactive bakers yeast are the same, on a vitamin D₂ basis, as those for vitamin D₂ mushroom powder authorized under § 172.382. Lallemand concluded that the petitioned uses of vitamin D₂ inactive bakers yeast would not increase the dietary exposure to vitamin D and therefore, it did not perform a new dietary exposure estimate for vitamin D from the petitioned uses. Because Lallemand considered the petitioned uses as substitutional for those in § 172.382, they referenced FDA’s cumulative dietary exposure estimate for vitamin D in FAP 8A4821 (85 FR 41916), which resulted in the promulgation of § 172.382.

We note that the cumulative dietary exposure estimate referenced by Lallemand does not include the contribution to dietary exposure to vitamin D from FAP 9A4823 (88 FR 745, January 5, 2023) for the use of vitamin D₃ as a nutrient supplement in breakfast cereals at levels up to 560 IU/100 g and in grain-based bars at levels up to 400 IU/100 g. This estimate also does not include the contribution to the dietary exposure to vitamin D from the use of vitamin D₃ as a nutrient supplement in yogurt and other cultured dairy products fermented with *L. delbrueckii*, subsp. *bulgaricus*, and *S. thermophilus* at levels up to 178 IU/100 g from FAP 1A4827 (90 FR 42699, September 4, 2025). Furthermore, we note that the cumulative dietary exposure estimate referenced by Lallemand used food consumption data from the 2011–2014 National Health and Nutrition Examination Survey (NHANES), and more recent NHANES food consumption data are available (Ref. 5).

The current cumulative eaters-only dietary exposure estimate to vitamin D (i.e., cumulative dietary exposure to vitamin D for consumers of any or all foods petitioned for use) from all existing sources was discussed in FAP 1A4827 (90 FR 42699). Since the uses of vitamin D₂ inactive bakers yeast are substitutional for those in § 172.382, the cumulative eaters-only dietary exposure estimate would not change from that estimated in FAP 1A4827 (90 FR 42699).

For the overall U.S. population 1 year of age and older, the estimated cumulative dietary exposure at the 90th percentile from all food sources of vitamin D, including the proposed uses

and background sources, is 3,170 IU/p/d. The estimated 90th percentile cumulative dietary exposure from all food sources of vitamin D is 944 IU/p/d for infants 0 to 6 months, 1230 IU/p/d for infants 6 to 12 months, 1720 IU/p/d for children 1 to 3 years, and 1910 IU/p/d for children 4 to 8 years. Estimated dietary exposures for adolescents, teenagers, and adults ranged from 1960 IU/p/d to 3930 IU/p/d. The estimated cumulative dietary exposure to vitamin D at the 90th percentile from the petitioned uses and background sources is below the IOM ULs for all population groups for which ULs were established (Ref. 5).

B. Safety of the Petitioned Uses of Vitamin D₂ Inactive Bakers Yeast

FDA reviewed and evaluated the information submitted by Lallemand regarding the safety of UV light-treated inactive bakers yeast. FDA concludes that the use of UV light to produce vitamin D₂ inactive bakers yeast does not pose a safety concern, since the UV light treatment has been shown not to produce any new components of toxicological concern that could be introduced into the diet (Ref. 4).

In addition, we reviewed and evaluated the information submitted by Lallemand regarding the safety of the dietary exposure to vitamin D₂ from the proposed uses of vitamin D₂ inactive bakers yeast. Lallemand submitted reports of scientific studies published after the 2011 IOM report and issuance of the July 13, 2020, final order (85 FR 41916) for the uses of vitamin D₂ mushroom powder. Lallemand concluded that these publications support a conclusion that the proposed uses of vitamin D₂ are safe.

We reviewed the published reports of scientific studies on vitamin D submitted by Lallemand, as well as other relevant published studies available to us since our previous evaluations of food additive petitions for fortifying a variety of foods with vitamin D (90 FR 42699, September 4, 2025; 88 FR 745, January 5, 2023; 85 FR 41916, July 13, 2020; 81 FR 46578, July 18, 2016; 77 FR 52228, August 29, 2012; 74 FR 11019, March 16, 2009; 70 FR 69435, November 16, 2005; 70 FR 37255, June 29, 2005; 70 FR 36021, June 22, 2005; and 68 FR 9000, February 27, 2003). The studies did not raise any new safety concerns regarding the current or proposed uses of vitamin D. The most recent food additive petition concerning vitamin D resulted in our amendment of the food additive regulations in § 172.380 to authorize the use of vitamin D₃ as a nutrient supplement in yogurt and other cultured dairy products

fermented with *L. delbrueckii*, subsp. *bulgaricus*, and *S. thermophilus* at levels up to 178 IU vitamin D₃ per 100 g (90 FR 42699). The earlier food additive petitions also resulted in amendments of the food additive regulations to allow for the safe use of vitamin D as a nutrient supplement in certain foods.

We consider the ULs established by the IOM relative to the dietary exposure estimates as the primary basis for assessing the safety of the petitioned uses of vitamin D₂. The estimated dietary exposure at the 90th percentile to vitamin D from all current and proposed food sources for each population group is less than the corresponding IOM UL for that population group. Considering that the petitioned uses of vitamin D₂ inactive bakers yeast are substitutional on a vitamin D₂ basis for the currently approved uses of vitamin D₂ mushroom powder, FDA concluded that the petitioned uses of vitamin D₂ inactive bakers yeast are not expected to increase the overall dietary exposure to vitamin D. Therefore, we conclude that the proposed uses of vitamin D₂ inactive bakers yeast are safe (Ref. 4).

III. Conclusion

Based on the relevant data available to FDA and information in the petition, we conclude that there is reasonable certainty that no harm will result from the uses of vitamin D₂ inactive bakers yeast, produced using UV light, as a source of vitamin D₂ within the limits proposed by Lallemand.

IV. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

V. Analysis of Environmental Impact

As stated in the December 29, 2021 (86 FR 74018) **Federal Register** notification of petition for FAP 1A4829, the petitioner claimed that this action is categorically excluded under 21 CFR 25.32(k) because it is to “approve a food additive petition for substances added directly to food that are intended to remain in food through ingestion by consumers and that are not intended to replace macronutrients in food.” We further stated that, if FDA determines the categorical exclusion applies, neither an environmental assessment

nor an environmental impact statement is required. We did not receive any new information or comments regarding this claim of categorical exclusion. We considered the petitioner’s claim of categorical exclusion and determined that this action is categorically excluded under 21 CFR 25.32(k). Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Paperwork Reduction Act of 1995

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

VII. Objections

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

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at <https://www.regulations.gov>.

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

Our review of this petition was limited to section 409 of the FD&C Act (21 U.S.C. 348). This order is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(l) of the FD&C Act (21 U.S.C. 331(l)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or

biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(l)(1) through (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(l) of the FD&C Act or any of its exemptions apply to food containing this additive. Accordingly, this order should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(l) of the FD&C Act. Furthermore, this language is included in all food additive orders and therefore should not be construed to be a statement of the likelihood that section 301(l) of the FD&C Act applies.

IX. References

The following references marked with an asterisk (*) are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at <https://www.regulations.gov>. 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 has verified the website addresses in this document, please note that websites are subject to change over time.

* 1. Office of Dietary Supplements. “Vitamin D—Fact Sheet for Consumers.” *U.S. Department of Health and Human Services, National Institutes of Health*, Nov. 2022, <https://ods.od.nih.gov/factsheets/VitaminD-Consumer/>.

* 2. Pilz, S., et al. “Rationale and Plan for Vitamin D Food Fortification: A Review and Guidance Paper.” *Frontiers in Endocrinology*, vol. 9, 2018, article 373, <https://www.frontiersin.org/articles/10.3389/fendo.2018.00373/full>.

* 3. IOM Committee to Review Dietary Reference Intakes for Vitamin D and Calcium. *Dietary Reference Intakes for Calcium and Vitamin D*, edited by A.C. Ross et al., National Academies Press, 2011, <https://www.ncbi.nlm.nih.gov/books/NBK56070/>.

* 4. FDA Memorandum from A. Khan, Toxicology Review Branch, Division of Food Ingredients, to S. Fischer, Regulatory Management Branch,

Division of Food Ingredients, August 25, 2026.

* 5. FDA Memorandum from R. Shah, Chemistry Evaluation Branch, Division of Food Ingredients, to S. Fischer, Regulatory Management Branch, Division of Food Ingredients, August 25, 2026.

6. Parva, N.R., et al. "Prevalence of Vitamin D Deficiency and Associated Risk Factors in the US Population (2011–2012)." *Cureus*, vol. 10, no. 6, 2018, article e2741, <https://doi.org/10.7759/cureus.2741>.

7. Corpas, E., et al. "Vitamin D and Calcium Deficiency in the Elderly." *Endocrinology of Aging: Clinical Aspects in Diagrams and Images*, edited by E. Corpas et al., Academic Press, 2021, pp. 103–130, <https://doi.org/10.1016/B978-0-12-819667-0.00004-4>.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Add § 172.383 to subpart D to read as follows:

§ 172.383 Vitamin D₂ Inactive Bakers Yeast.

Vitamin D₂ inactive bakers yeast may be safely used in foods as a source of vitamin D₂ under the following conditions:

(a) Vitamin D₂ inactive bakers yeast is the substance produced by exposing bakers yeast (*Saccharomyces cerevisiae*) to ultraviolet light, resulting in the photochemical conversion of endogenous ergosterol in bakers yeast to vitamin D₂ (also known as ergocalciferol or 9,10-seco(5Z,7E,22E)-5,7,10(19),22-ergostetraen-3-ol), and then inactivating the bakers yeast using heat.

(b) Vitamin D₂ inactive bakers yeast can be used alone or in combination with conventional bakers yeast.

(c) Vitamin D₂ inactive bakers yeast meets the following specifications:

- (1) Moisture, less than 7 percent.
- (2) Negative for *Salmonella*, *Staphylococcus aureus*, *Escherichia coli*, and *Pseudomonas aeruginosa*.
- (3) Coliforms, less than 10 colony forming units per gram (CFU/g).
- (4) Total plate count, less than 3,000 CFU/g.
- (5) Yeasts and molds, less than 300 CFU/g.
- (6) Lead, not more than 0.5 milligrams per kilogram (mg/kg).
- (7) Arsenic, not more than 0.3 mg/kg.
- (8) Cadmium, not more than 0.5 mg/kg.
- (9) Mercury, not more than 0.1 mg/kg.
- (d) To assure safe use of the additive, the label or labeling of the food additive container shall bear, in addition to the other information required by the Federal Food, Drug, and Cosmetic Act, adequate directions for use to provide a final product that complies with the limitations prescribed in paragraph (e) of this section.

(e) Vitamin D₂ inactive bakers yeast may be used as a source of vitamin D₂ in food as follows:

TABLE 1 TO PARAGRAPH (e)

Category of food	Maximum level of vitamin D ₂
Breakfast cereals	350 IU/100 g.
Edible plant-based beverages marketed as milk alternatives	84 IU/100 g.
Edible plant-based products marketed as yogurt alternatives	89 IU/100 g.
Extruded vegetable snacks	80 IU/28 g.
Fruit smoothies	100 IU/240 mL.
100% fruit juices that are fortified with greater than or equal to 330 mg of calcium per 240 mL, excluding fruit juices that are specially formulated or processed for infants.	100 IU/240 mL.
Fruit juice drinks that are fortified with greater than or equal to 100 mg of calcium per 240 mL, excluding fruit juice drinks that are specially formulated or processed for infants.	100 IU/240 mL.
Grain products and pastas	90 IU/100 g.
Meal replacement bars or other-type bars that are represented for special dietary use in reducing or maintaining body weight..	100 IU/40 g
Meal replacement beverages that are not intended for special dietary use in reducing or maintaining body weight and that are represented for use such that the total amount of vitamin D provided by the product does not exceed 1,000 IU per day.	500 IU/240 mL.
Plant protein products	80 IU/85 g.
Soups and soup mixes, except for soup and soup mixes that are subject to regulation by the U.S. Department of Agriculture under the Federal Meat Inspection Act or the Poultry Products Inspection Act.	100 IU/245 mL.
Soy-based spreads marketed as butter alternatives	330 IU/100 g.
Soy-based products marketed as cheese and cheese-product alternatives	270 IU/100 g.
Soy beverage products	89 IU/100 g.
Soy-protein based meal replacement beverages (powder or liquid) that are represented for special dietary use in reducing or maintaining body weight.	140 IU/240 mL.
Vegetable juices	100 IU/240 mL.
Yeast-leavened baked goods and baking mixes and yeast-leavened baked snack foods	400 IU/100 g.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–19656 Filed 9–24–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 300**

[TD 10055]

RIN 1545–BS10

Estate Tax Closing Letter User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: This document contains final regulations relating to the imposition of a user fee on authorized persons requesting the issuance of IRS Letter 627, also referred to as an estate tax closing letter. The final regulations, which adopt without change the text of the proposed regulations, increase the amount of the user fee imposed on a request for the issuance of an estate tax closing letter from \$56 to \$76. The Independent Offices Appropriations Act of 1952 authorizes the charging of user fees. The final regulations affect persons who request an estate tax closing letter.

DATES:

Effective date: These regulations are effective on October 26, 2026.

Applicability date: For date of applicability, see § 300.12(d).

FOR FURTHER INFORMATION CONTACT:

Concerning the final regulations, Juli Ro Kim at (202) 317–6859; concerning cost methodology, CFO Cost and User Fees at (202) 317–6400 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:**Authority**

This document contains amendments to 26 CFR part 300 regarding user fees for authorized persons who request the issuance of an estate tax closing letter (IRS Letter 627).

The Independent Offices Appropriations Act of 1952 (IOAA) (31 U.S.C. 9701) authorizes each agency to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A–25, 58 FR 38142 (July 15, 1993) (OMB Circular A–25).

The IOAA states that the services provided by an agency should be self-sustaining to the extent possible. Under OMB Circular A–25, agencies that provide services that confer special benefits on identifiable recipients beyond those accruing to the general

public must identify those services, determine whether user fees should be assessed for those services, and, if so, establish user fees that recover the full cost of providing those services, unless an exception to the full cost requirement is granted. As required by the IOAA and OMB Circular A–25, agencies are to review user fees biennially and update them as necessary to reflect changes in the cost of providing the underlying services.

Background

On June 2, 2026, the Department of the Treasury (Treasury Department) and the IRS published in the **Federal Register** (91 FR 32909) a notice of proposed rulemaking (proposed regulations) (REG–103193–26) proposing amendments to regulations under 26 CFR part 300 relating to the imposition of a user fee on authorized persons requesting the issuance of an estate tax closing letter. The proposed regulations proposed an increase of the user fee imposed on a request for the issuance of an estate tax closing letter from \$56 to \$76.

The preamble to the proposed regulations contains a detailed explanation of the legal background and user fee calculations supporting the amendment to these regulations. The Treasury Department and the IRS received one written public comment in response to the proposed regulations. The comment is available at <https://www.regulations.gov> or upon request. No public hearing on the proposed regulations was requested and accordingly no public hearing was held. After careful consideration of the comment received, the Treasury Department and the IRS adopt the text of the proposed regulations without change.

Summary of Comments

The single comment received addressed three central points.

The first point focused on the transparency of the specific cost model used to calculate the cost of providing a closing letter, including the derivation of the various assumptions, staff-hour estimates, and rates to which the cost model was applied. The comment requested that the IRS publicly release the 2025 Cost Model or supporting memorandum to evaluate how assumptions were derived, validated, and tested. Additionally, the comment requested that the IRS not move forward with these final regulations before the IRS provides this additional data and discloses it to the public.

The IOAA authorizes Federal government agencies to promulgate

regulations establishing the charge for services provided by the agency. OMB Circular A–25 states that, when a service offered by a Federal agency provides special benefits to identifiable recipients beyond those accruing to the general public, the agency should establish a user fee to recover the full cost of providing the service. Section 6(d) of the OMB Circular A–25 provides specific directives to determine the full cost of the government service. Each agency is responsible for reviewing the user charges for agency programs biennially to assure that existing charges are adjusted to reflect unanticipated changes in costs. See OMB Circular A–25 section 8(e).

As explained in the preamble to the proposed regulations, the IRS's cost methodology used in calculating the full cost of administering the estate tax closing letter program is in accordance with generally accepted accounting principles and the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Standards and Concepts* found in the Federal Accounting Standards Advisory Board Handbook of Federal Accounting Standards and Other Pronouncements, as amended. As the preamble to the proposed regulations states, the user fee calculation uses data from fiscal years 2023 through 2024 to determine the direct and indirect costs associated with the estate tax closing letter program. In accordance with the IOAA and OMB Circular A–25, the IRS conducted a biennial review of the estate tax closing letter program computing the full cost of issuing estate tax closing letters to authorized persons. The proposed regulations provide a detailed analysis of the full cost of providing the service of issuing estate tax closing letters to authorized persons based on operational activities of the IRS and the unit in charge of issuing estate tax closing letters. As the proposed regulations describe in detail, the increased user fee reflects the change in the IRS costs of administering the program as a result of changes in operational factors. The IRS has determined that the full cost to the IRS of overseeing the estate tax closing letter program is \$76 per request. In accordance with the OMB Circular A–25, these final regulations increase the fee to bring it in line with actual costs based upon a recent review of the estate tax closing letter program. The IRS is in compliance with OMB Circular A–25 in its methodology for computation of the actual cost and will follow the directive providing for a biennial reevaluation of the fees.

Regarding the suggestion of publication of and public comment on the cost model and data, the cost model and data will not be part of the final regulations when issued. The data that was required to be included for public review and comment was included in the preamble to the proposed regulations.

The second central point raised by the comment concerned the cost of the rulemaking process. Specifically, the comment inquired whether or not the cost of the rulemaking process is accounted for in the 2025 Cost Model and whether “another administratively efficient approach would better serve full-cost recovery without repeatedly incurring rulemaking costs.”

OMB Circular A–25 Section 7(a) provides that “user charges will be instituted through the promulgation of regulations.” The IRS implemented the estate tax closing letter user fee in 2021 in TD 9957 (86 FR 53539), based on a 2019 Cost Model, in accordance with the OMB Circular A–25 requiring full cost recovery to provide a government service unless an exception is granted. OMB Circular A–25 requires the IRS to review the user fees it charges for special services in a biennial review to ensure that the fees are adjusted for cost. As required, the IRS continued to review the cost of the estate tax closing letter program and issued adjustments to the fee by regulation in TD 10031 (90 FR 21410) and TD 10038 (90 FR 55041).

As related to these proposed regulations, the IRS completed a 2025 Cost Model to satisfy the agency’s responsibility to review the user charges for the estate tax closing letter program. The IRS organizational unit responsible for the implementation and operation of the estate tax closing letter is the IRS Small Business/Self Employed (Examination). Unlike other user fee programs, such as the offer in compromise program, the Office of Chief Counsel does not perform any duties or specific tasks to provide the estate tax closing letter, which is the service for which the user fee is incurred. The service of providing an estate tax closing letter is solely performed by IRS employees; therefore, as explained in the OMB Circular A–25, the full cost of the service is computed by cost factors including the IRS employees’ direct and indirect personnel hours.

OMB Circular A–25 does not require the IRS to account for and describe activities unrelated to providing estate tax closing letters and administering the estate tax closing letter program that are not included in the costs recovered in the estate tax closing letter user fee. The

costs associated with issuing the regulations required by the IOAA and OMB Circular A–25 to implement changes to the user fee are not such expenses and thus are not to be taken into account in calculating the cost. The IRS has accounted for all activities properly included in the estate tax closing letter user fee. As explained in detail in the proposed regulations, the estate tax closing letter user fee is consistent with these requirements.

The third point raised by the comment requested clarification of the Regulatory Flexibility Act as discussed in the Special Analyses section of the preamble. The comment requested that the IRS explain whether small professional fiduciaries, estate administration firms, law firms, accountants, or other small entities commonly request or absorb the fee in practice, and whether such burden is direct, indirect, or merely passed through to estates.

The final regulations increase the amount of the user fee to obtain an estate tax closing letter, which is imposed on requests made by decedents’ estates. As discussed in the Special Analyses section of this preamble, generally, decedent’s estates are not “small entities” for purpose of the Regulatory Flexibility Act under 5 U.S.C. 601(6). The Treasury Department and the IRS do not expect any of the costs to obtain an estate tax closing letter to be borne by small professional fiduciaries or other small entities. Moreover, the \$76 user fee is not substantial enough to have a significant economic impact on any entities that could be affected by establishing such a fee. Accordingly, the Treasury Department and the IRS conclude that the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

After consideration of the comment, these final regulations adopt the text of the proposed regulations without change.

Special Analyses

I. Regulatory Planning and Review

The OMB’s Office of Information and Regulatory Analysis has determined that these regulations are not subject to review under section 6(b) of Executive Order 12866.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact

on a substantial number of small entities. These regulations, which amend the amount of a fee to obtain a particular service, affect decedents’ estates, which generally are not small entities as defined under 5 U.S.C. 601(6). Thus, these regulations have no economic impact on small entities. In addition, the final regulations will establish a \$76 fee, which is not substantial enough to have a significant economic impact on any entities that could be affected by establishing such a fee. Accordingly, the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 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 in 1995 dollars, updated annually for inflation. These final regulations do 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.

IV. 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 final 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. Submission to Small Business Administration

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these final regulations was submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business. No comments were received on the proposed regulations.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Juli Ro Kim of the Office of the Associate Chief Counsel (Passthroughs, Trusts, and Estates). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.12 is amended by revising paragraphs (b) and (d) to read as follows:

§ 300.12 Fee for estate tax closing letter.

* * * * *

(b) *Fee.* The fee for issuing an estate tax closing letter is \$76.

* * * * *

(d) *Applicability date.* This section applies to requests for estate tax closing letters received by the IRS after October 26, 2026.

Frank J. Bisignano,
Chief Executive Officer.

Approved: September 2, 2026.

Kevin M. Salinger,
Acting Assistant Secretary of the Treasury
(Tax Policy).

[FR Doc. 2026-19666 Filed 9-24-26; 8:45 am]

BILLING CODE 4831-GV-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF-2023-0001; ATF 2013R-15P]

RIN 1140-AA51

Annual Notices on Explosive Materials Storage Facilities to Local Fire Authority

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) is amending Department of Justice (“Department”) regulations on reporting explosive materials storage. Currently, any person who stores explosive materials subject to ATF’s explosives regulations must notify the authority having jurisdiction for fire safety in that locality when they begin storing explosives at that site. This rule adds a requirement to also submit written notices every 12 months thereafter and when the person ceases storing explosives at that location and to retain copies of the notices for five years. These changes are intended to increase public safety, particularly for first responders.

DATES: This rule is effective October 26, 2026.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs; by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave. NE; Washington, DC 20226, or by telephone at 202-648-7070.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Organized Crime Control Act of 1970 (“OCCA”), Public Law 91-452, 84 Stat. 922 (1970) added 18 U.S.C. chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials) to part I, on crimes. One of the stated purposes for title XI was to reduce the “hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” Public Law 91-452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. *See* 18 U.S.C. 847. The Attorney General has delegated that responsibility to the Director of

ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General.¹ *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Regulations in 27 CFR part 555 implement title XI.

On August 24, 1998, ATF published in the **Federal Register** a final rule to implement a storage notification requirement for manufacturers and other persons who store explosives.² ATF amended the regulations in 27 CFR part 55 (now part 555)³ to require that any person who begins storing explosive materials must notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the storage type, magazine capacity, and location of each site where such explosives are stored (the structure storing the explosive materials is hereinafter referred to as a “magazine”).⁴ The 1998 final rule was issued in response to numerous deaths and injuries sustained by emergency response personnel responding to fires and other emergencies at sites where explosives were stored without the knowledge of state and local officials.⁵

ATF is concerned with the safety of emergency response personnel

¹ In Attorney General Order Number 6353-2025, the Attorney General delegated authority to the Director to issue regulations pertaining to matters within ATF’s jurisdiction, including under OCCA, the National Firearms Act, and the Gun Control Act. ATF’s jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

² Commerce in Explosives, final rule, RIN 1512-AB55, 63 FR 44999 (August 24, 1998). In this rule, ATF amended the regulations in 27 CFR part 55 (now part 555) to require that any person who begins storing explosive materials must notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the storage type, magazine capacity, and location of each site where such explosives are stored. The rule was issued in response to numerous deaths and injuries sustained by emergency response personnel responding to fires and other emergencies at sites where explosives were stored without the knowledge of state and local officials. *See* Commerce in Explosives proposed rule, RIN 1545-AU09, 61 FR 53688 (Oct. 15, 1996).

³ On January 24, 2003, ATF issued a final rule titled “Reorganization of Title 27, Code of Federal Regulations,” which, among other things, removed part 55 from chapter I and recodified it as part 555 in the new chapter II. 68 FR 3744.

⁴ Although the reporting requirement is per site or location, ATF defines “magazine” as “Any building or structure, other than an explosives manufacturing building, used for storage of explosive materials.” *See* 27 CFR 555.11. As a result, for easier reference, ATF is referring in this rule to all structures storing explosive materials as “magazines.”

⁵ Commerce in Explosives, notice of proposed rulemaking, RIN 1545-AU09, 61 FR 53688 (Oct. 15, 1996).

responding to fires on sites where explosives are stored, and the safety of the public around such areas. It is important that first responders are aware of explosives storage when responding to a fire site so they can take action that accounts for the explosives. For example, firefighters and other fire safety officials generally do not attempt to fight a fire that involves explosive materials because of the significant danger an explosion poses to such responders. If they know of the existence of explosives in such close proximity to a fire before they arrive, officials often evacuate the facility and the surrounding area to ensure the safety of the first responders and the public, rather than fighting the fire as they would if explosives were not present.⁶

The regulation at 27 CFR 555.201(f) requires that all persons storing explosives report certain information when they begin storing the explosive materials but does not specifically require subsequent reporting that might reflect changes in storage types and

magazine capacity. Executive Order 13650, “Improving Chemical Facility Safety and Security,” signed August 1, 2013, discussed the need to implement safety measures for handling and storing chemicals, to include explosive materials. In addition, it established a working group co-chaired by the heads of the Environmental Protection Agency (“EPA”) and the Departments of Labor and Homeland Security. Membership included the heads of the Departments of Justice, Agriculture, and Transportation, who would work with the co-chairs to carry out the responsibilities of the executive order. A final report, submitted by the Chemical Facility Safety and Security Working Group to the President in May 2014, noted that ATF would work closely with explosives industry associations to develop best practices, procedures, or regulations to improve communication with fire authorities, including more frequent notification of significant changes to storage facilities.⁷

Explosives industry association representatives provided input on these topics during discussions with ATF conducted in connection with implementing Executive Order 13650. These representatives recommended that ATF amend the notice requirement in § 555.201(f) to require annual notices.⁸ They stated that this would increase communication between industry members and their local emergency responders, mitigate the negative effects of turnover in the emergency response community, and increase training opportunities for the local responders. Based on additional discussions with industry representatives over time, the Department and ATF consider annual notices necessary as a means to increase public safety by fostering more communication between persons who store explosives and fire authorities, increasing and updating first responder knowledge about explosives stored in the area, and enabling them to better plan and respond to fires that occur in locations where explosives are stored.

II. Notice of Proposed Rulemaking

On August 23, 2023, the Department published in the **Federal Register** a notice of proposed rulemaking (“NPRM”) entitled “Annual Reporting

of Explosive Materials Storage Facilities to the Local Fire Authority,” 88 FR 57370, proposing changes to 27 CFR 555.201(f). The comment period closed November 21, 2023.

The Department issued this NPRM as a result of ATF’s consultations with explosives industry associations. The proposed rule explained that ATF believes that a requirement for annual notices would: (a) lead to more frequent contact between persons storing explosive materials and local fire authorities; (b) ensure that explosives storage information would be provided in a timely manner to new first responder staff members; and (c) reinforce the importance of the information to fire response organizations. The proposed rule expressed ATF’s belief that a recurring 12-month notice timeframe would best balance the need for these results against the burden of more frequent notices.

For these reasons, the Department proposed to amend 27 CFR 555.201(f) to require that, every 12 months after initial notification, any person who is storing explosive materials must notify the authority having jurisdiction for fire safety (in the locality in which the explosive materials are being stored) that they are continuing to store explosive materials, and to notify the same authority when the person ceases storing explosive materials at that location. The proposed amendment further required that the notice must include the type of explosives, magazine capacity, and location of each site where such materials are stored. In addition, the NPRM proposed a requirement that the person providing these notices must retain a copy of each notice for five years from the date of the notice, and make these records available for ATF inspection at all reasonable times.

III. Analysis of Comments and Agency Responses

In response to the proposed rule, ATF received approximately 500 comments. The commenters included industry associations, firearms owners, state marshals, county officials, firefighters, hazardous material specialists, and the public.

A. Supporting Comments

1. Enhances Safety

Comments Received

Several commenters expressed support for the proposed rule because they felt explosives in a facility represent an obvious safety issue for the public and those who put their lives on the line every day, such as first

⁶ See, e.g., Centers for Disease Control and Prevention, *National Institute for Occupational Safety and Health (NIOSH) Report # F2013-11, Recommendation #1*, pg. 23 (finding that a detailed pre-plan that included thorough assessment of characteristics of material stored at high-risk facility could have identified potential for risks of fighting the fire, including explosion) and Appendix Three, pg. 48 (recommending that owners of storage facilities coordinate with local first responders as part of a site emergency plan, and that firefighters, before responding to a fire involving explosive materials, know the quantity, storage types, and locations of explosive materials in their communities and include in their procedures a decision process to determine whether such a fire should be fought or focus should be on moving themselves to safe location and evacuating nearby residents); National Fire Protection Association (“NFPA”), *NFPA 1500 Standard on fire department occupational safety and health program*, 2013 ed., section 8.3.2 (stating that, in situations in which the risk to fire department members are excessive, activities shall be limited to defensive operations); Institute of Makers of Explosives (IME) guidance *Safety and Security Guidelines for Ammonium Nitrate* (recommending that when any oxidizer fire is involved, firefighters should avoid trying to extinguish the fire; instead, concentrate on evacuating the area, including all civilians, and withdraw to a safe location); Department of Transportation, *2016 Emergency Response Handbook*, (containing entire sections on isolation and evacuation distances when responding to hazardous materials transportation incidents); Environmental Protection Agency, Occupational Safety and Health Administration, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Joint Safety Advisory: *Chemical Advisory: Safe Storage, Handling, and Management of Solid Ammonium Nitrate Prills*, EPA 550-F-15-001 (June 2015) (when responding to a fire at a facility with hazardous materials, have an up-to-date pre-incident plan including information on the materials’ storage location and quantities, and first consider whether the fire can be fought or if the explosive material makes the approach too hazardous, at which point move to a safe location and focus on evacuating).

⁷ “Executive Order 13650, Actions to Improve Chemical Facility Safety and Security—A Shared Commitment, Report for the President,” at 51 (May 2014) https://www.osha.gov/chemical/executiveorder/final_chemical_eo_status_report.pdf.

⁸ Notice of Public Listening Sessions, DHS-2013-0075, 78 FR 69433 (November 19, 2013). See also, e.g., DHS-2013-0075-0056 at 6 (minutes from December 11, 2013, Public Listening Session).

responders. Some of these commenters focused on safety for first responders. For example, one commenter stated anything that helps first responders come home alive at the end of the day requires the utmost attention. Another commenter added that this proposed rule would enhance the safety and security of first responders through increased awareness of where explosive materials are located.

Other commenters focused on public safety or safety to both public and first responders. For example, one commenter emphasized that “having updated information on the locations and amounts of explosives stored in the jurisdiction will provide transparency and facilitate better preparation in advance of an incident.” Another commenter similarly expressed that ensuring fire authorities are aware of location, type, and quantity of explosive materials in their jurisdiction would enhance not only their safety but that of the public as well. They also stated the proposed rule would help ATF enforce the federal explosives laws and regulations more effectively. Another commenter also added that the safety benefits of this rule would outweigh the costs and burdens of the notice requirement.

ATF Response

ATF agrees the rule would increase safety for first responders, who might be required to respond to incidents at sites where explosives are stored, as well as the public generally. First responders would be better prepared to respond to incidents at sites where explosives are stored if they receive annual notification regarding explosives being stored at a given location. The federal explosives regulations currently require all persons who store explosive materials subject to ATF's explosives regulations in 27 CFR part 555 to notify the authority having jurisdiction for fire safety in the locality in which the person is storing explosive materials of the type of explosive materials, the magazine capacity, and the location of each site where they are storing explosive materials. The existing regulations require this notification when the person begins storing explosives at a site. The rule would add a requirement that the person storing explosive materials must also notify the same authority of the same information (updated as applicable) every 12 months thereafter and when they cease storing explosive materials.

2. Increases Communication With Emergency Responders and Aids Emergency Responder Risk Assessment Comments Received

Some commenters felt the proposed rule would aid law enforcement and communities in preparing for and adapting to potential explosives issues by providing important information and enhancing communications. For example, one industry association stated that the notice requirement would ensure: (1) information is accurate; (2) current information is available to local responders as well as the community; and (3) local responders could make adjustments to local response plans based on this information, if needed. Another commenter suggested the proposed notice requirements should become a requirement to inform the local fire department if explosives are in a particular location. One commenter added that this rule change could help the industry educate first responders about the risks and dangers of responding to fires that involve explosives and assist in “familiarizing responders with the facilities’ risk assessments and emergency response and evacuation plans.” They also added that annual notices would increase communication and provide transparency among industry members and local responders in their jurisdiction. A final commenter stated that the rule would not impose any new requirements but only clarify and streamline the notification process.

ATF Response

ATF agrees that increased communication between persons storing explosive materials and fire-safety authorities would better prepare first responders in the event of an incident at a site where covered explosive materials are stored. Knowing about the type of explosives, capacity of any magazine(s) at a site, and the location of each site where explosives are stored is vital for first responders to prepare an effective plan when responding to an emergency at a given location. As stated previously, all persons are already required to report explosives storage type, magazine, and location information when they begin storing explosive materials covered by ATF regulations. The rule would not change that requirement but would add a requirement that such persons must then submit notices with the same information (updated as applicable) every 12 months thereafter and when they cease storing explosive materials. This would ensure emergency responders have current and accurate

information regarding the presence, and potential amount (magazine capacity), of explosive materials if called to respond to a location where covered explosives are being stored.

3. Reasonable Notice Requirements Comments Received

In addition to expressing support for the proposed notice requirement, some commenters also stated that the record-keeping requirement was supportable because it did not impose an undue burden on industry. For example, one commenter emphasized that annual notices as proposed in the rule would not be an inconvenience. They also stated that the proposed rule would not be an invasion of privacy because the notices would be sent only to local authorities, rather than to a centralized national organization. Another commenter did not believe the proposed changes would infringe on Constitutional rights because it is already a requirement to notify local officials of explosives storage in the area and this rule just adds a requirement to update that notice periodically. This commenter also said the proposed rule is not burdensome because it just improves the notice process of explosive materials storage. Another commenter agreed that annual notices will reinforce the importance of the information to local responders. And one commenter indicated that 30 minutes as an estimate of the time it would take to notify annually is a reasonable time and would not be a burden.

ATF Response

ATF agrees that the rule would not place an undue burden on industry. Most explosives industry members established a system to notify their local fire authority under the current regulations when they began storing explosives at a given site, and a system to notify their local fire authority in the event of an explosives incident. The subsequent annual notices could be in the same format as the first one, and if the person has made no changes that year to the existing explosives storage, the next annual notice would not need to change. If there is a change to the explosives storage, making an update to the previous notice would require only minimal effort.

The regulations currently require that the notification include the storage type, magazine capacity, and location of each site where such materials are stored. The rule would not impose any new additions to what is already included in the notice requirement. The only change would be the annual nature of the notice

requirement. As a result, notifying annually would not require new processes or more than minimal additional work. Once the person storing covered explosives notifies the locality in writing, they need only retain a copy (which may be in digital form) of that notice for five years. ATF therefore does not believe the additional requirement as stated in the rule would impose a significant burden on the explosives industry. ATF does believe, however, that it would significantly increase the safety to first responders who are responsible for responding to incidents at sites where explosives are stored.

ATF also agrees that this rule does not infringe on any Constitutional rights for the reasons discussed in section III.B.3 of this preamble.

B. Opposing Comments

1. Rule Is Unnecessary

Comments Received

Some commenters disagreed with the proposed rule and thought the Department should not finalize it because they considered it unnecessary, invalid, not factual or reasonable, or even foolish, ridiculous, or recklessly irresponsible, without providing further explanation. A few commenters stated that not only did they think the Department was imposing an unnecessary and unjustified regulation on the public, they thought the proposed rule also did not provide a benefit to the public.

A few commenters provided additional explanation on the subject. One commenter stated that there has been no evidence that “ordinary citizens” possessing explosive materials present a widespread problem. A couple of other commenters stated that the proposed rule was confusing and needed to clarify how notifying authorities about magazine locations would help local fire departments. Another commenter remarked that first responders need to know what is being stored only during an emergency. One commenter who thought the proposed rule was unnecessary said there is no guarantee that the notice process would be accurate. A couple of other commenters questioned ATF’s evidence supporting the need for this rule and stated that there were no problems with the current situation, so there is no need for a rule.

One commenter believed the proposed rule was unnecessary as, the commenter stated, there are already mechanisms in place to keep first responders safe when responding to major residential or structural fires.

Other commenters elaborated on this topic by specifying that the proposed rule would be duplicative of other, already-existing, government agency or organization requirements, such as EPA Tier II Inventory Form, Occupational Safety and Health Administration’s (“OSHA’s”) “right to know” requirements, and hazmat placards under Department of Transportation (“DOT”), the International Fire Code, or the National Fire Protection Association’s (“NFPA”) codes and standards. Similarly, a couple of other commenters added that hazmat permits already provide adequate notification to fire responders about the presence of dangerous materials.

Some commenters considered the proposed rule to be unnecessary or inappropriate due to concerns about the type of explosives they believe would have to be reported, and tracking or registry aspects they believed were involved in the notice requirements. For example, regarding the type of explosives, two commenters stated that gunpowder up to 50 pounds has never had a registration requirement, and there is no need for one now. Another added that the proposed rule was unnecessary because black powder notice requirements are already mandated by federal and state regulations. By contrast, a third commenter said they supported the proposed rule because it applied only to certain explosives, such as dynamite or similar explosives used for construction, demolition, and mining.

On the subject of tracking or creating a registry, one commenter stated that ATF failed to provide any evidence that a national database is a necessary or an appropriate way to maintain a list that is useful to volunteer fire departments, whereas another commenter stated that they considered the changes in the proposed rule to be crucial because they would be a form of keeping track of weapons in our country.

ATF Response

ATF agrees that the rule should not apply to all materials that can explode because some of them (including small amounts of gunpowder) are already exempt from ATF’s explosives regulations. While the rule requires all persons storing explosives to submit notices about those explosives annually, that requirement would apply only to explosive materials that are subject to ATF’s explosives regulations in 27 CFR part 555. The rule would not apply to explosive materials that are specifically exempt from ATF’s explosives regulations, such as consumer fireworks, small-arms ammunition, and

components of small-arms ammunition (e.g. primers, propellant, etc.). *See* 18 U.S.C. 845(a); 27 CFR 555.141. In addition, the exempt explosive materials include commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices exempted from the term “destructive device” in 18 U.S.C. 921(a)(4). *See* 18 U.S.C. 845(a) and the 2025 Annual List of Explosive Materials, 90 FR 25077 (June 13, 2025). *See also* ATF’s response in section III.B.7 of this preamble.

Therefore, the annual notice requirement applies to the same people who are already required to submit a notice when they begin storing explosives covered by ATF’s regulations.

ATF disagrees that the rule is unnecessary. The rule is designed to protect the safety of emergency response personnel responding to fires on sites where explosives are stored. It is important that first responders are aware of explosives storage prior to responding to a fire site so they can take remedial action that accounts for the explosives. While the rule covers only the types of explosive materials that are regulated by ATF, those materials pose a risk to emergency response personnel, including when possessed by unlicensed “ordinary citizens.” The rule therefore applies to all “persons,” as defined by 18 U.S.C. 841 and 27 CFR 555.11, not just federal explosives licensees/permittees. Federal regulations generally require that a person have a license/permit to obtain explosive materials covered by ATF regulations, but all persons, even those without a license/permit, must store explosives in conformity with part 555. 18 U.S.C. 842(j), 27 CFR 555.26 and 555.29. A person with a license/permit could acquire explosives regulated under part 555, subsequently not renew that license/permit, and legally retain those explosive materials. This would result in an “ordinary citizen” who is not a licensee/permittee retaining explosives inventory of a type regulated by ATF that could pose a risk to the public and emergency response personnel. Federal law and regulations currently require any person possessing federally regulated explosive materials to store those explosives in accordance with part 555, which includes a requirement to report those explosives to local fire authorities. The rule merely

requires any person storing such explosives to notify local authorities of such storage every 12 months and when they cease storing such materials. Again, the rule does not cover explosives not regulated by ATF pursuant to part 555.

Additionally, in response to the comments that stated the rule is unnecessary because ATF provided no evidence that a national database was needed, or that asserted the notice requirement involves tracking or registry aspects, ATF notes that it is not proposing a national database or registry of explosive materials stored by individuals. In fact, the rule requires only that the individual provide notification of the type of explosive, the magazine capacity, and the location of the magazine to their local fire safety authority, not to ATF. The notification would not require persons storing explosive materials to report on specific amounts or changes in the amounts of explosives stored; only the magazine capacity, which alerts first responders to the potential danger for which they should prepare and dictates the distance the magazine must be from other structures, etc., for safety purposes.

Licensees/permittees already inform ATF of magazine capacity and their magazines are inspected periodically by ATF to ensure they meet distance and other safety requirements. This rule does not extend that oversight; it simply requires persons to report magazine capacity to local fire authorities, who then can prepare to respond and who would know only the magazine capacity for magazines in their jurisdiction. Nor would local fire authorities submit these notices to ATF. Rather, the person making the notification would have to retain a copy of the written notice (which may be in digital form) for five years. Copies retained by licensees/permittees would be subject to inspection by ATF, while copies retained by non-licensees/permittees would verify compliance with the storage provisions of part 555.

ATF does not believe that the rule would duplicate existing government agency requirements, including those provided as examples by commenters. ATF is not aware of any other existing federal requirement to notify local fire authorities about explosives storage locations. In addition, ATF is the primary federal agency responsible for ensuring that explosive materials are safely and securely stored. ATF believes that requiring annual notification to the local fire authority will benefit public safety by ensuring that first responders are better prepared to respond to incidents at explosives storage sites.

2. Scope of Authority

Comments Received

Many commenters described the proposed rule as an overreach of ATF's authority. Commenters stating that the proposed rule was an overreach articulated different reasons for their belief. Several commenters characterized the proposed rule as an attempt to circumvent the rule of law and the congressional lawmaking process. For example, many commenters stated that ATF does not have authority to make laws; only Congress can, and some commenters believed the rule and its changes to the law had to be passed by an act of Congress. Some commenters stated that the proposed rule overstepped the Department's authority by bypassing checks and balances and introducing laws. In a similar vein, other commenters asked what authority or law gives ATF the ability to make rules that end up having the weight of law. A couple of commenters implored ATF to "consider the implications of yet another revision of law done outside the purview of Congress. While this proposal sounds exceedingly logical on the surface, I am concerned about the possibility of future overreach by [ATF] Today's 'common-sense' rules become tomorrow's 'loopholes' that need to be closed, and I believe this is a wide-open back door to future restrictions." Two commenters cited to *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022). One of them stated that, according to the case, an act of Congress is needed to change how powders have been recorded. The other commenter referred to the case in support of the contention that ATF must, and can only, enforce the laws that Congress creates.

A few other commenters more generally stated that the proposed rule was an overreach into a realm that should be reserved to localities and States. Another believed the proposed rule raised several concerns that impact individuals on their own private property in ways that were overreaching and heavy-handed. And another commenter believed the overreach was predicated on assumptions that were not true, although they did not state what those assumptions were.

A small number of commenters described the proposed rule as arbitrary. One commenter opposed the rule based on the Administrative Procedure Act, stating the proposed rule did not fall within ATF's mandated purview and burdened intrastate agencies, without further clarification.

Multiple commenters stated the proposed rule should not be finalized because it would be challenged in court. Other commenters stated that rulemaking procedures from ATF have repeatedly been struck down by federal courts as an overreach of authority, so the Department should not proceed with this rule; and it would be a "moot point." Other commenters expressed the opinion that the rule would do nothing but create expensive federal lawsuits and would be a waste of government resources and taxpayer dollars. Another commenter stated that, instead of focusing on creating new rules that are likely to be challenged and struck down in federal court, it would be more prudent for ATF to concentrate its efforts on enforcing existing laws and regulations. By directing its attention toward individuals who are breaking the current laws, the commenter added, ATF could better ensure public safety and uphold the principles of justice.

ATF Response

In response to all the comments on this topic, which in various ways indicate an underlying perception that the rule would overreach and invade privacy because its scope would cover powder and involve invading peoples' homes, ATF notes that the rule applies only to explosive materials that are subject to ATF's explosives storage regulations at 27 CFR part 555, subpart K, which sets out explosives storage requirements. It does not apply to those explosive materials that are specifically exempt from ATF's regulations, such as consumer fireworks, small-arms ammunition, components of small-arms ammunition (e.g., primers, propellants), and commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or in antique devices exempted from the term "destructive device" in 18 U.S.C. 921(a)(4). See 18 U.S.C. 845; 27 CFR 555.141.

ATF's explosives storage regulations already require that persons storing covered explosive materials must report the stated information to authorities having local jurisdiction for fire safety when the person begins storing covered explosive materials. The rule would simply require annual notices thereafter. Nothing else, including the kinds of explosive materials subject to this requirement, would change. ATF believes that the rule would provide

first responders with information vital to ensure their safety should an incident occur at an explosives storage site.

West Virginia v. Environmental Protection Agency is inapplicable because there is no “extraordinary grant of regulatory authority.” *West Virginia* involved the “major questions doctrine,” or “cases in which the ‘history and breadth of the authority that [the agency] has asserted’ and the ‘economic and political significance’ of that assertion, provide a ‘reason to hesitate before concluding that Congress’ meant to confer such authority.” *Id.* at 721. The Court found that EPA’s interpretation of a statute would “substantially restructure the American energy market.” *Id.* at 724. Having the same regulated community report to their local fire safety authority the same information they provide upon initial storage every 12 months and when they cease storing the materials does not approach a “major question” or a “substantial[] restructure” of anything.

ATF disagrees that it lacks the legal authority to promulgate this rule as proposed and finalized. 18 U.S.C. 847 authorizes the Attorney General to prescribe rules and regulations that are reasonably necessary to carry out the provisions of Title XI of the OCCA, 18 U.S.C. chapter 40. Congress enacted chapter 40, which tasks the Attorney General with the responsibility, delegated to ATF, for investigating and enforcing criminal and regulatory violations of federal explosives laws. 28 U.S.C. 599A; 28 CFR 0.130(a)(1). The OCCA, as amended by the Safe Explosives Act (“SEA”), regulates explosives as defined, including safeguards for storing such explosives. As such, the regulations set forth requirements that implement the federal explosives laws, which include storing explosive materials regulated by the agency. Further, the rule is directly within the agency’s purview as delegated by Congress and the Attorney General. Federal law makes it unlawful for any person to store explosive materials in a manner not in conformity with regulations promulgated by the Attorney General under 18 U.S.C. 842(j). This provision also states, in relevant part, that “[i]n promulgating such regulations, the Attorney General shall take into consideration the class, type, and quantity of explosive materials to be stored, as well as the standards of safety and security recognized in the explosives industry.” The rule establishes certain standards that are necessary for the safety and security of stored explosive materials, as recommended by explosives industry

members, and is therefore consistent with the Department’s and ATF’s statutory authority to implement section 842(j). It is also consistent with the legislative purpose of the OCCA, which “is to protect interstate and foreign commerce against interference and interruption by reducing the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” OCCA sec. 1101.

3. Rule Is Unconstitutional

A significant number of commenters felt that the proposed rule was unconstitutional, illegal, or infringed upon or violated individual rights. The sections below discuss the specific parts of the Constitution commenters believed the rule violated.

a. Violates the Second Amendment Comments Received

Numerous commenters stated the proposed rule would infringe on the Second Amendment’s right to bear arms, with several describing it as a “blatant” violation of the Second Amendment or stating that it would put a “chokehold” on their rights. One commenter stated that the proposed rule would have too broad of an application because it was not limited to businesses and individuals who hold explosive licenses, and it was therefore a dystopian abandonment of the Second Amendment. Many commenters likened the proposed rule to actions taken by British soldiers that the commenters stated initiated the American Revolutionary War by attempting to control possession of gunpowder. One commenter stated that the proposed rule was a direct attack on Second Amendment rights and had nothing to do with public safety. Another commenter stated that anyone violating the proposed rule would likely be stripped of their Second Amendment rights.

Additionally, many commenters supported the contention that the proposed rule violated the Second Amendment by pointing to Supreme Court cases, particularly *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1 (2022), because, they stated, the proposed rule did not meet the text, history, and tradition test established by that case. One commenter stated that, per their interpretation of the *Bruen* decision, all gun laws are unconstitutional.

Several commenters raised more specific concerns that the rule infringed on their rights in relation to personal ammunition and firearms. Some of these commenters expressed concern because,

they stated, the proposed rule applied to ammunition and gun powder, and they expressed that the proposed notice requirement would violate their Second Amendment protections. Another commenter stated that people have the right to make their own ammunition, and it has been that way since 1791. Some commenters believed the proposed rule was a push to limit or take away the ability to own and fire guns or characterized it as illegal gun control, while another commenter asked if they would be subject to the proposed rule for having deer hunting ammunition, and another believed having a single bullet would require reporting to the fire department.

ATF Response

ATF disagrees with commenters that the rule would regulate possessing or using firearms and ammunition or that it would violate the Second Amendment. The rule continues to apply only to explosive materials that are subject to ATF regulations. Contrary to concerns raised by commenters, that does not include firearms, commercially manufactured black powder in quantities not to exceed 50 pounds, or small-arms ammunition. In addition, the rule does not apply to or restrict possessing or using firearms and ammunition. *See* 18 U.S.C. 845(a); 27 CFR 555.141.

The Second Amendment recognizes an individual’s right to keep and bear arms in common use for lawful purposes. *District of Columbia v. Heller*, 554 U.S. 570, 595, 625 (2008); *Bruen*, 597 U.S. at 17. The rule, however, does not regulate such arms. *Heller*, 554 U.S. at 625. Instead, it implements 18 U.S.C. 842(j), which requires any person to store explosive materials in a manner that conforms with regulations prescribed by the Attorney General. Federal law defines the term “explosive materials” to mean “explosives, blasting agents, and detonators,” 18 U.S.C. 841(c), and the term “explosives” to mean, in relevant part, “any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters,” *id.* 841(d).

ATF also acknowledges that the Second Amendment right to keep and bear arms “implicitly protect[s] those closely related acts necessary to” the right’s exercise. *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in judgment). But the rule

specifically exempts “small arms ammunition and components of small arms ammunition,” 27 CFR 555.141(a)(4), including “cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, including percussion caps, and 3/32 inch and other external burning pyrotechnic hobby fuses,” *id.* 555.11. The rule likewise exempts “commercially manufactured black powder in quantities not to exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers, if the black powder is intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16), or antique devices as exempted from the term “destructive device” in 18 U.S.C. 921(a)(4). *Id.* 555.141(b).

Even if the rule were interpreted as sweeping in some conduct covered by the Second Amendment’s ancillary protections, the rule “is consistent with the Nation’s historical tradition of firearm regulation,” *Bruen*, 597 U.S. at 684–85. Indeed, the nation has a long history of fire-safety laws regulating storing explosive materials such as gunpowder. *See, e.g., Heller*, 554 U.S. at 631–32. As a result, this rule does not violate the Second Amendment or interfere with people’s ability to possess or use arms in common use for lawful purposes.

b. Violates the First, Fourth, and Fifth Amendments

Comments Received

Some commenters specified that the proposed rule would constitute an infringement on privacy protected by the First Amendment but did not elaborate on these statements.

A significant number of commenters opposed the proposed rule on grounds that it would circumvent and violate constitutional rights granted under the Fourth Amendment, constitute an intrusion, and would violate individual privacy. Multiple commenters expressed concerns that the proposed rule was clearly a means to search another’s property without a warrant, and others that the rule would subject them to illegal search and seizure, a violation of Fourth Amendment protections against unreasonable searches and seizures. More specifically, one commenter stated the proposed rule was an attempt to provide authority to conduct warrantless searches by mandating registration, while other commenters believed the proposed rule would create a registry of personal property, which they stated would be

unconstitutional as a random search or inspection without a warrant. Other commenters stated that the proposed rule would enable ATF to inspect or search private residences, check anyone’s house or storage if they submitted the proposed notification, or go to their home and ask to see their gunpowder, violating the Fourth Amendment by conducting such searches. Multiple commenters stated it is not the government’s business to know how much gunpowder or other materials individuals legally own or store on their private property. A commenter believed ATF was proposing the rule because the agency wants to go into homes to inspect ammunition and know where it is stored.

Many commenters believed the proposed rule would violate the Fifth Amendment’s right against self-incrimination. One commenter more specifically stated that the rule would violate the Fifth Amendment because it would require “mandatory self-reporting for small amounts of privately owned black powder or smokeless powder and the ability to inspect at any time.”

ATF Response

ATF disagrees with the commenters’ First Amendment objections. This rule does not regulate speech. Moreover, storing explosive materials is not expressive conduct. Even if somehow considered expressive conduct, this rule does not target that expressive activity. The First Amendment is therefore not implicated. *See Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 707 (1986) (First Amendment scrutiny “has no relevance to a statute directed at . . . non-expressive activity.”); *see also Wright v. City of St. Petersburg*, 833 F.3d 1291, 1298 (11th Cir. 2016) (“First Amendment scrutiny ‘ha[d] no relevance to [a trespass ordinance] directed at imposing sanctions on nonexpressive activity.’”); *cf. Talk of the Town v. Dep’t of Fin. & Bus. Servs. ex rel. Las Vegas*, 343 F.3d 1063, 1069 (9th Cir. 2003) (holding that a section of the Las Vegas Code barring consumption of alcohol in places that lack valid liquor licenses “in no way can be said to regulate conduct containing an element of protected expression”). Conduct may be expressive where “[a]n intent to convey a particularized message [is] present, and . . . the likelihood [is] great that the message would be understood by those who viewed it.” *Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *Spence v. Washington*, 418 U.S. 405, 410–11 (1974)). The rule would not regulate conduct that intends to convey any

particularized message, and the commenters have not offered any valid reason to believe that storing explosives constitutes expressive conduct. As such, the First Amendment does not apply to the generally applicable regulatory requirement to annually submit a notice about stored explosives to the local fire safety authority.

ATF also disagrees that the rule violates the Fourth Amendment or any constitutional right to privacy. “The United States Constitution does not expressly guarantee a right to privacy, but the Supreme Court has held that a right to privacy does exist within the liberty component of the Fourteenth Amendment.” *See Padgett v. Donald*, 401 F.3d 1273, 1280 (11th Cir. 2005). Courts have recognized a privacy interest in avoiding disclosure of certain personal matters. *See id.* “[N]ot all disclosures of private information will trigger constitutional protection.” *Doe No. 1 v. Putnam County*, 344 F. Supp. 3d 518, 540 (S.D.N.Y. 2018) (finding courts have found a right to privacy in a “limited set of factual circumstances” involving one’s personal financial or medical information, *i.e.*, information of a “highly personal nature”). Information regarding stored explosives is of neither the medical nor financial variety, is not of a “highly personal nature,” and no court has found this information to be constitutionally protected.

ATF further disagrees that the rule would result in a warrantless search or seizure in violation of the Fourth Amendment. The rule narrowly applies to storing explosive materials covered by ATF regulations in 27 CFR part 555. Because explosive materials may legally be distributed only to federal explosives licensees/permittees, persons storing explosive materials regulated by ATF will generally hold a federal explosives license/permit. Explosives licensees/permittees are aware that ATF may enter places where explosive materials are stored to inspect or examine required records or documents, and facilities in which explosives are stored, under 18 U.S.C. 843(f) and 27 CFR 555.24. There is no reasonable expectation of privacy in the information contained in those records. 18 U.S.C. 842(j) makes it unlawful for any person to store explosive materials in a manner not in conformity with ATF regulations, and ATF regulations already require all persons who have regulated explosives to comply with the storage requirements in part 555, subpart K.

For those persons storing explosive materials who do not hold a federal license/permit, the requirement is merely a requirement to report the

presence of explosives for local fire safety purposes and retain the records so the person can verify they have met the notice requirement if asked, in conformity with 18 U.S.C. 842(j). Warrantless searches of property protected by the Fourth Amendment are per se unreasonable subject only to a few specifically and well-delineated exceptions. *See Kentucky v. King*, 563 U.S. 452, 459 (2011); *United States v. Reedy*, 989 F.3d 548 (7th Cir. 2021); *United States v. Rollins*, 190 Fed. Appx. 739 (2006). In addition, the rule, like every other regulation in 27 CFR part 555, would not apply to small-arms ammunition or components, or to commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16) or in antique devices exempted from the term “destructive device” in 18 U.S.C. 921(a)(4), as they are exempt from the provisions of 27 CFR part 555 pursuant to 18 U.S.C. 845(a)(4) and (5) and 27 CFR 555.141(a)(4) and (b).

ATF acknowledges that the language in the proposed rule, which states that the individual must make “each written notification . . . available for examination or inspection by an ATF officer at all reasonable times” may lead to the incorrect conclusion that ATF may enter the premises of individuals who do not hold a federal license/permit without a warrant for inspection purposes. Out of an abundance of caution, ATF is therefore removing that language from the final rule text.

ATF disagrees that the rule would violate the Fifth Amendment right against self-incrimination. The Fifth Amendment protects against disclosures that could be used against a person in a later criminal prosecution. However, the rule would require annual reports about stored explosives, which is a regulatory issue, not a criminal one. *See United States v. Spiezio*, 523 F. Supp. 264, 269 (E.D. Pa. 1981) (holding that 18 U.S.C. 842(f), which requires licensees to report information on persons to whom explosive materials are distributed, did not compel defendants to incriminate themselves in violation of their rights under U.S. Const. amend. V, cl. 3, in that the privilege under Const. amend. V, cl. 3 is not violated by reporting requirements of a regulatory nature that apply to lawful activities, and explosives are not inherently criminal, but are inherently dangerous so that Congress had a legitimate aim in

controlling explosives); *see also United States v. Bouknight*, 493 U.S. 549, 556 (1990) (“The Court has on several occasions recognized that the Fifth Amendment privilege may not be invoked to resist compliance with a regulatory regime constructed to effect the State’s public purposes unrelated to the enforcement of its criminal laws.”); *United States v. Wilson*, 98 F.4th 1204, 1225 (10th Cir. 2024) (holding where a statutory or regulatory scheme requiring records to be kept is *not* aimed primarily at criminal activities, or at groups inherently suspect of criminal activities, and is “constructed to effect the State’s public purposes unrelated to the enforcement of its criminal laws,” no Fifth Amendment protection applies).

The rule is aimed at annual reporting on stored explosive materials to appropriate officials for fire officials’ safety. The rule is not intended to target or investigate criminal activity, nor is it directed at any person suspected of criminal activity. Because the rule is regulatory in nature, the Fifth Amendment is not implicated, and therefore does not apply.

c. Violates the Ninth, Tenth, and Fourteenth Amendments

Comments Received

One commenter also stated the rule would violate the Ninth Amendment but did not add an explanation.

A small number of commenters expressed concerns that the proposed rule violated the Tenth Amendment. One commenter advised that, per the Tenth Amendment, any rights not given to the federal government are given to the states, which they said means that any regulation of explosive materials storage should be handled at the local, not the federal, level. Another commenter made the same statement about regulating personal gunpowder storage.

Several commenters stated that the proposed rule would violate the Fourteenth Amendment. One commenter stated that implementing the proposed rule would violate the Fourteenth Amendment by targeting and criminalizing those who reload ammunition and store materials to do so, if they fail to report their stores. Another commenter stated that, if any exemptions for police or other organizations are added to the rule, it would violate the equal application of law clause of the Fourteenth Amendment. One commenter stated that the proposed rule would deprive them of rights under the color of law. Two commenters expressed concern that the

proposed rule would violate their right to privacy.

ATF Response

One commenter stated the proposed rule would violate the Ninth Amendment, which states, “[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” U.S. Const. amend. IX. This commenter did not explain how they thought the proposed rule violated this constitutional provision.

ATF disagrees that the rule violates the Ninth Amendment. Rather than enunciating a particular affirmative right, the Ninth Amendment serves to protect other fundamental rights that are not set forth in the Constitution. *Charles v. Brown*, 495 F. Supp. 862, 863 (N.D. Ala. 1980). Some unenumerated rights may be of constitutional magnitude, but only by virtue of other amendments, such as the Fifth or Fourteenth Amendment. *Id.* at 864. A person cannot claim a right that exists solely under the Ninth Amendment. *Id.* at 864. *Cf. Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 231 (2022) (holding the Due Process Clause of both the Fifth and Fourteenth Amendments only protect rights that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.”).

ATF does not believe that an annual reporting requirement, designed to ensure the safety of emergency response personnel, denies any unenumerated right that is “deeply rooted in this Nation’s history and tradition” or “implicit in the concept of ordered liberty” protected under the Ninth Amendment or under any other constitutional amendment. *Dobbs*, 597 U.S. at 231; *see also United States v. Kuehnoel*, 187 F.3d 649 (9th Cir. 1999) (the defendant was convicted of possessing a pipe bomb and argued the conviction was in violation of his Ninth Amendment rights; the Court disagreed, “[w]e have observed that the Ninth Amendment ‘has not been interpreted as independently securing any constitutional rights.’”); *accord United States v. Broussard*, 80 F.3d 1025, 1041 (5th Cir.), *cert. denied*, 519 U.S. 906 (1996). No fundamental right would be infringed upon or denied as a result of the rule; therefore, the Ninth Amendment is inapplicable.

ATF disagrees that the rule violates the Tenth Amendment. Commenters correctly stated that the Tenth Amendment reserves to the states rights not given to the federal government. However, they were incorrect in their conclusion that therefore, regulating

explosive materials should be reserved for the states. The Commerce Clause of the Constitution, art. 1, § 8, cl. 3, states that “Congress shall have the Power . . . to regulate Commerce . . . among the several States” Therefore, when Congress acts within its power under the Commerce Clause, “the Tenth Amendment expressly disclaims any reservation of that power to the States.” See *New York v. United States*, 505 U.S. 144, 156 (1992).

Simply put, a valid exercise of Congress’ power as delegated to it by the commerce clause is not a violation of the Tenth Amendment. Multiple courts have repeatedly and consistently upheld the federal explosives laws as a valid exercise of Congress’ power to regulate commerce. See, e.g., *United States v. Joos*, 638 F.3d 581, 586 (8th Cir. 2011) (holding that 18 U.S.C. 842(i), which prohibits a felon from possessing any explosive, fell within Congress’s power under the Commerce Clause); *United States v. Folen*, 84 F.3d 1103, 1104 (8th Cir. 1996) (holding that making possession of explosives unlawful based on connection to commerce is within Congress’ power under the Commerce Clause); see also *United States v. Disney*, 62 M.J. 46, 49 (C.A.A.F. 2005) (holding that storing stolen explosives had a direct substantial impact on commerce); *United States v. Dawson*, 467 F.2d 668, 673 (8th Cir. 1972) (holding that receiving, transporting, selling, or storing explosives is an activity that affects commerce); see also *United States v. Grimes*, 142 F.3d 1342 (11th Cir.1998) (holding argument that 18 U.S.C. 844(i) is facially unconstitutional is without merit).

ATF disagrees with the commenter who stated the proposed rule would violate the Fourteenth Amendment by targeting and criminalizing those who reload ammunition and store materials. As previously discussed, the rule would not apply to small-arms ammunition and components thereof, or to commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16) or in antique devices exempted from the term “destructive device” in 18 U.S.C. 921(a)(4). See 18 U.S.C. 845(a)(4) and (a)(5). Ammunition reloaders fall into this exception and thus would not be impacted by the rule. But in addition, the Fourteenth Amendment’s Due Process Clause does not apply to federal

action and is therefore not applicable to this rule, as explained more below.

ATF disagrees that the rule would violate the Fourteenth Amendment because it would deprive individuals of their rights under the color of law. The Fourteenth Amendment provides that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” U.S. Const. amend. XIV. The rule does not operate under the color of state law; it is based on federal explosives law under 18 U.S.C. chapter 40, and therefore the Fourteenth Amendment is simply not applicable.

ATF disagrees that any exemption added to this rule to exempt police or other organizations would violate the “equal application of the law” clause of the Fourteenth Amendment. ATF is unable to address the commenter who mentioned a hypothetical exemption for police or other organizations in the proposed rule and alleged that it violates the Fourteenth Amendment. Although 18 U.S.C. 845 enumerates specific provisions and exceptions to certain federal explosives laws, it is not clear what exception the commenter references or what type of hypothetical exception the commenter envisions that would violate the Fourteenth Amendment. However, the commenter’s argument that this rule violates the Equal Protection Clause of the Fourteenth Amendment is meritless. The Equal Protection Clause forbids only intentional discrimination. *McCleskey v. Kemp*, 481 U.S. 279, 292 (1987); *Horner v. Ky. High Sch. Athletic Ass’n*, 43 F.3d 265, 276 (6th Cir. 1994). Even if “a neutral law has a disproportionately adverse effect . . . it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose.” *Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 272 (1979); see also *Soto v. Flores*, 103 F.3d 1056, 1067 (1st Cir. 1997) (“It is a truism that under Equal Protection Clause jurisprudence, a showing of disproportionate impact alone is not enough to establish a constitutional violation.”). “Discriminatory intent” requires that the “decisionmaker selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of’ the law’s differential treatment of a particular class of persons.” *SECSYS, LLC v. Vigil*, 666 F.3d 678, 685 (10th Cir. 2012) (Gorsuch, J.) (alteration and some quotation marks omitted) (citing *Feeney*, 442 U.S. at 279). Consequently, “when the law under review is generally applicable to all persons, no presumption of intentional

discrimination arises; proof is required. This is so because many laws, perhaps most and often unavoidably, affect some groups of persons differently than others even though they involve no intentional discrimination.” *Id.* (emphasis in the original).

This rule is generally applicable to all persons who store explosive materials as required by federal law. Nothing in this rule creates discrete, objectively identifiable classifications which treat similarly situated people differently based on a particular class of persons. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 60 (1973) (Stewart, J., concurring); *Tex. Entertainment Ass’n v. Hegar*, 10 F.4th 495, 513 (5th Cir. 2021); *Corey Airport Servs., Inc. v. Clear Channel Outdoor, Inc.*, 682 F.3d 1293, 1296–97 (11th Cir. 2012). Because the commenter did not identify a specific exception, it is unclear that there is any disparate impact on a certain class of individuals; but even if that impact existed, it would not be based on a discriminatory purpose.

ATF disagrees with the two commenters who expressed concern that the proposed rule would violate their right to privacy under the Fourteenth Amendment for the same reasons previously discussed under ATF’s response to comments on the Fourth Amendment’s right to privacy earlier in this section of the preamble.

4. Improper Registry and Other Use or Loss of Reported Information

Comments Received

A significant number of commenters expressed general concerns that the proposed rule was an attempt to collect data and create an illegal, de facto, or back-door registry of lawful individuals storing reloading materials, ammunition, and firearms. For example, one commenter stated the proposed rule was a blatant attempt to create unofficial registration of firearms, and another added that Congress has explicitly barred ATF from creating a registry of firearm owners in the Firearm Owners Protection Act. Another commenter expressed concern that any executive administration, standing army, or foreign power which sought to disarm and rule the American people, would need only obtain reports generated under this proposed rule to have the information they needed. One commenter stated the collected information could easily be added to “ATF’s firearm ownership database,” while another added that mandatory gun registries have historically led to confiscation measures.

Many commenters stated that, if the proposed rule was really based on safety concerns, local fire departments would be requesting this information themselves; therefore, they stated, the reason for the proposed rule was to create “another unconstitutional registry” that could be used against good citizens of this country. One commenter specified that they would support the rule for safety purposes if it was initiated by the local fire department rather than ATF and if they knew the information would not be transferred to ATF.

Some commenters raised concerns specifically about the use of local reporting as a subterfuge to create an illegal federal registry. One such commenter stated that the proposed rule was a tactic to get around the federal prohibition against a national gun registry by allowing local agencies to maintain such a registry. This same commenter added that the federal government could demand copies of these local registries. Another commenter stated that this rule could use local firefighters to spy on what lawful citizens own in the name of safety. Other commenters added that history has shown that the government can use a registry to disarm citizens even if the citizens are only reporting to local fire departments or police departments.

A significant number of commenters expressed concerns that the reporting requirement was particularly directed at gaining information to use to confiscate ammunition, gunpowder, and other explosive materials persons use to make ammunition. A number of commenters stated, for example, that the information collected under the proposed rule would be used not only for registration, but as a subterfuge for monitoring and confiscating gunpowder, ammunition, and firearms, and to incarcerate innocent people as a result. Another set of commenters similarly stated the proposed rule would create a registry of ammunition reloaders in order to track and find out where people keep gunpowder. A couple of commenters stated the proposed rule would provide ATF with a continuously updated registry of everyone that reloads their own ammunition or of reloading components in the guise of first responder safety, while another commenter described it as “fishing” for data on individual reloaders, and others believed the ultimate goal of the reporting requirements was to suppress ordinary citizens from engaging in this activity, or to adversely impact them for engaging in activities protected under the Constitution. One commenter said

the rule was designed to keep any form of explosives or propellants from law-abiding citizens. Another commenter warned the information could be used to arbitrarily set a limit on how much material used to make ammunition someone can store. One of these commenters also added that storing ammunition and gunpowder safely has never been a problem in this country, so the rule was clearly intended to target ammunition-making materials. Another commenter similarly stated that there are “no significant issues related to powder storage,” and that there are “already tools in place, such as receiving a warrant, for problematic individuals.”

Many commenters expressed concerns about how the reported information could subsequently be misused. For example, many considered the proposed rule to be a means of collecting information to create a paper trail on legally purchased items. Others expressed concerns that local authorities would share the reported information with law enforcement, insurance companies, etc., or that the purpose of the proposed rule was to leak individual names and addresses on the internet.

On a related topic, commenters were concerned about how secure the information would be. For example, one commenter said gathering this kind of information would increase the chances of a data breach or data leak, and another commenter asked what would be done if these records were hacked. Another commenter asked how fire departments would be expected to track this information and keep it secure, while another commenter asked who would pay for data storage and security of the reports.

ATF Response

The rule does not address, nor does it require, notification of firearms storage. The rule applies only to storing explosive materials that are already subject to ATF’s explosives regulatory authority. It does not apply to explosive materials that are specifically exempt from ATF’s regulations, which include small-arms ammunition and components thereof, and commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16) or in antique devices exempted from the term “destructive

device” in 18 U.S.C. 921(a)(4). *See* 18 U.S.C. 845.

Additionally, the rule would not create a registry of explosives storage locations, or any other kind of registry for federal, state or local officials to access. The rule would require that all persons storing non-exempt explosives, who are already required to provide reports to local authorities when they begin storing non-exempt explosives, must also notify their local fire authority every 12 months thereafter if they continue to store explosive materials and when they cease storing the explosives, and must retain a copy of such written notification for five years as proof of compliance.

Under the existing requirement to report the same information when beginning to store the covered explosives, local authorities have not shared this information with the ATF. To the best of ATF’s knowledge, local authorities have also not shared this information with other persons or entities, like insurance companies. Local authorities are likely to share information on explosives with other officials to the extent necessary to address a fire-related situation, but there have been no issues with information being otherwise shared, and ATF has no reason to believe that would change with the additional notifications under this rule. Neither ATF nor local authorities have made a registry, particularly at a national level. There have also been no concerns raised by local authorities to ATF that their information would be hacked, or other similar scenarios raised in the public comments. As a result, ATF does not anticipate any of these concerns to be an issue arising from the additional annual reporting of the same information under the rule.

5. Lack of Clarity

Comments Received

Numerous commenters opposed the proposed reporting requirement because they stated the rule was vague, unclear, or overbroad. A number of commenters stated generally that the proposed rule was written too broadly, which could lead to varied interpretation and abuse. One commenter said the proposed rule was intended to be broad so it could be used for surveillance purposes to erode the rights of law-abiding citizens. In a similar vein, a number of other commenters stated the proposed rule was too vague, and one added that the terms could potentially be redefined over time. One commenter said the rule was extremely inconsistent, and another

commenter stated that the rule was not thought out.

Some commenters provided more specific information on ways in which they felt the rule was too vague. For example, a few commenters expressed that this rule should not be considered because it does not define what is an explosive or explosive material. Another commenter stressed that the proposed rule was a solution in search of a problem and did not include details on how local fire departments would track this information in such a way as to not create a database of gun owners.

In addition, a number of commenters considered the proposed rule too vague because it did not specify what kinds of explosive materials would have to be reported. Numerous commenters stated the proposed rule did not define the types of explosives, define or name specific explosive materials, or the quantity that would have to be reported. Another commenter added that the proposed rule did not define how much explosive material would qualify as a hazard. Other commenters stressed that the proposed rule as written could apply to anything from hairspray, gasoline, fertilizers, to ammunition storage. One commenter added that many other household items could be considered an explosive, and if these items are required to be reported, the reporting process would be complicated and could overwhelm the system. And one commenter noted that “the broad term of explosive material would [a]ffect every household in the United States,” subjecting them to “extreme recordkeeping requirements.” Another commenter asked whether the proposed rule would subject “someone buying fireworks for the Fourth of July or New Years” to the reporting requirements or “someone who reloads or stocks ammunition” in their home because they hunt or are involved in shooting sports.

Some commenters stated that the proposed rule was too broad with respect to single-, double-, and triple-based gunpowder/propellants used by many Americans. A couple of commenters stressed that this rule could create massive issues for the public because no one would know the specific amount of powder that must be reported, thus causing people to inadvertently break the law.

Some commenters considered the rule too vague because they said it did not identify the penalty for failing to report explosives storage. One commenter stated the rule was unclear about specifics on how to report and to whom they should submit the report. Some commenters considered the proposed

rule to be too ambiguous about who would have to report explosives storage. Several commenters stated the Department needs to clarify whether the rule applies to permittees, licensees, or “any person” because, they emphasized, there is a huge difference between these groups. One commenter added that if the number applies to “any person,” the estimated affected population number of 9,674, mentioned in the economic analysis part of the rule, was underestimated and objectionable. This commenter also stated that the Department also did not clarify whether the reporting requirement would apply to businesses or large entities that would be able to handle this requirement.

ATF Response

ATF disagrees that the rule is too vague. Although the specific paragraph that would be revised by the rule does not explain which explosive materials are covered by the rule, that is because those details are explained in other provisions in the same regulation. The paragraph proposed for revision is not meant to be read alone; it is part of a larger set of regulatory provisions. The regulations also explain that the reporting requirements are applicable only to explosive materials that are subject to ATF’s explosives regulations in 27 CFR part 555. Additionally, there is an annual **Federal Register** notice, which identifies the kinds of explosives covered by the regulations. ATF acknowledges that some people may not be familiar with the rest of the explosives regulations and is providing further detail in these comment responses and elsewhere in the preamble to address that concern. However, ATF does not think that the regulation paragraph proposed for revision needs to be further revised to cross-reference regulations in the same part 555.

Regarding comments specifically about who would be required to report, the paragraph proposed for revision, § 555.201(f), clearly states at the beginning that it applies to “any person” who stores explosive materials. As a result, ATF does not agree with commenters who expressed that it was unclear as to whom the reporting requirement applies. It applies to all persons who store explosive materials covered by ATF explosives regulations. Persons who would be subject to the rule’s annual reporting requirement are already subject to the existing initial reporting requirement in the current regulatory provision and should already be aware that they must notify the local fire authority when they begin storing

explosives, or begin storing them in a new magazine. The rule does not change who must report on explosives storage, only how often. With regard to comments about penalties for failing to report as required by this rule, 18 U.S.C. chapter 40 provides the penalties for noncompliance with the storage requirements prescribed by the Attorney General. 18 U.S.C. 842(j) states in relevant part that “[i]t shall be unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Attorney General.” The rulemaking merely requires individuals to comply with notification requirements for storing explosives. Failure to comply with this provision is a violation of section 842(j). A person who violates section 842(j) is subject to a fine or imprisonment of not more than a year. 18 U.S.C. 844(b).

With regard to comments about the kinds of explosives the rule might include, several earlier ATF responses in section III.B of this preamble address this topic. However, to clarify in the context of these comments on vagueness, the annual notice requirement proposed in § 555.201(f) applies only to explosive materials that are subject to ATF regulations. ATF also annually publishes in the **Federal Register** a list of explosive materials that are subject to ATF’s explosives regulations.⁹ The rule would not expand the types or classes of explosive materials that are subject to ATF’s explosives regulations. Explosive materials that are specifically exempt from ATF’s explosives regulations, such as consumer fireworks, small-arms ammunition, components of small-arms ammunition (e.g., primers, propellants), and commercially manufactured black powder (in quantities not exceeding 50 pounds and intended to be used solely for recreational, sporting, or cultural purposes in antique firearms), are not subject to the proposed notice requirements. See 18 U.S.C. 845 and the 2025 Annual List of Explosive Materials, 90 FR 25077 (June 13, 2025). See also discussion in the ATF response under sections III.B.1 and 7 of this preamble.

The household items mentioned as examples in several of the comments would also not be subject to ATF regulations or the proposed annual notice requirement because they are not considered explosive materials under federal explosives laws. This

⁹ See, e.g., 2025 Annual List of Explosive Materials, 90 FR 25077 (Jun. 13, 2025); 2024 Annual List of Explosive Materials, 89 FR 67672 (Aug. 21, 2024).

information is already contained elsewhere in ATF regulations in 27 CFR part 555 (as well as 18 U.S.C. chapter 40), and the list published in the **Federal Register**. Therefore, ATF does not think it is necessary to repeat that detail or include a cross-reference to the relevant sections of the same part, in the paragraph in which the proposed revision to the notice requirement would occur. Nonetheless, ATF has added a clarifying phrase to address the scope more directly in that paragraph. This final rule therefore adds the phrase “covered by this part” to the first sentence, so it will read, “Any person who stores explosive materials covered by this part must notify”

6. Effect on Law-Abiding Citizens

Comments Received

Numerous commenters believed that the only purpose for the proposed rule was to illegally or inappropriately pursue, track, or watch law-abiding gun owners, people who store gunpowder, or people the government considers to be a threat or problem. A number of commenters asserted that the proposed notice requirement constitutes harassment of law-abiding citizens and gun owners or was purposely designed to hurt and harass them. One commenter said they respected the public safety point of the rule, but they also thought the rule was preposterous because it targeted law-abiding taxpayers who own firearms. A number of commenters stated that the proposed rule was nothing but a way to control the livelihood of private citizens who have not broken any laws.

Other commenters considered the rule to be an intrusion into the homes of private citizens without a warrant. Several recommended that ATF “stay in their lane and stop intruding on law-abiding citizens, and stay out of their homes”; that people have the right to purchase and store explosives wherever they choose as long as it is done safely. A number of commenters more specifically stated that ATF does not need to know who has gunpowder, and the local fire department does not need to know unless there is a fire.

Another commenter stated that the proposed rule was a way for the Department and ATF “to keep their thumb on shooting sports enthusiasts.”

In part because the proposed rule mentioned the OCCA, a number of commenters believed the proposed rule would cause law-abiding citizens who store gunpowder in their homes to be treated as, labeled, or made into criminals. Other commenters stated the proposed rule could potentially

criminalize legal citizens who unknowingly have explosive materials in their homes and could potentially cause millions of Americans who would not even be aware that the proposed notice requirement occurred to be subject to criminal penalties. Some commenters stated that the proposed rule was aimed at targeting law-abiding citizens even more than actual criminals or dangerous people of interest. And another commenter said the Department should stop pursuing law-abiding citizens who are defending themselves and focus on drug cartels and criminals with “Glock switches.”

Numerous commenters asserted that many commenters would not comply with this rule because it was inappropriately impacting law-abiding citizens. One commenter asked why gunpowder is just now being considered for safety purposes since it has been in existence for centuries.

ATF Response

ATF disagrees that the rule will have an increased negative impact on law-abiding citizens. First, the rule does not impact firearms. It applies only to explosive materials covered by ATF regulations in part 555, which does not include standard household items like those mentioned by commenters. More specifically, the rule would not apply to explosive materials that are expressly exempt from ATF’s explosives regulations, such as consumer fireworks, small-arms ammunition, and components of small-arms ammunition (*e.g.*, primers, propellant). In addition, the exempt explosive materials include commercially manufactured black powder in quantities not exceeding 50 pounds (as well as percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers) intended to be used solely for sporting, recreational, or cultural purposes in antique firearms as defined in 18 U.S.C. 921(a)(16) or in antique devices exempted from the term “destructive device” in 18 U.S.C. 921(a)(4). *See* 18 U.S.C. 845; 2025 Annual List of Explosive Materials, 90 FR 25077 (June 13, 2025); *see also* discussion in the ATF response under sections III.B.1 and 7 of this preamble.

Second, the rule would not affect persons who would not already be required to comply with ATF’s explosives storage requirements at 27 CFR part 555, subpart K. Persons subject to the rule are already subject to the current notice requirement and should be aware that they must notify the local fire authority if they begin storing explosives or acquire a new magazine. If they have been complying with the

existing requirement, they would be law-abiding citizens in this context. While they would be impacted by the proposed additional notice frequency, as described in response to comments under section III.B.1, ATF believes the impact would be minimal.

However, citizens who should have notified local authorities of their explosives storage under the existing regulatory provision, but did not do so when they began storing their explosives, are already in violation of the existing notice requirement. The rule would increase how often a person must notify but would not change who must notify, the kinds of explosives that are covered, or what information must be reported. It also would not cause persons to be in violation of existing requirements. Persons who are violating the existing notice requirement but who comply with the proposed notice requirement would be impacted more by the rule than persons who are already complying with existing reporting requirements. This is because they would have to submit their first notice and determine who the local authorities are in response to the rule. But even so, the marginal impact of the proposed notice requirement would still be small; most of the impact would stem from complying with existing requirements in the first instance.

ATF notes that the statute under 18 U.S.C. chapter 40 sets forth the penalty for failing to store explosives in compliance with the regulations as prescribed by the Attorney General. Persons who possess explosive materials that are already subject to ATF regulations are aware that they must comply with regulatory requirements, and that failure to comply with those regulatory requirements could result in a criminal penalty, particularly when storing explosives. 18 U.S.C. 842(j) makes it “unlawful for any person to store any explosive material in a manner not in conformity with regulations promulgated by the Attorney General.” A violation of 18 U.S.C. 842(j) constitutes a misdemeanor offense under section 844(b) of the statute. These statutory penalties remain unchanged, and the proposed annual notice requirement would not create any new or additional criminal penalties. It affects a regulatory notice and would simply change the frequency of notices for those possessing explosive materials subject to ATF regulations.

Sections of ATF regulations typically do not cite the statutory provision establishing the penalty. ATF generally does not include a statement in other sections of its regulations of the criminal penalty because the penalty is

statutorily established. Therefore, ATF does not feel it is necessary to add such a statement to the paragraph being proposed for revision because the criminal penalty is set forth in 18 U.S.C. chapter 40.

ATF disagrees that this rule will punish law-abiding citizens storing gunpowder because the rule references the OCCA. The primary federal statute regulating explosives and arson is the OCCA, Title XI, as amended by the SEA, 18 U.S.C. chapter 40. One of the provisions of the SEA provides safeguards for storing, handling, packaging, and labeling explosives. As previously discussed, the rule does not apply to explosive materials that are specifically exempt from ATF's explosives regulations. *See* 18 U.S.C. 845 and the 2025 Annual List of Explosive Materials, 90 FR 25077 (June 13, 2025). *See also* discussion in the ATF response under sections III.B.1 and 7 of this preamble.

ATF disagrees that the rule could potentially criminalize citizens who unknowingly have explosive materials in their home. 18 U.S.C. 842(j) requires that all persons must store explosive materials in compliance with its requirements. The statute defines the term explosive materials and explosives, and it requires the Attorney General to report an annual list of explosives in the **Federal Register**. *See* 90 FR 25077 (June 13, 2025) for the current list. This provides law-abiding citizens with notice and knowledge of what explosives must be stored in compliance with 18 U.S.C. 842(j), and thus what explosives would be subject to the notification requirement in this rule.

ATF disagrees that the rule targets law-abiding citizens more than criminals. As previously stated, all persons must store explosives in accordance with federal law and corresponding regulations. It is important that first responders are aware of explosives storage when responding to a fire site so they can be prepared when taking action that accounts for the explosives in an emergency response. This goal of the rule is to improve safety for emergency responders and the public.

With regard to the commenters who stated that the proposed notice requirement was designed and intended to harm and harass people, ATF disagrees. The additional notice frequency would have minimal impact on those who are required to submit notices. As the rule would not expand who is covered or what types of explosive materials are covered, it is not harassing or harming people as these persons are already required to submit

such a notice when they begin storing covered explosives. In addition, because there are exemptions for several kinds of explosives, including small-arms ammunition and commercially manufactured black powder not exceeding 50 pounds, used solely for sporting, recreational, or cultural purposes in antique firearms or devices, the rule would also not impact, harm, harass, or deny, persons who make their own ammunition for such purposes because, just as the current notice requirement does not apply to them, the rule would not apply to them.

Rather, ATF proposed this notice requirement because it has an important impact on the safety of those who respond to fires, and people living or working near explosives storage sites. For more details on this safety basis, see section III.B.7 of this preamble.

The proposed notice requirement also does not create an authorization for ATF to come into peoples' homes without a warrant, nor would it result in a warrantless search or seizure in violation of the Fourth Amendment. *See* discussion in section III.B.3.b of this preamble. The rule narrowly applies to storing explosive materials covered by ATF regulations in 27 CFR part 555. Because explosive materials may legally be distributed only to federal explosives licensees/permittees or exempt government agencies, persons storing explosive materials regulated by ATF will generally hold a federal explosives license/permit. Explosives licensees/permittees are aware that ATF may enter places where licensees/permittees store explosive materials to inspect or examine required records or documents, and the storage facilities, under § 555.24. ATF may not enter locations merely to inspect explosives stored by persons who do not hold a federal license/permit. The rule does not change this. Therefore, for those persons who do not hold a federal license/permit, ATF would continue to have no right of warrantless entry to inspect explosive materials stored at that location.

ATF acknowledges that the language in the proposed rule which states that the individual must make "each written notification . . . available for examination or inspection by an ATF officer at all reasonable times" may lead to the incorrect conclusion that ATF may enter the premises of individuals who do not hold a federal license/permit without a warrant for inspection purposes. Out of an abundance of caution, ATF is therefore removing that language from the final rule text.

7. Does Not Enhance Public Safety Comments Received

Some commenters believed the proposed annual notice requirement would do nothing to stop gun violence and would not make communities safer. One commenter acknowledged the importance of public safety, but said the proposed rule failed to address the core issues surrounding gun violence and thus would not aid public safety. Other commenters stated that the rule showed insufficient evidence that the requested level of notices would be necessary or would significantly reduce crime and enhance public safety.

Some commenters focused more specifically on the proposed notice requirement as a means of increasing safety and risk assessment planning for first responders. These comments were predicated on the idea that common hazardous materials are more dangerous than explosives or that explosions on residential properties are not an issue. For example, one commenter stated that according to their research, most emergency responders and the public are injured or killed by common hazardous materials, which would not be covered by the proposed notice requirement, and it would thus serve little purpose. This commenter added that chemicals such as propane, butane, chlorine, anhydrous ammonia, ammonium nitrate, ethanol, crude oil, hydrocarbon fuels, and liquefied petroleum gas are the major killers of emergency responders and in particular, firefighters. Other commenters indicated that the rule did not establish that smokeless or black powder is a serious risk to firefighters. One of these commenters stated that the rule did not include the actual number of serious injuries or persons killed from explosions at residential properties within the last ten years, and therefore the Department should not pursue the proposed regulation unless it can show data of numerous deaths from explosions on residential properties, and provide verifiable data that shows the risks that firefighters have experienced.

A couple of other commenters considered notices on explosives storage to be pointless. One commenter specified that 911 operators already ask about hazardous materials at a location and they report that information to the fire department, so notifying fire authorities of such information would be redundant. This commenter added that during an emergency, the fire department is not going to stop and search files for notices. Another commenter stressed that "anyone with

even the most basic of fire training understands that there are dangers hidden within homes, from O2 cylinders to propane bottles; we need to watch the fire's behavior and not the special note on a computer screen that is usually out of date and useless. The government has shown over and over that you are ineffective at even the most basic levels of security and safety."

A few commenters considered the notice requirement to be pointless because gunpowder does not give rise to crime. One commenter stated that the agency failed to show how this rule resolved a crime problem, and another stated that smokeless powder is rarely used in criminal acts. One commenter stated that according to their research, there is no evidence that criminals or violent organizations purchase and store large amounts of gunpowder to commit crimes.

A number of commenters raised issues with treating gunpowder or smokeless gunpowder as an explosive and asserted that it is not a risk to public safety. Several commenters stated that, while modern smokeless gunpowder is flammable rather than an explosive, two stated that it is only an explosive when not stored in compliance with current regulations, and one added that it also is not a firearm. Another commenter who reiterated that smokeless gunpowder is not an explosive, also asked under what authority it was being reclassified as one. Other commenters added that smokeless gunpowder is not dangerous when stored properly in private homes, and a couple of commenters stressed that there is no justifiable data showing that people who store gunpowder in their homes pose a fire hazard or a significant threat. Another couple of commenters said they do not remember hearing about any explosions or increased fire damage caused by reloading powder storage.

One commenter does not believe the rule will be effective because it does not provide guidance on safe storage practices.

A few commenters said this rule would not only fail to provide any protection, it would also create a burden for the public as well as local firefighters. While one commenter felt it made sense to know if explosive materials are being stored, they stated there was no need to collect this information for small amounts of the average household items (e.g., yard fertilizer, black powder, paint thinners, small amounts of gunpowder for reloading, lighter fluid, propane tanks). The commenter stated that the notice requirement for household items would be an overwhelming and complicated

process, and lives could be lost if fire departments have to check an extensive registry before fighting a house fire. Another commenter stated that they believed it was essential for the federal government to maintain public safety while maintaining the rights of Americans; however, the proposed rule could inadvertently discourage citizens from storing gunpowder responsibly which could potentially lead to unsafe practices. One commenter said the proposed rule would open a Pandora's box for the fireworks industry and other industries.

ATF Response

ATF reiterates that the rule does not address firearms, firearms safety, or violence from firearms. The rule applies only to explosive materials that are subject to ATF's regulatory authority. The rule does not expand the type or class of explosive materials that are subject to ATF's explosives regulations or the existing notice requirement. The rule does not apply to explosive materials that are specifically exempt from ATF's explosives regulations, and covered explosive materials do not include the household items listed by commenters (e.g., yard fertilizer, black powder, paint thinners, small amounts of gunpowder for reloading, lighter fluid, propane tanks). See 18 U.S.C. 845 and the 2025 Annual List of Explosive Materials, 90 FR 25077 (June 13, 2025). See also discussion in the ATF response under section III.B.1 of this preamble. The rule simply requires persons storing ATF-regulated explosive materials to notify the local fire authority every 12 months and when they cease storing explosives, in addition to the existing initial notice requirement, in order to increase first responder and public safety when fire or an explosion occurs at a location where explosives are being stored.¹⁰

For example, as noted in section I of this preamble, firefighters and other fire safety officials generally do not attempt to fight a fire that involves explosive materials because of the potential for an explosion that could harm the responders. If officials know of the

existence of explosives in such close proximity to a fire, they also typically evacuate the facility and the surrounding area to ensure the safety of the first responders and the public.

Explosives industry members, association representatives, and firefighting organizations specifically identified the increased frequency in notifications to local authorities as one way to improve safety in discussions as part of the 2013 working group established by Executive Order 13650.¹¹ They noted that local emergency response organizations may sometimes have high personnel turnover, which can cause the original report to be of less value as it might not come to the awareness of incoming personnel. *Id.* This may be more the case in locations that rely on volunteer or part-time personnel. They stated that the safety and security of explosives facilities, responders, and the surrounding communities would benefit from more frequent communications between persons who store explosives and local fire authorities. They also stated that more frequent communications would promote explosives site visits and training opportunities for fire responders. *Id.*

C. Comments Suggesting Changes

Comments Received

Several commenters provided suggestions or recommendations to improve the rule. Most of these comments made suggestions about the types and amounts of explosives that should be included under the proposed rule's notice requirements. For example, some commenters stated that there needs to be a distinction between notifying about small and large amounts of storage, or the rule should require notices only for very large amounts of explosives. Another commenter suggested that the rule would serve the public better if it were extended to black powder, dynamite, nitroglycerin, semtex, and other high explosives used for lawful purposes.

Other commenters suggested items that should be exempt from the annual notice requirement. Some commenters suggested that home reloading and muzzle-loading use should be exempt from notice requirements. Another commenter suggested that propellants manufactured strictly for the purpose of reloading sporting ammunition should

¹⁰ In 1998, ATF amended the regulations in 27 CFR part 55 (now part 555) to require that any person who begins storing explosive materials must notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the storage type, magazine capacity, and location of each site where such explosives are stored. The 1998 final rule was issued in response to numerous deaths and injuries sustained by emergency response personnel responding to fires and other emergencies at sites where explosives were stored without the knowledge of state and local officials. See RIN 1545-AU09, 61 FR 53688 (Oct. 15, 1996).

¹¹ Executive Order 13650, Actions to Improve Chemical Facility Safety and Security—A Shared Commitment, Report for the President, at 51 (May 2014), https://www.osha.gov/chemicalexecutiveorder/final_chemical_eo_status_report.pdf.

be exempt from this rule as that would minimize ATF's enforcement burden, minimize local fire department record-keeping burdens, and minimize the need for additional personnel to implement and enforce the proposed rule. One commenter suggested that powder and/or munitions should not be required for notices because there are so many other chemicals, aerosol, pesticides, thinners, cleaners, oil, and other combustibles in the average home and/or garage that are not reported annually.

Other comments made suggestions as to how ATF could better approach the subject or expend its resources more usefully. One commenter suggested that it would be more beneficial if ATF focused on publishing a tutorial on how to safely store small quantities of explosives instead of mandating annual notice requirements. Another commenter recommended that the notice requirement be replaced with training guidelines for first responders to ask when they are initially contacted about a fire or upon their arrival at the scene of a fire. In reference to ensuring public safety, one commenter believed ATF should focus on comprehensive background checks, mental health initiatives, and educational programs instead of finalizing the rule. Three other commenters stated that the Department should work with people to ensure the safety of our communities without infringing on peoples' rights and imposing burdensome notice requirements on law-abiding citizens, and that it is crucial to strike a balance between personal liberties and public safety.

One commenter suggested that the National Fire Prevention Association should be listed instead of ATF as a more appropriate agency to handle storage and notice requirements for hazardous materials.

ATF Response

In response to the comments suggesting that distinctions should be made between which types of explosives are covered by the notice requirement, or recommending a variety of exceptions to the kinds of explosives covered, ATF believes the rule is clear that it is applicable only to explosive materials currently subject to ATF's explosives regulations in 27 CFR part 555. The rule does not expand the type or class of explosive materials that are currently subject to ATF's regulatory authority. Further, it does not require notification for explosive materials specifically exempt from ATF's explosives regulations. See 18 U.S.C. 845 and the 2025 Annual List of

Explosive Materials, 90 FR 25077 (June 13, 2025). See also discussion in the ATF response under sections III.B.1 and 7 of this preamble. Persons subject to the rule are already subject to the existing notice requirement being proposed for revision, and should be aware of the current requirement to notify the local fire authority when they begin storing explosive materials subject to ATF regulations or they acquire a new magazine. The rule simply requires them to make notifications every 12 months and when they cease storing explosives, in addition to the current requirement of notification when storage begins.

With regard to comments suggesting that the paragraph proposed for revision, 27 CFR 555.201(f), include the types and amounts of explosive material that must be reported, and items that would be exempt from the notice requirements, ATF does not accept these suggestions. The paragraph proposed for revision is one paragraph in a full set of regulations on explosives. It is not intended to be read by itself, and other sections of the explosives regulations already contain the suggested information. In addition, ATF already publishes an annual list of explosive materials subject to ATF regulations in the **Federal Register** that updates the list with new developments in the explosives industry.

ATF does not believe that developing training material on how to safely store small amounts of explosive material is a sufficient substitute for the rule. The regulations at 27 CFR part 555 already provide explosives licensees/permittees, and persons without an explosives license/permit, with the necessary requirements to safely and securely store explosive materials that are subject to ATF's explosives regulations. The rule will allow local fire authorities to develop their own response plans based on the information received from the annual notification. Training material cannot replace the information about the actual presence of explosives that local fire authorities would receive through the annual notification.

ATF also disagrees that the National Fire Protection Association should be responsible for notifying local fire authorities of stored explosive materials. ATF, through the federal explosives laws, has been delegated the authority by Congress and the Attorney General to reduce the hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials. Additionally, ATF already requires that all persons storing explosive materials that are subject to 27 CFR part 555 must provide notice of

those materials to local fire authorities; the rule just increases the frequency of those notices.

D. Comments on Economic Analysis

1. Need for Regulation

Comments Received

Multiple concerns and questions were posed by commenters asking about the need to report on any combustible or explosive material that is normally stored in limited quantities at businesses or in homes (e.g., gasoline, fertilizer, swimming pool chemicals, propane, lithium batteries), with an overriding concern that the proposed rule would overwhelm citizens and businesses with burdensome notice requirements.

ATF Response

ATF disagrees that the rule would apply to combustible materials such as gasoline, fertilizer, or swimming pool chemicals, which are not regulated explosive materials. The need for the rule was to ensure that first responders are aware of the location of magazines containing explosives stored by anyone storing regulated explosives. This would ensure that if a first responder were to respond to fires or explosions in the building or nearby, they would be aware of the hazardous conditions. Being aware of hazardous conditions in addition to the existence of a fire enables first responders to anticipate the potential need for specialized protective gear, determine alternate approaches or methods, account for ways in which different explosive materials might react to heat, and take other steps that might save lives and minimize damage to property.

2. Burden on the Public

Comments Received

Many commenters stated the proposed rule was a waste of taxpayer money, time, and resources. Many commenters expressed concern regarding the burden the rule would place on the average citizen, businesses, and manufacturers due to all the additional notices and record-keeping that would result. One commenter expressed that the rule would cause extremely burdensome paperwork and record-keeping for the average citizen. The commenter also stated that the rule should not be allowed as it would "create an additional burden on citizens just on the grounds of the Paperwork Reduction Act of 1995."

ATF Response

This rule applies only to persons who store explosive materials covered by

ATF explosives regulations in 27 CFR part 555. The rule would not expand or change who would be required to submit notices from those who are already required to report this information; it just increases the frequency. The vast majority of persons who would be impacted by the rule are already federal explosives licensees/permittees subject to other record-keeping requirements. Although the rule would also impact a small number of other persons who store explosive materials covered by ATF regulations but who do not have a license/permit, this is necessary to increase safety, as described in multiple portions of section III.B of this preamble. The proposed change to the storage notice requirement adds only minimal time or work. Persons subject to the proposed annual notice frequency are already required to report the same information to the same authorities when they begin storing explosive materials at a given site or in a new one. So, if there are no other changes from the prior notice, they would merely need to send the same letter with a new date and signature each year. If there is a change, updating the letter to reflect that change would require only minimal time. ATF estimates that this annual notice requirement would have an annual opportunity cost to licensees/permittees of five minutes.

3. Impact on Small Businesses

Comments Received

One commenter emphasized that the rule would “disproportionately impact small businesses and individuals, further exacerbating the regulatory burden they already face.” One commenter posed several questions regarding who would pay for all the additional resources required to comply with the rule and stated that the economic impact numbers provided are incorrect. Another commenter indicated that if citizens are required to submit notices it will drive up the costs associated with homeowners’ insurance.

ATF Response

ATF disagrees that the rule would disproportionately impact small businesses and individuals. As discussed in several parts of section III.B of this preamble, the rule would not affect individuals storing commercially available combustible materials such as those typically found in residential households. It would apply only to persons who store explosive materials covered by ATF explosives regulations in 27 CFR part 555. If a person is storing regulated

explosive materials at their home, they should already be complying with ATF regulations for safely storing explosives in a magazine and accounting for the increased risk to their home of these materials through their homeowners’ insurance. Merely notifying the local fire authority would not affect those requirements or costs. For all businesses and other persons covered by the rule, including small businesses, this rule will impose only a five-minute burden in any given year, which is a de minimis time burden and thus would not have a significant or disproportionate impact on small businesses.

4. Government Costs

Comments Received

One of those commenters mentioned that the proposed annual notice requirement would be a “logistical nightmare,” while many others opined the rule would overwhelm and overburden already understaffed fire departments, especially those with more limited budgets (such as volunteer fire departments, small municipal departments, and those located in rural areas). One commenter added that the notice requirement would create a fiscal burden on local agencies and smaller fire departments. Another commenter stated that the proposed rule would put an undue burden on an already overworked agency (ATF). Another commenter stressed that the notice requirement would result in excess paperwork for firefighters. Another commenter opined that “this proposal will create unnecessary paperwork for the local fire authority.” The commenter also suggested that the proposed rule’s annual cost should include the cost to local communities for the time and expense incurred by the local fire officials.

ATF Response

ATF disagrees. ATF acknowledges that local fire departments or local municipalities will receive additional notices, which will involve receiving, routing, and organizing this information. However, ATF does not believe this is a significant paperwork burden on local fire departments or local municipalities. Additionally, the regulation does not require local jurisdictional authorities to do anything specific with these notices. Therefore, ATF cannot speculate as to how local jurisdictions will route or organize the notices. Furthermore, the paperwork burden for persons who would have to report on their regulated explosives storage once each year would be spread out among approximately 9,100

individuals and entities throughout the entire United States. Based on ATF’s Federal Explosives Licensing Center (“FELC”), the number of individuals or entities currently notifying local authorities is approximately 600 or fewer persons per state, depending on the location of licensed/permitted explosives entities. At the local level, the number would be significantly smaller. The rule would not affect all individuals or all businesses that might carry small amounts of combustible materials.

5. Benefits

Comments Received

One commenter suggested issues they felt needed clarification in the proposed rule’s economic analysis section, such as providing better details on potential threats to first responders, costs associated with inspections, and potential alternatives. This commenter said the proposed rule needed to explain the connection between the list of explosives and actual fatalities or injuries to first responders.

ATF Response

ATF disagrees that the rule should account for costs associated with inspections because the rule did not include a requirement for inspections, and they are not triggered by the notice requirement. ATF also disagrees that further explanation of the benefits of the rule’s notice requirement is necessary for a rule that imposes a five-minute burden in a given year. Informing local fire authorities of explosives storage is already a requirement for all persons when they begin storing covered explosives and provides a benefit to fire authorities in managing, assessing, and responding to fires and other issues in their jurisdiction that might impact the stability of the explosives or endanger first responders and others. It also aids them in being better equipped and prepared for additional hazards if a fire occurs at the magazine. This rule simply adds to the frequency with which they must report the required information—from once when they begin to store the covered explosives to once when they begin, every 12 months thereafter, and when they cease storing the explosive materials, so that the local authority has up-to-date information—at minimal cost to copy, paste, and email. ATF responds to the comment about alternatives in the next section.

6. Alternatives

Comments Received

Another commenter suggested that ATF consider alternative approaches

that prioritize education, responsible gun ownership, and collaboration with the firearms community.

ATF Response

ATF disagrees with the proposed alternatives and with the previous commenter's assertion. This rule does not affect gun ownership; therefore, focusing on responsible gun ownership would not be applicable in this context. It also does not affect private citizens who are not storing explosive materials covered by ATF explosives regulations in 27 CFR part 555. In addition, private citizens who are storing covered explosives are already subject to the requirement to report this information; the rule only affects the notice frequency. All persons subject to the rule should already have completed at least one notice providing the required information to local authorities. They therefore should not need training or education on how to create or submit such a notice. First responders already know how to deal with the dangers of explosives for the area, and ATF regularly collaborates with firefighting and other first responder communities; the first responders just need to know where explosives are, the types of explosives, and the potential amount (as represented by the magazine's capacity) so they can be prepared to safely respond to a fire emergency involving a magazine. Federal explosives licensees/permittees, who constitute the vast majority of persons subject to the rule, are already required to be trained on safely storing explosive materials. Other persons who have questions on these subjects can review ATF's explosives website at www.atf.gov/explosives.

IV. Final Rule

The current regulation at 27 CFR 555.201(f) requires any person who stores explosive materials to provide to local fire safety officials an oral notification before the end of the day on which the person begins storing explosive materials subject to ATF's explosives regulations in 27 CFR part 555 at that location, and in writing within 48 hours after they begin storing the explosives. Both forms of notification must include the storage type, magazine capacity, and location of each site where the person is storing such explosive materials.

The proposed rule did not propose changes to the existing regulatory text but proposed adding to it. The proposed additions included a requirement for the person to submit written notice, covering the same information, once every 12 months following the initial notice until the person is no longer

storing explosive materials at that site; a requirement that the person submit written notice within 48 hours after they cease storing explosives at that site; a requirement that the written notices must also include the notification date and the name, title, and agency of the authority official notified; and a requirement to retain the written notices for five years from the notice date, and make it available for examination or inspection by an ATF officer, as requested.

This rulemaking finalizes the proposed rule by amending § 555.201(f) as proposed in the NPRM except the last clause relating to examination and inspection. Because public comments indicated that this language could lead to the incorrect conclusion that ATF may enter the premises of individuals who do not hold a federal license/permit, ATF is removing that language from the final rule. In addition, this rule adds the phrase "covered by this part" to the first sentence of the existing regulatory text, so it would read, "Any person who stores explosive materials covered by this part must notify" ATF is also making minor sentence structure edits to both the existing text and the proposed amendment text to conform with plain writing guidelines. Both the added phrase and these minor sentence structure edits are being made in response to public commenters who misunderstood that this notice requirement applies only to explosive materials covered by ATF explosives regulations.

ATF is finalizing the proposed amendments because it believes notification every 12 months will increase public safety through increased communication between persons storing explosive materials and their local emergency responders; provide regularly updated storage information to local authorities; and allow for risk assessments and emergency response preparation prior to incidents, thus reducing potential safety and damage risk to first responders, emergency equipment, and other people around explosives storage sites.

V. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs 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 (Improving Regulation and Regulatory Review)

emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

This rule amends 27 CFR 555.201(f) to require written annual notification to authorities having jurisdiction for fire safety of the existence of stored explosive materials. More specifically, § 555.201(f) already requires any person who stores explosive materials to notify authorities with jurisdiction for fire safety about the storage type, magazine capacity, and location of each site where such explosive materials are stored when the person begins storing the explosive materials. This rule adds a requirement for an updated report once every 12 months thereafter, and when the person discontinues storing the explosives. Annual notice to the local fire authority ensures they have current information on explosives storage in their area, which enables the fire authority to better plan for fires in such locations and take appropriate steps to account for explosives. This increases both the safety of first responders and of those in the areas around the magazine. The explosives industry and fire authorities support this reporting for these safety reasons. This requirement would take about five minutes to send an email every 12 months and thus involves de minimis cost to those submitting notices.

The Office of Management and Budget ("OMB") has determined that this rule is not a "significant regulatory action" under Executive Order 12866.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity Through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M-25-20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations. This rule, however, is not an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it does not impose total costs greater than zero.

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) 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 final rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14924 requirements.

D. Executive Order 13132

This rule will not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Acting Director has determined that this rule does not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies are required to conduct a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small 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.

The Acting Director certifies, after consideration, that this rule will not have a significant economic impact on a substantial number of small entities. ATF estimates that this rule will impact approximately 9,100 persons, with 8,774 of those being licensees/permittees, and the majority of those being small businesses. However, ATF estimates that the additional notifications will take up to five

minutes annually to provide written notification by email. It therefore does not impose a significant economic impact on small businesses or the industry as a whole.

G. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not likely to have a significant economic impact on a substantial number of small entities under the Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. 657 and 5 U.S.C 601 note, as it imposes no additional costs.

H. Unfunded Mandates Reform Act of 1995

This rule does not include a federal mandate that might 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, and it will not significantly or uniquely affect small governments. Therefore, ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

I. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501–3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts it has on existing information collections. An information collection includes any reporting, record-keeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. See 5 CFR 1320.3(c). This rule creates the need to revise an existing information collection under the PRA. The title and description of the information collection impacted by this rule, a description of those who provide the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Notifying Fire Safety Authority of Stored Explosive Materials.

OMB control number: 1140–0071.

Summary of the information collection: This regulation amends 27 CFR 555.201(f) to require annual notice to authorities having jurisdiction for fire safety about explosive materials being stored in their jurisdiction. Currently, any person who stores explosive materials is required to notify authorities with jurisdiction for fire safety about the storage type, magazine

capacity, and location of each site where such explosive materials are stored when the person begins storing the explosives at that location. This rule amends the regulation to require the person to also submit such notices annually thereafter, and when the person ceases to store explosives there. Any person storing explosive materials is also required to maintain a copy of the written notification for five years from the date of the notice.

Need for information: It is important that first responders are aware of explosives storage when responding to a fire site. Firefighters and other fire safety officials generally do not attempt to fight a fire that has engaged a container of explosive materials because of the potential for an explosion that could harm the responders. Knowing that explosives are stored at the site, in close proximity to a fire, enables first responders to adjust their strategy for handling and responding to the fire in such cases to provide better public safety. The additional annual notice requirement provides local authorities with updated information from which to assess the potential danger from explosives at the site.

Proposed use of information: To provide first responders advance, updated information about where explosives are stored, which enables them to better plan for and respond to fires in close proximity to such stored explosives, and increases public safety.

Description of the respondents: Persons or entities who store regulated explosive materials.

Number of respondents: 9,100.

Frequency of response: once annually.

Burden of response: 5 minutes.

J. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.*, OMB’s Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria in 5 U.S.C. 804(2) to constitute a major rule. This rule is not a major rule because it will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Disclosure

Copies of the proposed rule, public comments received in response to it, and this final rule are available through the federal eRulemaking portal, at

<https://www.regulations.gov> (search for RIN 1140-AA51).

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

Accordingly, for the reasons discussed in the preamble, ATF amends 27 CFR part 555 as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Amend § 555.201 by revising paragraph (f) to read as follows:

§ 555.201 General.

* * * * *

(f) Any person who stores explosive materials covered by this part must notify the authority having jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, magazine capacity, and location of each site where such explosive materials are stored.

(1) The person must make the notification in paragraph (a) of this section orally before the end of the day on which they begin storing the explosive materials, and in writing within 48 hours from when they begin storing them.

(2) Thereafter, the person must submit written notice once every 12 months following the initial notice, but no later than the end of the month during which the 12-month period is completed, unless the person is no longer storing explosive materials at the relevant site.

(3) When a person ceases to store explosive materials at a site, they must notify the authority having jurisdiction for fire safety in the locality in which the explosive materials were stored in writing within 48 hours after the person discontinues storing materials at that location.

(4) Each written notice must also contain the notice date and the name, title, and agency of the fire authority official notified. The person submitting the notice must retain a copy of each written notice for five years from the notice date.

* * * * *

Robert Cekada,

Director.

[FR Doc. 2026-19694 Filed 9-24-26; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 505

Sanctions Penalties Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adding the Sanctions Penalties Regulations. These new regulations consolidate previously existing information regarding penalties applicable to multiple sanctions programs implemented by OFAC.

DATES: This rule is effective September 25, 2026.

FOR FURTHER INFORMATION CONTACT: OFAC, Assistant Director for Regulatory Affairs, 202-622-4855; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

OFAC administers and enforces U.S. economic and trade sanctions programs against targeted foreign governments, individuals, groups, and entities in accordance with national security and foreign policy goals and objectives. OFAC is responsible for the civil investigation and enforcement of economic sanctions violations under Presidential national emergency powers and specific legislation, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA).

In this rule, OFAC is reproducing information regarding enforcement procedures and penalties, including the rights of U.S. persons being investigated for violations, that are currently located in individual parts of 31 CFR chapter V into a new part, the Sanctions Penalties Regulations (the "Regulations"). This initial promulgation of the Regulations contains information regarding penalties for violations of sanctions issued pursuant to IEEPA and the United Nations Participation Act, as amended (22 U.S.C. 287c(b)) (UNPA). No substantive changes to these penalty provisions are being made with this rule. Following publication of this part, OFAC will update parts within 31 CFR chapter V to replace existing penalties information with cross-references to the

Regulations, to help standardize penalties provisions and to ease compliance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (Pub. L. 101-410, 104 Stat. 890, as amended; 28 U.S.C. 2461 note) (FCPIA). Civil penalty amounts are subject to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74, 129 Stat. 599, 28 U.S.C. 2461 note) (the FCPIA Act), as well as FCPIA. The FCPIA Act requires each Federal agency with statutory authority to assess CMPs and adjust them annually for inflation according to a formula described in section 5 of the FCPIA Act.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations, describes penalty information that is released to the general public, and sets forth a Paperwork Reduction Act notice.

Subpart B of the Regulations contains the definition of two terms used throughout the Regulations and refers to other parts of 31 CFR chapter V for additional definitions.

Subpart D of the Regulations describes the IEEPA civil penalty process, from the issuance of a pre-penalty notice to a final agency action. IEEPA provides for civil monetary penalties (CMP) of up to the greater of \$377,700 or twice the value of a transaction. Subpart E of the Regulations provides information on UNPA penalties.

In determining civil penalties, OFAC considers the facts and circumstances surrounding an apparent violation, including whether any of the following are present: willful or reckless violation of law, awareness of conduct at issue, or harm to sanctions program objectives. Base penalties are halved in cases for which OFAC learns of the violation through a voluntary self-disclosure to OFAC. Both IEEPA and UNPA include criminal penalties; OFAC may refer apparent sanctions violations to appropriate law enforcement agencies for criminal investigation and/or prosecution. Apparent sanctions violations that OFAC has referred for criminal investigation and/or prosecution may nevertheless be subject to OFAC civil penalty or other administrative action.

In addition to IEEPA penalties, OFAC also may levy civil penalties for sanctions violations pursuant to additional statutes. Penalties for certain additional statutes can be found in the following sections of the CFR: (a) the Trading with the Enemy Act (50 U.S.C. 4301-4341, at 4315), penalties at 31 CFR 501.700 through 501.747; (b) section 2339B of the Antiterrorism and Effective

Death Penalty Act of 1996 (18 U.S.C. 2339B), penalties at 31 CFR 597.701 through 597.705; (c) the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901–1908, at 1906), penalties at §§ 598.701 through 598.706; and (d) the Clean Diamond Trade Act (19 U.S.C. 3901–3913, at 3907), penalties at appendix A to 31 CFR part 501.

Public Participation

Because the Regulations involve a foreign affairs function, do not make substantive changes to OFAC's sanctions programs, and constitute a rule of agency procedure, notice and comment rulemaking would be impracticable, unnecessary, or contrary to the public interest. Accordingly, the provisions of E.O. 12866 of September 30, 1993, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, as well as the provisions of E.O. 14192 of January 31, 2025, "Unleashing Prosperity Through Deregulation" (90 FR 6065, February 6, 2025), and E.O. 14219 of February 19, 2025, "Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative" (90 FR 10583, February 25, 2025), are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Executive Order 14294

Section 5 of E.O. 14294 of May 9, 2025, "Fighting Overcriminalization in Federal Regulations" (90 FR 20367, May 14, 2025), directs that all future notices of proposed rulemaking (NPRMs) and final rules published in the **Federal Register**, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense and the authorizing statute. E.O. 14294 directs agencies to draft this statement in consultation with the Department of Justice.

E.O. 14294 further directs that the regulatory text of all NPRMs and final rules with criminal consequences published in the **Federal Register** after May 9, 2025, should explicitly state a *mens rea* requirement for each element of a criminal regulatory offense, accompanied by citations to the relevant provisions of the authorizing statute.

Willful violations of the regulations set forth in this final rule may be subject to criminal penalties pursuant to 50

U.S.C. 1705 and regulations promulgated thereunder. The statutory authority for criminal liability requires a *mens rea* of willfulness as an element pursuant to 50 U.S.C. 1705(c). In drafting this statement, OFAC has consulted with the Department of Justice.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting, Procedures and Penalties Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 505

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Securities, Services.

■ For the reasons set forth in the preamble, OFAC adds part 505 to 31 CFR chapter V to read as follows:

PART 505—SANCTIONS PENALTIES REGULATIONS

Subpart A—General Provisions

Sec.

- 505.101 Relation of this part to other laws and regulations.
- 505.102 Certain civil penalties information released.
- 505.103 Paperwork Reduction Act notice.

Subpart B—General Definitions

- 505.201 Definitions.
- 505.202 IEPPA.
- 505.203 OFAC.

Subpart C—[Reserved]

Subpart D—International Emergency Economic Powers Act Penalties and Findings of Violation

- 505.401 Penalties.
- 505.402 Pre-Penalty Notice; settlement.
- 505.403 Penalty imposition.
- 505.404 Administrative collection; referral to United States Department of Justice.
- 505.405 Findings of Violation.

Subpart E—United Nations Participation Act Penalties

- 505.501 Penalties.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 50 U.S.C. 1601 *et seq.*, 1701 *et seq.*; 22 U.S.C. 287c; 28 U.S.C. 2461 note (Pub. L. 101–410, 104 Stat. 890, as amended).

Subpart A—General Provisions

§ 505.101 Relation of this part to other laws and regulations.

This part sets forth standard sanctions penalty regulations applicable to transactions regulated pursuant to other parts codified in this chapter, as well as to economic sanctions programs for which implementation and administration are delegated to OFAC. Substantive prohibitions, definitions, interpretations, and licenses particular to each economic sanctions program are not contained in this part but are set forth in the particular part of this chapter dedicated to that program and OFAC's website, <https://ofac.treasury.gov>, or, in the case of economic sanctions programs not yet implemented in regulations, in the applicable Executive order or other authority. Violations of certain economic sanctions programs are subject to additional penalties; information about these will be found in the particular part of this chapter dedicated to that program.

§ 505.102 Certain civil penalties information released.

(a) After the conclusion of a civil penalties proceeding that results in either the imposition of a civil monetary penalty or a settlement agreement, OFAC shall make available to the public certain information on a routine basis, not less frequently than monthly, as follows:

(1) In each such proceeding against an entity, OFAC shall make available to the public:

- (i) The name and location of the entity involved;
- (ii) The sanctions program(s) involved;
- (iii) A brief description of the violation or apparent violation;
- (iv) A clear indication whether the proceeding resulted in a settlement agreement or the imposition of penalties;
- (v) An indication whether the entity voluntarily disclosed the violation or apparent violation to OFAC; and
- (vi) The amount of the penalty imposed or the amount of the agreed settlement.

(2) In such proceedings against individuals, OFAC shall release on an aggregate basis:

- (i) The number of penalties imposed and settlement agreements reached;
- (ii) The sanctions program(s) involved;
- (iii) A brief description of the violations or apparent violations;
- (iv) A clear indication whether the proceedings resulted in settlement

agreements or in the imposition of penalties; and

(v) The amounts of the penalties imposed and the amounts of the agreed settlements.

(b) The medium through which information will be made available to the public is OFAC's website at <https://ofac.treasury.gov>.

(c) The information made available pursuant to paragraph (a) of this section shall generally not include the following:

(1) The name of any violator or alleged violator who is an individual.

(2) Records or information obtained or created in the implementation of part 598 of this chapter.

(d) On a case-by-case basis, OFAC may release additional information concerning a particular civil penalties proceeding.

§ 505.103 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures, and other procedures, see § 501.901 of this chapter. 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 OMB.

Subpart B—General Definitions

§ 505.201 Definitions.

This part includes terms that may differ among various sanctions regulations administered by OFAC. When analyzing a procedure, penalty, or transaction, the appropriate definition is the one contained in the part relating to the associated sanctions regulations. In the case of economic sanctions programs for which implementation and administration are delegated to OFAC but for which regulations have not yet been issued, the definitions of terms in this part are governed by definitions contained in the implementing statute or Executive order.

§ 505.202 IEEPA.

The term IEEPA means the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

§ 505.203 OFAC.

The term OFAC means the Department of the Treasury's Office of Foreign Assets Control.

Subpart C—[Reserved]

Subpart D—International Emergency Economic Powers Act Penalties and Findings of Violation

§ 505.401 Penalties.

(a) The penalties available under section 206 of IEEPA (50 U.S.C. 1705) are applicable to violations of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to the applicable part of this chapter or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any regulation, ruling, instruction, order, directive, license, or prohibition issued under IEEPA.

(2) IEEPA provides for a maximum civil penalty not to exceed the greater of \$377,700 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(3) A person who willfully commits, willfully attempts to commit, willfully conspires to commit, or aids or abets in the commission of a violation of any regulation in the applicable part of this chapter, ruling, instruction, order, directive, license, or prohibition may, upon conviction, be fined not more than \$1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b)(1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note, Pub. L. 101–410, as amended).

(2) The criminal penalties provided in IEEPA are subject to adjustment pursuant to 18 U.S.C. 3571.

(c) Pursuant to 18 U.S.C. 1001, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; or makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, imprisoned, or both.

§ 505.402 Pre-Penalty Notice; settlement.

(a) *When required.* If OFAC has reason to believe that there has occurred a violation of any provision of the applicable part of this chapter or a violation of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to the applicable part of this chapter or otherwise under IEEPA and determines that a civil monetary penalty is warranted, OFAC will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see appendix A to part 501 of this chapter.

(b) *Response—(1) Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to OFAC. For a description of the information that should be included in such a response, see appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed or date the Pre-Penalty Notice was sent by email. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is

acceptable), contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and include the OFAC identification number listed on the Pre-Penalty Notice. The response must be sent to OFAC's Enforcement Division by mail, courier, or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by OFAC, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by OFAC are contained in appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 505.403 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, OFAC determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, OFAC may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

§ 505.404 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to IEEPA or make payment arrangements acceptable to OFAC, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a Federal district court.

§ 505.405 Findings of Violation.

(a) *When issued.* (1) OFAC may issue an initial Finding of Violation that identifies a violation if OFAC:

(i) Determines that there has occurred a violation of any provision of the applicable part of this chapter, or a violation of the provisions of any regulation, ruling, instruction, order, directive, or license issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to the applicable part of this chapter or otherwise under IEEPA;

(ii) Considers it important to document the occurrence of a violation; and

(iii) Based on the guidelines contained in appendix A to part 501 of this chapter, concludes that an administrative response is warranted but that a civil monetary penalty is not the most appropriate response.

(2) An initial Finding of Violation shall be in writing and may be issued whether or not another agency has taken any action with respect to the matter. For additional details concerning issuance of a Finding of Violation, see appendix A to part 501 of this chapter.

(b) *Response—(1) Right to respond.* An alleged violator has the right to contest an initial Finding of Violation by providing a written response to OFAC.

(2) *Deadline for response; default determination.* A response to an initial Finding of Violation must be made within 30 days as set forth in paragraphs (b)(2)(i) and (ii) of this section. The failure to submit a response within 30 days shall be deemed to be a waiver of the right to respond, and the initial Finding of Violation will become final and will constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

(i) *Computation of time for response.* A response to an initial Finding of Violation must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier), or dated if sent by email, on or before the 30th day after the postmark date on the envelope in which the initial Finding of Violation was served or date the Finding of Violation was sent by email. If the initial Finding of Violation was personally delivered by a non-U.S. Postal Service agent authorized by OFAC, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a Federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted,

at the discretion of OFAC, only upon specific request to OFAC.

(3) *Form and method of response.* A response to an initial Finding of Violation need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof (electronic signature is acceptable), contain information sufficient to indicate that it is in response to the initial Finding of Violation, and include the OFAC identification number listed on the initial Finding of Violation. The response must be sent to OFAC's Enforcement Division by mail, courier, or email and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(4) *Information that should be included in response.* Any response should set forth in detail why the alleged violator either believes that a violation of the regulations did not occur and/or why a Finding of Violation is otherwise unwarranted under the circumstances, with reference to the general factors affecting administrative action set forth in the guidelines contained in appendix A to part 501 of this chapter. The response should include all documentary or other evidence available to the alleged violator that supports the arguments set forth in the response. OFAC will consider all relevant materials submitted in the response.

(c) *Determination—(1) Determination that a Finding of Violation is warranted.* If, after considering the response, OFAC determines that a final Finding of Violation should be issued, OFAC will issue a final Finding of Violation that will inform the violator of its decision. A final Finding of Violation shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in Federal district court.

(2) *Determination that a Finding of Violation is not warranted.* If, after considering the response, OFAC determines a final Finding of Violation is not warranted, then OFAC will inform the alleged violator of its decision not to issue a final Finding of Violation.

Note 1 to paragraph (c)(2): A determination by OFAC that a final Finding of Violation is not warranted does not preclude OFAC from pursuing other enforcement actions consistent with the guidelines contained in appendix A to part 501 of this chapter.

(d) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with OFAC prior to a written submission regarding the

specific alleged violations contained in the initial Finding of Violation must be preceded by a written letter of representation, unless the initial Finding of Violation was served upon the alleged violator in care of the representative.

Subpart E—United Nations Participation Act Penalties

§ 505.501 Penalties.

(a) Section 5(b) of the United Nations Participation Act, as amended (UNPA) (22 U.S.C. 287c(b)), provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to section 5(a) of the UNPA shall, upon conviction, be fined not more than \$1,000,000 or, if a natural person, be imprisoned for not more than 20 years, or both.

(b) Violations involving transactions described in section 203(b)(1), (3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (a) of this section.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–19678 Filed 9–24–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 596

Terrorism List Governments Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Terrorism List Governments Sanctions Regulations to implement changes resulting from the rescission of the designation of Syria as a State Sponsor of Terrorism. Specifically, OFAC is removing and reserving a Syria-specific general license because the authorization is no longer necessary following the rescission.

DATES: This rule is effective September 25, 2026.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov>.

Background

On December 29, 1979, in accordance with section 6(i)(1) of the Export Administration Act of 1979, the President designated Syria as a State Sponsor of Terrorism (2 Pub. Papers 2290, 2294 (December 29, 1979)). On August 22, 1996, OFAC promulgated the Terrorism List Governments Sanctions Regulations, 31 CFR part 596 (61 FR 43462, August 23, 1996) (the “Regulations”), to implement section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (18 U.S.C. 2332d). The Regulations have been updated multiple times since then, most recently December 2022 (87 FR 78481, December 21, 2022), when two general licenses were added.

On July 8, 2026, consistent with section 1754(c)(4) of the National Defense Authorization Act for Fiscal Year 2019 (50 U.S.C. 4813(c)(4)), the President certified and reported to Congress that the Government of Syria had not provided any support for acts of international terrorism during the preceding six-month period and that the Government of Syria had provided assurances that it would not support acts of international terrorism in the future (H. Doc. 119–168, 119th Cong., 2d sess., at 3 (2026)). Effective August 24, 2026, based on the considerations regarding Syria contained in the memorandum accompanying the Presidential Report of July 8, 2026, and in accordance with applicable law, the Secretary of State rescinded Syria's designation as a State Sponsor of Terrorism (91 FR 55965, August 31, 2026).

In accordance with the rescission of the designation of Syria as a State Sponsor of Terrorism, the Government of Syria is no longer a Terrorism List Government for purposes of the Regulations. Accordingly, the Syria-specific general license in § 596.505 is no longer necessary, and this rule removes and reserves that section.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), as amended, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation,

and delay in effective date, as well as the provisions of E.O. 14192 of January 31, 2025, “Unleashing Prosperity Through Deregulation” (90 FR 6065, February 6, 2025), and E.O. 14219 of February 19, 2025, “Ensuring Lawful Governance and Implementing the President's ‘Department of Government Efficiency’ Deregulatory Initiative” (90 FR 10583, February 25, 2025), are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Executive Order 14294

Section 5 of E.O. 14294 of May 9, 2025, “Fighting Overcriminalization in Federal Regulations” (90 FR 20367, May 14, 2025), directs that all future notices of proposed rulemaking (NPRMs) and final rules published in the **Federal Register**, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense and the authorizing statute. E.O. 14294 directs agencies to draft this statement in consultation with the Department of Justice.

E.O. 14294 further directs that the regulatory text of all NPRMs and final rules with criminal consequences published in the **Federal Register** after May 9, 2025, should explicitly state a mens rea requirement for each element of a criminal regulatory offense, accompanied by citations to the relevant provisions of the authorizing statute.

Willful violations of the regulations set forth in this final rule may be subject to criminal penalties pursuant to 50 U.S.C. 1705 and regulations promulgated thereunder. The statutory authority for criminal liability requires a mens rea of willfulness as an element pursuant to 50 U.S.C. 1705(c). In drafting this statement, OFAC has consulted with the Department of Justice.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the “Reporting, Procedures and Penalties Regulations”). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 596

Administrative practice and procedure, Banks, Banking, Credit, Foreign trade, Penalties, Reporting and recordkeeping requirements, Sanctions, Terrorism.

For the reasons set forth in the preamble, OFAC amends 31 CFR part 596 as follows:

PART 596—TERRORISM LIST GOVERNMENTS SANCTIONS REGULATIONS

- 1. The authority citation for part 596 is revised to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 7201 *et seq.*; 31 U.S.C. 321(b).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy**§ 596.505 [Removed and Reserved]**

- 2. Remove and reserve § 596.505.

Bradley T. Smith,

Director, Office of Foreign Assets Control.

[FR Doc. 2026–19657 Filed 9–24–26; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100**

[Docket Number USCG–2026–1129]

RIN 1625–AA08

Special Local Regulation; Milwaukee River and Menomonee River, Milwaukee, WI

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation (SLR) for certain navigable waters of the Milwaukee River and Menomonee River. This action is necessary to provide for the safety of life on these navigable waters in Milwaukee, WI, during the Milwaukee River Challenge event on October 3, 2026. This regulation prohibits persons and vessels from entering the regulated area unless specifically authorized by the Captain of the Port Sector Lake Michigan or their designated representative.

DATES: This rule is effective on October 3, 2026, from 8 a.m. to 3:30 p.m.

ADDRESSES: To view available documents go to <https://>

www.regulations.gov and search for USCG–2026–1129.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email MSTC Dylan Caikowski, Sector Lake Michigan, Waterways Management Division, U.S. Coast Guard; telephone (571) 608–0739, or email D09-SMB-SecLakeMichigan-WWM@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
SLR Special Local Regulation
U.S.C. United States Code

II. Background and Authority

An organization notified the Coast Guard that on October 3, 2026, from 8 a.m. to 3:30 p.m., they will sponsor a large-scale rowing race in Milwaukee, WI. The Coast Guard received a request under 33 CFR 100.15 from the Milwaukee Riverwalk District for a Marine Event Permit to host the rowing race. The rowing race will include approximately 150 rowing vessels.

The Captain of the Port Sector Lake Michigan (COTP) is issuing this Special Local Regulation (SLR) under the authority in 46 U.S.C. 70041. The COTP has determined that potential hazards associated with the large-scale rowing race include the possibility of participants racing within the navigable channel, as well as the possibility that participants rowing within approaches to local public and private boat facilities might collide with or otherwise interfere with boaters near those facilities. The purpose of this rulemaking is to protect event participants, non-participants, and transiting vessels before, during, and after the scheduled event.

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. We must establish this SLR by October 3, 2026, to protect personnel, vessels, and the marine environment. Therefore, we do not have enough time to solicit and respond to comments.

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

III. Discussion of the Rule

This rule establishes a temporary SLR on October 3, 2026, from 8 a.m. to 3:30 p.m. The special local regulation will cover all navigable waters of the Milwaukee River from the confluence with the Menomonee River and the Humboldt Avenue Bridge between coordinates: 43°01.915' N, 087°54.627' W, then north to 43°03.425' N, 087°53.882' W and all navigable waters of the Menomonee River from the North 25th Street Bridge to the confluence with the Milwaukee River between coordinates: 43°01.957' N, 087°56.682' W, then east to 43°01.915' N, 087°54.627' W. 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 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 special local regulation. 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. Add § 100.T999–1129 to read as follows:

§ 100.T999–1129 Special Local Regulation; Milwaukee River and Menomonee River, Milwaukee, WI.

(a) *Location.* This special local regulation applies to the following regulated area: All waters of the Milwaukee River from the confluence with the Menomonee River and the Humboldt Avenue Bridge between coordinates: 43°01.915' N, 087°54.627' W, then north to 43°03.425' N, 087°53.882' W, and all navigable waters of the Menomonee River from the North 25th Street Bridge to the confluence with the Milwaukee River between coordinates: 43°01.957' N, 087°56.682' W, then east to 43°01.915' N, 087°54.627' W. These coordinates are based on the World Geodetic System (WGS 84).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Lake Michigan (COTP) in the enforcement of the regulated area. *Participant* means all persons and vessels registered with the event sponsor as a participant in the race.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the COTP or their designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative on VHF–FM channel 16 or by telephone at (414) 747–7182. Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced on October 3, 2026, from 8 a.m. to 3:30 p.m.

Rhianna N. Macon,

Captain, U.S. Coast Guard, Captain of the Port Sector Lake Michigan.

[FR Doc. 2026–19653 Filed 9–24–26; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 775

National Environmental Policy Act Implementing Procedures

AGENCY: United States Postal Service.

ACTION: Interim final rule; request for comments.

SUMMARY: The United States Postal Service (USPS) is publishing this interim final rule with request for comments to partially rescind and update its remaining National Environmental Policy Act (NEPA) implementing procedures, which were promulgated to implement the now-rescinded Council on Environmental Quality (CEQ) regulations.

DATES: This interim final rule is effective September 25, 2026. Comments are due by October 26, 2026.

ADDRESSES: Interested parties may direct comments and questions to: Mr. Thomas Shepherd, Environmental Counsel, United States Postal Service, 475 L'Enfant Plaza SW, Office 6606, Washington, DC 20260–6201, or at NEPA@usps.gov.

All submissions must include the agency name, “United States Postal Service,” and the subject heading “NEPA Procedures Rulemaking.” Note that comments sent by mail may be subject to delay due to Federal security screening. Faxed comments are not accepted. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Thomas Shepherd, Environmental Counsel, or Asif Ansari, Director, Environmental Affairs, at NEPA@usps.gov or at (202) 738–2939.

SUPPLEMENTARY INFORMATION:

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I. Introduction

USPS is revising its NEPA implementing regulations to contain only: (i) definitions of terms used in the regulations; (ii) administrative and routine actions excepted from NEPA review in appendix A; (iii) its revised categorical exclusions in appendix B based upon experience with existing regulations and new policies and infrastructure that have been implemented since the establishment of the categorical exclusions; (iv) related requirements for determining when NEPA applies to USPS actions and for the application of categorical exclusions; and (v) a provision for emergency circumstances. Going

forward, USPS will maintain the remainder of its NEPA procedures—which apply only to USPS's internal processes—in a Handbook separate from the Code of Federal Regulations (CFR). This interim final rule requests comments on this action and related matters to inform USPS's decision-making.

The Administrative Procedure Act does not apply to this action (5 U.S.C. 553(a)(2); 39 U.S.C. 410(a)), which is being taken pursuant to the Postal Service's general rulemaking authority under 39 U.S.C. 401(2). Nevertheless, the Postal Service is voluntarily soliciting public comments on its revision of 39 CFR part 775. Following the expiration of the comment period, the Postal Service may make further revisions to this action if the Postal Service's review of any comments submitted suggests that further revisions are warranted.

USPS is issuing this interim final rule to partially rescind and revise its remaining regulations codified at 39 CFR part 775 for implementation of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, as amended. USPS's existing NEPA implementing regulations were promulgated to “implement the [NEPA] regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).” 39 CFR 775.1. A stated policy of USPS's existing regulations is to interpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in NEPA and CEQ's NEPA regulations. 39 CFR 775.2(a). But CEQ's NEPA regulations have been repealed, as of April 11, 2025. *See* Removal of National Environmental Policy Act Implementing Regulations, (90 FR 10610; Feb. 25, 2025 and 91 FR 618; Jan. 8, 2026)). CEQ's repeal of its regulations was necessitated by and is consistent with Executive Order (E.O.) 14154, Unleashing American Energy (90 FR 8353; January 29, 2025), in which President Trump rescinded President Carter's E.O. 11991, Relating to Protection and Enhancement of Environmental Quality (42 FR 26967; May 24, 1977), which was the basis CEQ had invoked for its authority to issue regulations. USPS's regulations implementing CEQ's rescinded regulations now requires revision.

Additionally, Congress amended NEPA in significant part in the Fiscal Responsibility Act of 2023 (FRA), Public Law 118–5, signed on June 3, 2023, and in the One Big Beautiful Bill Act of July 4, 2025 (OBBBA), Public Law 119–21. The FRA added substantial detail and direction in Title I of NEPA, including

in particular on procedural issues that CEQ and individual acting agencies had previously addressed in their own regulations. With the passage of the FRA and CEQ's rescission of its NEPA regulations, it is necessary that USPS conform its procedures to the statute as amended.

Finally, the Supreme Court issued its decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, 145 S. Ct. 1497 (2025), in which it described the “transform[ation]” of NEPA from its roots as “a modest procedural requirement,” into a significant “substantive roadblock” that “paralyze[s]” “agency decisionmaking.” *Id.* at 1507, 1513 (quotations omitted). The Supreme Court explained that part of that problem had been caused by decisions of lower courts, which it rejected, issuing a “course correction” mandating that courts give “substantial deference” to reasonable agency conclusions underlying that agency's NEPA process. *Id.* at 1513–14. The Court also acknowledged, and through its course correction sought to address, the effect judicial “micromanage[ment]” has had on “litigation-averse agencies” which have been “tak[ing] ever more time and . . . prepar[ing] ever longer EISs [environmental impact statements] for future projects.” *Id.* at 1513. USPS, thus, is issuing this interim final rule to streamline its NEPA process in accordance with the Supreme Court's decision and changes to the underlying statute. This revision has thus been called for, authorized, and directed by all three branches of government at the highest possible levels.

USPS's procedures for implementing NEPA, 42 U.S.C. 4321 *et seq.*, as amended, are contained in 39 CFR part 775. USPS is issuing this interim final rule to revise 39 CFR part 775 so that it includes only administrative and routine actions excepted from NEPA review in appendix A, its categorical exclusions in appendix B, related requirements, and a provision for emergency circumstances. Other than these few provisions, USPS's procedures will be contained in the United States Postal Service NEPA Standard Operating Procedures, a copy of which is reprinted below for explanatory purposes only (and will not be codified in the CFR). The procedures are intended to be non-binding guidance.

The Supreme Court could not have been clearer in *Seven County* that NEPA is a procedural statute. *See Seven County*, 145 S. Ct. 1507 (“NEPA is a purely procedural statute.”); *see id.* at 1510 (“NEPA is purely procedural. . . . NEPA does not mandate particular

results, but simply prescribes the necessary process for an agency's environmental review of a project”); (internal quotation omitted); *id.* at 1511 (“NEPA is a purely procedural statute”); *id.* at 1513 (NEPA is properly understood as “a modest procedural requirement”); *id.* at 1514 (“NEPA's status as a purely procedural statute”); *see also id.* at 1507 (“Simply stated, NEPA is a procedural cross-check, not a substantive roadblock.”). USPS's decision to place NEPA implementing procedures in a guidance document is consistent with NEPA, the Supreme Court's opinion, and with the approach that several Federal agencies have used for decades.

A. National Environmental Policy Act

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

NEPA, as amended, furthers this national policy by requiring Federal agencies to prepare an environmental impact statement (EIS)—“in essence, a report”—for proposed “major Federal actions significantly affecting the quality of the human environment.” 42 U.S.C. 4332(2)(C); *Seven County*, 145 S. Ct. 1507. This statement must address: (1) the reasonably foreseeable environmental effects of the proposed agency action; (2) any reasonably foreseeable adverse environmental effects that cannot be avoided should the proposal be implemented; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented. 42 U.S.C. 4332(2)(C).

NEPA does not mandate particular results or substantive outcomes. *Seven County*, 145 S. Ct. at 1510–1512. Rather, NEPA requires Federal agencies to consider the environmental effects of

proposed actions as timely and unified Federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, and directing agencies to develop part of agencies' decision-making processes. NEPA provides requirements to facilitate procedures for project sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. 42 U.S.C. 4336a. NEPA also sets forth the circumstances under which agencies may rely on programmatic environmental documents, 42 U.S.C. 4336b, and adopt and use another agency's categorical exclusions. 42 U.S.C. 4336c.

NEPA identifies three levels of review—categorical exclusion, environmental assessment, and environmental impact statement. 42 U.S.C. 4336a. A categorical exclusion is “a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment within the meaning of [NEPA] section 102(2)(C).” 42 U.S.C. 4336e(1). An environmental assessment is a “concise” document “set[ting] forth the basis of [an] agency’s finding of no significant impact or determination that an environmental impact statement is necessary,” prepared in connection with a proposed agency action that does not have a significant impact or the significance of whose impact is unknown. 42 U.S.C. 4336(b)(2). An environmental impact statement is a document analyzing a proposed agency action with significant impact, governed by the provisions of 42 U.S.C. 4332(2)(C), 4336(b)(1).

B. CEQ NEPA Regulations

On January 20, 2025, President Trump issued E.O. 14154, *Unleashing American Energy*. 90 FR 8353 (Jan. 29, 2025) (“E.O. 14154”). The E.O. revoked E.O. 11991, *Relating to protection and enhancement of environmental quality* (42 FR 26967 (May 25, 1977)), which had directed CEQ to issue regulations implementing NEPA and required Federal agencies to comply with those regulations. E.O. 14154 at sec. 5. E.O. 14154 also directed CEQ to provide guidance on implementing NEPA and propose rescinding CEQ’s NEPA regulations within 30 days of the order. *Id.* at sec 5(a). CEQ issued an interim final rule rescinding its NEPA implementing regulations on February 25, 2025, effective April 11, 2025. 90 FR 10610 (Feb. 25, 2025). CEQ adopted the interim final rule as final on January 8, 2026. 91 FR 618 (Jan 8, 2026). Following

CEQ’s provision of initial guidance, E.O. 14154 directs the Chairman of CEQ to convene a working group to coordinate the revision of agency-level NEPA implementing regulations for consistency.

C. USPS NEPA Implementing Procedures and Regulations

In 1979, USPS established 39 CFR part 775 through a rulemaking that finalized USPS’ NEPA implementing regulations “in voluntary compliance with [CEQ’s] regulations for implementing the procedural provisions of [NEPA]” (44 FR 63524). USPS’ existing NEPA regulations in 39 CFR part 775 implemented and adopted the now-rescinded CEQ NEPA regulations. Part 775 was promulgated to “implement the [NEPA] regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).” 39 CFR 775.1. A stated policy of USPS’ regulations is to interpret and administer applicable policies, regulations, and public laws of the United States in accordance with CEQ’s NEPA regulations. 39 CFR 775.2(a). The definitions in CEQ’s NEPA regulations are incorporated into USPS’ regulations. 39 CFR 775.4. Finally, USPS’ NEPA regulations commit USPS to prepare an environmental impact statement when necessary under the factors in CEQ’s NEPA regulations. 39 CFR 775.5(a).

USPS has revised its NEPA regulations several times, including the following revisions:

- 1982 for modification to local notice requirements to align with CEQ regulations (47 FR 19992);
- 1983 for modifications due to changes in the intergovernmental review process (48 FR 29370);
- 1985 for revisions to environmental assessment process and a correction (50 FR 32411 and 50 FR 33036);
- 1990 for revisions to categorical exclusions, environmental evaluation process, and environmental impact statement requirements (55 FR 10452);
- 1998 to modify procedures and categorical exclusions based upon experience and new policies and infrastructure implemented since the restructuring of the USPS in 1992 (63 FR 45719);
- 2000 for revisions to environmental evaluation process (65 FR 41042); and
- 2014 to amend a categorical exclusion through an interim final rule with request for comments to make the exclusion more consistent with the intended scope of covered activities and with categorical exclusions used by other Federal entities for property disposals (79 FR 2102 and 79 FR 33095).

USPS has decided that the rescission of CEQ’s NEPA regulations and the recent legislative and judicial developments requires revision of 39 CFR part 775. Moreover, USPS has decided that the flexibility to respond to new developments in this fast-evolving area of law, afforded by using non-codified procedures, outweighs the utility of maintaining its full NEPA procedures as regulations going forward. USPS has decided to retain certain NEPA procedures in regulation pertaining to the purpose of the procedures (Section 775.1), defined terms to ensure clarity (Section 775.2), incorporation of the procedures into USPS planning (Section 775.3), identification and use of Categorical Exclusions (Section 775.4), and procedures to address emergencies (Section 775.5). The remainder of USPS’ NEPA procedures are set forth in USPS’s NEPA standard operating procedures to ensure flexibility. While codified procedures as regulations can provide visibility to the public, USPS will ensure such visibility simply by posting these procedures online. By contrast, not maintaining the majority of its procedures as regulations will enable it to rapidly update these procedures in response to future court decisions (such as *Seven County*) or legislation (such as the FRA and OBBBA).

USPS’s new NEPA implementing procedures are a more faithful implementation of the statute as amended in 2023 and 2025 than its old procedures. They implement major 2023 amendments, such as deadlines and page limits for environmental assessments and environmental impact statements, as directed at NEPA Section 107(g), and provide that USPS will complete preparation of these documents within the maximum length and on the timeline that Congress intends. They incorporate Congress’s definition of “major Federal action” and the exclusions thereto, as codified at NEPA Section 111(10). They incorporate Congress’s mandated procedure for determining the appropriate level of review under NEPA, as codified in NEPA Section 106. In addition, they incorporate Congress’s revision to the requirements for what an agency must address in its environmental impact statements, as codified at NEPA Section 102(2)(C), and Congress’s requirement that public notice and solicitation of comment be provided when issuing a notice of intent to prepare an environmental impact statement, as directed at NEPA Section 107(c). All of these are crucial features of Congress’s policy design and its purpose in the

amendments that NEPA review be more efficient and certain.

USPS's new NEPA implementing procedures also reflect the Supreme Court's recent and unequivocal statement that NEPA is a purely procedural statute. USPS is conscious of the Supreme Court's admonition that NEPA review has grown out of all proportion to its origins as a "modest procedural requirement," creating, "under the guise of just a little more process," "[d]elay upon delay, so much so that the process seems to 'borde[r] on the Kafkaesque.'" *Seven County*, 145 S. Ct. at 1513–14 (internal quotation omitted). These procedures, therefore, attempt to align NEPA with its congressionally mandated dimensions, reflecting the guidance given also by the President and the Supreme Court, and making review under it faster, more flexible, and more efficient.

In reaching this decision, USPS acknowledges that third parties may claim to have reliance interests in USPS' existing NEPA procedures. But as the Supreme Court explained, NEPA "is a purely procedural statute" that "imposes no substantive environmental obligations or restrictions." *Seven County*, 145 S. Ct. at 1507. To the extent any asserted reliance interests are grounded in substantive environmental concerns, such interests are entitled to "no . . . weight." *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1914 (2020).

Because reliance interests are inherently backward-looking, it is unclear how any party could assert reliance interests in *prospective* procedures. To the extent such interests exist, the USPS holds that they are "outweigh[ed]" by "other interests and policy concerns." *Id.* Namely, the complex web of regulations that preexisted the 2023 and 2025 amendments to NEPA and these new procedures repeatedly "led to more agency analysis of separate projects, more consideration of attenuated effects, more exploration of alternatives to proposed agency action, more speculation and consultation and estimation and litigation," which in turn has meant that "[f]ewer projects make it to the finish line," or even "to the starting line." *Seven County*, 145 S. Ct. at 1513–14. This has increased the cost of projects dramatically, resulting in systemic harms to America's infrastructure and economy. *Id.* Correspondingly, the wholesale revision and simplification of this regime, effectuated by the revision of USPS' NEPA procedures and relocation of them to the United States Postal Service NEPA Standard Operating Procedures,

is necessary to ensure efficient and predictable reviews and will significantly assist USPS' policy to provide prompt, reliable, and efficient services to patrons in all areas and to render postal services to all communities. 39 U.S.C. 101(a). This set of policy considerations drastically outweighs any claimed reliance interests in the preexisting procedures.

USPS has revised its NEPA implementing procedures to conform to the statutory amendments and to address the pathologies of the NEPA process and NEPA litigation identified by the Supreme Court.

Where USPS has retained an aspect of its preexisting NEPA implementing procedures, in guidance or regulation, it is because that aspect is compatible with these guiding principles; where USPS has revised or removed an aspect, it is because that aspect is not compatible.

D. Changes Made in This Interim Final Rule

In 39 CFR part 775, USPS is revising section 775.1, Purpose, to remove the reference to the CEQ NEPA implementing regulations.

USPS is removing sections 775.2 and 775.3 and renumbering the Definitions from section 775.4 to be section 775.2 and removing definitions that are no longer relevant to this Part. Section 775.2 now incorporates the defined terms in NEPA § 111, 42 U.S.C. 4336e, and defines additional terms used in the revised regulations. USPS is adding a new section 775.3, NEPA and Postal Service Planning, to provide clarity on the applicability of NEPA to USPS actions.

USPS is removing section 775.5 and renumbering the Categorical Exclusions from section 775.6 to be section 775.4. USPS is revising the language in this section to provide clarity on the application of the categorical exclusions. USPS is removing administrative and routine actions that were included in the categorical exclusions. These types of actions can now be classified as actions where NEPA does not apply because they do not fall within the definition of "major Federal action" in Section 110(10) of NEPA, 42 U.S.C. 4336e(10). These actions have been retained as appendix A for ease of reference and to avoid confusion. USPS is also modifying several existing categorical exclusions based upon its experience with the exclusions since they were established, the amendments to NEPA, and the Supreme Court's recent decision in *Seven County*. USPS is adding two new categorical exclusions relating to its

general actions for the procurement and/or fuel conversion of fuel efficient and reduced emission vehicles and for processing network actions necessary to improve performance and achieve operational efficiencies that do not significantly adversely impact traffic safety, congestion or air quality.

USPS is removing all other sections in part 775 and is adding a new section for emergency responses numbered as section 775.5, Emergencies.

1. Purpose

The revised section 775.1 removes reference to CEQ's rescinded NEPA-implementing regulations. The purpose of part 775 is to establish certain procedures that the Postal Service will use to comply with the NEPA statute.

2. Definitions

The revised section 775.2 incorporates the definitions in 42 U.S.C. 4336e and sets forth the definitions of additional terms used in part 775.

3. NEPA and Postal Service Planning

The revised section 775.3 clarifies when NEPA applies to a proposed USPS action consistent with the NEPA statute, as amended. Section 775.3 references a non-exhaustive list of administrative and routine actions that are not within the scope of NEPA. The list of exempt administrative and routine actions is contained in Appendix A to part 775.

4. Administrative and Routine Actions Excepted From NEPA Review

39 CFR part 775, Appendix A, identifies actions that are solely administrative and routine. NEPA does not apply to such actions that are undertaken to support the normal conduct of USPS business. While such activities are Federal actions, they are not "major" and therefore not subject to NEPA. These actions are now classified as actions where NEPA does not apply because they do not fall within the definition of "major Federal action" in Section 110(10) of NEPA, 42 U.S.C. 4336e(10). Most of the actions identified in Appendix A were previously subject to categorical exclusions, which USPS has now determined are not major Federal actions. This includes all the actions in Appendix A except A5, A8, A14, A17, and A18.

5. Categorical Exclusions

In Section 775.4, USPS is revising its procedures for establishing, revising, adopting, removing, and applying categorical exclusions to a proposed action to provide clarity to USPS and to align with the NEPA statute, as amended. Section 775.4(f) also sets forth

procedures for USPS to rely on categorical exclusion determinations of other agencies. Categorical exclusions represent those categories of actions that USPS has determined normally do not significantly affect the environment. Categorical exclusions provide important efficiency by ensuring that many agency actions are not subjected to additional NEPA review and can proceed using the significantly truncated process identified in the USPS NEPA regulations for determining that a categorical exclusion applies and ensuring that no “extraordinary circumstances” are present that may affect the significance of environmental effects of the proposal and thus, would preclude reliance on the categorical exclusion.

The list of categorical exclusions has been removed from the body of USPS’ NEPA-implementing regulations and is now contained in Appendix B to part 775. Although USPS is retaining many of the categorical exclusions from the rescinded regulations, the rule revises the list to move certain categorical exclusions that addressed administrative and routine actions excepted from NEPA review to Appendix A to part 775, which, as noted in the previous section, identifies actions that are not “major Federal actions” within the definition under NEPA and thus are not subject to NEPA.

Also, certain categorical exclusions are modified based on USPS’ experiences in applying the categorical exclusions since they were established. Specifically, categorical exclusion B1.b is revised to use current terminology for the procurement of systems, computers, and equipment, as well as to include the procurement, installation, operation, removal of electrical equipment.

Categorical exclusion B1.c. is revised to provide clarity. The original language in the categorical exclusion limited its applicability to facility functions not requiring construction in general, when USPS’ procedures required EAs only for certain construction activities. Moreover, the original language only recognized a vague “substantial relocation of employees” or “no substantial increase in the number of motor vehicles at a facility” without any clarity regarding what is “substantial” or recognizing that employee relocations and vehicle reassignments are often routine actions that do not fall under NEPA. The revised language clarifies that facility functions are categorically excluded unless USPS has determined the action possesses the potential for significant impacts to the human environment and identifies the need for an environmental assessment. The

categorical exclusion is also modified to reflect that the list of actions requiring environmental assessments has been moved to the procedures in United States Postal Service NEPA Standard Operating Procedures.

Categorical exclusion B1.f. is added to facilitate and encourage environmental review of its routine vehicle procurements. To fall within the scope of this exclusion, the new vehicles must have comparable or improved relative fuel efficiency and comparable or improved relative air emissions, as compared with the vehicles being replaced in use or service. This proposed categorical exclusion has been drafted narrowly to apply only where the vehicles being procured or converted are environmentally superior in terms of both relative air emissions and fuel efficiency than the vehicles being replaced. Where either of the air emission or fuel efficiency factors is not satisfied, the Postal Service would conduct either an environmental assessment or environmental impact statement, as appropriate.

Categorical exclusion B1.g. is added to facilitate and encourage environmental review of its processing network optimizations. Such network actions are designed to reduce costs that bear a direct relationship with environmental impacts. For example, lengthening a service standard or routing transportation through certain hubs allow for the trucks to be more optimally filled, reducing the total number of trips and/or miles driven required to deliver the same quantity of mail and packages. The reduced miles traveled resulting from network rationalization (including facility consolidations, workforce reduction and service standard changes) significantly reduced air emissions and other environmental impacts, such as noise, waste generation and energy conservation. In the event that a network change would not have neutral or beneficial impacts, and therefore a potential for significant environmental impacts, the new categorical exclusion clarifies that such processing network actions are not eligible for the exclusion. This categorical exclusion would not apply to actions relating to real property as such actions are covered under other existing USPS NEPA procedures or categorical exclusions.

Categorical exclusion B4.g. is revised to treat property disposals and acquisitions consistently. USPS has already determined that disposals of property where the planned or reasonably anticipated uses are similar to existing or surrounding properties are not actions that, individually or

cumulatively, have significant impacts on the environment (see 79 FR 33095, June 10, 2014). It also now determines that the same logic applies to situations where USPS acquires a property when its planned or reasonably anticipated use for the property is similar to current surrounding uses. USPS also finds that, as revised, categorical exclusion B4.g. will better comport with existing categorical exclusion B4.d., which covers the acquisition or disposal of existing facilities and real property where the planned uses do not differ significantly from past uses of the site.

Categorical exclusions B4.j., B4.k., and B4.m. are modified to reflect that the list of actions requiring environmental assessments has been moved to the procedures in United States Postal Service National Environmental Policy Act (NEPA) Standard Operating Procedures.

6. Emergency Responses

Finally, USPS is replacing section 775.5 to identify NEPA procedures for emergencies. The existing procedures did not account for emergency situations that require alternative arrangements. Now, USPS can take necessary action with reasonably foreseeable significant environmental effects without observing its NEPA procedures, so long as USPS consults with CEQ about alternative arrangements for compliance with NEPA.

II. USPS Solicits Comments

The Administrative Procedure Act does not apply to this action (5 U.S.C. 553(a)(2); 39 U.S.C. 410(a)), which is being taken pursuant to the Postal Service’s general rulemaking authority under 39 U.S.C. 401(2). Nevertheless, the Postal Service has elected voluntarily to solicit comments on the revision of 39 CFR part 775.

Note that this interim final rule is effective upon its date of publication in the **Federal Register**. The Postal Service will review any comments received during the 30-day comment period. Following the expiration of the comment period, the Postal Service may make further revisions to this action if the Postal Service’s review of any comments submitted suggests that further revisions are warranted.

List of Subjects in 39 CFR Part 775

Environmental impact statements.

For the reasons stated in the preamble, 39 CFR part 775 is revised to read as follows:

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

Sec.

775.1 Purpose.

775.3 NEPA and Postal Service planning.

775.4 Categorical exclusions.

775.5 Emergencies.

775.6 through 775.14 [Reserved]

Appendix A to Part 775—Administrative and Routine Actions Excepted from NEPA Review

Appendix B to Part 775—Categorical Exclusions

Authority: 39 U.S.C. 401; 42 U.S.C. 4321 *et seq.*

§ 775.1 Purpose.

The purpose of this part is to establish certain procedures that the United States Postal Service (Postal Service) shall use to comply with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), as amended.

§ 775.2 Definitions.

As used in this part, terms have the meanings provided in NEPA section 111, 42 U.S.C. 4336e. In addition:

(a) *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*).

(b) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action.

(c) *Connected action* means a separate Federal action within the authority of the Postal Service that is closely related to the proposed action and should be addressed in a single NEPA document because the proposed action:

(1) Automatically triggers the separate Federal action, which independently would require the preparation of additional NEPA documents;

(2) Cannot proceed unless the separate Federal action is taken previously or simultaneously; or

(3) Is an interdependent part of a larger Federal action that includes a separate Federal action, which mutually depend on the larger Federal action for their justification.

(d) *Effects* or impacts means changes to the human environment from the proposed action or alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(1) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic

(such as the effects on employment), social, or health effects. Effects appropriate for analysis under NEPA may be either beneficial or adverse, or both, with respect to these values.

(2) A “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the agency has no ability to prevent due to the limits of its regulatory authority or that would occur regardless of the proposed action.

(e) *Human environment* means comprehensively the natural and physical environment and the relationship of Americans with that environment. (See also the definition of “effects” in paragraph (c) of this section.)

(f) *Jurisdiction by law* means agency authority to approve, veto, or finance all or part of the proposal.

(g) *Record of Environmental Consideration (REC)* means the Postal Service form that identifies the Postal Service’s review of proposed activities under NEPA.

(h) *Related action* means an action undertaken by an agency, *e.g.*, a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, *e.g.*, that is an independent part of a larger action and depends on the larger action for its justification.

(i) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

§ 775.3 NEPA and Postal Service planning.

The Postal Service will determine that NEPA does not apply to a proposed action when:

(a) The activity or decision does not result in final action;

(b) The proposed activity or decision is exempted from NEPA by law;

(c) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law;

(d) In circumstances where Congress by statute has prescribed decisional criteria with sufficient completeness and precision such that the Postal Service retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of the Postal Service is nondiscretionary within the meaning of NEPA sec. 106(a)(4) and/or sec. 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and

4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(e) The proposed action is an action for which another statute’s requirements serve the function of agency compliance with NEPA; or

(f) The proposed action is not a “major Federal action.” In addition to the illustrative general categories set forth in NEPA sec. 111(10), 42 U.S.C. 4336e(10), the Postal Service has determined that the non-exhaustive list of the Postal Service’s activities identified in appendix A to this part are not subject to NEPA because they presumptively do not meet the definition of a “major Federal action.”

§ 775.4 Categorical exclusions.

(a) *Generally*. This section describes the process the Postal Service uses for establishing and revising categorical exclusions, for adopting other agencies’ categorical exclusions, for removing categorical exclusions, and for applying categorical exclusions to a proposed action. The Postal Service’s categorical exclusions, including categorical exclusions the Postal Service established and substantiated consistent with its NEPA procedures, legislative categorical exclusions, and categorical exclusions adopted from other agencies, are listed in appendix B to this part.

(b) *Establishing and revising categorical exclusions*. To establish or revise a categorical exclusion, the Postal Service will determine that the category of actions normally does not significantly affect the quality of the human environment. In making this determination, the Postal Service will:

(1) Develop a written record containing information to substantiate its determination;

(2) Consult with CEQ on its proposed categorical exclusion, including the written record, prior to providing public notice as described in paragraph (b)(3) of this section; and

(3) Provide public notice in the **Federal Register** of the Postal Service’s establishment or revisions of the categorical exclusion and the location (*e.g.*, website) of availability of the written record.

(c) *Adopting categorical exclusions from other Federal agencies*. Consistent with NEPA sec. 109, 42 U.S.C. 4336c, the Postal Service may adopt a categorical exclusion listed in another agency’s NEPA procedures. When adopting a categorical exclusion, the Postal Service will:

(1) Identify the categorical exclusion listed in the agency’s NEPA procedures that covers its category of proposed or related actions;

(2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate;

(3) Provide public notification in the **Federal Register** of the categorical exclusion that the Postal Service is adopting, including a brief description of the proposed action or category of proposed actions to which the Postal Service intends to apply the adopted categorical exclusion, a brief summary of the consultation with the originating agency, and the list of extraordinary circumstances that will apply; and

(4) Document the adoption of the categorical exclusion in appendix B to this part.

(d) *Removal of categorical exclusions.* To remove a categorical exclusion from appendix B to this part, the Postal Service will:

(1) Develop a written justification for the removal;

(2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification, prior to providing public notice as described in paragraph (d)(3) of this section; and

(3) Provide public notice of the Postal Service's removal of the categorical exclusion and the written justification in the **Federal Register**.

(e) *Applying categorical exclusions.* If the Postal Service determines that one or more categorical exclusions cover a proposed action, the Postal Service will evaluate the action for extraordinary circumstances that indicate a normally excluded action is likely to have a reasonably foreseeable significant adverse effect.

(1) If an extraordinary circumstance is not present, the Postal Service will determine that the categorical exclusion applies to the proposed action and conclude review.

(2) The Postal Service will determine that the categorical exclusion applies to the proposed action and conclude review if the Postal Service either:

(i) Determines that, notwithstanding the extraordinary circumstance, the proposed action is not likely to result in reasonably foreseeable adverse significant effects; or

(ii) Modifies the proposed action to avoid those effects.

(3) The Postal Service will document in a Record of Environmental Consideration (REC) its evaluation of the applicability of one or more categorical exclusions listed in appendix B to this part for actions that may have extraordinary circumstances. Some of the categorical exclusions listed in appendix B cover actions for which there are no reasonable expectations of any changes in use or other changes that

could cause an environmental impact and/or have little or no potential for extraordinary circumstances. These are designated with an asterisk (*) in appendix B. When using a categorical exclusion for these actions, the Postal Service may prepare a simple written record (which may already be included in documentation prepared during the course of normal project development) that a specific categorical exclusion was determined to apply to a proposed action. Proprietary or confidential financial or trade information will be redacted and/or removed from any documentation of a categorical exclusion determination under this section.

(4) If the Postal Service determines that it cannot apply the categorical exclusion to the proposed action, the Postal Service will prepare an environmental assessment or environmental impact statement, as appropriate.

(f) *Reliance on categorical exclusion determinations of other agencies.* The Postal Service may also rely on another agency's determination that a categorical exclusion applies to a particular proposed action if the agency action covered by that determination and the Postal Service's proposed action are substantially the same, or if the Postal Service's proposed action is a subset of the agency action covered by that determination. The Postal Service will document its reliance on an agency's categorical exclusion determination in a REC.

(g) *List of categorical exclusions.* The Postal Service has established the categorical exclusions in appendix B to this part.

§ 775.5 Emergencies.

Where emergency circumstances make it necessary to take an action with reasonably foreseeable significant environmental effects without observing the provisions of these procedures, the Postal Service will consult with the CEQ about alternative arrangements for compliance with NEPA sec. 102(2)(C), 42 U.S.C. 4332(2)(C).

§§ 775.6 through 775.14 [Reserved]

Appendix A to Part 775— Administrative and Routine Actions Excepted From NEPA Review

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A1 Routine Postal Service Policy Development

Policy development, planning and implementation that relate to routine activities such as personnel, organizational changes or similar administrative functions.

A2 Routine Postal Service Actions

Routine actions, including the management of programs or activities necessary to support the normal conduct of agency business, such as administrative, financial, operational and personnel action that involve no commitment of resources other than manpower and funding allocations.

A3 Personnel Actions

Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes that do not affect more than 1,000 positions.

A4 Awards of Certain Contracts

Award of contracts for technical support services, management and operation of a government owned facility, and personal services.

A5 Clarifying or Administrative Contract Actions

Contract interpretations, amendments, and modifications that are clarifying or administrative in nature.

A6 Research, Studies, and Data Collection

Research activities and studies and routine data collection when such actions are clearly limited in context and intensity.

A7 Education and Training

Educational and informational programs and activities.

A8 Procedural Documents

Administrative, organizational, or procedural Policies, Orders, Notices, Manuals, and Guides.

A9 Postal and Mail Actions

Postal rate or mail classification actions, address information system changes, post office name and zip code changes.

A10 Legal Activities

Property protection, law enforcement and other legal activities undertaken by the Postal Inspection Service, the Law Department, the Judicial Officer, and the Inspector General.

A11 Trade Representation and Market Development

Activities related to trade representation and market development activities.

A12 Emergency Preparedness

Emergency preparedness planning activities, including designation of on-site evacuation routes.

A13 Equipment Procurement or Disposal

Procurement or disposal of mail handling or transport equipment.

A14 Disposal of Routinely Generated Wastes

Disposal of routinely generated wastes, including equipment, in compliance with Federal, State, and local laws.

A15 Waste Minimization Operations

Operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include but are not limited to, adding filtration and recycling systems to allow reuse of vehicle or machine oil, setting up sorting areas to improve process efficiency, and segregating waste streams previously mingled and assigning new identification codes to the two resulting streams.

A16 Procedural Rulemakings and Interpretations and Rulings With Existing Regulations

Rulemakings that are strictly procedural, and interpretations and rulings with existing regulations, or modifications or rescissions of such interpretations and rulings.

A17 International Postal Agreements

Approval of Postal Service participation in international postal agreements that would not commit the Postal Service to any specific projects or activities.

A18 Approval of Technical Exchange Arrangements

Approval of technical exchange arrangements for information, data, or personnel with other countries or international organizations.

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- B1 Categorical Exclusions Relating to General Postal Service Actions
- B2 Categorical Exclusions Relating to Emergency or Restoration Actions
- B3 Categorical Exclusions Relating to Maintenance or Repair Actions at Existing Facilities
- B4 Categorical Exclusions Relating to Real Estate Actions

See § 775.4(e)(3) for categorical exclusions with an asterisk (*)

B1 Categorical Exclusions Relating to General Postal Service Actions

(a) Minor reassignment of motor vehicles and purchase or deployment of motor vehicles to new locations that do not have significant adverse impacts to traffic safety, congestion or air quality.

(b) Procurement, installation, operation, removal or disposal of communication

systems, computers, data processing equipment, and electrical equipment.*

(c) Postal facility function changes, unless the proposed action is listed as requiring an environmental assessment (EA) in the Postal Service's procedures implementing the National Environmental Policy Act (NEPA).

(d) Closure or consolidation of post offices under 39 U.S.C. 404(d).

(e) Actions which have an insignificant effect upon the environment as established in a previously written EA and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS). Such repetitive actions shall be considered "reference actions" and a record of all decisions concerning these "reference actions" shall be maintained by the Chief Environmental Officer or designee. The proposed action must be essentially the same in context and the same or less in intensity or create fewer impacts than the "reference action" previously studied under an EA or EIS in order to qualify for this exclusion.

(f) Procurement and/or fuel conversion of vehicles, whether owned or leased, where the vehicles being procured or converted have both: (i) comparable or improved relative fuel efficiency and (ii) comparable or lower relative air emissions, as compared with the vehicles they are replacing in use or service, whether due to vehicle replacement, route growth or change in business needs.

(g) Processing network actions necessary to improve performance and achieve operational efficiencies, including service standard changes and route optimization, that do not significantly adversely impact traffic safety, congestion or air quality.

B2 Categorical Exclusions Relating to Emergency or Restoration Actions

(a) Any cleanup, remediation or removal action conducted under the provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA), any asbestos abatement actions regulated under the provisions of the Occupational Safety and Health Act (OSHA), or the Clean Air Act or any PCB transformer replacement or any lead based paint abatement actions regulated under the provisions of the Toxic Substances Control Act (TSCA), OSHA or RCRA.*

(b) Testing associated with environmental cleanups or site investigations.*

B3 Categorical Exclusions Relating to Maintenance or Repair Actions at Existing Facilities

(a) Siting, construction or operation of temporary support buildings or support structures.

(b) Routine maintenance and minor activities, such as fencing, that occur in floodplains or state and local wetlands or pursuant to the nationwide, regional or general permitting process of the US Army Corps of Engineers.*

(c) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.*

(d) Changes in configuration of buildings required to promote handicapped

accessibility pursuant to the Architectural Barriers Act.*

(e) Repair to, or replacement in kind or equivalent of building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).*

(f) Internal modifications or improvements to structure, or buildings to accommodate mail processing, computer, communication or other similar types of equipment or other actions which do not involve modification to the external walls of the facility.*

(g) Joint development and/or joint use projects that only involve internal modifications to an existing facility.

(h) Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

(i) Actions which require concurrence or approval of another Federal agency where the action is a categorical exclusion under the NEPA regulations of that Federal agency.

B4 Categorical Exclusions Relating to Real Estate Actions

(a) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(b) Extension, renewal, renegotiation, or termination of existing lease agreements.*

(c) Purchase of Postal Service occupied leased property where the planned postal uses do not differ significantly from the past uses of the site.

(d) Acquisition or disposal of existing facilities and real property where the planned uses do not differ significantly from past uses of the site.

(e) Disposal through sale or outlease of unimproved real property.

(f) Disposal through sale, outlease, transfer or exchange of real property to other Federal or State agencies.

(g) Disposal or acquisition, whether through sale, lease, outlease, transfer or exchange, of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current, planned or reasonably anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, or parking lot in an urban area).

(h) Acquisition of real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion only applies to the acquisition. Any subsequent use of the site for a facility project must be considered under this part.

(i) Acquisition and disposal through sale, lease, transfer, reservation or exchange of real property for nature and habitat preservation, conservation, a park or wildlife management.

(j) New construction of Postal Service owned or leased, or joint development and joint use projects, of any facility unless the proposed action is listed as requiring an EA in the Postal Service's NEPA procedures.

(k) Expansion or improvement of an existing facility where the expansion is within the boundaries of the site or occurs in a previously developed area unless the proposed action is listed as requiring an EA in the Postal Service's NEPA procedures.

(l) Construction and disturbance pursuant to a nationwide, regional or general permit issued by the US Army Corps of Engineers.

(m) Any activity in floodplains being regulated pursuant to part 776 of this chapter and is not listed as requiring an EA in the Postal Service's NEPA procedures.

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Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—National Environmental Policy Act (NEPA) Standard Operating Procedures

United States Postal Service

National Environmental Policy Act (NEPA) Standard Operating Procedures

September 2026

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1.0 Standard Operating Procedures

1.1 Purpose

The purpose of these procedures is to integrate the National Environmental Policy Act (NEPA) into the Postal Service's decision-making processes. Specifically, the procedures: describe the process by which the Postal Service determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensure that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enable the Postal Service to conduct coordinated, consistent, predictable and timely environmental reviews; reduce unnecessary burdens and delays; and implement NEPA's mandates regarding lead and cooperating agency roles and page and time limits.

1.2 Procedural and Interpretive Rule

This document sets forth the Postal Service's procedures and practices for implementing NEPA. It further explains the Postal Service's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which the Postal Service will typically fulfill its requirements under NEPA.

1.3 Consultation With the Council on Environmental Quality ("CEQ")

In addition to the process for establishing or revising categorical exclusions set forth in

§ 775.4, the Postal Service will consult with CEQ while developing or revising their proposed NEPA implementing procedures, in accord with NEPA § 102(2)(B), 42 U.S.C. 4332(B).

2.0 Responsibilities and Authority

2.1 Responsibilities

The Postal Service's Chief Environmental Officer is responsible for the overall development of policy regarding NEPA and other environmental policies.

2.2 Authority

NEPA imposes certain procedural requirements on the exercise of the Postal Service's existing legal authority in relevant circumstances. Nothing contained in these procedures is intended or should be construed to limit the Postal Service's other authorities or legal responsibilities.

3.0 NEPA and Postal Service Planning

3.1 Determining When NEPA Applies

The Postal Service's regulations for determining when NEPA applies to action are set forth in 39 CFR 775.3. To determine whether an action is a "major Federal action" under NEPA (42 U.S.C. 4336e(10)), the terms "major" and "federal action," each have independent force. NEPA applies only when both of these two criteria are met. While such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of the Postal Service in each instance, the Postal Service provides its officers and the public at large with the following interpretive guidance:

The Postal Service will presume, on the basis of its experience, that the types of action listed in Appendix B to 39 CFR part 775 and in Section 6.3 of these procedures are generally "major."

NEPA does not apply to "non-Federal actions." Therefore, under the terms of the statute, NEPA does not apply to actions with no or minimal Federal funding, or with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project. NEPA § 111(10)(B)(i), 42 U.S.C. 4336e(10)(B)(i). A but-for causal relationship is insufficient to make an agency responsible for a particular action under NEPA. Minimal Federal funding or involvement, which may in a causal sense be a but-for cause of an action, does not by itself convert that action into a Federal action within the meaning of the language of the statute.

3.2 Determining the Appropriate Level of NEPA Review

1. If the Postal Service determines under Section 3.1 and 39 C.F.R. 775.3 that NEPA applies to a proposed activity or decision, the Postal Service will then determine the appropriate level of NEPA review in the following sequence and manner. At all steps in the following process, the Postal Service will consider the proposed action or project at hand and its effects.

a. If the Postal Service has established, or adopted pursuant to NEPA § 109, 42 U.S.C. 4336c, a categorical exclusion that covers the proposed action, the Postal Service will analyze whether to apply the categorical

exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to 39 CFR 775.4.

b. If an agency has already established a categorical exclusion that covers the proposed action, the Postal Service will consider whether to adopt that exclusion pursuant to 39 CFR 775.4(c) so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

c. If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to 39 CFR 775.4(b), the Postal Service will consider whether to so establish or revise, and then apply the categorical exclusion to the proposed action pursuant to 39 CFR 775.4(e).

d. If the Postal Service cannot apply a categorical exclusion to the proposed action consistent with paragraph 1.(a-c), the Postal Service will consider the proposed action's reasonably foreseeable effects consistent with paragraph 2. of this Subsection, and then will:

- if the proposed action is not likely to have reasonably foreseeable significant effects or the significance of the effects is unknown, develop an environmental assessment, as described in Section 6.0 below; or

- if the proposed action is likely to have reasonably foreseeable significant effects, develop an environmental impact statement, as described in Section 10.0 below.

2. When considering whether the reasonably foreseeable effects of the proposed action are significant, the Postal Service will analyze the potentially affected environment and degree of the effects of the action. The Postal Service may use any reliable data source and will not undertake new research unless it is essential to evaluating alternatives and the cost and time of obtaining it are not unreasonable.

a. In considering the potentially affected environment, the Postal Service may consider, as appropriate to the specific action, the affected area (national, regional, or local) and its resources.

b. In considering the degree of the effects, the Postal Service may consider the following, as appropriate to the specific action:

- Both short- and long-term effects.
- Both beneficial and adverse effects.
- Effects on public health and safety.
- Economic effects.
- Effects on the quality of life of the American people.

4.0 NEPA and Postal Service Decisionmaking

4.1 Planning and Early Coordination

Early planning and coordination among postal functional groups is required to properly consider environmental issues that may be attributable to the proposed action. Operational and facility personnel must cooperate in the early concept stages of a program or project. If it is determined that more than one postal functional group will be involved in any action, a lead organization will be selected to complete the NEPA process before any NEPA documents are prepared.

4.2 Limitations on Actions During the NEPA Process

Until the Postal Service issues a record of decision or finding of no significant impact, or makes a categorical exclusion determination, as applicable, the Postal Service will take no action concerning a proposal that would:

1. have an adverse environmental effect; or
2. limit the choice of reasonable alternatives.

5.0 Categorical Exclusions

5.1 General

Categorical exclusions are actions that the Postal Service has determined do not normally have a significant impact on the human environment. To be categorically excluded, it must be determined that a proposed action fits within a class listed and there are no extraordinary circumstances that may affect the significance of environmental effects of the proposal. The action must not be connected to other actions with potentially significant impacts or is not related to other proposed actions with potentially significant impacts. Extraordinary circumstances are those unique situations presented by specific proposals, such as scientific controversy about the environmental impacts of the proposal, uncertain effects or effects involving unique or unknown risks.

5.2 List of Categorical Exclusions

A list of categorical exclusions is contained in Appendix B to 39 CFR part 775.

6.0 Environmental Assessments

6.1 Generally

If an action is subject to NEPA, as determined following these procedures, and unless the Postal Service finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following these procedures, or by another provision of law, the Postal Service will prepare an environmental assessment with respect to a proposed action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown. Environmental assessments are to be concise. NEPA § 106(b)(2); 42 U.S.C. 4336(b)(2).

6.2 Elements

For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, environmental assessments:

1. Briefly discuss the:
 - a. Purpose and need for the proposed action based on the Postal Service's statutory authority;
 - b. Alternatives to the extent required by NEPA § 102(2)(H), 42 U.S.C. 4332(2)(H); and
 - c. The reasonably foreseeable effects of the proposed action and the alternatives considered.

In preparing the environmental assessment, the Postal Service will focus its

analysis on whether the environmental effects of the action or project at hand are significant. Similarly, the Postal Service will document in the environmental assessment where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the action or project at hand that extend outside the geographical territory of the project or might materialize later in time.

6.3 Actions Normally Requiring an Environmental Assessment

The following classes of actions normally require environmental assessments, but likely do not require an environmental impact statement:

1. Proposed actions that do not fall under a categorical exclusion, but with respect to which there is no clear indication that significant effects will result;
2. Proposed actions typically covered by a categorical exclusion but that involve an extraordinary circumstance, where the presence of the extraordinary circumstance prevents the Postal Service from applying the categorical exclusion under 39 CFR 775.4;
3. Any action that would adversely affect a federally listed threatened or endangered species or its habitat;
4. Any action that would directly affect public health;
5. Any action that would require development within park lands, or be located in close proximity to a wild or scenic river or other ecologically critical area;
6. Any action that may have highly uncertain or unknown risks on the human environment;
7. Any action that threatens a violation of applicable federal, state, or local law or requirements imposed for the protection of the environment;
8. New construction of a facility with vehicle bulk fuel dispensing capabilities, whether owned or leased;
9. Acquisition or lease of an existing building involving new uses or a change in use resulting in more severe adverse environmental impacts than the prior use; and
10. Relocation of 300 or more employees from a single facility more than 50 miles.

6.4 Page Limits

The text of an environmental assessment is strictly prohibited from exceeding 75 pages, not including citations or appendices.

1. Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment or environmental impact statement. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.
2. Environmental assessments will be formatted for an 8.5" x 11" page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying

quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5" x 11", each such item will count as one page.

3. Certification Related to Page Limits. The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the Postal Service has considered the factors mandated by NEPA; that the environmental assessment represents the Postal Service's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects the Postal Service's expert judgment; and that any considerations addressed briefly or left unaddressed were, in the Postal Service's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

6.5 Deadlines

The Postal Service will complete the environmental assessment not later than 1 year after either the date on which it determines that NEPA requires the preparation of an environmental assessment with respect to such action or the date on which the Postal Service issues a notice of intent to prepare the environmental assessment for such action, whichever is earliest.

1. The environmental assessment will publish (unless the deadline is extended pursuant to the provision below), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

2. Deadline extensions. If the Postal Service determines it is not able to meet the deadline, it may establish a new deadline for cause. Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which the Postal Service determines it is not able to meet the statutory deadline and that issuance pursuant to paragraph 1. above would, in the Postal Service's view, result in inadequate analysis. Such new deadline must provide only so much additional time as is necessary to complete such environmental assessment. The announcement of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline.

3. Certification Related to Deadline. When the environmental assessment is published, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting environmental assessment represents the Postal Service's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the Postal Service's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Postal Service's judgment,

the analysis contained therein is adequate to inform and reasonably explain the Postal Service's final decision regarding the proposed Federal action.

7.0 Findings of No Significant Impact

7.1 Preparation

The Postal Service will prepare a finding of no significant impact if it determines, based on an environmental assessment, not to prepare an environmental impact statement because the proposed action or project at hand will not have significant effects. The finding of no significant impact will:

1. Reference the environmental assessment. The environmental assessment may be included in the finding if it is short, in which case the discussion in the assessment need not be repeated in the finding;
2. Document the reasons why the Postal Service has determined that the proposed action or project at hand will not have a significant effect on the quality of the human environment;
3. State the authority for any mitigation that the Postal Service has adopted and any applicable monitoring or enforcement provisions. If the Postal Service finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the agency or voluntary mitigation commitments that will be undertaken to avoid significant effects;
4. Identify any other NEPA documents related to the finding of no significant impact; and
5. State that an environmental impact statement will not be prepared for the proposed action or project at hand, concluding the NEPA process for that action.

7.2 Publication of Environmental Assessments and Findings of No Significant Impacts

The Postal Service will make each environmental assessment and finding of no significant impact available to the public by posting on its website. During the process of preparing the environmental assessment, the Postal Service may publish draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA, the Postal Service's regulations in 39 CFR part 775, and this guidance. However, proprietary or confidential financial or trade information will be redacted and/or removed from publicly available environmental assessments or findings of no significant impacts.

8.0 Lead and Cooperating Agencies

8.1 Designation of Cooperating Agency

The Postal Service may, in its discretion, designate any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal to serve as a cooperating agency.

8.2 Designation of Lead Agency

A proposed activity or decision may entail activities or decisions undertaken by other federal agencies. These activities and decisions are "related actions," in that they

are each the responsibility of a particular agency but they are all interdependent parts of a larger action and depend on the larger action for their justification. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA § 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A).

8.3 Postal Service Serving as Lead Agency

When serving as the lead agency, the Postal Service is ultimately responsible for completing the NEPA process; when serving as the lead agency, the Postal Service will also determine and document the scope of the project at hand. When a joint lead relationship is established pursuant to NEPA § 107(a)(1)(B), 42 U.S.C. 4336a(a)(1)(B), the Postal Service and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

8.4 Cooperation With Lead Agency

When another agency is the lead agency, the Postal Service will cooperate in the NEPA process.

9.0 Notices of Intent and Scoping

9.1 Notice of Intent

As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, the Postal Service will publish a notice of intent to prepare an environmental impact statement. If the Postal Service determines that it will prepare an environmental assessment for a proposed action, the Postal Service may publish notice of intent to publish an environmental assessment.

9.2 Request for Public Comment

The notice of intent for an environmental impact statement will include a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposed action. NEPA § 107(c); 42 U.S.C. 4336a(c).

9.3 Contents of Notice of Intent

In addition to a request for comment required for notices of intent for environmental impact statements, notice of intent for any NEPA document may include:

1. The purpose and need for the proposed action;
2. A preliminary description of the proposed action and alternatives the environmental impact statement will consider;
3. A brief summary of expected effects;
4. Anticipated permits and other authorizations (*i.e.*, anticipated related actions);
5. A schedule for the decision-making process;
6. A description of the public scoping process, including any scoping meeting(s);
7. Contact information for a person within the Postal Service who can answer questions about the proposed action and the environmental impact statement; and
8. Identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions), and any

information that such agencies require in the notice to facilitate their decisions or authorizations.

9.4 Scoping

The Postal Service may use an early and open process to determine the scope of issues for analysis in an NEPA document, including identifying substantive issues that meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, and eliminating from further study non-substantive issues. Scoping may begin as soon as practicable after the proposal for action is sufficiently developed for consideration. Scoping may include appropriate pre-application procedures or work conducted prior to publication of the notice of intent.

10.0 Environmental Impact Statements

10.1 Preparation of Environmental Impact Statement

The Postal Service will prepare an environmental impact statement only with respect to proposed actions that otherwise require preparation of an NEPA document and that have a reasonably foreseeable significant effect on the quality of the human environment. Based on the Postal Service's experience, there are no actions that normally require an environmental impact statement. However, the Postal Service will prepare an EIS when necessary for actions that generally "significantly affect [] the quality of the human environment," consistent with section NEPA § 102(2)(C), 42 U.S.C. 4332(2)(C). Whether an impact rises to the level of "significant" is a matter of the Postal Service's expert judgment.

10.2 Comments

During the process of preparing an environmental impact statement, the Postal Service:

1. Will obtain the comments of:
 - a. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or is authorized to develop and enforce environmental standards that govern the action or project at hand; and
 - b. Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.
2. May request the comments of:
 - a. State, Tribal, or local governments that may be affected by the proposed action;
 - b. Any agency that has requested it receive statements on actions of the kind proposed; and
 - c. The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action.
3. This process of obtaining and requesting comments pursuant to this Subsection may be undertaken at any time that is reasonable in the process of preparing the environmental impact statement. The Postal Service will ensure that the process of obtaining and requesting comments, and the Postal Service's analysis of and response to those comments, does not cause the Postal Service to violate the congressionally mandated

deadline for completion of an environmental impact statement.

4. Addressing comments contained in environmental impact statements. The Postal Service will address any substantive comments received consistent with this Subsection in the environmental impact statement.

10.3 Contents of Environmental Impact Statements

1. Purpose and need. The statement will include the purpose and need for the proposed action based on the Postal Service's statutory authority.

2. Analysis within the environmental impact statement. The environmental impact statement will include a detailed statement on:

- a. reasonably foreseeable environmental effects of the proposed action;
- b. any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented;
- c. a reasonable range of alternatives to the proposed action, including an analysis of any adverse environmental impacts of not implementing the proposed action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal;
- d. the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity;
- e. any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action should it be implemented; and
- f. any means identified to mitigate adverse environmental effects of the proposed action. The Postal Service is mindful in this respect that NEPA itself does not require or authorize the Postal Service to impose any mitigation measures.

3. Proportionate Analysis. Environmental impact statements will discuss effects in proportion to their significance. With respect to issues that are not of a significant nature and do not meaningfully inform the consideration of environmental effects and the resulting decision on how to proceed, there will be no more than the briefest possible discussion to explain why those issues are not significant and therefore not worthy of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of the congressionally mandated page limits and deadlines.

10.4 Page Limits

1. Except as provided in paragraph (2), the text of an environmental impact statement will not exceed 150 pages, not including citations or appendices.

2. An environmental impact statement for a proposed action of extraordinary complexity will not exceed 300 pages, not including any citations or appendices. The Postal Service will determine at the earliest possible stage of preparation of an environmental impact statement whether the conditions for exceeding the page limit in paragraph (1) are present.

3. Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment or environmental impact statement. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the congressionally mandated page limits.

4. Environmental impact statements shall be prepared on 8.5" x 11" paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5" x 11", each such item will count as one page.

5. Certification Related to Page Limits. The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental impact statement does not exceed these page limits. In this regard, as part of the finalization of the environmental impact statement, a responsible official will certify that the Postal Service has considered the factors mandated by NEPA; that the environmental impact statement represents the Postal Service's good-faith effort to prioritize documentation of the most important considerations required by the statute within the congressionally mandated page limits; that this prioritization reflects the Postal Service's expert judgment; and that any considerations addressed briefly or left unaddressed were, in the Postal Service's judgment, comparatively not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed.

10.5 Deadlines

The Postal Service will complete the environmental impact statement not later than 2 years after either the date on which it determines that NEPA requires the preparation of an environmental impact statement with respect to such action or the date on which the Postal Service issues a notice of intent to prepare the environmental impact statement for such action, whichever is earliest. The end date for the environmental impact statement will be the date of publication of a notice of availability of the environmental impact statement.

1. The environmental impact statement will publish (unless the deadline is extended pursuant to the provision below), on the day the deadline elapses, in as substantially complete form as is possible.

2. Deadline extensions. If the Postal Service determines it is not able to meet the deadline, it may establish a new deadline for cause. Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which the Postal Service determines it is not able to meet the statutory deadline, that issuance pursuant to subsection (4) above would, in the Postal Service's view,

result in an inadequate analysis. Such new deadlines must provide only so much additional time as is necessary to complete such environmental impact statement. The announcement of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline.

3. Certification Related to Deadline. When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents the Postal Service's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the Postal Service's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Postal Service's judgment, the analysis contained therein is adequate to inform and reasonably explain the Postal Service's final decision regarding the proposed Federal action.

10.6 Publication of the Environmental Impact Statement

The Postal Service will publish the entire environmental impact statement. During the process of preparing the environmental impact statement, the Postal Service may publish such draft, predecisional materials as in its judgment may assist in fulfilling its responsibilities under NEPA, the Postal Service's regulations in 39 CFR part 775, and this guidance. However, proprietary or confidential financial or trade information will be redacted and/or removed from publicly available environmental impact statements and draft, predecisional materials. The Postal Service will file each environmental impact statement together with comments and responses it solicited with the U.S. Environmental Protection Agency (EPA), Office of Federal Activities, following EPA's filing guidance (<https://www.epa.gov/nepa/environmental-impact-statement-filing-guidance>). EPA will include the environmental impact statement in its weekly notice of availability published in the **Federal Register**. The Postal Service will publish the entire environmental impact statement, including any appendices, and the Postal Service's decision by posting it on the Postal Service's website consistent with NEPA (42 U.S.C. 4332(c)).

10.7 Record of Decision

1. For actions requiring environmental impact statements, a concise public record of decision is prepared when a decision, or a proposal for legislation, is made. The record, which may be integrated into any other record, or notice, including that required by Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, must:

- a. State what the decision was.
- b. Identify all alternatives considered in reaching a decision; identify and discuss all important factors, including any essential considerations of national policy, which were weighed in making the decision and state how those considerations entered into the decision.

c. State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been or will be adopted, and if not, why not.

At the time of its decision on its proposed action, the Postal Service may timely publish a record of decision document or joint decision document notifying the public that the decisionmaker has certified that the Postal Service has considered all relevant information raised in the NEPA process and that the NEPA process has closed.

10.8 Actions Prohibited Prior to the Issuance of Record of Decision

Until a record of decision is issued, no action may be taken on a proposal on which an environmental impact statement is made if the action would:

1. Have an adverse environmental impact, or
2. Limit the choice of reasonable alternatives.

11.0 Efficient Environmental Reviews

11.1 Programmatic NEPA Documents and Tiering

1. The Postal Service may prepare NEPA documents for programmatic Federal actions, such as the adoption of new agency programs. The Postal Service may evaluate the proposal(s) in one of the following ways:

- a. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
- b. Generically, including actions that have relevant similarities, such as common timing, effects, alternatives, methods of implementation, media, or subject matter.
- c. By stage of technological development.

2. After completing a programmatic environmental assessment or environmental impact statement, the Postal Service may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse effects that bear on the analysis. After 5 years, as long as the Postal Service reevaluates the analysis in the programmatic NEPA document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, the Postal Service may continue to rely on the document.

3. The Postal Service may rely on the analysis included in the programmatic NEPA document in a subsequent NEPA document for a related action(s) in accordance with 42 U.S.C. 4336b.

11.2 Reliance on Existing NEPA Documents

1. Generally. The Postal Service may rely on an environmental impact statement, environmental assessment, or portion thereof, provided that the statement, assessment, or portion thereof meets the standards for an adequate statement or assessment under these procedures. When relying on an environmental impact statement, environmental assessment, or portion thereof, the Postal Service will cite, briefly describe the content and relevance to

the NEPA document, and may make modifications that are necessary to render the relied-upon document, or portion thereof, fit for fulfilling NEPA's analytic requirements for the action at hand.

2. Substantial Similarity.

a. If the actions covered by the original environmental impact statement or environmental assessment and the proposed action are substantially the same, the Postal Service will republish the relied-upon statement or assessment.

b. If the actions are not substantially the same, the Postal Service may modify the statement or assessment as necessary to render the statement fit for fulfilling NEPA's analytic requirements for the action at hand, and publish the relied-upon statement or assessment, as modified. Where appropriate, the Postal Service may solicit comment to the extent that solicitation of comment will assist the Postal Service in expeditiously adapting the relied-upon statement or assessment so that it is fit for the Postal Service's purposes.

11.3 Incorporation

The Postal Service may incorporate material, such as planning studies, analyses, or other relevant information, into NEPA documents by reference when the effect will be to cut down on bulk without impeding the Postal Service and public review of the action. When incorporating material by reference, the Postal Service will cite, briefly describe the content and relevance to the NEPA document, and make the materials reasonably available for review by potentially interested parties. The Postal Service will not use incorporation as a means to evade the statutory page limits.

11.4 Supplements to NEPA Documents

The Postal Service will prepare supplements to NEPA documents only if a major Federal action remains to occur, and:

1. The Postal Service makes substantial changes to the proposed action that are relevant to environmental concerns; or
2. The Postal Service decides, in its discretion, that there are substantial new circumstances or information about the significance of the adverse effects that bearing on the proposed action or its effects.

11.5 Integrity and Completeness of Information

1. The Postal Service will not undertake new scientific and technical research to inform its analyses unless that is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable. Rather, the Postal Service will make use of reliable existing data and resources.

2. When the Postal Service is evaluating an action's reasonably foreseeable effects on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, the Postal Service will make clear in the relevant NEPA document that such information is lacking.

11.6 Integrating NEPA With Other Environmental Requirements

1. To the fullest extent possible, the Postal Service will prepare environmental

documents concurrently with and integrated with analyses and related surveys and studies required by other Federal statutes.

2. The Postal Service will combine an environmental document prepared in compliance with NEPA with any other agency document to reduce duplication and paperwork. Thus, the Postal Service may combine an environmental document with related plans, rules, or amendments as a single consolidated document.

3. If comments on a notice of intent or other aspects of a scoping process identify consultations, permits, or licenses necessary under other environmental laws, the environmental document may contain a section briefly listing the applicable requirements and how the Postal Service has or will meet them (e.g., permits applied for or received, consultations initiated or concluded).

11.7 Elimination of Duplication With State, Tribal, and Local Procedures

1. The Postal Service may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents.

2. To the fullest extent practicable unless specifically prohibited by law, the Postal Service will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

- a. Joint planning processes;
- b. Joint environmental research and studies;
- c. Joint public hearings (except where otherwise provided by statute); or
- d. Joint environmental documents.

11.8 Proposals for Regulations

Where the proposed action is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive Order requirements may satisfy one or more requirements in the Postal Service's regulations in 39 CFR part 775 and this guidance. When a procedure or document satisfies one or more requirements in the Postal Service's regulations and this guidance, the Postal Service may substitute it for the corresponding requirements in the Postal Service's regulations and this guidance and need not carry out duplicative procedures or documentation. Agencies will identify which corresponding requirements in the Postal Service's regulations and this guidance are satisfied and consult with CEQ to confirm such determinations.

11.9 Unique Identification Numbers

For all NEPA documents, the Postal Service will provide a unique identification number for tracking purposes, which the Postal Service will reference on all associated environmental review documents prepared for the proposed action and in any database or tracking system for such documents. The Postal Service will coordinate with the CEQ and other federal agencies to ensure uniformity of such identification numbers across federal agencies.

12.0 Definitions

As used in these implementing procedures, terms have the meanings provided in NEPA § 111, 42 U.S.C. 4336e, and 39 CFR part 775. In addition:

12.1 NEPA Document

NEPA document means a categorical exclusion, environmental assessment, finding of no significant impact, environmental impact statement, record of decision and published supporting documentation.

12.2 Mitigation

Mitigation means measures that avoid, minimize, or compensate for effects caused by a proposed action or alternatives as described in an NEPA document or record of decision and that have a nexus to those effects. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

1. Avoiding the impact altogether by not taking a certain action or parts of an action.
2. Minimizing effects by limiting the degree or magnitude of the action and its implementation.
3. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
4. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
5. Compensating for the impact by replacing or providing substitute resources or environments.

12.3 NEPA Process

NEPA process means all measures necessary for compliance with the requirements of section 2 and title I of NEPA § 102(2), 42 U.S.C. 4332(2).

12.4 Notice of Intent

Notice of intent means a public notice that an agency will prepare and consider an NEPA document.

12.5 Participating Agency

Participating agency means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

12.6 Publish and Publication

Publish and publication mean methods found by the agency to efficiently and effectively make NEPA documents and information available for review by interested persons, including electronic publication.

12.7 Reasonable Alternatives

Reasonable alternatives means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant.

12.8 Responsible Official

Responsible official means the person, or designated representative, who proposes an action and is responsible for compliance with NEPA. For larger projects, that person may not have the financial authority to approve such action. The responsible official signs the

NEPA documents (FONSI, ROD) and the REC.

12.9 Scope

Scope consists of the range of actions, alternatives, and effects to be considered in an NEPA document. The scope of an individual statement may depend on its relationships to other statements.

12.10 Tiering

The coverage of general matters in broader environmental impact statements or environmental assessments (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basin-wide program statements or ultimately site specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared."

13.0 Severability

The sections of these procedures are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or entity is held invalid, it is the Postal Service's intention that the validity of the remainder of those parts will not be affected, with the remaining sections to continue in effect.

[FR Doc. 2026-19720 Filed 9-24-26; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2025-0244; FRL-13461-02-R4]

Air Plan Approval; Kentucky; Campbell-Clermont Area Maintenance Plan for the 2010 1-Hour SO₂ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (DAQ), on February 20, 2025. The SIP revision includes the second 10-year maintenance plan for the Kentucky portion of the Campbell-Clermont, Kentucky-Ohio maintenance area ("Campbell-Clermont, KY-OH Area" or "Area") for the 2010 1-hour sulfur dioxide (SO₂) National Ambient Air Quality Standards (NAAQS). The Kentucky portion of the Area is comprised of a part of Campbell County. The EPA is approving Kentucky's second 10-year maintenance plan for the Kentucky portion of the Area because

the Commonwealth has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This direct final rule is effective November 24, 2026 without further notice, unless EPA receives adverse comment by October 26, 2026. If adverse comments are received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2025-0244 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, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Nelsha Athauda, Multi Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9360. Ms. Athauda can also be reached via electronic mail at athauda.nelsha@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. The EPA's Final Action

In accordance with the CAA, the EPA is approving the second 10-year maintenance plan for the Kentucky portion of the Campbell-Clermont, KY-OH Area for the 2010 1-hour SO₂ NAAQS, submitted by DAQ as a revision to the Kentucky SIP on February 20, 2025. The second maintenance plan is designed to maintain the 2010 1-hour SO₂ NAAQS within the Area through the end of the second 10-year portion of the maintenance period beyond redesignation (through 2037). The EPA is approving the plan because it meets all applicable requirements under CAA sections 110 and 175A.

II. Background

On June 2, 2010, the EPA revised the primary SO₂ NAAQS, establishing a new 1-hour SO₂ standard of 75 parts per billion (ppb).¹ The 2010 1-hour SO₂ NAAQS is met at a monitoring site when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with 40 CFR part 50, appendix T.² Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement.³

Upon promulgation of a new or revised NAAQS, CAA section 107(d) requires the EPA to designate as nonattainment any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the NAAQS. The EPA designated the Area as nonattainment for the 2010 1-hour SO₂ NAAQS, effective on October 4, 2013, based on a violating 2009–2011 design value of 89 ppb at the Highland Heights ambient air monitor (Air Quality System (AQS) ID: 21–037–3002) in Campbell County, Kentucky.^{4,5} The Area consists of a portion of Campbell County, Kentucky and Pierce

Township in Clermont County, Ohio.⁶ Under CAA section 192(a), SO₂ nonattainment areas must attain the NAAQS as expeditiously as practicable but not later than five years after the effective date of the designation.⁷ The Area's attainment date was no later than October 4, 2018. The EPA's nonattainment designation for the Area established a requirement for Kentucky and Ohio to submit an attainment SIP within 18 months following the effective date of designation (October 4, 2013).⁸

When the EPA designated the Area as nonattainment for the 2010 1-hour SO₂ NAAQS, the EPA determined that operations at the Walter C. Beckjord Generating Station (Beckjord) were the major contributor to the SO₂ NAAQS violations at the Highland Heights monitor in Campbell County.^{9,10} In 2014, operations at Beckjord ceased, and the facility was permanently shut down.¹¹ The source is no longer authorized to operate and cannot restart without meeting the State of Ohio's prevention of significant deterioration (PSD) permitting requirements. The shutdown reduced SO₂ emissions in the Area from approximately 90,851 tons per year (tpy)¹² in 2011 to 38 tpy¹³ in 2016, resulting in a significant improvement in monitored air quality.

On March 31, 2015, DAQ submitted a request to the EPA for a clean data determination (CDD) for the Area based on the then-certified 2012–2014 SO₂ monitoring design value showing attainment of the SO₂ NAAQS. On February 22, 2016, DAQ submitted a redesignation request and first 10-year maintenance plan for the Kentucky portion of the Area. On March 10, 2017, EPA finalized approval of the Commonwealth's CDD, redesignation request, and first 10-year maintenance plan.^{14,15} The purpose of Kentucky's February 20, 2025, submittal is to fulfill the second 10-year maintenance plan requirement for the Kentucky portion of

the Area pursuant to CAA section 175A(b) to ensure compliance with the 2010 SO₂ NAAQS through 2037.¹⁶

III. The EPA's Evaluation of Kentucky's SIP Submittal

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under CAA section 175A(a), the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. The September 4, 1992, memorandum from John Calcagni, titled "Procedures for Processing Requests to Redesignate Areas to Attainment" outlines the key elements of a maintenance plan, which includes an attainment emissions inventory, a maintenance demonstration, monitoring network requirements, verification of continued attainment, and contingency plan elements.¹⁷ CAA section 175A(b) requires that eight years after the redesignation, the Commonwealth must submit a revised (second) maintenance plan demonstrating continued attainment of the relevant NAAQS for 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures deemed necessary to assure prompt correction of any future 2010 1-hour SO₂ violations.

Kentucky's February 20, 2025, submission provides a plan for continued maintenance of 2010 SO₂ NAAQS for the Kentucky portion of the Area through the end of the second 10-year maintenance period in 2037. The EPA has determined that Kentucky's second maintenance plan meets all the requirements established at CAA section 175A and is thus approving DAQ's February 20, 2025, SIP submission. The following is a summary of the EPA's interpretation of the CAA section 175A requirements and the EPA's evaluation of how Kentucky's SIP submission meets each requirement.

A. Attainment Emissions Inventory

For the second maintenance plan, DAQ, in consultation with the EPA Region 4 and the Ohio Environmental

¹ See 75 FR 35520.

² See 40 CFR 50.17(b).

³ A calendar year meets data completeness requirements when all four quarters are complete, and a quarter is complete when at least 75 percent of the sampling days for each quarter have complete data. A sampling day has complete data if 75 percent of the hourly concentration values, including State-flagged data affected by exceptional events which have been approved for exclusion by the Administrator, are reported. See 40 CFR part 50, appendix T, section 3.1(b).

⁴ See Final Technical Support Document, July 2013, Kentucky First Round of Nonattainment Area Designations for the 2010 SO₂ Primary NAAQS, Prepared by EPA Region 4 (2013 Kentucky TSD), available at [regulations.gov](https://www.epa.gov/regulations.gov) in Docket EPA-HQ-OAR-2012-0233 with Document ID No. EPA-HQ-OAR-2012-0233-0308.

⁵ See 40 CFR 50.17(b).

⁶ See 40 CFR 81.318 and 81.336.

⁷ CAA section 192(a) applies to SIPs required under CAA section 191(a).

⁸ See CAA section 191(a).

⁹ See 2013 Kentucky TSD.

¹⁰ See 78 FR 47191.

¹¹ See Appendix B of Kentucky's February 20, 2025, SIP submission for documentation of Walter C. Beckjord's shutdown.

¹² See Table 5 of 81 FR 86664.

¹³ See Table 5 in Kentucky's February 20, 2025, SIP submission.

¹⁴ EPA finalized approval of the Ohio Environmental Protection Agency (Ohio EPA) August 11, 2015, redesignation request and maintenance plan for the Clermont County portion of the Area on November 21, 2016. See 81 FR 83158.

¹⁵ See 82 FR 13227.

¹⁶ EPA published a direct final rule on July 16, 2025, approving Ohio's second maintenance plan for the Ohio portion of the Area, effective September 15, 2025. See 90 FR 31872.

¹⁷ "Procedures for Processing Requests to Redesignate Areas to Attainment," memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992, available at <https://www.epa.gov/ground-level-ozone-pollution/procedures-processing-requests-redesignate-areas-attainment>.

Protection Agency (Ohio EPA), selected 2016 as the base year (*i.e.*, attainment emissions inventory year). Also, in consultation with Ohio EPA, Kentucky's SIP relies on the 2016v2 Emissions Modeling Platform (EMP)¹⁸ inventory as the preferred source of the 2016 base year and future year projected emissions data to demonstrate maintenance of the SO₂ NAAQS. The 2016v2 EMP draws on data from the 2017 National Emissions Inventory (which was updated to represent the year 2016 through the incorporation of 2016-specific State and local data) and includes emissions data for all criteria pollutants (and precursors) for electric utility generating unit (EGU) point sources, non-EGU point sources, on-road and non-road (mobile) sources, commercial marine vessels, and fires for the U.S., Canada, and Mexico. The 2016v2 EMP projects future year emissions for modeling years 2016, 2023, 2026, and 2032.¹⁹ Area source, on-road, and non-road emissions were compiled from the 2016v2 EMP for both 2016 and 2037 (with the 2032 modeling year used as a surrogate for 2037) for the Ohio and Kentucky portions of the Area.²⁰ Kentucky's SO₂ emissions for Campbell County used county-wide SO₂ emissions data rather than scaling down emissions to the portion of Campbell County in the Area

for each source sector (Ohio EPA's approach for Clermont County). On September 16, 2025, DAQ transmitted to the EPA a clarification letter²¹ to the Commonwealth's February 20, 2025, SIP submission, correcting typographical errors, base year and future year source sector emissions data, and clarifying how the Commonwealth developed the source sector emission inventories from the 2016v2 EMP data files. Specifically, Kentucky's supplement corrects footnote 14 in the February 20, 2025, SIP submission to reference Appendix D rather than Appendix C for additional information on emission inventory development. The supplement also identifies the three 2016v2 EMP input data files the Commonwealth used to develop the Campbell County SO₂ source-sector spreadsheet included in Appendix D of the SIP submission, including weblinks for each data file. Last, Kentucky's supplement corrects source sector emissions and documentation for *Table 3—Kentucky Portion SO₂ Emission Inventory Totals for 2016 Base Year and 2037 Second Maintenance Year (tpy)* of Kentucky's February 20, 2025, SIP submission including:

(1) Adding residential wood combustion and point fire emissions to the calculation for 2016 and 2037,

changing the area source totals from 15.46 tpy for both years to 20.61 tpy for 2016 and 20.39 tpy for 2037;

(2) Updating the non-EGU point source-sector emissions for the 2016 inventory from 2.06 tpy to 2.07 tpy, and;

(3) Clarifying that the non-road source-sector emissions for 2016 and 2037, (0.85 tpy and 0.43 tpy emissions, respectively) were calculated as a total of the commercial marine vehicles, railroads, and non-road emissions from the 2016v2 EMP to ensure a comprehensive accounting of non-road emissions in Campbell County.

Kentucky's corrections to the source-sector SO₂ emission values in Table 3 of the submittal changed the 2016 base year total emissions from 22.90 tpy to 28.06 tpy and the 2037 future year total emissions from 20.63 tpy to 25.56 tpy. Kentucky provided a revised Table 3 in the supplemental September 16, 2025, letter clarifying that the source-sector emission updates do not affect the Commonwealth's conclusion in its February 20, 2025, SIP revision that the Kentucky portion of the Area demonstrates maintenance of the SO₂ NAAQS for the second 10-year maintenance period. Kentucky's revised Table 3 source-sector corrections are reflected in the Campbell County 2016 base year inventory emission data in Table 1, below.²²

TABLE 1—2016 BASE YEAR SO₂ EMISSION INVENTORY FOR THE CAMPBELL-CLERMONT, KY–OH AREA (tpy) FROM THE EPA'S 2016v2 EMP

	EGU Point	Non-EGU Point	Non-road	Area	On-road	Total
Kentucky (Campbell County)	0	* 2.07	0.85	* 20.61	4.53	* 28.06
Ohio (Clermont County)	0	0.10	2.83	6.31	0.94	10.18
Area Total	0	* 2.17	3.68	* 26.92	5.47	* 38.24

* Source-sector emission values corrected in Kentucky's September 16, 2025, supplemental letter to EPA Region 4.

Table 1 shows that 2016 SO₂ emissions in the Kentucky portion of the Area were at 28.06 tpy (based on county-level data), with emissions for the Ohio portion at 10.18 tpy. At the time of the EPA's 2013 nonattainment designation, there were no SO₂ point

sources in the portion of Campbell County within the Area, and the Beckjord powerplant in Clermont County was the only SO₂ EGU point source in Ohio found to cause a violation at the Campbell County Highland Heights monitor.²³ Since the

EPA redesignated the Kentucky portion of the Area in 2017, there are no EGU and major point or non-point SO₂ emitting sources that could cause a violation of the SO₂ NAAQS at the Highland Heights monitor (AQS ID 21–

¹⁸ The EPA developed the 2016v2 emissions modeling platform in 2022 as an update to the 2016v1 platform based on new data, model versions and methods following the release of the 2016v1. See <https://www.epa.gov/air-emissions-modeling/2016v2-platform>) and Technical Support Document: Preparation of Emissions Inventories for the 2016v2 North American Emissions Modeling Platform; February 2022 (https://www.epa.gov/system/files/documents/2022-02/2016v2_emismod_tsd_february2022.pdf).

¹⁹ Documentation of the 2016v2 EMP inputs is provided in Appendix D of Kentucky's February 20, 2025, SIP submission.

²⁰ DAQ relied upon projected 2032 emissions as a surrogate for 2037 emissions based on the "relatively stagnant population growth in the Area and existing State and Federal rules in place which preclude the installation of a new source or group of sources with SO₂ emissions capable of causing or contributing to an exceedance of the NAAQS." See Second 10-Year Maintenance Plan for the Kentucky-portion of the Campbell-Clermont, KY–OH Area at pp. 6–7.

²¹ Kentucky's September 11, 2025, supplemental letter is in the docket for this action.

²² The corrections are also reflected in Tables 2 and 3 in section III.B of this rulemaking below.

²³ In an August 11, 2015, redesignation request for Clermont County, the Ohio Environmental Protection Agency evaluated the potential contribution to elevated SO₂ levels in the Campbell-Clermont KY–OH Area from the W.H. Zimmer powerplant located approximately 15 km south of the Beckjord plant in Clermont County and 27 km southwest of the Campbell County SO₂ monitor. Ohio determined that emissions from Beckjord only—and not Zimmer—caused SO₂ violations in the Area. The Zimmer facility permanently ceased operations on May 31, 2022. See Appendix C of Kentucky's February 20, 2025, SIP submission for documentation of Zimmer's shutdown.

037–3002) as reflected in the 2023–2025, 3-year design value of 6 ppb.²⁴

B. Maintenance Demonstration

States may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of

emissions during a year when the area was attaining the NAAQS (*i.e.*, the 2016 base or attainment year inventory in Kentucky's SIP submission).²⁵ Kentucky's submission establishes that the 2037 projected inventory is below the level of the 2016 base year inventory thus demonstrating maintenance through 2037. The 2037 future year is appropriate because it is 10 years beyond the first 10-year maintenance period. Kentucky projected 2037 future

year emissions for non-EGU point, area, on-road,²⁶ and non-road source categories using the 2016v2 EMP 2032 model year emissions case as a surrogate for 2037. *See* Appendix D of Kentucky's SIP submission. The 2016 base year and 2037 future year SO₂ emission inventory totals for the Area were developed consistent with the EPA guidance and are summarized in Tables 2 and 3, below.

TABLE 2—2016 BASE YEAR AND 2037 FUTURE YEAR SO₂ EMISSION INVENTORY COMPARISON (tpy) FOR THE CAMPBELL-CLERMONT, KY–OH MAINTENANCE AREA

Source Sector	2016 Base year	2037 Future year
Kentucky (Campbell County):		
EGU Point	0	0
Non-EGU Point	* 2.07	2.07
Non-road	0.85	0.43
Area	* 20.61	* 20.39
On-road	4.53	2.67
Total	* 28.06	* 25.56
Ohio (Clermont County):		
EGU Point	0	0
Non-EGU Point	0.10	0.14
Non-road	2.83	1.38
Area	6.31	6.26
On-road	0.94	0.36
Total	10.18	8.14

* Source-sector emission values corrected in Kentucky's September 16, 2025, supplemental letter to EPA Region 4.

TABLE 3—2016 BASE YEAR AND 2037 FUTURE YEAR TOTAL SO₂ EMISSION INVENTORY (tpy) FOR THE CAMPBELL-CLERMONT, KY–OH AREA SECOND MAINTENANCE PLAN

Source Sector	2016 Base year	2037 Future year
EGU Point	0	0
Non-EGU Point	* 2.17	2.21
Non-road	3.68	1.81
Area	* 26.92	* 26.65
On-road	5.47	3.03
Total	* 38.24	* 33.70

* Source-sector emission values corrected in Kentucky's September 16, 2025, supplemental letter to EPA Region 4.

The 2014 permanent and enforceable shutdown of the Beckjord facility in Ohio resulted in significant SO₂ emission reductions in the Area. As shown in Table 4 below, the design values since attainment have steadily decreased with the latest design value being 92 percent below the NAAQS, demonstrating continued maintenance.

Tables 2 and 3 show no base and future year EGU point source emissions and low non-EGU point source emissions. *See* Appendix D of Kentucky's February 21, 2025, SIP revision for additional emissions inventory information. Currently, there are no large EGU or non-EGU SO₂ point sources located in either the Kentucky or Ohio portions of

the Area with the potential to cause a monitored violation.

Additionally, while neither the Commonwealth nor Ohio have projected significant growth in their respective counties, any potential new major stationary source that seeks to construct during the second 10-year maintenance period would be subject to each State's

²⁴ The EPA air quality design values are available at <https://www.epa.gov/air-trends/air-quality-design-values>.

²⁵ *See* Calcagni Memo at p. 9.

²⁶ Due to the relatively small, and decreasing, amounts of sulfur in gasoline and on-road diesel fuel, the EPA's transportation conformity rules provide that they do not apply to SO₂ unless either the EPA Regional Administrator or the director of the State air agency has found that transportation-

related emissions of SO₂ as a precursor are a significant contributor to a fine particulate matter (PM_{2.5}) nonattainment problem, or if the SIP has established an approved or adequate budget for such emissions as part of the RFP, attainment, or maintenance strategy. *See* 40 CFR 93.102(b)(1), (2)(v); "Guidance for 1-Hour SO₂ Nonattainment Area SIP Submissions," memorandum from Stephen D. Page, Director, April 23, 2014, available at <https://www.epa.gov/system/files/documents/>

2025-09/guidance-for-1-hour-so2-nonattainment-area-sip-submissions.pdf. As with the first 2010 1-hour SO₂ maintenance plan for the Area, motor vehicle emission budgets were not established because mobile sources were insignificant contributors to the Area's violation of the 2010 SO₂ NAAQS. In consultation with Kentucky and Ohio, the EPA agreed that mobile emissions budgets are not necessary for the second maintenance plan.

SIP-approved PSD program permitting requirements. Given the low design values for the Area, the EPA does not anticipate any future monitored violation of the SO₂ NAAQS for the Area. For the reasons discussed above, Kentucky’s February 20, 2025, SIP submission demonstrates maintenance of the 2010 SO₂ NAAQS for the Area.

C. Monitoring Network

The Highland Heights SO₂ monitor (AQS ID: 21–037–3002) located in Campbell County is the only SO₂ monitor operating in the Area. The 3-year design values²⁷ since the shutdown of the Beckjord facility in Ohio in 2014 have remained well below the 75 ppb 2010 1-hour SO₂ NAAQS. See Table 4 below and Figure 2 in Kentucky’s February 20, 2025, SIP

submission. The most recent complete and certified 3-year design value (2023–2025) for Highland Heights is 6 ppb. In its SIP revision, Kentucky has committed to continue to operate an EPA-approved ambient air quality network, in compliance with 40 CFR part 58 and has thus addressed the requirement for the monitoring. The EPA approved Kentucky’s 2025 Annual Ambient Air Monitoring Network Plan on October 28, 2025.²⁸

TABLE 4—CAMPBELL-CLERMONT, KY–OH AREA 1-HOUR SO₂ DESIGN VALUES [ppb]

Location	AQS ID	2013–2015	2014–2016	2015–2017	2016–2018	2017–2019	2018–2020	2019–2021	2020–2022	2021–2023	2022–2024	2023–2025
Highland Heights—Campbell County, KY	21–037–3002	50	30	15	12	11	9	9	10	8	7	6

D. Verification of Continued Attainment

An air agency should ensure that it has the legal authority to implement and enforce all measures necessary to attain and maintain the NAAQS. Additionally, the air agency should establish how it will track progress of the maintenance plan for the area. Kentucky, through DAQ, has the legal authority to enforce and implement the maintenance plan for the Kentucky portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent contingency measures determined to be necessary to correct future attainment issues for the 2010 SO₂ NAAQS. In addition, Kentucky requires major point sources in all counties to submit SO₂ emissions information annually and assists in the preparation of new periodic inventories for all source sectors every three years in accordance with the Air Emissions Reporting Rule, 40 CFR part 51 subpart A. Kentucky will compare emissions information to the attainment year and the 2037 projected maintenance year inventories to assess emission trends and to ensure continued compliance with the standard. Lastly, as mentioned in section II.C above, the Commonwealth will continue to operate an EPA-approved ambient air quality network in accordance with monitoring requirements at 40 CFR part 58.

E. Contingency Plan

CAA section 175A(d) requires that a maintenance plan include such contingency measures as the EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a timeframe for action by the State. A State should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a State will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with CAA section 175A(d). With the 2014 permanent shutdown of the Beckjord Generating Station, there are no EGU point sources in the Area, and thus DAQ does not anticipate future monitored violations of the 2010 SO₂ NAAQS.

Kentucky has an enforcement program to address NAAQS violations and will continue to identify violations of the SO₂ NAAQS and undertake an aggressive follow-up, if a violation occurs, to ensure compliance and enforcement of the standard. Ambient air SO₂ monitoring data will serve as the primary trigger for any response to

prevent or correct a NAAQS violation in the area. Kentucky has established warning and action level responses with specific triggering indicators. DAQ commits to adopt and expeditiously implement necessary corrective actions in the event of a warning or action level trigger.

A warning level trigger occurs whenever an annual average 99th percentile maximum daily 1-hour SO₂ concentration greater than 75 ppb occurs in a single calendar year within the Area.²⁹ A warning level response will consist of a study to evaluate the Area’s emission inventory for all source sectors, exceptional events, and best practices for implementing the State’s PSD permitting program at any new stationary source and/or new or modified area source. The study will determine if the monitored SO₂ concentrations indicate a trend toward higher values and/or if SO₂ emissions appear to be increasing. The study will evaluate whether any such trend is likely to continue and, if so, what control measures are necessary to reverse the trend. Implementation of controls will take place as expeditiously as possible, but no later than 12 months from the conclusion of the most recent calendar year.

An action level trigger occurs whenever a two-year average of the 99th percentile maximum daily 1-hour SO₂ concentration greater than 75 ppb

²⁷ Design values are calculated as the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. See Appendix T to 40 CFR part 50.

²⁸ Kentucky’s 2025 Annual Ambient Air Monitoring Network Plan and EPA’s Approval Letter are both available in the docket for this action. For more information on the Highland

Heights monitor (AQS ID: 21–037–3002), see page 31 of the Network Plan.

²⁹ KDAQ’s submittal states that a “warning level response shall be prompted whenever the annual average 99th percentile maximum daily 1-hour SO₂ concentration of 75 ppb occurs in a single calendar year.” Per 40 CFR 50.17(b), the 1-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual (99th

percentile) of the daily maximum 1-hour average concentrations is less than or equal to 75 ppb. On December 29, 2025, DAQ sent an email to the EPA clarifying that the warning level response will be prompted whenever an annual average 99th percentile maximum daily 1-hour SO₂ concentration greater than 75 ppb occurs in a single calendar year. The email is available in the docket for this action.

occurs within the Area. A violation of the NAAQS (the three-year average of the 99th percentile maximum daily 1-hour value SO₂ concentration of 75 ppb or greater) shall also prompt an action level response. In the event that the action level is triggered and is not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, DAQ in conjunction with the metropolitan planning organization or regional council of governments, will determine additional control measures needed to assure future attainment of the 1-hour SO₂ NAAQS. Measures that can be implemented in the short term will be selected for implementation within 18 months from the close of the calendar year that prompted the action level response. The Commonwealth will also consider the timing of an action level trigger and determine if additional, significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and will constitute the response.

If the Commonwealth determines that a new control measure that is already promulgated and scheduled to be implemented will be sufficient to address a violation of the SO₂ NAAQS, additional local measures may be unnecessary. DAQ will submit to the EPA an analysis to demonstrate that the proposed control measures are adequate to return the Area to attainment. If adoption of control measures is necessary, they will be subject to Kentucky's administrative and legal process. This process will include publication of notices, an opportunity for public hearing and comment, and other measures required by State law for revisions to the SIP. The selection of control measures will be based on cost-effectiveness, emission reduction potential, economic and social considerations, or other factors that the Commonwealth deems appropriate.

IV. Final Action

The EPA is approving the second maintenance plan for the Kentucky portion of the 2010 1-hour SO₂ Campbell-Clermont, KY–OH Area for the reasons discussed above. Approval of Kentucky's SIP revision will make certain commitments related to maintenance of the 2010 1-hour SO₂ NAAQS in the Kentucky portion of the Campbell-Clermont, KY–OH Area federally enforceable as part of the Kentucky SIP.

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.³⁰ Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not 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 13175.³¹

³⁰ See 42 U.S.C. 7410(k); 40 CFR 52.02(a).

³¹ See 65 FR 67249, November 9, 2000.

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

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 24, 2026. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements.³²

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 15, 2026.

Kevin McOmber,

Regional Administrator, Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart S—Kentucky

- 2. In § 52.920, amend the table in paragraph (e), by adding an entry for “2010 1-hour SO₂ Second 10-Year Maintenance Plan for the Kentucky portion of the Campbell-Clermont, KY–OH Area” at the end of the table to read as follows:

³² See CAA section 307(b)(2).

§ 52.920 Identification of plan. (e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanations
2010 1-hour SO ₂ Second 10-Year Maintenance Plan for the Kentucky portion of the Campbell-Clermont, KY-OH Area.	Campbell County portion of Campbell-Clermont, KY-OH Area.	2/20/2025	9/25/2026, 91 FR [Insert Federal Register page where the document begins]	

[FR Doc. 2026-19668 Filed 9-24-26; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 11 and 12

[Docket No. USCG-2022-0649]

RIN 1625-AC68

Implementation of Training Requirements for Personnel Serving on U.S.-Flagged Passenger Ships That Carry More Than 12 Passengers on International Voyages

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its merchant mariner training regulations to implement amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and the Seafarers’ Training, Certification and Watchkeeping Code, to require personnel serving on U.S.-flagged passenger ships carrying more than 12 passengers on international voyages to complete passenger ship emergency familiarization. This final rule also expands the applicability of the required crowd management training to include specified ratings on passenger ships. These required trainings would promote the safety of life at sea.

DATES: This final rule is effective October 26, 2026. The incorporation by reference of certain material listed in this rule is approved by the Director of the Federal Register as of October 26, 2026.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to

www.regulations.gov, type USCG-2022-0649 in the search box, and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: For information about this document, call or email Megan Johns Henry, Coast Guard Office of Merchant Mariner Credentialing (CG-MMC-1); telephone 571-610-3303, email Megan.C.Johns@uscg.mil.

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I. Abbreviations

- BLS U.S. Bureau of Labor Statistics
- BTS Bureau of Transportation Statistics
- CFR Code of Federal Regulations
- CG-MMC Coast Guard Office of Merchant Mariner Credentialing
- CSS Code Code of Safe Practices for Cargo Stowage and Securing
- DHS Department of Homeland Security
- DOT Department of Transportation
- GSA U.S. General Services Administration
- IBR Incorporated by Reference
- IGF Code International Code of Safety for Ships Using Gases or Other Low Flashpoint Fuels
- IMO International Maritime Organization
- IRFA Initial Regulatory Flexibility Analysis

- M&IE Meal and Incidental Expenses
- MISLE Marine Information for Safety and Law Enforcement
- MMC Merchant Mariner Credential
- NAICS North American Industry Classification System
- NARA National Archives and Records Administration
- NMC National Maritime Center
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- PIC rule Persons in Charge of Fuel Transfers final rule
- POV Privately owned vehicle
- PSC Port State Control
- RA Regulatory analysis
- Ro-ro Roll-on/roll-off
- § Section
- SBA Small Business Administration
- SME Subject matter expert
- SOLAS International Convention for the Safety of Life at Sea, 1974, as amended
- STCW Convention International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978
- STCW Code Seafarers Training, Certification and Watchkeeping Code
- U.S.C. United States Code
- VSL Value of a Statistical Life

II. Basis and Purpose, and Regulatory History

The purpose of this final rule is to ensure the safety of passengers on board U.S.-flagged passenger ships by ensuring all shipboard personnel have completed training and are competent to assist passengers in the event of an emergency. As defined in 46 CFR 11.1103 and 12.903,¹ passenger ships are those ships carrying more than 12 passengers on an international voyage. With this rulemaking, the Coast Guard requires passenger ship emergency familiarization for all shipboard personnel on U.S.-flagged passenger ships, which may prevent the loss of life

¹ The Coast Guard adopted these definitions from the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, and codified them in the CFR. 78 FR 77796, 77974 & 77987 (Dec. 24, 2013).

at sea, reduce the risk of injury, and increase protection of property and the marine environment. The Coast Guard is expanding the applicability of the existing crowd management training requirement to include ratings qualified under Chapters II, III, and VII of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention)² on passenger ships.

The legal basis of this final rule is 14 U.S.C. 502, which authorizes the Secretary of the Department of Homeland Security (“the Secretary”) broad authority to issue such regulations and orders as appropriate to carry out any law applicable to the Coast Guard and to delegate such regulatory authority to the Coast Guard. More specifically, 46 U.S.C. 7101 and 7301 authorize the Secretary to prescribe the requirements for the credentialing of officers and ratings, respectively. The Secretary has delegated these statutory authorities to the Coast Guard through DHS Delegation No. 00170.1(II)(92)(e), Revision No. 01.4, which generally authorizes the Coast Guard to determine and establish the experience and professional qualifications required to issue credentials.

This final rule makes the following changes, which apply to all personnel serving on U.S.-flagged passenger ships that carry more than 12 passengers on international voyages:

(1) Incorporates by reference STCW Consolidated Edition, 2017, comprised of the STCW Convention and the Seafarers’ Training, Certification and Watchkeeping Code (including Erratum April 2018 and Supplement February 2019) (STCW Code), in 46 CFR parts 11 and 12. The STCW Convention and the STCW Code prescribe a five-tiered passenger ship training approach, which is detailed in Section IV, Discussion of the Rule.

(2) Adds a new requirement for all shipboard personnel to complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency, before being assigned to shipboard duties. The passenger ship emergency familiarization requirement applies to all shipboard personnel, including Masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization training does not require Coast Guard

approval. Mariners or vessel operators must maintain documentation verifying that personnel have completed the passenger ship emergency familiarization.

(3) Expands the applicability of crowd management training to include ratings qualified under Chapters II, III, and VII of the STCW Convention. Crowd management courses will continue to require Coast Guard approval in accordance with 46 CFR part 10, subpart D. Approved crowd management courses are readily available to mariners.

On June 21, 2024, the Coast Guard published a notice of proposed rulemaking (NPRM) (89 FR 52324) soliciting comments from the public on the described changes. The comment period closed on September 19, 2024.

III. Discussion of Comments and Changes From Proposed Rule

In response to the NPRM for this rulemaking, the Coast Guard received two comments. Both comments expressed support for the proposed changes to the merchant mariner training regulations for personnel serving on U.S.-flagged passenger ships carrying more than 12 passengers on international voyages.

One commenter stated that the Coast Guard’s measures through the rulemaking are vital for enhancing safety and ensuring crews are adequately prepared to handle emergencies at sea.

The other commenter highlighted the importance of requiring personnel serving on U.S.-flagged passenger ships carrying more than 12 passengers on international voyages to complete passenger ship emergency familiarization and the expansion of the crowd management training requirement. The commenter noted that these measures are critical for enhancing the safety of life at sea. The commenter added that the NPRM changes would ensure that all relevant personnel are adequately trained to effectively manage emergencies. This includes the ability to safely and efficiently evacuate passengers, maintain order during crises, and minimize the risk of injury or loss of life. By mandating this training, the Coast Guard is taking proactive measures to protect the lives of passengers and crew alike.

Additionally, the same commenter emphasized that aligning U.S. regulations with the latest international standards outlined in the STCW Convention and STCW Code is essential for maintaining the credibility and safety of U.S.-flagged vessels in

international waters. The commenter also supported the expanded scope of crowd management training to include specified ratings on passenger ships, highlighting the need to adapt to the evolving challenges posed by larger, more complex vessels and a diverse passenger base.

The Coast Guard agrees with these comments and agrees that the changes are crucial steps toward enhancing maritime safety. The alignment with the STCW Convention and STCW Code and the expanded training requirements reflect the Coast Guard’s commitment to ensuring the highest standards of safety for both passengers and crew.

Therefore, we are adopting the changes to 46 CFR parts 11 and 12 with minor, non-substantive changes from the NPRM.

IV. Discussion of the Rule

In the following paragraphs, we provide a section-by-section description of our amendments to 46 CFR parts 11 and 12, in section number order with topical headings.

46 CFR Part 11

Authority Citations

We are deleting reference to 46 U.S.C. 503 and adding, in its place, 46 U.S.C. 502. Section 503 no longer exists, and those authorities have been moved to section 502. We are also deleting reference to 46 U.S.C. 8906 and adding, in its place, 46 U.S.C. chapter 89. Chapter 89 of title 46 of the U.S.C. contains the authorities for requiring various small vessel officer endorsements, including the civil penalties (in 46 U.S.C. 8906) for violating the chapter. Finally, we are updating the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision to this document.

Subpart A—General

Section 11.102 Incorporation by Reference.

The Coast Guard is incorporating by reference the STCW Consolidated Edition 2017, which is comprised of the STCW Convention and the STCW Code (including Erratum April 2018 and Supplement February 2019). The STCW Convention sets the minimum standards for training, certification and watchkeeping for seafarers. The STCW Code addresses the technical aspects of the STCW Convention, including minimum standards of competence and the appropriate methods for demonstrating competence, which includes training. Currently, regulations in 46 CFR chapter I, subchapter B,

² Ratings qualified under Chapters II, III, and VII of the STCW Convention are: Able Seafarer Deck, Able Seafarer Engine, Ratings Forming Part of a Navigational Watch, and Ratings Forming Part of an Engine-room Watch.

reference the STCW Convention and the STCW Code, as amended through 2011. The STCW Consolidated Edition 2017 includes additional amendments to the STCW Convention and the STCW Code. The amendments were adopted in 2016 and entered into force on July 1, 2018. These amendments contain updated training requirements for personnel to address emergencies on passenger ships, prescribing a five-tiered passenger ship training approach.

The five-tiered approach includes passenger ship emergency familiarization, safety training for personnel providing direct service to passengers, passenger ship crowd management, crisis management and human behavior, and passenger safety, cargo safety, and hull integrity training.³ Each tier builds on the previous tier of training, and the training requirements are structured as appropriate to the associated position of responsibility on board the ship.

Subpart C—STCW Officer Endorsements

Section 11.305—Requirements to qualify for an STCW endorsement as Master of vessels of 3,000 GT or more (management level).

The Coast Guard amends Table 1 to § 11.305(e), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.307—Requirements to qualify for an STCW endorsement as Chief Mate of vessels of 3,000 GT or more (management level).

The Coast Guard amends Table 1 to § 11.307(e), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.309—Requirements to qualify for an STCW endorsement as Officer in Charge of a Navigational Watch (OICNW) of vessels of 500 GT or more (operational level).

The Coast Guard amends Table 1 to § 11.309(e), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.311—Requirements to qualify for an STCW endorsement as Master of vessels of 500 GT or more and less than 3,000 GT (management level).

The Coast Guard amends Table 1 to § 11.311(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.313—Requirements to qualify for an STCW endorsement as Chief Mate of vessels of 500 GT or more

and less than 3,000 GT (management level).

The Coast Guard amends Table 1 to § 11.313(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.315—Requirements to qualify for an STCW endorsement as Master of vessels of less than 500 GT (management level).

The Coast Guard amends Table 1 to § 11.315(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.317—Requirements to qualify for an STCW endorsement as Master of vessels of less than 500 GT limited to near-coastal waters (management level).

The Coast Guard amends Table 1 to § 11.317(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.319—Requirements to qualify for an STCW endorsement as Officer in Charge of a Navigational Watch (OICNW) of vessels of less than 500 GT (operational level).

The Coast Guard amends Table 1 to § 11.319(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.321—Requirements to qualify for an STCW endorsement as Officer in Charge of a Navigational Watch (OICNW) of vessels of less than 500 GT limited to near-coastal waters (operational level).

The Coast Guard amends Table 1 to § 11.321(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.325—Requirements to qualify for an STCW endorsement as Chief Engineer Officer on vessels powered by main propulsion machinery of 3,000 kW/4,000 HP propulsion power or more (management level).

The Coast Guard amends Table 1 to § 11.325(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.327—Requirements to qualify for an STCW endorsement as Second Engineer Officer on vessels powered by main propulsion machinery of 3,000kW/4,000 HP propulsion power or more (management level).

The Coast Guard amends Table 1 to § 11.327(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.329—Requirements to qualify for an STCW endorsement as Officer in Charge of an Engineering Watch (OICEW) in a manned engine room or designated duty engineer in a periodically unmanned engine room on vessels powered by main propulsion

machinery of 750 kW/1,000 HP propulsion power or more (operational level).

The Coast Guard adds numbers to the footnotes in Table 1 to § 11.329(e) for consistency with other sections. Additionally, Table 1 to § 11.329(e), footnote 2, is amended by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.331—Requirements to qualify for an STCW endorsement as Chief Engineer Officer on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more and less than 3,000 kW/4,000 HP propulsion power (management level).

The Coast Guard amends Table 1 to § 11.331(e), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Section 11.333—Requirements to qualify for an STCW endorsement as Second Engineer Officer on vessels powered by main propulsion machinery of 750kW/1,000 HP or more and less than 3,000 kW/4,000 HP propulsion power (management level).

The Coast Guard amends Table 1 to § 11.333(d), footnote 2, by adding a reference to the appropriate section of the STCW Code for clarity.

Subpart K—Officers on a Passenger Ship When on an International Voyage

Section 11.1105—General requirements for officer endorsements.

The Coast Guard revises the title of this section from “General requirements for officer endorsements” to “General requirements.” The change aligns with the purpose of this subpart, in accordance with the STCW Convention and the STCW Code. Other specific changes to § 11.1105 are detailed below.

In summary, we are combining existing paragraph (a) introductory text and text from paragraph (a)(1) into paragraph (a) introductory text; adding new paragraph (a)(1); redesignating paragraphs (a)(1)(i) as (a)(3), (a)(1)(ii) as (a)(2), (a)(1)(iii) as (a)(4) and (a)(1)(iv) as (a)(5); redesignating paragraph (a)(2) as paragraph (b); and redesignating existing paragraphs (b), (c), and (d) as paragraphs (c), (d) and (e) respectively. These changes allow paragraphs (a)(1) through (a)(5) to refer to the applicable paragraphs (1 through 5) of Section A–V/2 of the STCW Code, as detailed in the following discussion of those paragraphs.

In revised paragraph (a) introductory text, we change the word “vessel” to “ship” for consistency in terminology in this part and add the text, “before being assigned to shipboard duties” for clarity. The language from existing paragraph (a)(1) in revised paragraph (a)

³ STCW Convention Regulation V/2 and the STCW Code, Section A–V/2, *Mandatory minimum requirements for the training and qualifications of masters, officers, ratings, and other personnel on passenger ships.*

introductory text details the incorporation of the STCW Convention Regulation V/2 and of Section A-V/2 of the STCW Code.

New paragraph (a)(1) specifies that all officers and personnel aboard passenger ships must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities. Paragraph (a)(1) refers to Section A-V/2 paragraph 1 of the STCW Code, which requires that passenger ship emergency familiarization be completed before personnel are assigned to shipboard duties.

In accordance with Section A-V/2 paragraph 1 of the STCW Code, passenger ship emergency familiarization must include topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization, in accordance with Section A-V/2 paragraph 1 of the STCW Code, also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill.

Passenger ship emergency familiarization training in paragraph (a)(1) does not require Coast Guard approval. Operating companies must ensure personnel are familiarized with the shipboard layout, their shipboard duties, and emergency procedures. Personnel or vessel operating companies must maintain documentary evidence verifying that personnel have completed the Passenger Ship Emergency Familiarization training. It is the responsibility of the operating companies, who are obligated by Regulation I/14, "Responsibilities of Companies" of the STCW Convention, to ensure that documentation relevant to personnel training is maintained and readily accessible. Port State Control (PSC) officers or Coast Guard inspectors may ask to see evidence that personnel have completed passenger ship emergency familiarization.

Redesignated paragraph (a)(2), which already requires the completion of safety training for personnel providing direct service to passengers in passenger spaces, is revised to include the

addition of "officers" to personnel providing direct service to passengers in passenger spaces. In addition, we removed "onboard passenger ships" from the explanation of passenger spaces. We add "passenger ship" to more accurately describe the type of safety training required. Paragraph (a)(2) refers to Section A-V/2 paragraph 2 of the STCW Code, which requires that passenger ship safety training be completed before personnel are assigned to shipboard duties.

In accordance with Section A-V/2 paragraph 2 of the STCW Code, passenger ship safety training must include communication. Specifically, it must include:

1. The ability to communicate with passengers during an emergency, considering the language or languages appropriate to the principal nationalities of passengers carried on the particular route;

2. The likelihood that an ability to use elementary English vocabulary for basic instructions can provide a means of communicating with a passenger in need of assistance, whether or not the passenger and crew member share a common language;

3. The possible need to communicate during an emergency by some other means, such as by demonstration, hand signals, or calling attention to the location of instructions, muster stations, life-saving devices, or evacuation routes when oral communication is impractical;

4. The extent to which complete safety instructions have been provided to passengers in their native language or languages;

5. The languages in which emergency announcements may be broadcast during an emergency or drill to convey critical guidance to passengers and to facilitate crew members in assisting passengers; and

6. In accordance with Section A-V/2 paragraph 2 of the STCW Code, passenger ship safety training must include life-saving appliances, and specifically the ability to demonstrate to passengers the use of personal life-saving appliances, and embarkation procedures with special attention to disabled persons and persons needing assistance.

Passenger ship safety training in paragraph (a)(2) does not require Coast Guard approval and can be conducted on board the ship or in a shore-based location. Personnel completing passenger ship safety training are obligated to maintain documentary evidence of their training by STCW Convention Regulation V/2, "Mandatory minimum requirements for the training

and qualification of masters, officers, ratings and other personnel on passenger ships," of the STCW Convention.

The Coast Guard makes non-substantive changes in redesignated paragraph (a)(3), which already requires the completion of crowd management training. In addition, the Coast Guard makes the following substantive changes to clarify which personnel are required to complete the required training:

1. The text, "ratings qualified under Chapters II, III, and VII of the STCW Convention" is added to Masters, officers, and personnel designated on muster lists to assist passengers in emergency situations.

2. The text, "approved or accepted" is added to clarify that Masters, officers, ratings qualified under Chapters II, III, and VII of the STCW Convention, and personnel designated on muster lists to assist passengers in emergency situations must complete "approved or accepted" training in passenger ship crowd management. Requiring approved or accepted training aligns with 46 CFR part 10, subpart D, which allows training to be either approved or accepted by the Coast Guard.

3. The text is revised to refer to Section A-V/2 paragraph 3 of the STCW Code, which requires crowd management training to be completed in accordance with STCW Convention Regulation V/2, paragraph 7, as set out in table A-V/2-1. Personnel completing crowd management training are obligated to maintain documentary evidence of their training by STCW Convention Regulation V/2, "Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on passenger ships," of the STCW Convention.

Redesignated paragraph (a)(4) makes one non-substantive change. Additionally, redesignated paragraph (a)(4), which already includes a requirement for the completion of crisis management and human behavior, clarifies that training in crisis management and human behavior must be approved "or accepted" training in accordance with 46 CFR part 10, subpart D. Paragraph (a)(4) is revised to refer to Section A-V/2 paragraph 4 of the STCW Code, which requires training in crisis management and human behavior to be completed in accordance with STCW Convention Regulation V/2 paragraph 8, as set out in table A-V/2-2. Personnel completing crisis management and human behavior training are obligated to maintain documentary evidence of their training by STCW Convention

Regulation V/2, “Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on passenger ships,” of the STCW Convention.

Redesignated paragraph (a)(5) makes one non-substantive change. Additionally, redesignated paragraph (a)(5) clarifies that training in passenger safety, cargo safety, and hull integrity must be approved “or accepted” training in accordance with 46 CFR part 10, subpart D. Paragraph (a)(5) is also revised to refer to Section A–V/2 paragraph 5 of the STCW Code, which requires that training must be completed before personnel are assigned to shipboard duties.

In accordance with Section A–V/2 paragraph 5 of the STCW Code, passenger safety, cargo safety, and hull integrity training must include loading and embarkation procedures and, specifically, the ability to properly apply the procedures established for the ship regarding loading and discharging vehicles, rail cars and other cargo transport units, including related communications; lowering and hoisting ramps; setting up and stowing retractable vehicle decks; and embarking and disembarking passengers, with special attention to disabled persons and persons needing assistance.

Passenger safety, cargo safety, and hull integrity training must also include:

1. Carriage of dangerous goods, including the ability to apply any special safeguards, procedures, and requirements regarding the carriage of dangerous goods on board roll-on/roll-off (ro-ro) passenger ships;⁴

2. Securing cargoes, specifically the ability to correctly apply the provisions of the Code of Safe Practices for Cargo Stowage and Securing (CSS Code)⁵ to the vehicles, rail cars, and other cargo transport units carried, and to properly use the cargo-securing equipment and materials provided, considering their limitations;

3. Stability, trim, and stress calculations, specifically the ability to make proper use of the stability and stress information provided; calculate stability and trim for different

conditions of loading, using the stability calculators or computer programs provided; calculate load factors for decks; and calculate the impact of ballast and fuel transfers on stability, trim, and stress; and

4. Opening, closing and securing hull openings, including the ability to properly apply the procedures established for the ship for opening, closing and securing bow, stern and side doors and ramps; correctly operating the associated systems and conducting surveys on proper sealing and ro-ro deck atmosphere, including the ability to use equipment, where carried, to monitor atmosphere in ro-ro spaces and properly apply the procedures established for the ship for ventilation of ro-ro spaces during lading and discharging of vehicles, while on voyage and in emergencies.

Personnel completing passenger safety, cargo safety, and hull integrity training are obligated to maintain documentary evidence of their training by STCW Convention Regulation V/2, “Mandatory minimum requirements for the training and qualification of masters, officers, ratings and other personnel on passenger ships,” of the STCW Convention.

Redesignated paragraph (b) is revised to state that, “Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.” These revisions clarify who is required to hold evidence of successful completion of training in accordance with paragraph (a). We removed the existing text, “through approved or accepted training,” to clarify that the training required in paragraphs (a)(1) and (a)(2) do not have to be Coast Guard-approved or accepted training, while the training required in paragraphs (a)(3), (a)(4), and (a)(5) must be Coast Guard-approved or accepted training.

Redesignated paragraph (c) updates terminology used in this subpart and makes other non-substantive changes. Paragraph (c) corrects references to other revised paragraphs in this subpart for personnel who must provide evidence of having maintained the required standard of competence every 5 years.

Redesignated paragraph (d) updates the paragraph reference, which was redesignated from paragraph (b) to paragraph (c), and replaces the word “sea” with “relevant seagoing” to better describe the service needed to maintain the standard of competence.

Redesignated paragraph (e) replaces the word “vessels” with “ships” to

provide consistency of terminology used in this subpart.

46 CFR part 12

Authority Citations

The Coast Guard revises the authorities listed for part 12 by adding 14 U.S.C. 502, which governs the delegation of powers by the Secretary to the Coast Guard. It authorizes the Secretary to transfer or impose on the Coast Guard any of the rights, privileges, powers, or duties vested in the Secretary regarding the administration of the Coast Guard, including the authority to promulgate regulations. We updated this authority in part 12 for consistency with 46 CFR parts 10 and 11. We also revised the authorities listed for part 12 by adding 46 U.S.C. 7303 through 7316. We made this change to more clearly cite the statutory authority provided by Congress to issue regulations for all classifications of ratings endorsements with respect to standards of competency, training, and sea service. Finally, we updated the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.

Subpart A—General

Section 12.103 Incorporation by Reference.

The Coast Guard revises § 12.103 to incorporate by reference the STCW Consolidated Edition 2017, which is comprised of the STCW Convention and the STCW Code (including Erratum April 2018 and Supplement February 2019).⁶

Subpart F—Requirements for STCW Rating Endorsement

Section 12.603—Requirements to qualify for an STCW endorsement as Able Seafarer-Deck.

The Coast Guard amends Table 1 to § 12.603(d), footnotes 2 and 3, by adding references to the appropriate sections of the STCW Code for clarity.

Section 12.605—Requirements to qualify for an STCW endorsement as Ratings Forming Part of a Navigational Watch (RFPNW).

The Coast Guard amends Table 1 to § 12.605(c), footnote 2, by adding reference to the appropriate section of the STCW Code for clarity.

Section 12.609—Requirements to qualify for an STCW endorsement as Rating Forming Part of an Engineering Watch (RFPEW).

The Coast Guard amends Table 1 to § 12.609(c), footnote 2, by adding

⁶ See section IV, Discussion of the Rule, 46 CFR part 11, subpart A, in this document for a description of the STCW Convention and the STCW Code.

⁴ A ro-ro passenger ship is defined in Chapter II-1, Regulation 2 of SOLAS, as being “a passenger ship with ro-ro cargo spaces or special category spaces.”

⁵ The CSS Code provides an international standard for the safe stowage and securing of cargoes to promote the safety of life both at sea, and during loading and discharge. See <https://www.imo.org/en/OurWork/Safety/Pages/CSS-Code.aspx?text=All%20cargoes%20should%20be%20stowed,%20properly%20qualified%20and%20experienced>. (last visited 07/14/2026).

reference to the appropriate section of the STCW Code for clarity.

Section 12.611—Requirements to qualify for an STCW endorsement as Electro-technical Rating (ETR) on vessels powered by main propulsion machinery of 750 kW/1,000 HP or more.

The Coast Guard amends Table 1 to § 12.611(c), footnote 2, by adding reference to the appropriate section of the STCW Code for clarity.

Subpart I—Ratings and Personnel on a Passenger Ship When on an International Voyage

The Coast Guard is revising the title of this subpart from “Crewmembers on a Passenger Ship on an International Voyage,” to “Ratings and Personnel on a Passenger Ship When on an International Voyage.” The change aligns with the purpose of this subpart, in accordance with the STCW Convention and the STCW Code. We made an editorial change to § 12.901; for § 12.905, we combined existing paragraph (a) introductory text and paragraph (a)(1) into paragraph (a) introductory text; redesignated existing paragraph (a)(2) as paragraph (b); added new paragraphs (a)(1) through (a)(5); and redesignated existing paragraphs (b), (c), and (d) as paragraphs (c), (d) and (e) respectively. New paragraphs (a)(1) through (a)(5) refer to the applicable paragraphs (1 through 5) of Section A–V/2 of the STCW Code. The specific changes to § 12.905 are detailed below.

Section 12.905—General Requirements.

In revised paragraph (a) introductory text, we replace the word “vessel” with “ship” to provide consistency of terminology used in this subpart and revise the text to clarify when and to whom the requirements apply. We also moved language from existing paragraph (a)(1) to paragraph (a) introductory text to detail the incorporation of the STCW Convention Regulation V/2 and of Section A–V/2 of the STCW Code.

Paragraph (a)(1) specifies that all personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities. Paragraph (a)(1) also refers to Section A–V/2 paragraph 1 of the STCW Code.⁷ Passenger ship emergency familiarization in paragraph (a)(1) does not require Coast Guard approval.

Paragraph (a)(2) is redesignated as paragraph (b). New paragraph (a)(2) adds the requirement that personnel providing direct service to passengers in

passenger spaces must have completed the passenger ship safety training.

Paragraph (a)(2) is also revised to refer to Section A–V/2 paragraph 2 of the STCW Code.⁸ Passenger ship safety training in paragraph (a)(2) does not require Coast Guard approval in accordance with 46 CFR part 10, subpart D, and can be conducted on board the ship or in a shore-based location.

New paragraph (a)(3) adds the requirement that ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in an emergency situation onboard passenger ships must have completed approved or accepted training in passenger ship crowd management. Passenger ship crowd management training must be approved or accepted training in accordance with 46 CFR part 10, subpart D. This paragraph is also revised to refer to Section A–V/2 paragraph 3 of the STCW Code.⁹

New paragraph (a)(4) adds the requirement that personnel designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior. Crisis management and human behavior training must be approved or accepted training in accordance with 46 CFR part 10, subpart D. This paragraph is also revised to refer to Section A–V/2 paragraph 4 of the STCW Code.¹⁰

New paragraph (a)(5) adds the requirement that personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must have completed approved or accepted training in passenger safety, cargo safety, and hull integrity. Passenger safety, cargo safety, and hull integrity training must be approved or accepted training in accordance with 46 CFR part 10, subpart D. This paragraph is also revised to refer to Section A–V/2 paragraph 5 of the STCW Code.¹¹

Redesignated paragraph (b) requires personnel completing the training described in paragraph (a) to hold

documentary evidence of meeting these requirements.

Redesignated paragraph (c) updates terminology used in this subpart and makes other non-substantive changes. Paragraph (c) also corrects references to other revised paragraphs in this subpart for personnel who must provide evidence of having maintained the required standard of competence every 5 years.

Redesignated paragraph (d) updates the paragraph reference which was redesignated from paragraph (b) to paragraph (c) and replaces the word “sea” with “relevant seagoing” to better describe the service needed to maintain the standard of competence.

Existing paragraph (d) is redesignated as paragraph (e) with no changes to the text.

V. Incorporation by Reference

Material for incorporation by reference appears in the regulatory text for 46 CFR 11.102 and 12.103. The sections that reference these standards, and the locations and web addresses where these standards are available, are listed in those sections. The material incorporated by reference is summarized in this preamble in Section IV., Discussion of the Rule, under the discussions of §§ 11.102 and 11.105. For information about how to view this material, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The Director of the Federal Register approved the material in 46 CFR parts 11 and 12 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. Consistent with 1 CFR part 51 incorporation by reference provisions, this material is reasonably available. Interested persons have access to it through their normal course of business, may purchase it from the International Maritime Organization (IMO) as identified in 46 CFR 11.102 or 12.103, or may view a copy by means we have identified in those sections.

SOLAS: The International Convention for the Safety of Life at Sea, 1974 is referenced in the amendatory text of this document and was previously approved for § 11.102.

VI. Regulatory Analyses

The Coast Guard received two comment submissions during the 90-day comment period that ended on September 19, 2024. Both comments were in support of the rule and, as a result, the methodology employed in the RA is unchanged from the NPRM. However, we have updated the affected population, wage, and travel cost data used throughout the analysis, resulting

⁷ See Section IV, Discussion of the Rule, § 11.1105, in this document, for a description of section A–V/2 paragraph 1 of the STCW Code.

⁸ See Section IV, Discussion of the Rule, § 11.1105, in this document, for a description of section A–V/2 paragraph 2 of the STCW Code.

⁹ See Section IV, Discussion of the Rule, § 11.1105, in this document, for a description of section A–V/2 paragraph 3 of the STCW Code.

¹⁰ See Section IV, Discussion of the Rule, § 11.1105, in this document, for a description of section A–V/2 paragraph 4 of the STCW Code.

¹¹ See Section IV, Discussion of the Rule, § 11.1105, in this document, for a description of section A–V/2 paragraph 5 of the STCW Code.

in increased cost estimates from the NPRM.

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

A. Regulatory Planning and Review

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.”

Additionally, Executive Order 13609 (Promoting International Cooperation) promotes the goal of Executive Order 13563. Executive Order 13609 targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

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.

This rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866. See OMB Memorandum M–25–20, “Guidance Implementing Section 3 of Executive Order 14192, titled ‘Unleashing Prosperity Through Deregulation’” (March 26, 2025).

The United States is a signatory to the STCW Convention; therefore, the United

States is required to implement amendments to the STCW Convention and the STCW Code through national regulations.

A summary of the regulatory analysis (RA) follows. The final rule makes the following changes, which apply to all personnel serving on U.S.-flagged passenger ships:

(1) Incorporates by reference the STCW Consolidated Edition 2017, comprised of the STCW Convention and the STCW Code in 46 CFR parts 11 and 12.

(2) Adds a new requirement for all personnel to complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency. Personnel must complete the familiarization before being assigned to shipboard duties. The passenger ship emergency familiarization requirement applies to all personnel, including Masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization training does not require Coast Guard approval. Mariners or ship operators must maintain documentation verifying that personnel have completed the passenger ship emergency familiarization.

(3) Expands the applicability of the crowd management training requirement by adding ratings qualified under Chapters II, III, and VII of the STCW Convention to the current applicability of officers and personnel designated on the muster list to assist passengers in emergency situations. Prior to this final rule, only Masters, officers, and personnel designated on the muster list to assist passengers on board passenger ships in emergency situations had to complete crowd management training.

The Coast Guard considers the benefits and costs of the rulemaking against the baseline, which is our best assessment of maritime affairs absent this action. We do not have data on whether the U.S.-passenger-ship industry is currently in compliance with the training requirements in this final

rule. Pursuant to 46 CFR 1.01–10(f)(1), which authorizes the Coast Guard to supervise the administration of the manning of U.S. ships, and prior to this final rule, PSC officers and Coast Guard inspectors were verifying that mariners held the appropriate credentials and met the training required by the STCW Convention and the STCW Code, but were not tracking compliance with the requirements outlined in this final rule, since compliance was voluntary.

While the Coast Guard believes it is possible that personnel may have already completed the required passenger ship trainings before the effective date of this final rule, due to a lack of data, we cannot assume compliance. Thus, for the purposes of this RA, we assume personnel are not in compliance with the training requirements, and we measure initial compliance costs in the first year of implementation. As a result, the Coast Guard estimates that the operating companies of U.S.-flagged passenger ships will incur undiscounted average annual costs of approximately \$379,253, in 2023 dollars, from the passenger ship emergency familiarization requirements, and ratings qualified under Chapters II, III, and VII of the STCW Convention will incur undiscounted average annual costs of \$22,104, in 2023 dollars, to comply with the crowd management training requirement. Taken together, the final rule will result in annualized costs to industry of approximately \$403,486, and total costs of \$3,624,350, in 2023 dollars, when discounted at 2 percent over a 10-year period of analysis. The Coast Guard believes the final rule will improve safety of life at sea by ensuring passenger ship personnel are equipped to assist passengers in an emergency and will also maintain the ability of passenger ships and mariners to operate in international markets. Table 1 provides a summary of the final rule’s applicability, affected population, potential costs, and benefits.

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Table 1: Summary of the Final Rule's Impacts

Category	Summary
Applicability	The final rule applies to personnel serving on U.S.-flagged passenger ships that carry more than 12 passengers on international voyages.
Affected Population	The final rule creates costs for 41 operating companies employing 1,230 mariners and other personnel and for 44 specified ratings serving on 51 U.S.-flagged passenger ships.
Cost Impacts	Operating companies will incur undiscounted average annual costs of approximately \$379,253 in 2023 dollars, from the passenger ship emergency familiarization requirements. Personnel with ratings qualified under Chapters II, III, and VII of the STCW Convention will incur undiscounted average annual costs of approximately \$22,104, in 2023 dollars, in tuition, travel expenses, opportunity cost, and per diem to comply with the crowd management training requirements. Taken together, the final rule results in annualized costs to industry of approximately \$403,486 and total costs of approximately \$3,624,350 in 2023 dollars, when discounted at 2 percent over a 10-year period of analysis. This final rule creates no new costs for Government.
Unquantified Benefits	The final rule aligns U.S. regulations with international standards and ensures the U.S. retains its status on the IMO's "White List," which ensures that U.S.-flagged passenger ships avoid potential detainment or denial of entry in foreign ports and U.S. This ensures U.S.-flagged vessels and mariners retain the ability to operate in international markets. The final rule promotes international harmonization and reciprocity of maritime regulations between the U.S. and countries where the affected ships in this rule may operate. This reciprocity promotes the safety of U.S. passengers who disproportionately cruise on foreign-flagged ships. The final rule promotes the safety of life at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment.

Changes From NPRM to Final Rule

The Coast Guard received two public comments during the 90-day public comment period, and both were in support of the requirements proposed in the NPRM. As a result, the requirements and the methodology employed to

analyze the associated benefits and costs are unchanged. Despite the methodology remaining consistent, we have updated the affected population, wage, and travel cost data used throughout the analysis. This involved updating wage rates and cost inputs used in the analysis from a base year of

2021 to 2023. These changes to the affected population data and cost inputs resulted in increased cost estimates from the NPRM. Beyond these increases, nothing else in the RA has changed. Table 2 summarizes the changes to the affected population from the NPRM to the final rule.

Table 2: Summary of Affected Population Changes from NPRM to Final Rule

Element of the analysis	NPRM	Final rule	Resulting Change in RA
Affected population data	50 U.S.-flagged passenger ships owned by 37 operating companies. The passenger ship emergency familiarization requirement will affect 1,080 personnel (200 officers + 44 specified ratings + 836 personnel), and the expanded applicability of crowd management training requirements will affect the 44 ratings.	51 U.S.-flagged passenger ships owned by 41 operating companies. The passenger ship emergency familiarization requirement will affect 1,230 personnel (206 officers + 44 specified ratings + 980 personnel), and the expanded applicability of crowd management training requirements will affect the 44 ratings.	These increases in the number of affected owners and operators, ships, and mariners will lead to increased total and annualized cost estimates.

Description of Regulatory Changes

This final rule results in multiple changes that have costs. First, the rule adds passenger ship emergency familiarization requirements for officers, ratings, and personnel on passenger ships making international voyages. This training includes topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during

the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill.

Second, the final rule expands the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Prior to this final rule, only officers and personnel designated on the muster list to assist passengers in emergency situations were required to complete this training. Table 3 lists and describes the changes we make to 46 CFR parts 11 and 12, with their associated impacts.

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Table 3: Changes to 46 CFR Parts 11 and 12

Section	Description of Change	Impact
Part 11	Revises the authorities listed for Part 11 by removing extraneous references related to Executive Order 10173, updates the reference from 14 U.S.C. 503 to 14 U.S.C. 502, as the authorities in section 503 were moved to section 503, and updates the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.	This editorial change does not impose any costs or cost savings.
11.102(a)	Edits paragraph (a) to remove Coast Guard Office of Merchant Mariner Credentialing (CG-MMC) and National Archives and Records Administration (NARA) phone numbers, as well as update the NARA website URL.	This editorial change does not impose any costs or cost savings.
11.102(b)	Edits paragraph (b) introductory text to add IMO phone number, email, and website.	This editorial change does not impose any costs or cost savings.
11.102(b)(1) 11.102(b)(2)	Amends paragraphs (b)(1) and (b)(2) to update the incorporation by reference of the STCW Convention, 2017 Edition, and specifies the paragraphs in 46 CFR part 11 affected by these amendments.	This editorial change does not impose any costs or cost savings.
11.305 11.307 11.309 11.311 11.313 11.315 11.317 11.319 11.321 11.325 11.327 11.331 11.333	Amends footnote 2 in Table 1 of each impacted section to add reference to the appropriate section of the STCW Code.	This editorial change does not impose any costs or cost savings.

11.329	Renumbers footnotes associated with Table 1 for greater consistency with other sections, and amends footnote 2 in Table 1 of this section to add reference to the appropriate section of the STCW Code.	This editorial change does not impose any costs or cost savings.
11.1105	Removes the term “for officer endorsements” from the title to reflect that the Coast Guard does not issue endorsements in accordance with any of the requirements in this subpart.	This editorial change does not impose any costs or cost savings.
11.1105(a)	Merges paragraph (a)(1) into paragraph (a) introductory text. Replaces the word “vessel” with “ship” for consistency with the terminology used in this subpart, adds the text “before being assigned shipboard duties,” and deletes the text “of this part” for clarity.	This editorial change does not impose any costs or cost savings.
11.1105(a)(1)	Amends paragraph (a)(1) to add a new requirement for officers and personnel to complete a passenger ship emergency familiarization. Paragraph (a)(1)(i) is revised and redesignated as new paragraph (a)(3) to retain the requirement for crowd management training.	This change creates new costs and benefits. Operating companies will incur initial-year costs of \$421,584 (in undiscounted 2023 dollars) to comply with passenger ship emergency familiarization requirements. Affects 206 officers, 44 specified ratings, and 980 personnel serving on 51 U.S.-flagged passenger ships, with numbers declining in subsequent years due to ships exiting the industry. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S.

		to maintain its status on the IMO's "White List".
11.1105(a)(2)	Continues renumbering of paragraphs in § 11.1105 for consistency with paragraph numbering in the STCW Code, and further clarifies that officers and personnel are required to comply with the STCW Code's training requirements.	This editorial change does not impose any costs or cost savings.
11.1105(a)(3)	Paragraph (a)(1)(i) is redesignated as paragraph (a)(3) to retain the requirement for crowd management training. Revisions include adding that training may be accepted, and adding "ratings qualified under Chapters II, III, and VII of the STCW Convention" as affected mariners to harmonize with changes in 46 CFR Part 12.	This editorial change does not impose any costs or cost savings since it is a revision of an existing requirement. The new costs associated with expanding crowd management training requirement to ratings qualified under Chapters II, III, and VII of the STCW Convention will be reflected in the changes to 46 CFR Part 12.
11.1105(a)(4) 11.1105(a)(5)	Paragraph (a)(1)(iii) is redesignated as paragraph (a)(4) and paragraph (a)(1)(iv) is redesignated as paragraph (a)(5) to continue renumbering of paragraphs in § 11.1105 for consistency with the format of the five-tiered approach to training in the STCW Code and corresponding paragraph numbering to improve readability for readers familiar with the STCW Code .	This editorial change does not impose any costs or cost savings.
11.1105(b) 11.1105(c) 11.1105(d) 11.1105(e)	Paragraph (a)(2) is redesignated as paragraph (b), redesignates paragraph (b) as paragraph (c), redesignates paragraph (c) as paragraph (d), and redesignates paragraph (d) as paragraph (e). All are revised to reference the appropriate paragraph detailing training or evidence of training. Paragraph (d) deletes "sea" and adds "relevant seagoing" for consistency. Paragraph (e) changes "vessels" to "ships."	This editorial change does not impose any costs or cost savings.
Part 12	Revises the authorities listed for part 12 by adding 14 U.S.C. 502 for uniformity with parts 10 and 11, adding additional sections from 46 U.S.C. 7303-7316 to more clearly cite the statutory authority provided	This editorial change does not impose any costs or cost savings.

	by Congress, and updates the reference to DHS Delegation No. 00170.1, Revision No. 01.4, to reflect the most recent revision of this document.	
12.103(a)	Edits paragraph (a) to remove CG-MMC and NARA phone numbers, as well as update the NARA website URL and email.	This editorial change does not impose any costs or cost savings.
12.103(b)	Edits paragraph (b) introductory text to add IMO phone number, email, and website.	This editorial change does not impose any costs or cost savings.
12.103(b)(1)	Redesignates paragraph (b)(1) as paragraph (b)(2) and adds a new paragraph (b)(1) to incorporate by reference the STCW Convention, 2017 Edition.	This editorial change does not impose any costs or cost savings.
12.103(b)(2)	Amends redesignated paragraph (b)(2) to update the incorporation by reference of the STCW Code, 2017 Edition, and updates the sections and paragraphs in 46 CFR Part 12 affected by these amendments.	This editorial change does not impose any costs or cost savings.
12.603	Amends footnotes 2 and 3 in Table 1 to § 12.603(d) to add reference to the appropriate sections of the STCW Code.	This editorial change does not impose any costs or cost savings.
12.605 12.609 12.611	Amends footnote 2 in Table 1 to § 12.605(c), § 12.609(c), and § 12.611(c) to add reference to the appropriate sections of the STCW Code.	This editorial change does not impose any costs or cost savings.
12.901	Revises the title of subpart I to better reflect the purpose of the subpart in accordance with the STCW Code. Changes the text “part” to “subpart” for consistency.	This editorial change does not impose any costs or cost savings.
12.905(a)	Moves text from paragraph (a)(1) into paragraph (a) introductory text. Replaces the word “vessel” with “ship” for consistency with terminology used in this subpart and revises the text to specify when and to whom the requirements apply.	This editorial change does not impose any costs or cost savings.
12.905(a)(1)	Amends paragraph (a)(1) to add a requirement for all personnel to complete passenger ship emergency familiarization.	This change creates new costs and benefits. 41 operating companies will incur initial-year costs of \$421,584 (in undiscounted 2023 dollars) to achieve compliance with

		passenger ship emergency familiarization requirements. Affects 206 officers, 44 ratings, and 980 personnel serving on 51 U.S.-flagged passenger ships, with numbers declining in subsequent years due to ships exiting the industry. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S. to maintain its status on the IMO's "White List".
12.905(a)(2)	Redesignates paragraph (a)(2) as paragraph (b). Adds new paragraph (a)(2) to specify that personnel providing direct service to passengers in passenger spaces must complete passenger ship safety training specified in Section A-V/2 paragraph 2 of the STCW Code. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change does not impose any costs or cost savings.
12.905(a)(3)	Adds new paragraph (a)(3) to require ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in emergency situations to complete crowd management training.	This change creates new costs and benefits. Ratings qualified under Chapters II, III, and VII of the STCW Convention will incur average annual costs of \$22,104 (in undiscounted 2023 dollars). More specifically, we estimate ratings will incur \$68,013 (in undiscounted 2023 dollars) in the first year to comply with crowd management training requirements and then incur an average of \$17,003 (in undiscounted 2023 dollars) in annually recurring costs to train new ratings due to turnovers. Affects 44 specified ratings

		serving on 51 U.S.-flagged passenger ships in the first year of implementation, with decreasing numbers every year after. See table 3 for details on turnovers. Benefits include enhanced passenger safety at sea in the case of an emergency which may prevent the loss of life, reduce the risk of injury, and increase protection of property in the marine environment. It also increases international harmonization of maritime regulation and allows the U.S. to maintain its status on the IMO's "White List". In addition, this ensures U.S. mariners meet international standards and maintain their ability to serve on foreign-flagged ships.
12.905(a)(4)	Adds new paragraph (a)(4) to specify that personnel designated on the muster list as having responsibility for the safety of passengers in emergency situations must complete training in crisis management and human behavior. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change does not impose any costs or cost savings.
12.905(a)(5)	Adds new paragraph (a)(5) to specify that personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must complete training in passenger safety, cargo safety, and hull integrity. This was an existing requirement but is now being specified for greater clarity and consistency with the five-tiered approach to training in the STCW Code.	This editorial change does not impose any costs or cost savings.

12.905(b)	Redesignates paragraph (a)(2) as paragraph (b) and revises text of paragraph (b) to clarify that personnel must retain documentary evidence of training completion. This was an existing requirement but is now being specified for greater clarity and consistency with the STCW Code.	This editorial change does not impose any costs or cost savings.
12.905(c) 12.905(d) 12.905(e)	Redesignates paragraph (b) as paragraph (c), redesignates paragraph (c) as paragraph (d), redesignates paragraph (d) to paragraph (e), and revises text to reference the correct paragraphs outlining training requirements and evidence of training. Paragraph (d) is updated to remove “sea” and add “relevant seagoing” for consistency.	This editorial change does not impose any costs or cost savings.

Affected Population

This final rule has two affected populations that will incur costs: (1) operating companies with U.S.-flagged passenger ships; and (2) ratings qualified under Chapters II, III, and VII of the STCW Convention serving on the same ships.

The Coast Guard analyzed data from the Marine Information for Safety and Law Enforcement (MISLE) database to determine the number of U.S.-flagged passenger ships that carry more than 12 passengers on international voyages and to determine the number of unique owners and operators.¹² We determined that there are 51 U.S.-flagged passenger ships owned by 41 operating companies

that will incur the costs of providing passenger ship emergency familiarization to the officers, ratings, and personnel aboard their ships. Unlike most STCW Convention and STCW Code training requirements, it will be incumbent upon the owners and operators of these passenger ships to provide this training, since it is ship-specific and is given on board prior to assuming duties.

To determine the number of officers, ratings, and personnel impacted by the passenger ship emergency familiarization requirements, as well as the number of ratings qualified under Chapters II, III, and VII of the STCW Convention subject to the crowd management training requirements, the

Coast Guard used additional data from the MISLE database.¹³ The Coast Guard reviewed the certificate of inspection for all 51 U.S.-flagged passenger ships in the affected ship population and reviewed the manning requirements for each ship.¹⁴ Accordingly, we determined that 1,230 personnel [(103 officers + 22 specified ratings + 490 additional personnel) × 2 mariners per ship] will be subject to the training requirements.¹⁵ Specifically, the passenger ship emergency familiarization requirement will affect 1,230 personnel (206 officers + 44 specified ratings + 980 personnel), and the expanded applicability of crowd management training requirements will affect the 44 ratings. See table 4.

Table 4: Counts of Mariners in the Affected Population

	Number of Officers	Number of Specified Ratings	Number of Additional Personnel	Total Mariners
Crew 1	103	22	490	615
Crew 2	103	22	490	615
Total	206	44	980	1,230

¹² The Coast Guard used MISLE to provide data on all active (inspected by definition) U.S.-flagged passenger vessels that carry over 12 passengers on international voyages as defined by their SOLAS certification and route type.

¹³ MISLE was accessed on October 22, 2024.

¹⁴ According to 46 U.S.C. Subtitle II, Part F: Manning of Vessels, manning requirements refer to requirements generally for the number of individuals required, qualifications and conditions of employment, and duties; for masters and other licenses and registered individuals; for pilots; for

unlicensed personnel; for small vessels; for tank vessels; and for pilotage on the Great Lakes.

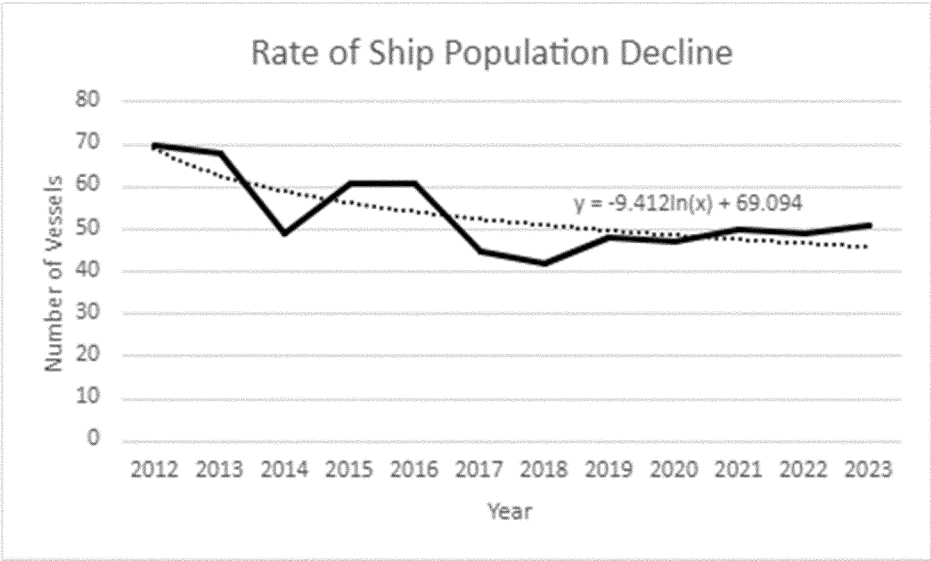
¹⁵ For each passenger ship, we assume two individuals to serve in each billet, to account for the rotational nature of shipboard employment.

Additionally, we used historical ship population data from 2012 to 2023 to estimate growth rates within the industry, and subsequent changes to the ship and mariner population into the future. After examining the changes in ship population over time, we determined that the population of U.S.-flagged passenger ships is facing a gradual decline despite apparent growth in the foreign-flagged fleet. While linear growth rates are typically preferred, we

determined that a linear decline that will eventually reach zero is an unrealistic picture of the changing dynamics of the ship population. Instead, a logarithmic decline that gradually levels off according to the formula for the trend line $y = -9.412\ln(x) + 69.094$ more accurately portrays the industry because logarithmic functions are best used to project slow rates of decline, and trend towards a number without reaching

zero. This rate of decline is reflected in Figure 1. However, for the purposes of this analysis, we estimate that the U.S.-flagged ship population will decrease by one ship each year, which is the closest whole number to the average annual change in population over the next 10 years of analysis. Therefore, we estimate that the continuous decrease in the affected mariner population is equivalent to the manning requirements of a ship exiting service each year.

Figure 1: Rate of Ship Population Decline



Next, we reviewed the manning requirements for the 51 U.S.-flagged passenger ships to derive the average manning requirement and thereby estimate the decrease in mariners and personnel each year. The affected population of 51 U.S.-flagged passenger

ships is comprised of 3 categories of ships: 4 passenger vessels of 100 or more gross tons (46 CFR Subchapter H), 9 small passenger vessels of less than 100 gross tons carrying more than 150 passengers or with overnight accommodations for more than 49

passengers (46 CFR Subchapter K), and 38 small passenger vessels of less than 100 gross tons (46 CFR Subchapter T). The average crew size for each of the categories of vessels and the entire population is displayed in Table 5.

Table 5: Average Counts of Mariners by Category of Passenger Vessel in the Affected Population

Vessel category	Average Officers	Average Ratings	Average Additional Personnel
Passenger Vessels of 100 or More Gross Tons	8	7	40
Passenger Vessels Carrying More Than 150 Passengers or With Overnight Accommodations for More Than 49 Passengers	3	0	24
Passenger Vessels of Less Than 100 Gross Tons	1	0	3
Total (Across Entire Population)¹⁶	2	1	10

Based on this data, the Coast Guard estimates that the average ship in the population carries 13 mariners (2 officers, 1 specified rating, and 10 personnel) and operates with 2 crews that will be subject to the requirements. The Coast Guard assumes that, as ships subject to the requirements exit the fleet, mariners will have less opportunity to serve aboard these ships and leave the affected population. Because we do not know which category of vessel may exit the affected population in a given year, we elect to use the overall population average rather than the specific estimates for the subcategories of ships to account for mariner exit in the affected population. We believe that, since the majority of the affected population is made up of smaller ships (38 of the 51 affected ships), this overall average, which tends toward a smaller ship, is most representative. Therefore, we estimate that each exiting ship will result in 26 fewer personnel subject to the training requirements (4 officers, 2 specified ratings, and 20 personnel across 2 crews).

Mariner Turnover

In any given year, there will be turnover in the mariner population, and some credentialed mariners will choose to exit the industry. The turnover rate is the number of mariners who leave the industry and will need to be replaced by mariners with a Merchant Mariner Credential (MMC). Because the Coast Guard does not issue passenger ship

endorsements, we cannot estimate the turnover rate from existing data. Instead, the Coast Guard uses the turnover rate derived for the “Persons in Charge of Fuel Transfers” final rule (PIC rule), published on May 27, 2020 (85 FR 31677) as an approximation for the turnover rate for this rule. In that rule, the Coast Guard estimated that, in any given year, 32.55 percent of the population that was eligible to renew a specific MMC endorsement would not do so.

The PIC rule used data from the National Maritime Center (NMC) for individuals obtaining MMCs with issue dates from April 2009 to March 2020 and expiration dates from August 2009 to March 2025. In the data from NMC, every MMC and every mariner has a unique identifying number, such that sorting by mariner reference number shows all the MMCs for that mariner. We then cleaned the data and applied a formula that marks each MMC as either renewed, not renewed, or ineligible to renew. We marked any MMC with an expiration date after July 18, 2019 (when we downloaded the data) as ineligible to renew. Otherwise, we assumed an MMC is renewed if the issue date is within 2,190 days of the previous MMC’s issue date. The period of 2,190 days is equivalent to 6 years (6 years × 365 days in a standard calendar year), which represents the validity period of 5 years plus a year-long grace period wherein a mariner cannot use the expiring MMC but could renew that MMC without having to retake the required formal training from the beginning. If there was no new MMC issued by March 2015, we assumed that the mariner left the marine industry or

otherwise no longer requires an MMC (turned over) in 2015. We then tabulated how many MMCs in each calendar year were eligible to renew, how many of those eligible were renewed, and how many of those eligible were not renewed to produce a turnover percentage as discussed. The PIC rule used a 3-year average of turnover rates to arrive at the calculated turnover rate. This rate assumes that any mariner lost to turnover in a given year is replaced by a mariner with an original MMC, in order to maintain a stable population of mariners able to serve the total population of vessels. We believe this turnover rate is a good approximation for the turnover rate in our population, because the MMC endorsement in the PIC rule has similar requirements for qualification, including similar prerequisites such as Basic and Advanced Firefighting training.

Therefore, in a similar manner, for this final rule, we assume that any mariner lost to annual turnover will be replaced by a mariner with the same credentials at this rate. This methodology ensures a stable population of mariners able to serve the total population of active ships. Because we state in part 12.905(d) that the standard of competence in crowd management can be maintained through evidence of 1 year of sea service within the last 5 years, employing this turnover rate allows us to capture the number of new ratings entering service who will require crowd management training. This turnover rate is applied only to ratings, because this group of mariners can be replaced by those who have a newly issued original MMC, as noted

¹⁶ These totals are calculated from the full affected population of vessels. For example, 206 officers divided by 51 ships leads to an average of 2 officers per ship.

above, and will be required to complete this training.

Together, in subsequent years, we expect to see decreasing numbers of

mariners seeking to meet the requirements of this rule. Table 6 outlines the number of officers, ratings, and personnel we estimate will be

required to complete passenger ship emergency familiarization and crowd management training over the next 10 years of analysis.

Table 6: Mariners Needing Passenger Ship Emergency Familiarization and Crowd Management Trainings due to Turnover and Ship Population Decline

Year	Officers in Population ¹⁷ (a)	Ratings in Population ¹⁸ (b)	Personnel in Population ¹⁹ (c)	Number of Personnel Needing Passenger Ship Emergency Familiarization each Year (d) = (a + b + c)	Number of Ratings Seeking Crowd Management Training due to Turnovers ²⁰ (e) = (b) × 32.55%
1	206	44	980	1,230	44
2	202	42	960	1,204	14
3	198	40	940	1,178	13
4	194	38	920	1,152	12
5	190	36	900	1,126	12
6	186	34	880	1,100	11
7	182	32	860	1,074	10
8	178	30	840	1,048	10
9	174	28	820	1,022	9
10	170	26	800	996	8

Columns (a), (b), and (c) describe the decrease in overall mariner population each year due to ships being retired from service, estimated at approximately one ship per year. Column (d) provides a running total of personnel who will be required to take passenger ship emergency familiarization each year before assuming shipboard duties. Finally,

column (e) describes the total number of ratings who will seek crowd management training due to turnover within the mariner population. Since we assume that ratings are currently not in compliance with the crowd management requirements of Section A-V/2 of the STCW Code, the total is the full population of ratings in year 1, with only new ratings completing training due to turnover in subsequent years.

Costs

The Coast Guard has considered the additional costs of the final rule against the baseline. Specifically, we considered whether there are compliance costs to operating companies and personnel aboard the ships, as well as enforcement costs to the Federal government associated with the final rule.

First, the final rule adds passenger ship emergency familiarization requirements for officers, ratings, and

personnel on passenger ships making international voyages. These costs will be incurred by operating companies in the ship population. Second, the final rule expands the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Prior to this final rule, only officers and personnel designated on the muster list to assist passengers in emergency situations were required to complete this training. The Coast Guard believes that there may be existing ratings qualified under Chapters II, III, and VII of the STCW Convention with duties on the muster list, which already requires them to complete crowd management training. However, for the purposes of our analysis, due to a lack of data, we assume that all qualified ratings in the affected population will need to complete crowd management for the first time as a result of this final rule.

¹⁷ Officers in population values are equal to the previous row value minus 4 (2 officers each across 2 crews) as a result of 1 vessel exiting the industry each year.

¹⁸ Ratings in population values are equal to the previous row value minus 2 (1 ratings each across 2 crews) as a result of 1 vessel exiting the industry each year.

¹⁹ Personnel in population values are equal to the previous row value minus 20 (10 personnel each across 2 crews) as a result of 1 vessel exiting the industry each year.

²⁰ Rounded to the nearest whole number. The first row in this column is an exception and should not be calculated with the provided formula because all ratings will need to seek crowd management training in the first year of analysis.

While these changes to training requirements will create new costs for operating companies and ratings qualified under Chapters II, III, and VII of the STCW Convention, the Coast Guard does not anticipate that this rulemaking will create added enforcement costs to the Federal government. We estimate that Coast Guard inspectors currently need 5–10 minutes to verify training documents during a PSC inspection, and that this final rule will not add to the time and resources expended under the current requirements.

Passenger Ship Emergency Familiarization and Crowd Management Trainings

The final rule requires officers, ratings, and personnel to complete the passenger ship emergency familiarization, and expands the applicability of crowd management training to include ratings qualified under Chapters II, III, and VII of the STCW Convention. Discussions with subject matter experts (SMEs) from CG–MMC and personnel at local Coast Guard inspections offices reveal that we are currently unable to determine whether the U.S. passenger ship industry complies with the training requirements of the STCW Convention because compliance has been voluntary and not required to be recorded during an inspection. Therefore, for the purposes of this analysis, we assume that everyone in the affected population will need to comply with the passenger ship emergency familiarization and crowd management training requirements.

The following section estimates the initial first-year compliance costs and the future recurring compliance costs associated with this final rule.

Cost of Passenger Ship Emergency Familiarization

Passenger ship emergency familiarization is conducted on board when personnel report for duty and includes topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding

one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill. Because this training is ship-specific and given before personnel are assigned to shipboard duties, we assume that operating companies will incur the costs of these required trainings. Costs are based on the opportunity cost of time of personnel required to complete the training.

The Coast Guard assumes that a mariner serving at management level aboard the ship gives the familiarization training to crewmembers. According to 46 CFR 10.107, management level refers to the level of responsibility associated with (1) serving as Master, Chief Mate, Chief Engineer Officer or Second Engineer Officer onboard a seagoing ship; and (2) ensuring that all functions within the designated area of responsibility are properly performed. We believe mariners at this level to be most qualified to provide this training, given that this training is meant to be specific to the ship on which the mariners serve.

Based on input from SMEs and Coast Guard inspectors from local offices with oversight in the operating areas of the ships, the Coast Guard estimates that this training requires 4 hours per individual. In addition, we assume that it requires half this time, or 2 hours, for a management level officer to prepare to deliver the training. We make this assumption as management level officers are responsible for shipboard management and familiar with the areas required to be included in the passenger ship emergency familiarization training. Included in this 2 hours is 0.083 hours (5 minutes) to document and record training completion, consistent with other training documentation estimates in the information collection request, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention (OMB Control Number 1625–0079). Given the relatively small size of the average ship in the affected population and the ship-specific knowledge of the management level officers on board, we assume that 2 hours is sufficient development, preparation, and documentation time for both initial and subsequent training offerings.

To compute the opportunity cost of time of the affected population to complete passenger ship emergency familiarization training, we use the U.S. Bureau of Labor Statistics' (BLS) Occupational Employment Statistics occupational series, “53–5021 Captains, Mates, and Pilots of Water Vessels,”

under North American Industry Classification System (NAICS) 483100—Deep Sea, Coastal, and Great Lakes Water Transportation to estimate the hourly mean wage rate for officers, which is \$51.30 in 2023 dollars.²¹ Similarly, we use BLS occupational series, “53–5011 Sailors and Marine Oilers,” to estimate the mean wage rate for ratings, which is \$29.00 in 2023 dollars.²² Finally, we use “53–6061 Passenger Attendants” to estimate the mean wage rate for personnel, which is \$23.11 in 2023 dollars.²³

Next, we apply a load factor to these wage rates to determine the total compensation of officers, ratings, and personnel more accurately. We calculate a load factor of 1.42 (1.4213 rounded down) from the BLS's Employer Costs of Employee Compensation December 2023 release.²⁴ We then multiply the hourly wage rates by this load factor. Therefore, we find the loaded hourly wage rate of an officer is \$72.85 ($\51.30×1.42), the loaded hourly wage rate of a rating is \$41.18 ($\29.00×1.42), and the loaded hourly wage rate of personnel is \$32.82 ($\23.11×1.42).

Because all personnel must receive this training each time they report for duty, we assume that the training will be delivered to the entire population of personnel each year. In addition, we assume that this new training will be delivered at a quarterly frequency on average, in line with other trainings required for mariners serving on Subchapter K and T vessels according to 46 CFR 122.420 and 185.420, respectively. This means that, in the first year, 206 officers, 44 specified ratings, and 980 personnel across 2 crews (assuming each crew serves 6 months on average) will need to take this training twice, for a total of 8 training hours per mariner. Additionally, 1 management level officer will need to prepare to deliver the training and document completion of the training for personnel aboard their ship twice for each crew, meaning 102 officers (1 officer delivering the

²¹ <https://www.bls.gov/oes/2023/may/oes535021.htm> (last visited 07/14/2026).

²² <https://www.bls.gov/oes/2023/may/oes535011.htm> (last visited 07/14/2026).

²³ <https://www.bls.gov/oes/2023/may/oes536061.htm> (last visited 07/14/2026).

²⁴ We obtained a total compensation estimate of \$43.11 and the wages and salaries estimate of \$30.33 for private industry workers for the transportation and material moving occupational group from Table 4 of the Employer Costs for Employee Compensation—December 2023 release at https://www.bls.gov/news.release/archives/ecec_03132024.htm (last visited 07/14/2026). This allowed us to determine a load factor of 1.42 ($\$43.11$ divided by $\$30.33$) that we could apply to the mean hourly wage rate to obtain an estimate for total compensation for an officer and rating.

training twice for each crew across 51 ships) will need to spend 4 hours preparing to deliver the training in the first year, 0.166 hours (10 minutes) of which will be used to document training completion.

Therefore, in the first year of implementation, we estimate that operating companies will incur costs of \$421,584 in undiscounted 2023 dollars, rounded. This is the sum of 206 officers taking the training twice, for a total of 8 hours, at a loaded wage rate of \$72.85 ($206 \times 8 \times \$72.85 = \$120,056.80$), 44 specified ratings taking the training twice, for a total of 8 hours, at a loaded wage rate of \$41.18 ($44 \times 8 \times \$41.18 = \$14,495.36$), 980 personnel taking the

training twice, for a total of 8 hours, at a loaded wage rate of \$32.82 ($980 \times 8 \times \$32.82 = \$257,308.80$), and 102 officers preparing to deliver and document completion of the training twice, for a total of 4 hours, at a loaded wage rate of \$72.85 ($102 \times 4 \times \$72.85 = \$29,722.80$).

Costs to the population of operating companies will decrease over time as ships exit the industry at an estimated rate of one per year. We estimate that the average ship in the population carries 13 mariners (2 officers, 1 specified rating, and 10 personnel) and operates with 2 crews that will be subject to the requirements. We assume that, as ships subject to the

requirements exit the fleet, mariners serving on those ships will also exit the affected population and will no longer be subject to the training requirements. Therefore, we estimate that each exiting ship will result in 26 fewer personnel subject to the training requirements (4 officers, 2 specified ratings, and 20 personnel). This is reflected in the calculations. Over the 10 years of analysis, we estimate that operating companies will incur average annual costs of \$379,253 and total costs of \$3,792,528, in undiscounted 2023 dollars. Table 7 describes the cost impacts of the passenger ship emergency familiarization requirements over the next 10 years of analysis.

Table 7: Undiscounted Costs of the Passenger Ship Emergency Familiarization Requirement Over 10 Years of Analysis

Year	Officers Giving Training (a)	Officers Taking Training (b)	Ratings Taking Training (c) ²⁵	Personnel Taking Training (d)	Officer Loaded Wage (e)	Rating Loaded Wage (f)	Personnel Loaded Wage (g)	Hours to Take Training (h)	Hours to Prepare and Document Training (i)	Total Cost (j) = [(a × e × i) + (b × e × h) + (c × f × h) + (d × g × h)]
1	102	206	44	980	\$72.85	\$41.18	\$32.82	8	4	\$421,584
2	98	202	42	960	\$72.85	\$41.18	\$32.82	8	4	\$412,177
3	94	198	40	940	\$72.85	\$41.18	\$32.82	8	4	\$402,770
4	90	194	38	920	\$72.85	\$41.18	\$32.82	8	4	\$393,363
5	86	190	36	900	\$72.85	\$41.18	\$32.82	8	4	\$383,956
6	82	186	34	880	\$72.85	\$41.18	\$32.82	8	4	\$374,549
7	78	182	32	860	\$72.85	\$41.18	\$32.82	8	4	\$365,142
8	74	178	30	840	\$72.85	\$41.18	\$32.82	8	4	\$355,736
9	70	174	28	820	\$72.85	\$41.18	\$32.82	8	4	\$346,329
10	66	170	26	800	\$72.85	\$41.18	\$32.82	8	4	\$336,922
Average										\$379,253
10-year total										\$3,792,528

Note: Totals may not sum due to rounding.

²⁵ The 32.55 percent turnover rate for ratings discussed in the mariner turnover section is not reflected here because the emergency familiarization training will be given each year when reporting for duty. Except for those mariners leaving the population due to ships exiting the market, we assume that the number of ratings will be constant each year in order to fully meet the manning requirements of the ships remaining in the affected population.

Cost of the Crowd Management Trainings

The crowd management training requirement applies to the 44 specified ratings across 2 crews in the affected mariner population for the first year of implementation. In subsequent years, only a fraction of the mariner population will need to seek crowd management training, due to a declining ship population and employee turnover.²⁶ The cost of attending a crowd management course includes tuition, travel expenses, opportunity cost of time, and meal and incidental expenses (M&IE), incurred by the

affected ratings qualified under Chapters II, III, and VII of the STCW Convention.

(a) Tuition and Opportunity Cost of Attendance

As of November 2024, approximately 20 Coast Guard-approved training providers offer crowd management training. Because crowd management is an existing training requirement, we do not assume any new costs to training providers to develop crowd management courses and obtain Coast Guard approval of these courses. The websites of seven training centers

provide detailed information on the length and tuition for the course. According to this data, the duration of a crowd management course ranges from 4 to 8 hours to complete, for an average of 5.17 hours. As a result, we estimate that ratings will take 1 day on average to complete the course. Tuition ranges from \$90 to \$400, for an average cost of \$226. Table 8 provides an overview of the available crowd management courses with associated costs and hours, while table 9 describes the estimated undiscounted cost for an individual rating to take crowd management training.

Table 8: Coast Guard Approved Training Centers Currently Offering Crowd Management Training Costs

Training Center	Website ²⁷	Cost	Hours ²⁸
Alaska Vocational Technical Center	https://avtec.edu/maritime/courses/crowd-management-alavtc-142/	\$90.00	4.0
Captain School USVI	http://www.captainschoolusvi.com/	\$300.00	N/A
Chesapeake Marine Training Institute	https://www.chesapeakemarineinst.com/cmti-course/crowd-management/	\$200.00	4.0
Maritime Professional Training	https://www.mptusa.com/course-details/crowd-management-course-155	\$199.00	8.0
Maritime Institute	https://maritimeinstitute.com/course/crowd-management/	\$400	7.0
Quality Maritime Training, LLC	https://www.qualitymaritimetraining.com/courses	\$195.00	4.0
Resolve Maritime Academy	https://resolveacademy.com/courses/	\$199.00	4.0
Average		\$226	5.17

²⁶ See table 4 for more specifics on the numbers of ratings who will seek crowd management training over the next 10 years of analysis.

²⁷ All websites accessed July 14, 2026.

²⁸ Not all training providers indicated the length of course time on their websites. Those not

providing the length of their offered crowd management course are indicated with an N/A in the Hours column.

Table 9: Opportunity Cost of Time for Ratings to Complete a Crowd Management Course

Loaded Wage Rate (a)	Hours (b)	Total Opportunity Cost of Crowd Management Course (c) = (a) × (b)
\$41.18	8	\$329

Note: Totals may not sum due to rounding.

(b) Travel Distribution

To estimate the cost of travel and the opportunity cost of travel time, we assume varying modes of travel for mariners getting to and from approved training based on the distribution of travel modes, derived in table 16 of CG–MMC Policy Letter 01–21: Guidelines for Qualifying for STCW Endorsements for Basic and Advanced IGF Code Operations cost analysis.²⁹ We reflect the same percentages in this final rule as in the policy letter by assuming that 20 percent will drive to the training center and return the same day, 46 percent will drive and stay 2 nights, and 34 percent will fly and stay 2 nights.³⁰ The percentages used in CG–MMC Policy Letter 01–21 derived from the distance required to travel to the nearest training provider for each mariner based on the ZIP Code associated with their credential and the ZIP Codes associated with the training provider locations. The policy letter used a random sample of 100 mariners with STCW endorsements involving the International Code of Safety for Ships Using Gases or Other Low Flashpoint Fuels (IGF Code) travelling to training centers offering relevant IGF Code training courses. In that analysis, we determined that 20 mariners will commute to the nearest training provider (or live less than 85.4 miles from a training provider), 46 will drive to the nearest training provider and lodge overnight (or live between 85.4 miles and 583.5 miles from a training provider), and 34 will fly to the nearest training provider and lodge overnight (or live greater than 583.5 miles from a training provider).

Because there is no specific endorsement for the population of

mariners affected by this rule (mariners serving on small passenger ships making international voyages), it is not possible to accurately replicate this methodology in this analysis. Due to this lack of data, we have determined to use the percentages as they appear in CG–MMC Policy Letter 01–21. We acknowledge that this creates uncertainty surrounding our cost estimates related to travel for this specific population of mariners.

We use the same methodology from CG–MMC Policy Letter 01–21 to estimate the thresholds and opportunity costs for travel among the affected population. Using updated data, the Coast Guard estimates that mariners who live or reside less than 93.9 miles from a training provider will commute to the closest site without lodging or utilizing overnight accommodations. We base this assumption on a report titled, “Commuting in America (2): The National Report on Commuting Patterns and Trends,” from the American Association of State Highway and Transportation Officials, which posits that Americans, on average, are willing to spend up to a maximum of 90 minutes commuting to work each way.³¹ This report, which used data from the American Community Survey, illustrates that approximately 97.5 percent of American commuters spent 90 minutes (1.5 hours) or less commuting to work.³² To convert 90

minutes into a distance, we calculate an average driving speed using data from the Department of Transportation’s (DOT’s) National Highway Traffic Safety Administration’s report, “National Traffic Speeds Survey III: 2015.”³³ From this report, we take the mean speed from the three road classes across the five time periods provided. We obtain an average speed of 62.6 mph. We then multiply the average speed of these three road classes by 1.5 hours (90 minutes) to obtain our commuting distance threshold of 93.9 miles (62.6 mph × 1.5 hours).

The next threshold we estimated is the distance at which a mariner chooses to drive to the training provider and lodge for the duration of the training before returning to their place of residence. To determine this distance, we establish a range by calculating the minimum and maximum distances for this threshold. The minimum distance at which mariners will drive and lodge during training must be equal to the threshold established by those mariners commuting: 93.9 miles (188 miles round trip).

The National Household Travel Survey estimates that 94.3 percent of Americans travel by personal vehicle when making round trips of less than 500 miles.³⁴ We use this distance of 500 miles as the lower bound of our

www.census.gov/content/dam/Census/library/working-papers/2013/demo/SEHSD-WP2013-03.pdf (last visited 07/14/2026).

³³ In order to convert this to distance, we take the mean total of table 12’s Speed by Road Type and Time of Day estimates from 2015 to get at average road speed of 62.6 miles per hour. This information can be found in table 12 using the “Download Document” link for Publication No. DOT HS 812 485 (March 2018) at this website: <https://rosap.nhtl.bts.gov/view/dot/35961> (last visited 07/14/2026).

³⁴ The BTS conducted the National Household Travel Survey in 2001, and it was last updated in May of 2017. Please see table 4, “Percent of Long-Distance Trips by Mode and Roundtrip Distance” to obtain the travel distance distribution of trips by miles and travel mode. Readers can access the table at: <https://rosap.nhtl.bts.gov/view/dot/5475> (last visited 07/14/2026).

²⁹ <https://www.regulations.gov/document/USCG-2020-0181-0002>. Similar methodology was also used in the Towing Vessel Firefighting Training Appendix A, published on October 3, 2023 (88 FR 67966), available at: <https://www.regulations.gov/document/USCG-2020-0492-0013>.

³⁰ Id.

³¹ The American Association of State Highway and Transportation Officials conducted the report in 2013 and used Census Bureau data in the report. Please see Figure 11–13 on page 16 to obtain the travel distribution time to work in minutes. Readers can access the report at <https://transportation.org/traveltrends/commuting-in-america/brief-13-11-commuting-departure-time-and-trip-time/> (last visited 07/14/2026).

³² The American Community Survey is an ongoing survey by the U.S. Census Bureau. It regularly gathers information pertaining to demographics and housing characteristics of U.S. households. More information on this survey can be found at: <https://www.census.gov/programs-surveys/acs/about.html> (last visited 07/14/2026).

For information on “mega-commuting” refer to footnote 29 or this brochure from the ACS: <https://www.census.gov/programs-surveys/acs/data/mega-commuting.html>

maximum distance threshold. To estimate the upper bound of our maximum distance threshold, we reference data from the Office of Airline Information report, “Average Length of Haul, Domestic Freight and Passenger Modes (Miles),” which calculated the average domestic passenger flight length of 941 miles (1,882 miles round trip) in 2023.³⁵ We use this average domestic passenger flight statistic because it reflects a distance at which the average American prefers flying over other

modes of transportation when traveling from one location to another.

Additionally, to validate the value of a 1,882 miles round trip, we reference the National Household Travel Survey data. A round-trip distance of 1,882 miles is close to the 2,000 plus miles round-trip distance category used by the National Household Travel Survey. For trips of over 2,000 miles round trip, 22.2 percent of Americans will travel by car and 74.8 percent will travel by flying. We then average our lower and upper

bounds for the maximum distance threshold to obtain an average maximum distance of 1,191 miles [(500 miles + 1,882 miles) ÷ 2], or 596 miles one-way.

Therefore, we determined that, beyond 596 miles between a mariner’s place of residence and the training provider they attended, mariners will choose to fly and lodge instead of drive and lodge. Table 10 displays the distance thresholds for all three choices of transportation.

Table 10: Modes of Travel and Travel Distance Thresholds

Travel Choice	Travel Distance (One-Way) Threshold for a Mariner to Reach their Nearest Training Provider Denoted by x
Commute	$x < 93.9$ miles
Drive and Lodge	$93.9 \text{ miles} \leq x \leq 596 \text{ miles}$
Fly and Lodge	$x > 596$ miles

(c) Opportunity Cost of Travel Time for Mariners

After determining the travel mode thresholds, we then determined the costs associated with each mode of travel. A mariner incurs an opportunity cost during the time they spend traveling to the closest training provider. To calculate these costs, we used the commuting distances and times calculated in CG–MMC Policy Letter 01–21. The policy letter calculated that the average commuter faces a 61.2-mile round trip, and those driving and lodging face approximately a 498.8-mile round trip.³⁶

Next, we calculated the wages associated with the opportunity cost of travel. To calculate these costs, we took

the mean hourly loaded wage rate for a rating taking a crowd management course, \$41.18 and multiplied it by the time required to travel to and from the closest training provider. For mariners commuting, it will take an average round-trip time of approximately 0.98 hours to commute to a training provider [the average round-trip distance divided by the average mean road class speed (61.2 miles round trip ÷ 62.6 mph)]. Similarly, we performed this calculation for those mariners driving and lodging to get an average round-trip time of about 7.97 hours (498.8 ÷ 62.6 mph). However, mariners driving and lodging will be traveling only half the round-trip distance, or 3.99 hours, twice (on the day of arrival and the day of departure).

Lastly, we estimated that it will take mariners the equivalent of an entire workday (8 hours) to fly to a training provider and fly back to their place of residence. This estimate encompasses the time necessary to travel to and from the airport, to go through security, wait for boarding, time on the tarmac, time in-flight, and the time to go through baggage claim upon arrival.

For each travel mode, we multiplied the mean hourly loaded wage rate by the average commuting time, and the days traveling and the distribution of travel mode to arrive at the weighted opportunity cost of travel for a mariner. Table 11 displays the opportunity cost of time for each mode of transportation for an individual mariner.

³⁵ The Office of Airline Information at the BTS collects air freight and domestic passenger summary data. This office divides revenue passenger miles by revenue passenger enplanements to calculate the average length of passenger trips. To find the average length of a domestic flight, please see table 1–38, “Average

Length of Haul, Domestic Freight and Passenger Modes (Miles)” and refer to cell AO:13. Readers can access the table at: <https://www.bts.gov/content/average-length-haul-domestic-freight-and-passenger-modes-miles> (last visited 07/14/2026).

³⁶ The calculations for average trip distances were obtained from page 31 of the CG–MMC Policy Letter

01–21: Guidelines for Qualifying for STCW Endorsements for Basic and Advanced IGF Code Operations cost analysis. See <https://www.regulations.gov/document/USCG-2020-0181-0002> (last visited 07/14/2026).

Table 11: Weighted Average of Opportunity Cost of Time Used by Mode of Transportation per Mariner

Mode of Travel	Commuting Time per Day (hours) (a)	Days Traveling (b)	Loaded Hourly Wage for a Deck Officer (c)	Percent of Mariners who Travel (d)	Total Opportunity Cost (Sum of columns) = (a) × (b) × (c) × (d)
Flying to Training Provider	8	2	\$41.18	34.00%	\$224
Driving to Training Provider and Lodging	3.99	2	\$41.18	46.00%	\$151
Commuting to Training Provider	0.97	1	\$41.18	20.00%	\$8
Average Total Opportunity Cost of Travel for a Mariner for Crowd Management Training					\$383

Note: Totals may not sum due to rounding.

(d) Fuel Costs

If a mariner chooses to commute or chooses to drive and lodge for the duration of the training, they will incur the costs associated with the use of their own personal vehicle to travel to and from the training provider. The U.S. General Services Administration (GSA) sets the mileage reimbursement rate for federal employees who use their privately owned vehicle (POV) for official government travel and to present this information in a single standard mileage rate. The GSA also conducts reviews of travel costs on an annual basis to determine the mileage reimbursement rate by factoring in the costs of the following: the price of gasoline and oil, depreciation of the original vehicle cost, the costs of maintenance and insurance, and state and Federal taxes. The GSA approximates the POV mileage

reimbursement rate to be \$0.66 per mile in 2023.³⁷ To calculate the fuel costs for mariners commuting and not lodging, we multiplied this reimbursement rate by the number of days a mariner commutes by the average round-trip distance calculated for commuting, 61.2 miles. We used this same method when calculating the costs for mariners driving and lodging, with the difference being that they spend the equivalent of 1 day when completing their round-trip distance of 498.8 miles. Therefore, a mariner will incur a fuel cost of about \$40.39 (\$0.66 × 61.2 miles × 1 day) when commuting and \$329.21 (\$0.66 × 498.8 miles × 1 day) when driving to and lodging near a training provider.

A mariner traveling by air will need to pay for round-trip airfare and transport fare to and from the airport. Using data from the Bureau of Transportation Statistics (BTS), we

estimate the average unadjusted round-trip airfare to be \$382 in 2023.³⁸ To calculate the cost of transport, we referred to the costs of round-trip airport transfer in the 2006 interim rule, Validation of Merchant Mariners' Vital Information and Issuance of Coast Guard Merchant Mariner's Licenses and Certificates of Registry, published January 13, 2006 (71 FR 2154), or \$50. We inflated this value using the 2023 4th Quarter and the 2006 4th Quarter Gross Domestic Product implicit price deflator values of 123.241 and 84.770, respectively.³⁹ After dividing the values, we obtained a factor of approximately 1.454. We multiplied this value by \$50 to obtain a transfer cost of approximately \$72.70, in 2023 dollars. Table 12 presents the average fuel and transfer costs associated with ratings completing a crowd management course.

³⁷ The GSA mileage rate data is available at <https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-rates/pov-mileage-rates-archived> (last visited 07/14/2026). We used the rate per mile rate of \$0.66 for January 1, 2023.

³⁸ To view the annual average price of a round-trip airfare for 2023 in unadjusted dollars, visit the link at: <https://www.bts.gov/newsroom/2023-annual-average-domestic-air-fares-decreases-2022#:~:text=The%202023%20annual%20average%20domestic,adjusted%20annual%20fare%20of%20%24394.&text=Itinerary%20Fares%3A%20Round%20trips%20but,>

[sample%20of%2010%25%20of%20tickets](https://www.bts.gov/newsroom/2023-annual-average-domestic-air-fares-decreases-2022#:sample%20of%2010%25%20of%20tickets). (last visited 07/14/2026).

³⁹ U.S. Bureau of Economic Analysis, Gross Domestic Product: Implicit Price Deflator [GDPDEF], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/GDPDEF> (last visited 07/14/2026).

Table 12: Weighted Average Fuel and Transfer Costs for a Rating taking Crowd Management Course

Mode of Travel	Fuel Cost/ Ticket Cost (a)	Transport Fare to and from Airport (b)	Percent of Mariners who Travel (c)	Average Cost to Mariner = [(a) + (b)] × (c)
Flying and lodging	\$382.00	\$72.70	34%	\$155
Driving and lodging	\$329.21	\$0	46%	\$151
Commuting	\$40.39	\$0	20%	\$8
Weighted Average Fuel Cost for a Mariner taking Crowd Management Training				\$314

Note: Totals may not sum due to rounding.

(e) M&IE Rates and Lodging Costs

Mariners incur M&IE during training and travel days, and mariners not commuting incur lodging expenses during training days. To estimate these costs, we used the GSA 2023 general travel per diem rates of \$59 for a full day and \$44.25 for first and last day, calculated at 75 percent of the full day

rate.⁴⁰ We also used the general lodging rates provided by GSA for 2023, and a calculated average lodging tax rate for 2023 from the *2023 HVS Lodging Tax Report—USA*,⁴¹ to arrive at average lodging costs of \$104.13 per night.⁴²

We assumed that those who choose to drive or fly will spend 2 nights (arrival and training day) in a hotel, which costs \$104.13 per night, for a total of \$208.26.

Accordingly, personnel who commute to a training center will incur \$44.25 (consistent with the M&IE rate for the first and last day of travel), while personnel who drive or fly will spend about \$147.50 ((2 days × \$44.25) + (1 day × \$59)) on meals and incidentals. Table 13 presents the weighted average cost breakdown by mode of transportation.

Table 13: Weighted Average Mariners Incur M&IE and Lodging Costs (Undiscounted) for Ratings taking Crowd Management Course

Mode of Travel	Lodging Costs (a)	M&IE (b)	Percent of Mariners who Travel (c)	Total Cost = [(a) + (b)] × (c)
Flying and lodging	\$208.26	\$147.50	34.00%	\$121
Driving and lodging	\$208.26	\$147.50	46.00%	\$164
Commuting	\$0.00	\$44.25	20.00%	\$9
Weighted Average M&IE and Lodging Costs				\$293

Note: Totals may not sum due to rounding.

⁴⁰ GSA per diem rates can be found here: <https://www.gsa.gov/about-us/newsroom/news-releases/fy-2023-conus-per-diem-rates-for-federal-travelers-released-08172022> (last visited 07/14/2026). See <https://www.gsa.gov/travel/plan-and-book/per-diem-rates/faqs#15> (last visited 07/14/2026), reference FAQ #15, for information on calculating first and last travel day M&IE per diem.

⁴¹ <https://www.hvs.com/article/9749-2023-HVS-Lodging-Tax-Report-USA> (last visited 07/14/2026).

⁴² The lodging cost includes lodging tax. According to the GSA, the standard lodging rate for 2023 was \$98. See <https://www.gsa.gov/about-us/newsroom/news-releases/fy-2023-conus-per-diem-rates-for-federal-travelers-released-08172022>. The

average lodging tax rate was 6.26%, which can be found here: <https://www.hvs.com/article/9749-2023-HVS-Lodging-Tax-Report-USA>. These websites were accessed on July 14, 2026. Thus, lodging cost per night is estimated to be \$104.13 [(\$98 per night multiplied by 6.26% equals \$6.13 tax) plus \$98].

(f) Documentation Costs Related to Crowd Management Training

It is the responsibility of the operating companies who are obligated by STCW Convention Regulation I/14, “Responsibilities of Companies,” to ensure that documentation relevant to personnel training is maintained and readily accessible. According to the information collection request, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention (OMB Control Number 1625–0079), it

currently takes a technical specialist 0.083 hours (5 minutes) to record that personnel serving on passenger vessels are trained as required by Regulation V/2 of the STCW Convention. Given that this final rule expands the applicability of the crowd management training to ratings qualified under Chapters II, III, and VII of the STCW Convention, and that other STCW Convention and STCW Code trainings are already required to be recorded, we assumed this documentation will not create additional costs.

(g) Total Cost to Mariners Taking Crowd Management Training

We estimated the total undiscounted annual costs for mariners required to take a crowd management course by adding the totals costs in tables 8, 9, 11, 12, and 13 and then multiplying by the affected population in table 6. We estimated the total undiscounted 10-year cost to be \$221,041, and the undiscounted average cost to be \$22,104 in 2023 dollars. Table 14 describes the total undiscounted costs for mariners taking a crowd management course over the next 10 years of analysis.

Table 14: Total Undiscounted Costs for Mariners Taking a Crowd Management Course

Year	Mariners Required to Take Training Course (a)	Total Opportunity Cost of Travel (b)	Total Fuel Costs (c)	Average MI&E & Lodging Costs (d)	Opportunity Cost of Time of Taking Course (e)	Tuition Costs (f)	Total Costs = [a × (b + c + d + e + f)]
1	44	\$383	\$314	\$293	\$329	\$226	\$68,013
2	14	\$383	\$314	\$293	\$329	\$226	\$21,640
3	13	\$383	\$314	\$293	\$329	\$226	\$20,095
4	12	\$383	\$314	\$293	\$329	\$226	\$18,549
5	12	\$383	\$314	\$293	\$329	\$226	\$18,549
6	11	\$383	\$314	\$293	\$329	\$226	\$17,003
7	10	\$383	\$314	\$293	\$329	\$226	\$15,457
8	10	\$383	\$314	\$293	\$329	\$226	\$15,457
9	9	\$383	\$314	\$293	\$329	\$226	\$13,912
10	8	\$383	\$314	\$293	\$329	\$226	\$12,366
Average							\$22,104
Average (Years 2 - 10)							\$17,003
10-Year Total							\$221,041

Note: Totals may not sum due to rounding.

Note: Totals may not sum due to rounding.

Likewise, table 15 describes the total cost to industry (operating companies and ratings qualified under Chapters II, III, and VII of the STCW Convention) of

this final rule. Operating companies will incur the costs of the passenger ship emergency familiarization, while the ratings who will be required to take the crowd management course under the expanded applicability will incur those

related costs. The Coast Guard estimates that the annualized total cost to industry over the next 10 years of analysis will be \$403,486, in 2023 dollars, when discounted at 2 percent.

Table 15: Total Cost to Industry of the Final Rule Over a 10-Year Period of Analysis (2023 dollars)

Year	Passenger Ship Emergency Familiarization Costs	Crowd Management Training Costs for Qualified Ratings	Total Cost	Discounted (2%)
1	\$421,584	\$68,013	\$489,596	\$479,996
2	\$412,177	\$21,640	\$433,817	\$416,972
3	\$402,770	\$20,095	\$422,865	\$398,475
4	\$393,363	\$18,549	\$411,912	\$380,543
5	\$383,956	\$18,549	\$402,505	\$364,561
6	\$374,549	\$17,003	\$391,553	\$347,687
7	\$365,142	\$15,457	\$380,600	\$331,335
8	\$355,736	\$15,457	\$371,193	\$316,810
9	\$346,329	\$13,912	\$360,240	\$301,433
10	\$336,922	\$12,366	\$349,288	\$286,538
Total			\$4,013,569	\$3,624,350
Annualized				\$403,486

Note: Totals may not sum due to rounding.

Note: Totals may not sum due to rounding.

Standards Incorporated by Reference (IBR)-Related Changes

IBR-related changes refer to the sections in 46 CFR parts 11 and 12 that will be revised to incorporate the STCW Consolidated Edition 2017, comprised of the STCW Convention and the STCW Code. See Section IV, Discussion of the Rule, in this preamble. In themselves, the IBR-related changes do not impose any cost on the regulated industry. Table 3 describes each IBR-related change in the final rule and provides explanations for the no-cost determinations.

Costs to Government

Coast Guard inspectors currently request mariner credentials and training records related to the STCW Convention and the STCW Code but are not tracking compliance with the requirements outlined in this final rule, since compliance has been voluntary. We expect that Coast Guard inspectors will verify compliance with the requirements in this rule as a part of their routine review of credentials and training records. Therefore, we do not anticipate this rulemaking to add to the time and resources currently necessary to verify training certificates as part of an inspection. Accordingly, the final

rule has no new costs to the Government.

Benefits

The Coast Guard received two public comments in which commenters outlined benefits of the rule. The first commenter stated that the training requirements “are vital for enhancing safety and ensuring crews are adequately prepared to handle emergencies at sea.” The second commenter described how passenger ships on international voyages often carry large numbers of passengers who are not familiar with maritime emergency procedures. With these trainings, personnel will be better prepared and trained to assist passengers in the case of an emergency. The second commenter also stated that as ships grow larger, continue to adopt more complex systems, and cater to more diverse groups of passengers, the expansion of crowd management training applicability is important to ensure maritime personnel are able to handle the unique challenges posed by modern passenger ships; this will ultimately help increase safety and prevent accidents. As the second commenter remarked, the rule “reinforces a culture of safety within the maritime industry. By prioritizing comprehensive training for all personnel, the Coast Guard is setting a

clear expectation that safety is paramount,” which benefits passengers and instills confidence in personnel who will be better equipped to respond to emergencies.

In addition, the second commenter stated that the rule will bring U.S. regulations into harmony with international standards, which is critical for ensuring U.S. mariners are held to the same standards as mariners serving on foreign-flagged ships. The second commenter states this promotes uniformity in safety standards around the globe, which is better for passengers and helps the U.S. maintain credibility when promoting other international safety standards.

The Coast Guard agrees with the public commenters and anticipates that this final rule will improve the safety of life at sea in the case of an emergency by ensuring that ship personnel are familiar with safety features, emergency equipment and procedures, basic communication, and crowd management techniques. This is important so that the ship’s personnel are able to assist passengers, including elderly and disabled individuals, during an emergency. The consequences of the loss of a ship from the affected population are potentially catastrophic.

While there are no examples of major accidents in the affected population of U.S.-flagged ships, the *Costa Concordia*

disaster in the foreign fleet provides some insight into the how costly improper emergency management can be. On January 13, 2012, the *Costa Concordia*, an Italian passenger ship operating in the Mediterranean Sea with 3,206 passengers and 1,023 crewmembers on board, struck a reef off the Italian coastline. The incident resulted in the loss of 32 lives (27 passengers and 5 crewmembers), injury to 157 others, and the total loss of the ship. In the ensuing accident report,⁴³ the Italian Ministry of Infrastructures and Transports concluded that multiple factors contributed to the injuries and loss of life. Some of these factors included delayed management of the emergency response and evacuation process, inconsistencies in assignment of duties, communication issues due to the different backgrounds of passengers and crewmembers, and passenger confusion over which personnel employed on passenger vessels were trained to assist in an emergency.⁴⁴ While other factors certainly contributed to the loss of life and injury in this maritime disaster, it is evident that clearly communicated emergency procedures and experience with crowd management could have aided both crew and passengers in responding to the emergency occurring onboard their ship. Both U.S.-flagged ships and ships in the foreign-flagged fleet (where U.S. passengers disproportionately travel) can expose passengers and crew to greater risk of loss of life and injury.

While we have not conducted a risk analysis on the U.S.-flagged ship population related to the training provisions in this final rule, due to a lack of data, we can estimate the costs associated with loss of life and ship in the population. We used data from the National Vessel Documentation Center to estimate \$809,500 as the median price of a U.S.-flagged passenger ship.⁴⁵ In addition, we reviewed the manning requirements for all 51 ships in the ship population to derive the average manning requirement and maximum number of passengers. Based on this data, we estimated that the average ship in the population can carry 13 mariners (2 officers, 1 specified rating, and 10

personnel) and 114 total passengers at one time. In order to estimate the benefit of preventing a fatality, we used the Value of a Statistical Life (VSL) estimate of \$13.2 million for analyses, using a base year of 2023.⁴⁶ The VSL is defined as the additional cost that individuals would be willing to bear for improvements in safety (that is, reductions in risks) that, in the aggregate, reduce the expected number of fatalities by one. This conventional terminology has often provoked misunderstanding on the part of both the public and decision makers. What is involved is not the valuation of life, as such, but the valuation of reductions in risks. For example, a VSL of \$13.2 million does not mean that a specific human life is worth \$13.2 million but is, instead, meant to measure the willingness to pay for reductions in only small risks of premature death (say, \$132 for a risk of 1 in 100,000). This approach to valuation of mortality risks is endorsed by OMB Circular A-4, which provides guidance to Federal agencies on the development of regulatory analysis.⁴⁷

In the event of a total loss of ship and life due to lack of emergency training and procedure, we estimated losses totaling \$809,500 from loss of ships and nearly \$1.7 billion from loss of life,⁴⁸ per ship lost.

Beyond the costs associated with a catastrophic loss, it should be noted that the United States is required to implement amendments to the STCW Convention and the STCW Code through national regulations. Failure to meet our treaty obligation to fully implement the STCW Convention could cause the United States to lose its status on the IMO White List. The White List distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Loss of this status could cause U.S. ships to be subject to more rigorous PSC inspections in foreign ports, including possible detainment or denial of entry, resulting in potential revenue losses. Additionally, U.S. mariners could be ineligible to serve on foreign-flagged passenger ships. Hence, by aligning national regulations with the STCW Convention and the STCW Code, the

final rule ensures that owners and operators of U.S.-flagged ships, as well as U.S. mariners, are able to operate in international markets.

Further, there is an additional benefit in the promotion of international harmonization and reciprocity of maritime regulation. This final rule advances Executive Order 13609, "Promoting International Cooperation," which targets international regulatory cooperation to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. By promoting harmonization of international maritime safety regulations, the United States ensures that our ships comply with international standards and meet the regulations of foreign countries while our ships are in their waters, while also promoting higher baseline safety standards for foreign-flagged ships that often carry U.S. passengers.

Alternatives Considered

This final rule codifies the STCW Convention and the STCW Code, including amendments through 2016. As a signatory to the STCW Convention, the United States must ensure compliance with its treaty obligations through full implementation of amendments to the STCW Convention and the STCW Code. The STCW Convention is not self-implementing; therefore, the Coast Guard does not have discretion and must issue regulations to implement these requirements. Failure to meet the treaty obligations could cause the United States to lose status on the IMO's "White List," which distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Because the Coast Guard must implement the training requirements outlined in the 2016 amendments and does not implement any discretionary requirements in this final rule, we did not examine any alternatives to the rule.

B. Small Entities

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, we considered the impact of this rule on small entities. 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.

A Final Regulatory Flexibility Analysis discussing the impact of this final rule on small entities addresses the following, as required under section 603(b) of the RFA:

(1) A statement of the need for, and objectives of, the rule;

⁴³ The Ministry of Infrastructures and Transports, Marine Casualties Investigative Body, Cruise Ship COSTA CONCORDIA, Marine Casualty on January 13, 2012. This report is available at: https://www.transportes.gob.es/recursos_mfom/2012costaconcordia.pdf (last visited 7/15/2026).

⁴⁴ Ibid at 159.

⁴⁵ The median price is used here due to significant outliers on the upper bound of vessel valuations. The mean price is weighted upward by the inclusion of 4 large ships with valuations of \$500,000,000, which is atypical for the relatively small-sized ships in the population.

⁴⁶ For more information on the VSL, see the DOT guidance located at <https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis> (last visited 07/14/2026).

⁴⁷ <https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf> (last visited 07/14/2026).

⁴⁸ Loss of life is calculated as \$1,676,400,000 [(\$13.2 million multiplied by 127 people (13 crew members and 114 passengers on average)], rounded.

(2) A statement of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA) in the NPRM, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. A statement of the need for, and objectives of, the rule.

The growth of foreign-flagged passenger ships as a vacation destination has resulted in the launching of consistently larger ships and subsequent concerns over passenger safety. Passenger ship travel requires passengers to feel assured of their safety, regardless of where the ship originates or hails. Typically, passengers are only on board these ships for a short time, and seldom have maritime experience, so they rely on the ship's crew to assist them in emergency situations. In emergency situations, it may be impossible for passengers to identify which crewmembers are trained to assist them in an emergency. Such situations pose risks to life, health, and safety, as well as damage to property and the marine environment.

The IMO has worked to address these risks, leading to amendments in 2016 to the STCW Convention and the STCW Code to ensure that passenger ship personnel are familiar with the safety

features, emergency equipment and procedures, basic communication, and crowd management techniques in order to assist passengers, including elderly and disabled individuals, during an emergency.

The United States is a signatory to the STCW Convention and must ensure compliance with its treaty obligations through full implementation of the STCW Convention and the STCW Code. The STCW Convention is not self-implementing. The Coast Guard must issue regulations to implement these requirements. The Coast Guard issued CG-MMC Policy Letter 02-21 to advise owners and operators of U.S. passenger ship operating companies of the requirements of the STCW Convention and the STCW Code. However, if the Coast Guard does not issue regulations to implement these requirements, they are not enforceable, and there is a risk that U.S. ships could be denied entry to or detained in foreign ports, that U.S. mariners could be ineligible to serve on foreign-flagged ships, and that operating companies, personnel, and, we believe, the passengers will be at higher risk for loss of ship, serious injury, or loss of life as the result of an emergency for which mariners and personnel were unprepared.

The objective of this final rule is to ensure the safety of passengers on board U.S.-flagged passenger ships by ensuring all shipboard personnel have completed training and are competent to assist passengers in the event of an emergency. With this rulemaking, the Coast Guard requires passenger ship emergency familiarization for all shipboard personnel on U.S.-flagged passenger ships and expands the applicability of the existing crowd management training requirement to include ratings qualified under Chapters II, III, and VII of the STCW Convention, which may prevent the loss of life at sea, reduce the risk of injury, and increase protection of property and the marine environment.

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments.

The Coast Guard received two public comments on the NPRM in support of the rule. The Coast Guard did not receive any public comments specifically addressing the IRFA, or any comments addressing costs incurred by the regulated owners and operators of

the affected U.S.-flagged passenger ships. As a result, we have not adjusted the requirements from the NPRM.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the final rule as a result of the comments.

The Chief Counsel for Advocacy of the SBA did not provide comment on the NPRM or the IRFA.

4. A description of and an estimate of the number of small entities to which the final rule will apply or an explanation of why no such estimate is available.

As described in Section VI A, Regulatory Planning and Review, in this document, there are two affected populations for the final rule: (1) operating companies that will incur the costs of the required passenger ship emergency familiarization, and (2) ratings qualified under Chapters II, III, and VII of the STCW Convention who will need to complete a crowd management course. Ratings qualified under Chapters II, III, and VII of the STCW Convention are individuals and not entities; as such, the second affected population does not contain any small entities. We focus the attention of this analysis on the operating companies of U.S.-flagged passenger ships.

Of the 51 ships in the affected ship population, there are 41 operating companies. Of these 41 operating companies:

1. 2 are governmental jurisdictions with populations over 50,000, neither of which is classified as a small entity;

2. 1 is a non-profit organization, and is classified as a small entity;

3. 38 are private companies, of which 5 are not classified as small businesses, 22 are classified as small businesses, and 11 could not be classified because information could not be found on those 11 businesses. For the purposes of this analysis, we classify those 11 businesses, where information could not be found, as small entities.

We researched the number of employees and revenue of these companies using proprietary and public business databases. Then we measured company size data using the SBA business size standards to assess how many companies in this industry may be small entities. The SBA provides business size standards for all NAICS sectors.⁴⁹ Our analysis of the available company information revealed 14 primary NAICS codes. Table 16 displays

⁴⁹ https://www.sba.gov/sites/default/files/2023-06/Table%20of%20Size%20Standards_

Effective%20March%2017%2C%202023%20%282%29.pdf (last visited 07/14/2026).

the NAICS codes of the small businesses found in our sample, with applicable data.

Table 16: NAICS Codes of Identified Small Businesses

Title	NAICS Code	Count of Small Businesses	SBA Size Standard Type	SBA Size Threshold
Scenic and Sightseeing Transportation, Water	487210	6	Revenue	\$14,000,000
Inland Water Passenger Transportation	483212	4	Employee	550
Travel Agencies	561510	3	Revenue	\$25,000,000
All Other Amusement and Recreation Industries	713990	3	Revenue	\$9,000,000
Tour Operators	561520	2	Revenue	\$25,000,000
All Other Transit and Ground Passenger Transportation	485999	1	Revenue	\$19,000,000
Hotels (except Casino Hotels) and Motels	721110	1	Revenue	\$40,000,000
Navigational Services to Shipping	488330	1	Revenue	\$47,000,000
Site Preparation Contractors	238910	1	Revenue	\$19,000,000
New Single-family Housing Construction (Except For Sale Builders)	236115	1	Revenue	\$45,000,000
Elementary and Secondary Schools	611110	1	Revenue	\$20,000,000
Scenic and Sightseeing Transportation, Other	487990	1	Revenue	\$25,000,000
Coastal and Great Lakes Passenger Transportation	483114	1	Employee	550
Boat Dealers	441222	1	Revenue	\$40,000,000

Revenue Impacts of the Final Rule. To determine the impacts of the final rule on small operating companies, we used information on revenue or employee size as available on business directory websites.

As discussed in the “Cost to Industry” section of the RA, we estimate that there is a population of 51 ships that will be subject to this rule in the first year of implementation, with an estimated population decline of 1 ship per year in subsequent years. There are 41 unique owners and operators of the affected ships employing 1,230 officers, ratings, and personnel subject to the passenger ship emergency familiarization requirements, 34 of which are considered small entities. The Coast Guard was able to find revenue data on

22 of those 34 small entities, allowing us to analyze estimated impacts.

We estimate that 4 hours is the time needed for officers, ratings, and personnel to complete the passenger ship emergency familiarization. In addition, a management level officer will need approximately 2 hours to prepare to deliver the passenger ship emergency familiarization aboard each ship for each crew. We assume there are 2 crews per vessel to account for the rotational nature of shipboard employment, and that each crew (serving an average of 6 months on board each ship) will take the training twice per year in line with other quarterly training requirements as outlined in 46 CFR 185.420 and § 122.420. Thus, we multiply the estimated training and training

preparation hours by 2 to capture the quarterly frequency of training per year. The loaded hourly wage rate of officers, ratings, and personnel are \$72.85, \$41.18, and \$32.82 respectively.

Because all officers, ratings, and additional personnel are required to participate in emergency familiarization training, we needed the number of officers, ratings, and personnel impacted by the passenger ship emergency familiarization requirements. To determine this, we reviewed the certificate of inspection for all 25 U.S.-flagged passenger ships in the affected ship population owned by entities with available revenue data and reviewed the manning requirements for each ship. We then added the total officers, ratings, and additional personnel for each ship owned by each entity and multiplied by

2 to account for both crews on each ship. After determining the total affected personnel for each entity, we then calculated undiscounted first-year costs (in 2023 dollars) for each impacted small entity in the affected population with known revenue data [(number of officers delivering training $\times$ 4 preparation hours $\times$ \$72.85 hourly wage) + (number of officers $\times$ 8 training hours $\times$ \$72.85 hourly wage) + (number of specified ratings $\times$ 8 training hours $\times$ \$41.18 hourly wage) + (number of

additional personnel $\times$ 8 training hours $\times$ \$32.82 hourly wage)]. We then divided the calculated first-year cost by the small entity's revenue to find the level of impact on the affected small entity. For example, for owner or operator "A" in column 1, we estimate undiscounted first-year costs of \$13,179.68 [(8 officers $\times$ \$72.85 officer wage $\times$ 8 training hours) + (0 ratings $\times$ \$41.18 rating wage $\times$ 8 training hours) + (28 additional personnel $\times$ \$32.82 personnel wage $\times$ 8 training hours) + (4

officers delivering training $\times$ \$72.85 officer wage $\times$ 4 training preparation hours)]. We then found the estimated level of impact on owner or operator "A" of 1.48 percent by dividing the calculated first-year cost by its revenue obtained from public business databases (\$13,179.68 $\div$ \$891,000 = 1.48%). See Table 17 for the calculations of first-year costs and impacts on small entities in the affected population.

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Table 17: Estimated First-Year Impact of the Emergency Familiarization Training for Affected Small Entities with Known Revenue Data

Owner or Operator ⁵⁰	Number of Vessels	Officers	Ratings	Additional Personnel	Officers Delivering Training (1 per crew, per vessel)	Officer Wage	Rating Wage	Additional Personnel Wage	Training Hours	Training Preparation Hours	Total Cost	Company Revenue	Percent Impact
A	2	8	0	28	4	\$72.85	\$41.18	\$32.82	8	4	\$13,179.68	\$891,000	1.48%
B	1	4	0	86	2	\$72.85	\$41.18	\$32.82	8	4	\$25,494.16	\$10,729,000	0.24%
C	1	2	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$4,374.00	\$1,313,000	0.33%
D	1	2	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$4,374.00	\$8,000,000	0.05%
E	1	4	0	4	2	\$72.85	\$41.18	\$32.82	8	4	\$3,964.24	\$1,011,000	0.39%
F	1	4	0	4	2	\$72.85	\$41.18	\$32.82	8	4	\$3,964.24	\$534,000	0.74%
G	1	4	0	4	2	\$72.85	\$41.18	\$32.82	8	4	\$3,964.24	\$31,124,000	0.01%
H	1	4	0	8	2	\$72.85	\$41.18	\$32.82	8	4	\$5,014.48	\$744,000	0.67%
J	1	4	0	8	2	\$72.85	\$41.18	\$32.82	8	4	\$5,014.48	\$298,000	1.68%
K	3	8	0	10	6	\$72.85	\$41.18	\$32.82	8	4	\$9,036.40	\$2,184,000	0.41%
L	1	2	0	8	2	\$72.85	\$41.18	\$32.82	8	4	\$3,848.88	\$19,481,000	0.02%
M	1	2	0	4	2	\$72.85	\$41.18	\$32.82	8	4	\$2,798.64	\$1,649,000	0.17%
N	1	4	0	12	2	\$72.85	\$41.18	\$32.82	8	4	\$6,064.72	\$149,000	4.07%
O	1	4	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$5,539.60	\$149,000	3.72%
P	1	4	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$5,539.60	\$337,000	1.64%
Q	1	4	0	12	2	\$72.85	\$41.18	\$32.82	8	4	\$6,064.72	\$149,000	4.07%
R	1	4	0	12	2	\$72.85	\$41.18	\$32.82	8	4	\$6,064.72	\$236,343,000	0.00%
S	1	4	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$5,539.60	\$649,000	0.85%
T	1	2	0	2	2	\$72.85	\$41.18	\$32.82	8	4	\$2,273.52	\$2,400,000	0.09%
U	1	4	0	6	2	\$72.85	\$41.18	\$32.82	8	4	\$4,489.36	\$149,000	3.01%
V	1	4	0	4	2	\$72.85	\$41.18	\$32.82	8	4	\$3,964.24	\$8,829,000	0.04%
W	1	2	0	10	2	\$72.85	\$41.18	\$32.82	8	4	\$4,374.00	\$10,793,000	0.04%

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For this final rule, the Coast Guard considers an impact of greater than 1 percent (.01) of a small entity's annual revenue to be a significant impact. Table 18 shows the distribution of revenue impacts on the small entities affected by

this final rule. In addition to the less than 1 percent threshold, which indicates no significant impact, we also include the 1-to-3 percent threshold indicating significant impact, and a greater than 3 percent threshold showing even greater impacts on

affected small entities. The Coast Guard estimates that 7 small entities, or 32 percent of the population with known revenue, will incur significant impacts, with 4 of those small entities incurring impacts greater than 3 percent of their annual revenue.

⁵⁰ Small entity names are removed to protect personal identifiable information.

Table 18: Distribution of Revenue Impacts

Percent of Revenue Impact	Small Entities with Known Revenue	Portion of Small Entities with Known Revenue
<1%	15	68%
1–3%	3	14%
>3%	4	18%

5. *A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record.*

This final rule calls for a revised collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. This rule revises the current information collection, Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1995, 1997 and 2010 Amendments to the International Convention, OMB Control Number: 1625–0079.

Under the existing OMB Control Number 1625–0079, the Coast Guard collects information from owners and operators of U.S.-flagged passenger ships, and ratings and officers serving on these ships, as well as from training centers. The final rule adds additional collection of information requirements to this existing collection of information in order to implement the STCW Convention and the STCW Code. These additional collection of information requirements will: (1) require the operating companies of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that all personnel serving on these ships have completed a passenger ship emergency familiarization, and (2) require documentary evidence that required personnel have completed crowd management training for ratings serving on U.S.-flagged passenger ships that carry 12 passengers or more on international voyages.

The additional collection of information in the final rule will ensure that mariners have completed training necessary to comply with the STCW Convention and the STCW Code and adequately assist passengers in the event of an emergency. The additional collection of information is also needed to demonstrate to the IMO that the United States, as a signatory to the STCW Convention, has met the

obligation to implement requirements through national regulations.

The additional collection of information in this final rule will affect an estimated 34 small entities. These entities are owners and operators of ships carrying 12 or more passengers on international voyages who employ officers, ratings, and personnel required to complete passenger ship emergency familiarization.

According to the current collection of information, a management level officer spends about 5 minutes to document evidence of personnel training on behalf of operating companies as a part of the 2 hours estimated to prepare for training and document training completion. Accordingly, we estimate that the passenger ship emergency familiarization requirement of the final rule will increase the burden hour of the existing collection of information by 17 hours (51 ships $\times$ 0.083 hours per response $\times$ 2 crews $\times$ 2 trainings per year = 16.9 hours).

In addition to the recordkeeping requirements of the final rule, there are also new training requirements. First, the final rule expands the applicability of crowd management training by requiring ratings qualified under Chapters II, III, and VII of the STCW Convention to complete this training. Prior to this final rule, only officers and personnel designated on the muster list to assist passengers in emergency situations were required to complete this training.

Second, the final rule creates a new requirement for all personnel to complete passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities during an emergency. Personnel must complete the familiarization before being assigned to shipboard duties. The passenger ship emergency familiarization requirement applies to all personnel, including Masters, officers, and ratings qualified under Chapters II, III, and VII of the STCW Convention. This familiarization training does not require Coast Guard approval. Mariners or ship operators

must maintain documentation verifying that personnel have completed the passenger ship emergency familiarization. This training includes topics to familiarize personnel with the general safety features aboard the ship, the location of essential safety equipment, including life-saving appliances, the importance of personal conduct during the implementation of emergency plans, and restrictions on the use of elevators during emergencies. Passenger ship emergency familiarization also includes the requirement to communicate with passengers during an emergency, including the ability to communicate in the working language of the ship, including non-verbally communicating safety information, and understanding one of the languages in which emergency announcements may be broadcast on the ship during an emergency or drill.

6. *A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

As a party to the STCW Convention, the United States is obligated to implement all amendments into domestic law. The United States proposed and supported these amendments, recognizing the enhanced safety measure as desirable.

This final rule codifies the 2017 edition of the STCW Convention and the STCW Code. As a signatory to the STCW Convention, the United States must ensure compliance with its treaty obligations through full implementation of amendments to the STCW Convention and the STCW Code. The STCW Convention is not self-implementing; therefore, the Coast Guard does not have discretion and must issue regulations to implement

these requirements. Failure to meet the treaty obligations could cause the United States to lose status on the IMO's "White List," which distinguishes administrations that are in full compliance with the STCW Convention and the STCW Code. Because the Coast Guard must implement the training requirements outlined in the 2016 amendments and does not implement any discretionary requirements in this final rule, we did not examine any alternatives to the rule.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we want to assist small entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the final rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this final rule. 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.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This final rule calls for a revision to an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Standards of Training, Certification and Watchkeeping for

Seafarers (STCW) International Convention.

OMB Control Number: 1625–0079.

Summary of the Collection of Information: The STCW Convention establishes minimum standards of training, certification and watchkeeping for seafarers. The United States is a signatory to the STCW convention, which defines standards of competence necessary to ensure safety of life at sea and the marine environment and addresses the responsibilities of signatories to ensure seafarers meet standards of competence. The information collection requirements are necessary to implement the STCW Convention.

Under the existing information collection, OMB Control Number 1625–0079, the Coast Guard collects information from owners and operators of U.S.-flagged passenger ships, and ratings and officers serving on these ships, as well as training centers. The final rule adds additional requirements to the existing collection of information in order to implement the passenger ship training requirements of the STCW Convention. These additional collection of information requirements will: (1) require the owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that officers, ratings, and personnel serving on these ships have completed passenger ship emergency familiarization; (2) require owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages to provide documentary evidence that ratings qualified under Chapters II, III, and VII of the STCW Convention have completed crowd management training; and (3) require training providers to document course completion or disenrollment for crowd management training.⁵¹

Need for Information: The additional collection of information in the final rule will ensure that: (1) passenger ship personnel are trained to adequately assist passengers in the case of an emergency; (2) mariners have proof of completion of training necessary for compliance with the STCW Convention; and (3) the United States can verify and demonstrate that it has in place national regulations which implement the STCW

Convention and the STCW Code, as is required of a signatory to the convention.

Use of Information: The Coast Guard will use the additional collection of information in the final rule to help to ensure compliance with international requirements and to maintain acceptable quality in activities associated with training and assessment of merchant mariners.

Description of the Respondents: The respondents are owners and operators of U.S.-flagged passenger ships that carry 12 passengers or more on international voyages and training providers offering crowd management courses.

Number of Respondents: The additional collection of information in this final rule will affect an estimated 41 passenger ship operating companies that carry 12 or more passengers on international voyages. These companies will have to document completion of passenger ship emergency familiarization for all personnel serving aboard their ships and retain documentation of a crowd management course for the ratings qualified under Chapters II, III, and VII of the STCW Convention serving aboard their ships.

Frequency of Response: Operating companies of U.S.-flagged passenger ships that carry 12 or more passengers on international voyages will be required to submit the additional information when it is requested during a PSC inspection. The required passenger ship emergency familiarization and crowd management training records will be recorded at completion, to be available upon request.

Burden of Response: According to the current collection of information, a management level officer spends about 0.083 hours (5 minutes) to document evidence of mariners' training on behalf of a ship owner or operator for each of the two crews, twice per year. These 5 minutes are accounted for in the estimate for emergency familiarization training preparation and documentation. Accordingly, we estimate that passenger ship emergency familiarization will increase the burden hour of the existing collection of information by approximately 17 hours annually (51 ships × 0.083 hours per response × 2 crews × 2 per year = 16.9 hours).

Also, according to the existing collection of information, a technical specialist spends about 0.083 hours (5 minutes) to document training records for personnel serving aboard passenger ships. Given that this final rule expands the applicability of the crowd management training to ratings qualified

⁵¹ As of March 24, 2014, each school with an approved course must keep records for at least 5 years after the end of each student's completion or disenrollment from a course or program (46 CFR 10.403). Training providers are not expected to keep additional records under this collection of information, only to continue to keep the records already required.

under Chapters II, III, and VII of the STCW Convention as a subset of the overall mariner population, and operating companies already record STCW training completion for this population, this will not create an increase in the amount of time required to document training records.

The existing collection of information for training providers shows that an administrative specialist spends about 1 hour to document course completion, including a student's performance. However, because this action is taken once annually for each approved course, this will not increase the estimated burden for training providers, although this rule may minimally increase the number of students taking a crowd management course.

Estimate of Total Annual Burden: The total estimated burden hours for this final rule is approximately 17 hours for operating companies of U.S.-flagged passenger ships that carry 12 or more passengers providing documentary evidence of having completed passenger ship emergency familiarization.

As required by 44 U.S.C. 3507(d), we will submit a copy of this rule to OMB for its review of the collection of information.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard can enforce the collection of information requirements in this final rule, OMB would need to approve the Coast Guard's request to collect this information. We will publish a **Federal Register** notice once OMB acts on our request.

E. Federalism

A rule has implications for federalism under Executive Order 13132 (Federalism) if it has a substantial direct effect on 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. We analyzed this final rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all the categories covered in 46 U.S.C. Chapters 71, 73, and 81 addressing personnel qualifications, and manning of ships, and any other category in which Congress intended the Coast Guard to be the sole source of a ship's obligations,

are within the field foreclosed from regulation by the States. *See, e.g., United States v. Locke*, 529 U.S. 89 (2000) (finding that the states are foreclosed from regulating tanker ships) *see also Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157 (1978) (state regulation is preempted where "the scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it [or where] the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." (Citations omitted)). Therefore, because the States may not regulate within these categories, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a ship's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this final rule will have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100 million (adjusted for inflation) or more in any one year. Although this final rule will not result in such an expenditure, we do discuss the potential effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, (Civil Justice Reform), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 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.

K. Energy Effects

We have analyzed this final rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

The standards applied in this rule originate from the STCW, an international Convention developed and maintained by the IMO, an intergovernmental body composed of sovereign member states. Because the STCW is a mandatory Convention

obligation negotiated by governments rather than a technical standard developed by a voluntary consensus standards body, it does not meet the definition of a “voluntary consensus standard” under the National Technology Transfer and Advancement Act. Therefore, this final rule does not incorporate by reference voluntary consensus standards.

M. Environment

We have analyzed this final rule under Department of Homeland Security Management 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 made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. This final rule is categorically excluded under paragraphs L54 and L56 of Appendix A, table 1 of DHS Instruction Manual 023–01, Rev. 1. Paragraph L54 pertains to regulations that are editorial or procedural and paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel. This final rule codifies STCW Convention and the STCW Code concerning requirements for personnel serving on passenger ships on international voyages with regard to passenger ship emergency familiarization and crowd management training to promote the safety of life at sea in the case of an emergency.

List of Subjects

46 CFR Part 11

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Schools, Seamen,

46 CFR Part 12

Incorporation by reference, Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR parts 11 and 12 as follows:

PART 11—REQUIREMENTS FOR OFFICER ENDORSEMENTS

- 1. The authority citation for part 11 is revised to read as follows:

Authority: 14 U.S.C. 502; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. chapter 89; 46 U.S.C. 7502, 7505, 7701, and 70105; E.O. 10173; DHS Delegation No. 00170.1, Revision No. 01.4. Section 11.107 is also issued under the authority of 44 U.S.C. 3507.

- 2. Revise § 11.102 to read as follows:

§ 11.102 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard, Office of Merchant Mariner Credentialing (CG–MMC) and at the National Archives and Records Administration (NARA). Contact the Coast Guard, CG–MMC, at U.S. Coast Guard, Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509, email: MMCPolicy@uscg.mil. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/CFR/IBR-locations or email fr.inspection@nara.gov. The material may be obtained from International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England, +44 (0)20 7735 7611, sales@imo.org, www.imo.org.

(a) STCW Consolidated Edition 2017, copyright 2017, comprised of:

(1) STCW Convention (or STCW): The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers; IBR approved for §§ 11.201(h); 11.426(c); 11.427(f); 11.428(c); 11.429(d); 11.493(e); 11.495(e); 11.497(c); 11.553(d); 11.555(e); 11.1001(a); 11.1003(a); 11.1009(c); 11.1105(a).

(2) STCW Code: The Seafarers’ Training, Certification and Watchkeeping Code, (including Erratum April 2018 and Supplement February 2019); IBR approved for §§ 11.201(h); 11.301(a) and (f); 11.302(a), (c), and (d); 11.303(a) through (d); 11.305(a), (c), and (e); 11.307(a), (c), and (e); 11.309(a), (d), and (e); 11.311(a), (c), and (d); 11.313(a), (c), and (d); 11.315(a), (c), and (d); 11.317(a), (c), and (d); 11.319(a), (c), and (d); 11.321(a), (c), and (d); 11.325(a), (c), and (d); 11.327(a), (c), and (d); 11.329(a), (d), and (e); 11.331(a), (d), and (e); 11.333(a), (c), and (d); 11.335(a) through (c); 11.604; 11.901(c); 11.1003(a); 11.1105(a).

(b) SOLAS: The International Convention for the Safety of Life at Sea, 1974; IBR approved for § 11.601.

§ 11.305 [Amended]

- 3. Amend § 11.305 as follows:
 - a. In paragraph (a)(2), remove the text “of this part”; and
 - b. In paragraph (e), footnote 2 to Table 1 to § 11.305(e), after the text “not previously satisfied,” add the text “in accordance with Section A–II/2 of the STCW Code.”

§ 11.307 [Amended]

- 4. Amend § 11.307 as follows:
 - a. In paragraph (a)(2), remove the text “of this part”; and
 - b. In paragraph (e), footnote 2 to Table 1 to § 11.307(e), after the text “not previously satisfied,” add the text “in accordance with Section A–II/2 of the STCW Code.”

§ 11.309 [Amended]

- 5. Amend § 11.309 as follows:
 - a. In paragraph (e), footnote 2 to Table 1 to § 11.309(e), after the text “not previously satisfied,” add the text “in accordance with Section A–II/1 of the STCW Code.”

§ 11.311 [Amended]

- 6. Amend § 11.311 as follows:
 - a. In paragraph (a)(2), remove the text “of this part”; and
 - b. In paragraph (d), footnote 2 to Table 1 to § 11.311(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/2 of the STCW Code.”

§ 11.313 [Amended]

- 7. Amend § 11.313 as follows:
 - a. In paragraph (a)(2), remove the text “of this part”; and
 - b. In paragraph (d), footnote 2 to Table 1 to § 11.313(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/2 of the STCW Code.”

§ 11.315 [Amended]

- 8. Amend § 11.315 as follows:
 - a. In paragraph (a)(2), remove the text “of this part”; and
 - b. In paragraph (d), footnote 2 to Table 1 to § 11.315(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/2 of the STCW Code.”

§ 11.317 [Amended]

- 9. Amend § 11.317 as follows:
 - a. In paragraph (d), footnote 2 to Table 1 to § 11.317(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/3 of the STCW Code.”

§ 11.319 [Amended]

■ 10. Amend § 11.319 as follows:
 ■ a. In paragraph (d), footnote 2 to Table 1 to § 11.319(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/1 of the STCW Code.”

§ 11.321 [Amended]

■ 11. Amend § 11.321 as follows:
 ■ a. In paragraph (d), footnote 2 to Table 1 to § 11.321(d), after the text “not previously satisfied,” add the text “in accordance with Section A–II/3 of the STCW Code.”

§ 11.325 [Amended]

■ 12. Amend § 11.325 as follows:
 ■ a. In paragraph (d), footnote 2 to Table 1 to § 11.325(d), after the text “not previously satisfied,” add the text “in accordance with Section A–III/2 of the STCW Code.”

§ 11.327 [Amended]

■ 13. Amend § 11.327 as follows:
 ■ a. In paragraph (d), footnote 2 to Table 1 to § 11.327(d), after the text “not previously satisfied,” add the text “in accordance with Section A–III/2 of the STCW Code.”

■ 14. Amend § 11.329 as follows:

■ a. In paragraph (e), revise table 1 to § 11.329 to read as follows:

§ 11.329 Requirements to qualify for an STCW endorsement as Officer in Charge of an Engineering Watch (OICEW) in a manned engineroom or designated duty engineer in a periodically unmanned engineroom on vessels powered by main propulsion machinery of 750 kW/1,000 HP propulsion power or more (operational level).

* * * * *

(e) * * *

TABLE 1 TO § 11.329(e)—STCW ENDORSEMENT AS OICEW IN A MANNED ENGINE ROOM OR DESIGNATED DUTY ENGINEER IN A PERIODICALLY UNMANNED ENGINE ROOM ON VESSELS POWERED BY MAIN PROPULSION MACHINERY OF 750 kW/1,000 HP PROPULSION POWER OR MORE

[Operational level]

Entry path from national endorsements	Sea service ¹	Competence—STCW Table A–III/1 ²	Training required by this section ³
Second Assistant Engineer any horsepower	None	Yes	Yes.
Third Assistant Engineer any horsepower	None	Yes	Yes.
Assistant Engineer—Limited	None	Yes	Yes.
Designated Duty Engineer of vessels of less than 4,000 HP/3,000 kW ⁴	12 months	Yes	Yes.
Designated Duty Engineer—Unlimited, less than 500 GRT	None	Yes	Yes.
Assistant Engineer—MODU	None	Yes	Yes.
Assistant Engineer—OSV	None	Yes	Yes.
Designated Duty Engineer of vessels of less than 1,000 HP/750 kW HP ⁴	24 months	Yes	Yes.

¹ This column provides the minimum additional service required of the seafarer in order to meet the requirements of this section.

² Complete any items in paragraph (a)(3) of this section not previously satisfied in accordance with Section A–III/1 of the STCW Code.

³ Complete any items in paragraph (a)(4) of this section not previously satisfied.

⁴ STCW certificate should be limited to vessels less than 500 GRT.

§ 11.331 [Amended]

■ 15. Amend § 11.331 as follows:
 ■ a. In paragraph (e), footnote 2 to Table 1 to § 11.331(e), after the text “not previously satisfied,” add the text “in accordance with Section A–III/3 of the STCW Code.”

§ 11.333 [Amended]

■ 16. Amend § 11.333 as follows:
 ■ a. In paragraph (d), footnote 2 to Table 1 to § 11.333(d), after the text “not previously satisfied,” add the text “in accordance with Section A–III/3 of the STCW Code.”

§ 11.493 [Amended]

■ 17. In § 11.493, amend paragraph (e) by removing the text “STCW Regulation” and adding, in its place, the text “STCW Convention Regulation”.

§ 11.495 [Amended]

■ 18. In § 11.495, amend paragraph (e) by removing the text “STCW Regulation” and adding, in its place, the text “STCW Convention Regulation”.

§ 11.497 [Amended]

■ 19. In § 11.497, amend paragraph (c) by removing the text “STCW

Regulation” and adding, in its place, the text “STCW Convention Regulation”.

§ 11.553 [Amended]

■ 20. In § 11.553, amend paragraph (d) by removing the text “STCW Regulation” and adding, in its place, the text “STCW Convention Regulation”.

§ 11.555 [Amended]

■ 21. In § 11.555, amend paragraph (e) by removing the text “STCW Regulation” and adding, in its place, the text “STCW Convention Regulation”.

§ 11.1001 [Amended]

■ 22. In § 11.1001, amend paragraph (a) by removing the text “Regulation I/10 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended (STCW)” and adding, in its place, the text “STCW Convention Regulation I/10”.

Subpart K—Officers and Personnel on a Passenger Ship When on an International Voyage

■ 23. Revise § 11.1105 to read as follows:

§ 11.1105 General requirements.

(a) To serve on a passenger ship on international voyages, before being assigned shipboard duties, Masters, deck officers, Chief Engineers, and engineer officers must meet the appropriate requirements of the STCW Convention Regulation V/2 and of Section A–V/2 of the STCW Code (both incorporated by reference, see § 11.102) as follows:

(1) Officers and personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities as specified in Section A–V/2 paragraph 1 of the STCW Code.

(2) Officers and personnel providing direct service to passengers in passenger spaces must have completed passenger ship safety training specified in Section A–V/2 paragraph 2 of the STCW Code.

(3) Masters, officers, ratings qualified under Chapters II, III, and VII of the STCW Convention, and personnel designated on muster lists to assist passengers in emergency situations must have completed approved or accepted training in passenger ship crowd management specified in Section A–V/2 paragraph 3 of the STCW Code.

(4) Masters, Chief Engineer Officers, Chief Mates, Second Engineer Officers, and any person designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior as specified in Section A-V/2 paragraph 4 of the STCW Code.

(5) Masters, Chief Engineer Officers, Chief Mates, Second Engineer Officers, and every person assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must have completed approved or accepted training in passenger safety, cargo safety, and hull integrity as specified in Section A-V/2 paragraph 5 of the STCW Code.

(b) Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.

(c) Personnel required to be trained in accordance with paragraph (a)(3), (a)(4), or (a)(5) of this section must provide, at intervals not exceeding 5 years, evidence of maintaining the standard of competence.

(d) The Coast Guard will accept onboard training and experience, through evidence of 1 year of relevant seagoing service within the last 5 years, as meeting the requirements of paragraph (c) of this section.

(e) Personnel serving onboard small passenger ships engaged in domestic, near-coastal voyages, as defined in § 10.107 of this subchapter, are not subject to any obligation for the purpose of this STCW requirement.

PART 12—REQUIREMENTS FOR RATING ENDORSEMENTS

■ 24. The authority citation for part 12 is revised to read as follows:

Authority: 14 U.S.C. 502; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7303–7316, 7503, 7505, 7701, and 70105; DHS Delegation No. 00170.1, Revision No. 01.4.

■ 25. Revise § 12.103 to read as follows:

§ 12.103 Incorporation by reference.

Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved incorporation by reference (IBR) material is available for inspection at the Coast Guard, Office of Merchant Mariner Credentialing (CG-MMC) and at the National Archives and

Records Administration (NARA). Contact Coast Guard, CG-MMC, at U.S. Coast Guard, Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509, email: MMCPolicy@uscg.mil. For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov. The material may be obtained from International Maritime Organization (IMO), 4 Albert Embankment, London SE1 7SR, England; + 44(0)20 7735 7611; sales@imo.org; www.imo.org.

(a) STCW Consolidated Edition 2017, copyright 2017, comprised of:

(1) STCW Convention (or STCW): The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, IBR approved for §§ 12.811(a); 12.905(a).

(2) STCW Code: The Seafarers' Training, Certification and Watchkeeping Code, (including Erratum April 2018 and Supplement February 2019); IBR approved for §§ 12.601(b); 12.602(a), (c), and (d); 12.603(a), (c), and (d); 12.605(a) through (c); 12.607(a) and (c); 12.609(a) through (c); 12.611(a) through (c); 12.613(a) and (b); 12.615(a) and (b); 12.617(a) and (b); 12.619(a); 12.621(a); 12.623(b); 12.811(a); 12.905(a).

(b) [Reserved]

§ 12.603 [Amended]

■ 26. Amend § 12.603 as follows:

■ a. In paragraph (d), footnote 2 to Table 1 to § 12.603(d), after the text “not previously satisfied,” add the text “in accordance with Section A-II/4 of the STCW Code.”; and

■ b. In paragraph (d), footnote 3 to Table 1 to § 12.603(d), after the text “not previously satisfied,” add the text “in accordance with Section A-II/5 of the STCW Code.”

§ 12.605 [Amended]

■ 27. Amend § 12.605 as follows:

■ a. In paragraph (a)(3), remove the text “of this part”; and

■ b. In paragraph (c), footnote 2 to Table 1 to § 12.605(c), after the text “not previously satisfied,” add the text “in accordance with Table A-II/4 of the STCW Code.”

§ 12.607 [Amended]

■ 28. In § 12.607(a)(4), remove the text “of this part”.

§ 12.609 [Amended]

■ 29. Amend § 12.609 as follows:

■ a. In paragraph (a)(3), remove the text “of this part”; and

■ b. In paragraph (c), footnote 2 to Table 1 to § 12.609(c), after the text “not

previously satisfied,” add the text “in accordance with Table A-III/4 of the STCW Code.”

§ 12.611 [Amended]

■ 30. Amend § 12.611 as follows:

■ a. In paragraph (a)(2)(iii), remove the text “of this part”; and

■ b. In paragraph (c), footnote 2 to Table 1 to § 12.611(c), after the text “not previously satisfied,” add the text “in accordance with Table A-III/7 of the STCW Code.”

■ 31. Revise the heading to part 12, subpart I, to read as follows:

Subpart I—Ratings and Personnel on a Passenger Ship When on an International Voyage

§ 12.901 [Amended]

■ 32. In § 12.901, remove the word “part” and add, in its place, the word “subpart”.

■ 33. Revise § 12.905 to read as follows:

§ 12.905 General requirements.

(a) To serve on a passenger ship on an international voyage, before being assigned shipboard duties, personnel must meet the appropriate requirements in STCW Convention Regulation V/2 and Section A-V/2 of the STCW Code (incorporated by reference, see § 12.103) as follows:

(1) All personnel must have completed passenger ship emergency familiarization appropriate to their capacity, duties, and responsibilities as specified in Section A-V/2 paragraph 1 of the STCW Code.

(2) Personnel providing direct service to passengers in passenger spaces must have completed the passenger ship safety training specified in Section A-V/2 paragraph 2 of the STCW Code.

(3) Ratings qualified under Chapters II, III, and VII of the STCW Convention and personnel designated on the muster list to assist passengers in emergency situations must have completed approved or accepted training in passenger ship crowd management specified in Section A-V/2 paragraph 3 of the STCW Code.

(4) Personnel designated on muster lists as having responsibility for the safety of passengers in emergency situations onboard passenger ships must have completed approved or accepted training in crisis management and human behavior as specified in Section A-V/2 paragraph 4 of the STCW Code.

(5) Personnel assigned immediate responsibility for embarking and disembarking passengers, loading, discharging, or securing cargo, or closing hull openings onboard ro-ro passenger ships must have completed

approved or accepted training in passenger safety, cargo safety, and hull integrity as specified in Section A–V/2 paragraph 5 of the STCW Code.

(b) Personnel required to be trained in accordance with paragraph (a) of this section must hold documentary evidence of successful completion of training as proof of meeting these requirements.

(c) Personnel required to be trained in accordance with paragraph (a)(3), (a)(4), or (a)(5) of this section must provide, at intervals not exceeding 5 years, evidence of maintaining the standard of competence.

(d) The Coast Guard will accept onboard training and experience, through evidence of 1 year of relevant seagoing service within the last 5 years, as meeting the requirements of paragraph (c) of this section.

(e) Personnel serving onboard small passenger vessels engaged in domestic, near-coastal voyages, as defined in § 15.105(g)(1) of this subchapter, are not subject to any obligation for the purpose of this STCW requirement.

Dated: September 22, 2026.

R. C. Compber,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2026–19652 Filed 9–24–26; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket No. DOT–OST–2025–0897]

RIN 2105–AF33

Disadvantaged Business Enterprise and Airport Concession

Disadvantaged Business Enterprise Program Revisions

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is finalizing amendments to its Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) program regulations. With few modifications, this final rule follows the interim final rule (IFR) published on October 3, 2025, which eliminated race- and sex-based presumptions that DOT determined to be unconstitutional. This action completes the transition to a system of individualized determinations

of social and economic disadvantage to ensure program constitutional compliance and addresses administrative challenges identified by stakeholders during the public comment period.

DATES: This rule is effective September 25, 2026.

Electronic Access and Filing

This document, the IFR, all comments received, and all background material may be viewed online at www.regulations.gov using the docket number listed above. Electronic retrieval assistance and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.GovInfo.gov.

FOR FURTHER INFORMATION CONTACT:

Allen Gutierrez, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590 at (202) 738–6263 or allen.gutierrez@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Department issues this final rule to finalize, with few modifications, the October 3, 2025 IFR.¹ The IFR was a direct response to legal developments, including Executive Order 14151, *Ending Radical and Wasteful Government DEI Programs and Preferencing*; Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*; recent developments in case law; the Attorney General's March 21, 2025 memorandum to all Federal agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations*;² and the Solicitor General's conclusion that the DBE program's presumptions violate the U.S. Constitution in a June 2025 letter advising the Speaker of the House that the U.S. Department of Justice (DOJ) would no longer defend the presumptions.³ The Solicitor General's conclusion and letter concern

¹ 90 FR 47982.

² Memorandum from the Attorney General for All Federal Agencies, *Implementation of Executive Orders 14151 and 14173; Eliminating Unlawful DEI Programs in Federal Operations* (March 21, 2025), available at <https://www.justice.gov/ag/media/1409556/dl?inline>.

³ Letter from Solicitor General D. John Sauer to Hon. Mike Johnson (June 25, 2025), <https://www.justice.gov/oip/media/1404871/dl?inline>.

litigation about the race- and sex-based presumptions of the DBE program. In that litigation, on September 23, 2024, the U.S. District Court for the Eastern District of Kentucky determined that the DBE program's statutory race- and sex-based presumptions likely do not comply with the Constitution's promise of equal protection under the law.⁴ The Court held that the Government may only use a racial classification to “further a compelling government interest” and may only use race in a “narrowly tailored fashion.” It held that although courts have identified a compelling government interest in “remediating specific, identified instance[s] of past discrimination that violated the constitution or a statute,” the Government did not present evidence of such discrimination by DOT against each of the groups covered by the DBE program's presumptions. The Court held, moreover, that the presumptions were not narrowly tailored because Congress used an unexplained “scattershot” approach in identifying the covered groups, and because the presumptions had no “logical end point.” The Court also held that the sex-based presumptions failed heightened scrutiny. Accordingly, the Court issued a preliminary injunction that prohibited DOT from mandating the use of presumptions with respect to contracts on which the two plaintiff entities bid. Following these developments, DOT determined that the race- and sex-based presumptions of the DBE and ACDBE programs were unconstitutional.

In light of this determination, the Department removed these presumptions, requiring all firms to demonstrate disadvantaged ownership through an individualized personal narrative (PN) process. The Department expects that the minor modifications made in this final rule will have no additional economic impacts beyond those described in the regulatory analysis supporting the IFR, which is available in the docket for this rulemaking. This final rule adopts, with minor clarifications, the regulatory framework established by the IFR. The Department's economic analysis supporting the IFR, including the Regulatory Impact Analysis published on October 3, 2025, remains valid and applicable to this final rule. As this final rule makes no substantive changes to the IFR's policy framework, there are no additional economic impacts beyond those previously analyzed. The minor

⁴ *Mid-America Milling Co. v. U.S. Dep't of Transp.*, No. 3:23–cv–00072, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024).

clarifications contained in this final rule—such as replacing “similarly situated” with “non-disadvantaged individuals with comparable qualifications” and establishing specific reevaluation deadlines—are administrative refinements that do not alter the compliance costs or burden hours estimated in the IFR. Accordingly, the Department incorporates the economic analysis performed for the IFR. This final rule responds to the 637 public comments the Department received in its docket for the rulemaking.

II. Background

Congress authorized the DBE program in 1983 and has since reauthorized the DBE program numerous times, having most recently authorized the program in Section 11101(e) of the Infrastructure Investment and Jobs Act (Pub. L. 117–58) (November 15, 2021). Congress codified the ACDBE program in 1987. See 49 U.S.C. 47107(e).

The DBE program requires recipients of DOT highway, transit, and airport funding to set goals for participation by contractors that are small businesses owned and controlled by socially and economically disadvantaged individuals. The ACDBE program imposes similar requirements on airport concessionaires. Congress mandated by statute that DOT “presume” that members of specific groups (e.g., Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and women) were socially and economically disadvantaged. Other individuals did not benefit from that statutory presumption. This meant that two individuals with comparable qualifications may have faced different standards for entering the program, based solely on their race, ethnicity, or sex.

On October 3, 2025, the Department issued an IFR (90 FR 47979) that immediately eliminated the use of these presumptions, based on the Department’s determination that the presumptions were unconstitutional. The IFR required all firms—both applicants and currently certified firms—to prove social and economic disadvantaged ownership through an “individualized determination” as described in 49 CFR 26.67. This shift was necessary to ensure that the program is lawful.

The Department received 637 public comments on the IFR from a range of stakeholders, including DBE firms, prime contractors, State departments of transportation, airports, transit authorities, trade associations, and

advocacy groups. The Department has made minor changes in this final rule to clarify some provisions in response to comments received during the comment period. The following sections provide a comprehensive analysis of these comments and the Department’s responses.

III. Discussion of Public Comments and Final Rule

Stakeholders expressed divided views on the IFR, its compliance with the rulemaking process required by the Administrative Procedure Act (APA), its removal of the rebuttable presumption, its provisions concerning the content of PNs, the reevaluation of currently certified firms, and the goal setting process to be used by recipients of DOT financial assistance. Some commenters took an explicit position either supporting or opposing the IFR, and a substantial group of commenters also asked a variety of questions about how to implement its provisions.

1. Removal of the Presumptions

Comments

Support for the IFR

Several advocates argued that the elimination of race- and sex-based presumptions is necessary to align the DBE and ACDBE programs with the Constitution. They contended that awarding contracts based on group identity rather than merit violates the Equal Protection Clause of the 14th Amendment and the Due Process Clause of the 5th Amendment. These commenters frequently cited the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (SFFA)*,⁵ and the U.S. District Court’s preliminary injunction in *Mid-America Milling*,⁶ as legal mandates for the Department’s action to eliminate the presumptions.

Commenters, principally prime contractors and non-DBE subcontractors, argued that the previous regulatory framework distorted market competition by favoring specific demographic groups regardless of individual circumstances, effectively operating as a subsidy that displaced merit-based firms and leading to the hiring of more costly and less competent businesses. Some individual engineers and business owners commented that the prior rules discouraged non-DBE firms from pursuing public work because they felt excluded by what they

characterized as quotas or set-asides that did not prioritize qualifications or value.

One advocacy group summarized both legal and policy objections to the presumptions, saying that assuming all members of certain groups are disadvantaged is “grossly overinclusive.” It supported the new standards to ensure resources go to businesses that “actually demonstrate need” relative to their peers, rather than relying on “proxies” that may allow wealthy or well-connected individuals to qualify.

In addition, some commenters asserted that the IFR would reduce waste and fraud within the program. These commenters argued that the presumptions allowed individuals to bypass scrutiny, enabling “pass-through” entities or firms owned by wealthy individuals to secure contracts intended for the truly disadvantaged. One construction trade association noted that the goals established under the prior program failed to increase genuine participation and instead created bureaucratic inefficiencies that harmed the industry. Another supporter of the IFR opined that there was a need to “dismantle” the DBE program.

Opposition to the IFR

Most commenters, including not only numerous individual small business owners but also advocacy groups and most trade associations and recipients commenting, strongly opposed the IFR’s removal of the presumptions. An advocacy group and a trade association argued that the removal of presumptions ignored the legislative record and empirical evidence, including disparity studies covering many years, demonstrating that systemic discrimination against women and minority groups persists in transportation contracting. They and many of the individual small business commenters asserted that the DBE program was Congress’s specific remedy for these documented barriers and that the IFR undermines the program’s ability to level the playing field by placing new, undue burdens on small DBE and ACDBE firms.

Many commenters argued that the Department misapplied *SFFA*, noting that the decision addressed university admissions rather than government contracting, where the Government has a distinct, compelling interest in ensuring public funds do not finance private discrimination. Others contended that the IFR is an *ultra vires* act that effectively nullifies statutory provisions enacted by Congress via Executive Order and DOT action,

⁵ 600 U.S. 181 (2023).

⁶ *Mid-America Milling Co. v. U.S. Dep’t of Transp.*, No. 3:23-cv-00072, 2024 WL 4267183 (E.D. Ky. Sept. 23, 2024).

violating the separation of powers doctrine.

Stakeholders also expressed deep concern regarding the economic impact of the rule. Many small business owners stated that the immediate suspension of goals and the requirement for individualized narratives would cause irreparable financial harm, forcing firms to lay off employees or cease operations. One comment estimated that tens of thousands of firms could go out of business as a result. Commenters emphasized that the “race-neutral” approach ignores the reality that economic power in the transportation contracting field is dominated by large, established white-owned firms. The IFR effectively would eliminate minority participation, one commenter added. Many business owners said that it was only the DBE program as it existed prior to the IFR that enabled them to start and grow successful businesses.

DOT Response

The Department acknowledges the variety of perspectives regarding the IFR. The Department agrees with commenters who stated that the IFR is necessary to ensure the DBE and ACDBE programs comply with the Constitution. As noted in the preamble to the IFR, DOJ and DOT have concluded that the race- and sex-based presumptions previously used in these programs are unconstitutional considering recent Federal court cases, including *SFFA* and *Mid-America Milling*. There is simply no room under constitutional law for a presumption that someone is disadvantaged just because they are a woman or a member of a minority group. The Department has no compelling justification in authorizing race- and sex-based presumptions under the DBE or ACDBE program. Participation in the DBE and ACDBE programs requires clear, individualized evidence that a firm’s owner is socially and economically disadvantaged, without reliance on unconstitutional race- and sex-based presumptions.

Regarding comments that the IFR ignores persistent discrimination, the Department emphasizes that the IFR does not end the DBE or ACDBE programs, nor does it deny that discrimination exists. Rather, it modifies the certification standards to require individualized evidence of discrimination that caused actual social and economic harm. This ensures that the program benefits those who have truly faced discrimination and economic hardship, regardless of presumptions related to their race or sex.

The Department disagrees with the assertion that the IFR constitutes an *ultra vires* act. The Department is responsible for administering its programs in a constitutional manner. When a statutory provision is determined to be unconstitutional, the agency must take action to cease implementation of that provision. The IFR preserves the statutory goal of assisting socially and economically disadvantaged individuals but removes the unconstitutional method—group-based presumptions—used to identify them.

2. Administrative Procedure Act (APA) and Legal Authority

The Department determined that the race- and sex-based presumptions violate the Constitution, asserting that this conclusion provided “good cause” under the APA to publish the IFR without prior notice and comment.

Comments

The Department received comments challenging the way the IFR was promulgated, as well as the underlying legal rationale for eliminating the former rule’s presumptions of disadvantage.

Good Cause Exception and Notice-and-Comment Rulemaking

Many commenters argued that the Department violated the APA by bypassing the notice-and-comment rulemaking process. They contended that the Department failed to demonstrate “good cause” under 5 U.S.C. 553(b)(B), arguing that no contingency existed to justify immediate implementation without public input. This was particularly true, commenters said, due not only to the alleged adverse effects of the IFR on thousands of small businesses but also to the variety of implementation provisions that could have benefited from public comment before going into effect. Several commenters noted that the court cases cited by the Department, such as the *SFFA* decision and the *Mid-America Milling* preliminary injunction, occurred months or even years prior to the IFR, thereby negating the claim that notice-and-comment was “impracticable.” Moreover, some comments asserted that *SFFA* dealt with student admissions to universities, a very different subject matter area from federally assisted contracting and therefore was not on point.

A few comments asserted that the IFR constitutes a “major rule” with significant economic impact, requiring a transition period and congressional review under the Congressional Review Act (CRA). One legal organization

argued that the “good cause” exception is a narrow safety valve intended for acute safety emergencies, not for policy shifts driven by litigation risk or executive preference.

Some commenters also made policy arguments against an immediately effective IFR. A letter-writing campaign from over 150 engineers said that they, contractors, and public agencies depend on stable and clearly communicated Federal requirements to plan and design safe, compliant projects. Sudden regulatory changes on this scale, the letters said, can cascade through multiple stages of project delivery, risking adverse consequences for the projects.

Many commenters opposing the IFR asked that the Department withdraw the IFR, reinstate the pre-October 3, 2025 rule, and issue a notice of proposed rulemaking (NPRM) seeking comment on changes in the program before imposing the changes.

Conversely, some commenters supported the immediate effectiveness of the rule, agreeing that continuing to enforce race- and sex-based presumptions would perpetuate unconstitutional discrimination.

DOT Response

For the reasons stated in the IFR, the Department maintains that “good cause” existed to issue the IFR without prior notice and comment. Agencies are authorized by 5 U.S.C. 553(b)(B) to publish a final rule without first seeking public comment on a proposed rule “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” DOT notes, moreover, that the IFR solicited public comments, and that it has fully evaluated those comments in issuing this final rule, and thus the Administrative Procedure Act’s rulemaking requirements have been satisfied.

3. Constitutional and Statutory Authority

Comments

Commenters expressed divergent views on the constitutionality of the DBE and ACDBE programs and the Department’s authority to amend them via the IFR.

Several commenters, including a State attorney general and some advocacy organizations, supported the Department’s determination that the race- and sex-based presumptions are unconstitutional. These commenters

argued that the Supreme Court's decision in *SFFA* clarified that remedying generalized societal discrimination is not a compelling interest sufficient to justify racial classifications. They contended that the DBE program lacks the "logical end point" required by strict scrutiny and relies on "outdated stereotypes" rather than individualized evidence. Supporters emphasized that the Government has an obligation to stop enforcing unconstitutional provisions immediately.

As noted above, commenters opposing the IFR argued that it is based on a misapplication of case law. They asserted that *SFFA* addressed higher education admissions and did not overrule the long line of appellate precedents (e.g., *Midwest Fence Corp. v. Dep't of Transp.*;⁷ *Western States Paving Co. v. Wash. State Dep't of Transp.*;⁸ *Adarand Constructors, Inc. v. Slater*⁹) that specifically upheld the constitutionality of the DBE program as a remedy for discrimination in contracting. Commenters noted that the *Mid-America Milling* decision resulted in the issuance of a preliminary injunction from a single district court, applicable only to specific parties, and argued that the Department acted prematurely by applying this ruling nationwide before a final judgment or appellate review.

Furthermore, numerous commenters argued that the IFR is an *ultra vires* act that violates the separation of powers. They contended that the DBE program's presumptions are mandated by statute (e.g., the Infrastructure Investment and Jobs Act, 49 U.S.C. 47113) and that the Executive Branch lacks authority to repeal legislation through regulation or Executive Order without congressional action, and that the IFR was arbitrary and capricious for APA purposes because it failed to consider reliance interests of affected parties and did not consider less burdensome alternatives.

DOT Response

Regarding the comments on statutory authority and *ultra vires* acts, the Department acknowledges that the presumptions were codified by Congress. However, the Executive Branch has an obligation to ensure that all laws are implemented in a manner consistent with the Constitution. The Department rejects the assertion that *Mid-America Milling* or *SFFA* is irrelevant; these cases reflect the current jurisprudence on equal protection,

which prohibits the Government from utilizing race- or sex-based classifications unless it is to further a compelling governmental interest and it is used in a narrowly tailored fashion, which the current presumptions fail to satisfy. The IFR preserves the statutory DBE program to the maximum extent possible by shifting to an individualized model of disadvantage, thereby saving the program from total invalidation while curing its constitutional defects.

Regarding the comments on reliance interests, the Department acknowledges that businesses, individuals, and public agencies that benefited from the DBE program's presumptions of disadvantage may have expected the DBE program to continue in its prior form. However, reliance on a program does not justify continuing to operate unconstitutional presumptions of disadvantage within the program. The final rule allows firms to continue participating in the program by demonstrating eligibility through individualized evidence of discrimination that caused actual economic harm. This approach preserves the constitutional aspects of the DBE program and mitigates any effects on reliance interests. To the extent that the immediate suspension of goals implicates commenters' reliance interests, any effects will be mitigated by firms making required submissions and Unified Certification Programs (UCPs) completing the recertification process as soon as possible. Immediate suspension of goals is necessary to remedy the unconstitutional aspects of the DBE program.

4. Implementation and Transition Period

Comments

The Department received a significant number of comments expressing concern over the immediate effective date of the IFR and the operational disruptions caused by the transition to the new certification standards.

A wide range of stakeholders, including trade associations, transit agencies, and individual business owners, argued that the immediate effective date of the IFR caused severe market disruption. As noted above, over 150 comments were submitted by professional engineers, who emphasized the importance of regulatory predictability for those responsible for safe and efficient infrastructure delivery. They warned that immediate implementation of the regulation without clear guidance would cause administrative confusion, diverting their attention from the core mission of protecting public safety.

Recipients and industry groups requested urgent clarification regarding the status of contracts executed prior to the IFR's effective date. Commenters asked whether recipients must stop counting DBE participation on active projects toward their overall goals or if they must modify existing contracts to remove DBE requirements. Some noted confusion regarding whether the IFR requires the termination of DBE subcontractors who lose certification during the reevaluation process, warning that such actions would lead to litigation and project delays.

Other commenters pointed out inconsistencies in implementation, noting that while some States allowed existing contracts to proceed, others issued stop-work orders or paused payments pending Federal guidance. An association of general contractors requested a "safe harbor" for active contracts to prevent administrative bottlenecks and protect contractors from liability due to the sudden regulatory change.

DOT Response

The Department acknowledges the challenges posed by the transition period. The Department thanks the professional engineering community for highlighting that safe and efficient infrastructure delivery depends on regulatory predictability. However, the immediate effective date was necessary to bring the program into constitutional compliance.

In response to the confusion and fears expressed by small businesses, prime contractors, and certifying agencies following the publication of the IFR, the Department has issued Frequently Asked Questions (FAQs) guidance available at <https://www.transportation.gov/mission/civil-rights/disadvantaged-business-enterprise/october-2025-interim-final-rule>. The FAQs clarify how the regulatory changes to goal-setting, counting, and termination operate in practice.

5. Business Consequences

Comments

The Department received starkly contrasting comments regarding the economic consequences of the IFR. Although certified DBEs characterized the rule as an existential threat that will force widespread business closures, other contractors and industry stakeholders viewed it as a necessary correction to a market distorted by unconstitutional preferences.

A substantial number of DBE-certified firms reported that the immediate

⁷ 840 F.3d 932 (7th Cir. 2016).

⁸ 407 F.3d 983 (9th Cir. 2005).

⁹ 228 F.3d 1147 (10th Cir. 2000).

suspension of goals and the uncertainty of the reevaluation process have placed them in immediate financial peril. Many commenters described the IFR not merely as a regulatory modification, but as a “de facto suspension” of the program that has frozen their revenue streams. Small business owners stated that without the enforcement of contract goals, prime contractors immediately ceased soliciting their participation or canceled pending agreements, interpreting the IFR as a signal that DBE participation is no longer required.

Specific data points provided by commenters illustrate the severity of this “market freeze.” One DBE firm reported losing nearly \$2 million in anticipated contracts immediately following the rule’s publication, representing the entirety of their revenue projection for the coming year. A highway products supplier stated it has lost half of its revenue since the initial injunctions began and have received “zero” new contracts since the IFR took effect, warning that “my business cannot survive this.” Another construction equipment firm reported that the flow of bid invitations stopped completely within days of the rule taking effect, forcing the firm to suspend hiring plans and consider workforce reductions to avoid insolvency. Further, a construction firm owner reported that she had already let employees go because primes were no longer choosing her firm for subcontracts.

These stakeholders argued that they lack the generational wealth and capital reserves of larger, non-disadvantaged competitors. Consequently, they contend that the administrative pause and the removal of goals will inevitably lead to the collapse of thousands of small businesses that operate on thin margins, resulting in layoffs and economic damage to the communities they employ. A comment supporting the IFR acknowledged that the end of race- and gender-conscious goals in California in 1996 resulted in sharp reductions in minority- and women-owned business participation in State-funded contracts.

Some commenters, including non-DBE contractors, engineers, and policy organizations, expressed relief at the IFR, arguing that the previous system unfairly penalized merit-based businesses and distorted market competition. These stakeholders contended that the race- and sex-based presumptions operated as a subsidy that displaced more qualified and cost-effective firms.

Supporters of the IFR emphasized several key points regarding business survival and market fairness. Business owners who previously did not qualify

for DBE status stated they had been excluded from public work despite paying above-average wages and hiring diverse workforces, simply because they did not fit the demographic criteria. They viewed the IFR as leveling the playing field so that engineers and contractors are chosen based on “skill set and talent.”

On the topic of cost efficiency, long-time contractors argued that the historic DBE program inflated costs for taxpayers by forcing prime contractors to hire DBEs even when they were not the lowest bidder or the most qualified. One commenter cited data suggesting bid prices dropped by approximately 5.6 percent when similar preferences were removed in California for State-funded contracts, arguing that the IFR would result in better value for public funds. Finally, several commenters argued that the previous system encouraged fraud, citing instances of “pass-through” entities where spouses or relatives of wealthy contractors were listed as owners solely to secure DBE certification. These commenters asserted that the IFR would eliminate these “sham” businesses, thereby restoring integrity to the market.

DOT Response

The Department acknowledges that the changes it is making regarding eligibility for the DBE program may cause temporary losses to firms that have participated in the program under the former criteria. The IFR’s eligibility criteria and PN process provide an avenue for firms to remain eligible by providing evidence of discrimination that caused actual social and economic disadvantage on an individual basis. We urge firms to take advantage of this on-ramp by providing PNs and other relevant information to recipients as soon as possible, and for recipients to process these submissions in an expedited manner, so that all eligible firms can participate in the program in the near future.

With that said, basing eligibility on race- and sex-based presumptions of disadvantage is unconstitutional. The only constitutionally permissible way for firm owners to establish disadvantage is through individualized evidence of discrimination that caused actual economic harm, as required by the Department’s rule. If a firm owner that has participated in the program via the former presumptions cannot make this showing, participation in a program aimed at firms owned and controlled by socially and economically disadvantaged individuals is not possible.

The Department notes that alternative means for the participation of small businesses in DOT-assisted contracts, even those that are not eligible DBEs, are available. The Department encourages recipients to utilize DBE-neutral strategies, including Small Business Elements (SBE) under § 26.39, to foster small business participation both during the interim period before the reevaluation process is completed and in the future.

The Department also acknowledges the comments regarding market distortion and fraud, noting that the new individualized determination process is designed to ensure that only those business owners who have truly suffered social and economic disadvantage are certified, thereby addressing some of the concerns about program integrity while fulfilling the statutory mandate to assist disadvantaged firms.

Section-by-Section Analysis

The Department received numerous technical comments regarding specific regulatory amendments in the IFR. The following summary addresses comments organized by the relevant Code of Federal Regulations (CFR) sections.

6. Definitions (§§ 23.3 and 26.5)

Comments

Several commenters raised concerns regarding the revised definition of “socially and economically disadvantaged individual.” Commenters noted that the definition requires a certifier to find an individual disadvantaged on a “case-by-case basis” but criticized the lack of a clear standard for “social disadvantage” once the presumptions were removed. Some commenters argued that the requirement to compare one’s status to “similarly situated non-disadvantaged individuals” is logically flawed, asserting that a disadvantaged individual is, by definition, not similarly situated to a non-disadvantaged one. Other commenters requested clarification on whether the phrase “without regard to race or sex” in the definition precludes any mention of race or sex in an owner’s file, or if it simply prohibits using those characteristics as a standalone basis for eligibility.

DOT Response

The Department amended the definition to reflect the adoption of a constitutionally neutral process based on individualized evidence of actual social and economic disadvantage. This preamble discusses the “similarly

situated” and “without regard to race or sex” issues below.

7. Reporting and Recordkeeping (§§ 26.11 and 23.27)

Comments

Commenters opposed the elimination of requirements to report the race and sex of DBE owners, arguing that without this data, the Department cannot monitor the program for discrimination or evaluate its effectiveness. Recipients asked for guidance on what data to submit in the Uniform Report during the transition, given that goals are suspended.

DOT Response

The Department has determined that collecting race and sex data for the purpose of administering presumptions is no longer relevant to the program’s operation under the new race- and sex-neutral eligibility standards. Recipients should continue to report total ACDBE and DBE participation once counting resumes. The Department will issue further instructions on reporting mechanics going forward.

8. Goal Setting and Counting (§§ 26.45, 26.51, 26.55, and Part 23 Equivalents)

Comments

Recipients and contractors expressed frustration with the prohibition on setting contract goals and counting participation during the reevaluation period (§§ 26.51(h) and 26.55(i)). Commenters stated that this “pause” has led prime contractors to drop DBE subcontractors from teams.

Commenters questioned the continued relevance of disparity studies given the removal of race- and sex-based presumptions. One commenter argued that the IFR fundamentally alters the legal foundation for disparity studies, which are designed to measure discrimination against specific groups, not generic “social disadvantage.”

Consultants and recipients noted that the new requirement in § 26.45(c)(3) for disparity studies to provide a “detailed capacity analysis” will increase costs and necessitate new economic modeling that many current studies do not include. Some stakeholders asked if existing disparity studies are now invalid and if recipients must commission new “capacity analyses” before resuming the program. Others asked for clarification on the requirement for “detailed capacity analysis” in disparity studies, noting that existing studies may not meet this undefined standard.

DOT Response

The Department understands that the transition to a new certification standard can be difficult for participants, but given the constitutional imperatives involved, we see no alternative to pausing the goal system until only firms that meet the new requirements can participate.

The Department disagrees that the IFR allows consideration of so-called systemic discrimination. The Department emphasizes that recipients must establish eligibility through individualized evidence of discrimination that caused actual economic harm. Recipients are not eligible if they use goals/disparity studies that are based on presumptions regarding race or sex or are otherwise based on generalized assertions of systemic discrimination.

Because the regulation now requires a strictly race- and sex-neutral approach to goal setting, the sole purpose of disparity studies in the DBE and ACDBE programs under this final rule is to ensure that recipients’ goals properly account for availability and utilization of small businesses and the capacity of small, disadvantaged businesses relative to non-small businesses or small, non-disadvantaged businesses.

9. Consultation Requirements (§§ 26.45(g)(1) and 23.43))

Comments

The IFR amends § 26.45(g)(1) to remove the specific requirement to consult with “minority and women’s contractor groups.” Policy centers and advocacy groups criticized this change, arguing that it silences the very communities the program is intended to help and obscures the reality of discrimination in the marketplace.

DOT Response

The Department removed specific references to minority and women’s groups to align the regulations with the DBE-neutral and DBE-conscious framework of the IFR. However, recipients must still consult with organizations that have information concerning the availability of disadvantaged and non-disadvantaged businesses. This includes general contractor groups, community organizations, and other individuals and groups. Nothing in the rule prohibits recipients from consulting with organizations that serve disadvantaged businesses, including those serving particular constituencies, provided the overall consultation is comprehensive and focuses on obtaining relevant evidence regarding the availability of

eligible firms. Indeed, the Department encourages such broad-based consultation.

10. Social and Economic Disadvantage Standards (§ 26.67)

Numerous commenters expressed concern regarding the requirement for all firms to submit a PN. Small business owners argued that drafting a PN proving systemic barriers and economic harm is burdensome, subjective, and requires legal or professional assistance they cannot afford. One commenter noted that the compliance costs disproportionately impact the very firms the program is meant to help. Certifying agencies commented that they lack objective criteria or a “rubric” to evaluate these narratives, fearing that without standardized guidance, determinations will be inconsistent across States.

“Without Regard to Race or Sex”

Comments

Stakeholders urgently sought clarification on the IFR’s instruction that determinations must be made “without regard to race or sex.” Many commenters, including small businesses, advocacy groups, recipients, and trade associations, argued that this phrasing suggests owners cannot mention race or sex even as a factual cause of their individual disadvantage. An advocacy group argued that this prohibition conflicts with the very court decision, *Mid-America Milling*, the Department used to justify the rule. It contended that *Mid-America Milling* struck down the presumption of disadvantage based on group membership, but that the court did not rule that race or sex cannot be factual causes of disadvantage in individual cases. Moreover, a transit authority noted that *SFFA*, which forms an important basis for the Department’s rationale for the IFR, explicitly stated that “how race affected [an applicant’s] life, be it through discrimination, inspiration, or otherwise” fully complies with the equal protection requirements of the Constitution. Many of these commenters recommended that the “without any consideration of race or sex” language be replaced by language saying that individual determinations would be made “without any presumption of disadvantage based on race or sex.”

Commenters opposing the IFR provision said that it was illogical for a PN being able to relate adverse personal experiences related to national origin, religion, language, sexual orientation, color, political affiliation, and a myriad

of other possible sources of disadvantage while prohibiting an owner from mentioning a personal experience of explicit race or sex discrimination. One commenter asserted the rule's restriction on mentioning race and sex in PNs acted as a "gag order" forcing owners to ignore the reality of their experiences.

Many commenters asserted that binding certifiers to the specific nature of the discrimination experienced renders the "individualized review" impossible and effectively creates a "presumption of non-disadvantage." Conversely, some commenters supported the strict removal of these factors, arguing that any consideration of race or sex violates the principle of colorblindness.

Other comments noted the IFR did not define what constituted "race" for purposes of the rule. A Native American commenter argued that American Indians were not a race, but rather a people identified by history and tribal identity. Other commenters pointed out that Hispanic Americans, while a group that was presumed disadvantaged under the pre-October 3 rule, have never been defined as a race. Some commenters asked whether the prohibition on considering "sex" would prevent owners from discussing discrimination based on sexual orientation or gender identity in their narratives.

DOT Response

The Department is amending § 26.67(a)(1) to replace the term "systemic barriers" with the term "social barriers." This change ensures the regulatory text remains consistent with the specific, individual experiences required in a PN.

The Department received comments expressing uncertainty regarding the meaning of the phrase "without regard to race or sex" in § 26.67. Several commenters interpreted this language as prohibiting applicants from discussing race- and sex-based discrimination in a PN or preventing certifiers from considering such experiences as part of an individualized determination. That was not the Department's intent. The Department intended the IFR to eliminate race- and sex-based presumptions of social and economic disadvantage, not to prohibit consideration of an applicant's individual experiences. Accordingly, the Department is revising the regulatory text to clarify that individualized determinations must be made without reliance on race- or sex-based presumptions of disadvantage. This clarification does not alter the substantive framework established by

the IFR. Rather, it confirms that eligibility determinations must be based on individualized evidence concerning the applicant's own experiences and circumstances, including evidence of discrimination, social barriers, denied opportunities, or other factors that the applicant contends contributed to social and economic disadvantage. This ensures the PN establishes disadvantage through "individualized proof regarding specific instances" as required by § 26.67, rather than relying on unconstitutional group-based classifications. This clarification is also consistent with DOT Order 2100.9, *Ensuring Nondiscrimination and Equal Opportunity in Department of Transportation Policies, Programs, and Activities* (November 10, 2025), which requires that program eligibility determinations be based on individualized evidence rather than presumptions or classifications based on race or sex. The relevant inquiry is thus whether the applicant has established disadvantage through individualized evidence of discrimination that caused actual economic harm rather than through any presumption arising from membership in a particular group.

In addition, the Department recognizes that the term "Hispanic" does not denote a "race." Individuals who may fit within the broad scope of that term may well encounter acts of discrimination based on such factors as language, accent, color, presumed or actual national origin, presumed legal status, etc. Such incidents could be cited in an owner's PN.

The "Similarly Situated" Standard Comments

Stakeholders heavily criticized the requirement in § 26.67(a)(2) that a PN must establish economic disadvantage "relative to similarly situated non-disadvantaged individuals."

Several commenters argued that this standard is "illogical and confusing" because a disadvantaged individual is, by definition, not similarly situated to a non-disadvantaged individual. They asserted that if two individuals were truly similarly situated, neither would be disadvantaged, rendering the comparison impossible. Commenters also questioned why business owners must compare themselves to "individuals" rather than comparing their businesses to other businesses, calling this a "fatal flaw" in the context of commercial contracting. Commenters also asserted that owners lack access to the confidential financial data of competitors required to prove that a peer received more favorable terms,

making the standard practically impossible to satisfy.

DOT Response

To address commenter concerns that the "similarly situated" standard is "illogical" or "impossible" to meet without access to proprietary data, the Department is replacing this term with "non-disadvantaged individuals with comparable qualifications." This refinement clarifies that the evidentiary standard focuses on comparing the owner's professional credentials and work history (such as comparing two engineers who each hold a bachelor's degree in engineering, and certification in the same or similar North American Industry Classification System (NAICS) codes and similar experience in the field), rather than current financial outcomes.

With the removal of group-based presumptions, the terms "disadvantaged" and "non-disadvantaged" are no longer tied to specific group membership (racial, ethnic, or sex classifications). Any individual could be considered "non-disadvantaged," just as any individual could potentially demonstrate "disadvantage" through an individualized showing.

The Department disagrees with commenters who characterize the "similarly situated" requirement as "illogical." Rather, in a narrative context, the comparison is practical and makes sense. When an owner describes how a specific and identifiable attribute, characteristic, or personal circumstance negatively affected their business experience, the "non-disadvantaged person with comparable qualifications" is simply a peer who lacks that specific barrier. The rule essentially asks the owner to demonstrate: "Because of [Attribute/Characteristic/Reason], I have faced barriers in my professional field that a peer with the comparable qualifications—who does not have [Attribute/Characteristic/Reason]—did not face."

The DBE program evaluates the actual economic harm faced by business owners by determining how these disadvantages limit their competitiveness within the free enterprise system. Although the ultimate impact is on the business, the disadvantage stems from the individual owner's experiences with discrimination, bias, or other barriers. The PN must, therefore, establish how the individual owner's economic trajectory (including their work history and advancement) has been hindered relative to a peer with comparable qualifications.

This rulemaking does not require owners to obtain confidential, private financial data of their competitors to prove that they received less favorable outcomes. The rule only requires a narrative of the owner's disadvantage, not a financial audit of a competitor. The Department ensures that owners can establish economic disadvantage through a preponderance of the evidence without seeking the private financial data of competitors.

“Economic Disadvantage in Fact” Provision

Comments

One policy organization noted that the IFR appears to omit the former provision at § 26.67(c)(2), which previously allowed recipients to deny certification to an individual whose personal net worth (PNW) fell below the regulatory cap but who nonetheless was not “economically disadvantaged in fact.” The commenter argued that removing this provision eliminates a critical safeguard that allowed certifiers to prevent wealthy individuals from qualifying for the program merely by manipulating their assets to meet the technical PNW threshold. The commenter recommended reinstating this provision to ensure the program serves only those with genuine economic need.

DOT Response

The Department agrees with commenters who noted that the use of the economic disadvantage in fact requirement is important to include as a safeguard against the fraudulent use of the program. Requiring that firms demonstrate economic disadvantage in fact is consistent with the Department's effort to amend the DBE and ACDBE programs to ensure that participation in these programs remains limited to individuals that are in fact socially and economically disadvantaged. Therefore, the final rule amends the regulation to ensure that economic disadvantage in fact remains a standalone requirement as part of DBE and ACDBE certification.

Specific Group Considerations

The Department received specific comments regarding the eligibility and processing of distinct groups that have historically interacted with the DBE and ACDBE programs through unique statutory or regulatory provisions, including Alaska Native Corporations (ANCs), Tribes, Native Hawaiian Organizations (NHOs), Small Business Administration (SBA) 8(a) participants, and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs).

Alaska Native Corporations, Indian Tribes, and Native Hawaiian Organizations

Comments

The Department received detailed comments from ANCs, Tribal representatives, and advocacy groups arguing that their eligibility for the DBE program is derived from specific statutory mandates that are legally distinct from the race- and sex-based presumptions addressed in the IFR. One commenter noted that ANC eligibility is based on 43 U.S.C. 1626(e)(4)(C), which provides that ANCs and their subsidiaries are “deemed” to be socially and economically disadvantaged for purposes of Federal law.

Commenters asserted that this eligibility is a “political classification” based on the government-to-government relationship between the United States and sovereign Tribes, recognized in *Morton v. Mancari*,¹⁰ rather than a racial classification subject to strict scrutiny. Consequently, these commenters argued that ANCs, as well as Tribally owned concerns and Native Hawaiian Organizations (NHO), should be exempt from the requirement to submit PNs. They requested immediate guidance confirming that these entities retain their certified status without undergoing the individualized narrative process required for other firms.

DOT Response

In order to maintain consistency with the SBA's treatment of Indian Tribes and NHOs legally recognized under Federal and State law, representatives of these firms are exempt from the reevaluation and narrative requirements. However, these firms and their representatives must comply with all other certification requirements (e.g., business size, control, PNW) under § 26.63(c)(1). This is equally applicable to the ACDBE program, which follows the certification standards of § 26.63(c). See § 23.31(a). ANCs will continue to follow the § 26.63(c)(2) process for certification, which reflects their recognition as disadvantaged under the Alaska Native Claims Settlement Act.

The Department emphasizes that the process for Tribally owned concerns, NHO-owned, and ANC-owned firms is based on the fact that these businesses are owned by sovereign entities and not by individuals. Individuals who are Native American, Native Hawaiian, or Alaska Native and who are seeking ACDBE or DBE certification on behalf of their individually owned (not Tribally owned) business are required to submit

a PN and must demonstrate both social and economic disadvantage.

SBA 8(a) Program Participants

Comments

Several commenters urged the Department to grant automatic reciprocity or a waiver of the PN requirement for firms currently certified under SBA's 8(a) Business Development Program (8(a)). Commenters noted that following the *Ultima Servs. Corp. v. U.S. Dep't of Agric.*¹¹ decision, the SBA already required SBA 8(a) participants to submit individual social disadvantage narratives.

These commenters argued that requiring these same firms to undergo a duplicative review by DOT recipients wastes administrative resources and imposes unnecessary burdens on small businesses that have already proven their disadvantage to a Federal agency. A commenter specifically recommended that the Department amend § 26.111 to extend DBE certification to SBA 8(a) firms automatically for the duration of their program term. Conversely, some commenters noted that the SBA's post-*Ultima* process allows owners to cite race as a contributing factor to their disadvantage and sought clarification on whether DOT would accept SBA-approved narratives given the IFR's “without regard to race or sex” language.

DOT Response

The Department declines to adopt automatic reciprocity for SBA 8(a) certified firms. Although the SBA 8(a) program and the DBE program share similar goals, they operate under different statutory authorities and regulatory standards.

The Department's IFR requires a PN to establish social and economic disadvantage based on “individualized proof regarding specific instances of economic hardship, social barriers, and denied opportunities.” § 26.67(a)(1). Because the SBA's evidentiary standards and certification procedures have diverged from the Department's requirements under the IFR, UCPs must evaluate whether a firm meets the specific standards of the DBE program. But the Department acknowledges that financial documentation or other evidence prepared for SBA certification may still be relevant; owners are encouraged to use such existing documentation to support their DBE or ACDBE reevaluation, provided it addresses the specific criteria in § 26.67.

¹⁰ 417 U.S. 535 (1974).

¹¹ 683 F. Supp. 3d 745 (E.D. Tenn. 2023).

Service-Disabled Veteran-Owned Small Businesses

Comments

Multiple commenters advocated for the inclusion of SDVOSBs in the DBE program or suggested replacing the race-based presumptions with preferences for veterans. Commenters argued that veterans face significant employment and business barriers due to their service and disability, which constitutes a race-neutral form of social disadvantage. One commenter noted that they faced “secondary” disadvantage status behind race-based groups and that the elimination of those presumptions creates an opportunity to prioritize veterans.

DOT Response

The statutory definition of “socially and economically disadvantaged individuals” authorized by Congress for the DBE program does not automatically include veterans as a presumptive group. The IFR eliminates unconstitutional race- and sex-based presumptions and requires all applicants to establish social and economic disadvantage through individualized evidence. However, the Department emphasizes that under the new case-by-case standard in § 26.67, any individual—including a veteran—may qualify as socially and economically disadvantaged if the individual can demonstrate by a preponderance of the evidence, that he or she has faced chronic and substantial social disadvantage that has impeded business success. A service-connected disability could be part of the factual basis for such a claim of disadvantage, provided the owner meets the PNW cap and other eligibility criteria.

11. Privacy and Confidentiality of Information (§§ 26.109(a) and (b), 26.68(e))

The Department received comments regarding the protection of sensitive personal and financial information required under the new individualized certification standards, as well as conflicting comments advocating for the public disclosure of such information to ensure program integrity.

Comments

Several commenters expressed concern that the IFR’s PN and PNW statement requirements significantly increase the volume of sensitive data held by UCPs, raising the risk of unauthorized disclosure. A trade association representing public transportation agencies noted that the influx of personally identifiable

information (PII) creates potential disclosure risks under various State and Federal open records laws. This association urged the Department to clarify that UCPs must continue to safeguard PII in accordance with applicable laws to prevent the exposure of owners’ private financial and personal histories.

Other commenters echoed this concern, with one accounting firm requesting explicit assurance from the Department that information submitted for reevaluation would be used solely for assessment purposes and treated as confidential. Another commenter described the requirement to divulge personal histories of discrimination as an “invasion of privacy.” Similarly, a supplier argued that requiring business owners to describe personal experiences of bias in writing raises serious privacy concerns and risks “re-traumatizing” individuals who must relive harmful experiences to justify their eligibility. This commenter warned that without clear confidentiality standards, the process might discourage qualified owners from participating.

Conversely, the Department received comments advocating for the public disclosure of certification documents to deter fraud. A public policy organization argued that the current lack of public transparency in the certification process allows for potential abuse. This commenter recommended that the Department amend the rule to require UCPs to post approved PNWs and PNW documents publicly on their websites with sensitive identifiers redacted. They asserted that such transparency would allow competing contractors to review and challenge questionable certifications, thereby ensuring that only genuinely disadvantaged businesses receive DBE status. Another commenter supported this view, stating that the ability of other contractors to challenge a firm’s status is the clearest way to keep the process honest, and objected to shielding this data from public review.

DOT Response

The Department acknowledges the privacy concerns raised by stakeholders regarding the submission of PNWs and financial documentation. The IFR, while changing DBE eligibility standards, does not alter the Department’s longstanding commitment to protecting PII. The Department reaffirms that UCPs are required to protect the confidentiality of personal and financial information permitted by Federal, State, and local law, consistent with the existing provisions of §§ 26.83(g) and 26.109(a)(2). Specifically, § 26.109(a)(2)

provides that notwithstanding any provision of State or Federal law (e.g., Freedom of Information Act (FOIA), 5 U.S.C. 522), certifiers must not release any information that may reasonably be construed as confidential business information without the submitter’s written consent. This includes applications for certification and supporting information submitted in a PN as confidential information protected by this provision. To assist UCPs in maintaining compliance with Federal confidentiality standards, the Department may draft specific guidance regarding ensuring privacy of narrative information in the future.

Regarding the requests to mandate public posting of owner narratives and financial statements, the Department declines to adopt this recommendation. In addition to the part 26 provisions cited above, the Privacy Act and the FOIA generally protect personal financial information and personnel-like files from mandatory public disclosure to prevent unwarranted invasions of personal privacy. Publishing redacted PNW statements and PNWs of discrimination would likely deter legitimate participation in the program due to privacy concerns, as noted by other commenters. The Department relies on the expertise of UCP certifiers and established oversight mechanisms, rather than public crowdsourcing, to verify eligibility, prevent fraud, and ensure program integrity.

12. The Reevaluation Process (§§ 26.111 and 23.81)

Comments

Commenters raised significant practical concerns regarding the reevaluation process. Stakeholders expressed deep concern regarding the requirement in § 26.111(c) for UCPs to complete reevaluations “as quickly as practicable” without a defined deadline. Commenters argued that this creates an indefinite period of uncertainty where firms that meet the revised eligibility requirements are technically certified but practically ineligible for goal credit, since the recipients’ programs would not yet be allowed to operate or utilize DBE goals. Some objected to the provision stating that the decertification procedures of § 26.87 do not apply. They argued this strips firms of due process rights, such as notice and administrative hearing, before losing a property interest in their certification.

Commenters noted confusion regarding firms certified in multiple States. The FAQ guidance suggesting firms must go through the reevaluation process in their Jurisdiction of Original

Certification (JOC) and then reapply for certification was described as burdensome and contrary to the streamlining goals of the 2024 final rule. Comments suggested that once a firm was recertified in its JOC, all that the firm must do is notify other UCPs of that action to be recertified there. A frequent request from commenters in many categories was for the Department to provide standardized templates and checklists for the PN and the PNW statement. Commenters were concerned that without a DOT template, 53 different UCPs will develop 53 different standards, leading to chaos for interstate firms and inconsistent determinations.

State agencies and UCPs commented that they lack the staffing and resources to process thousands of PNs and PNW statements simultaneously. One recipient projected that while larger agencies might complete reviews in 60–90 days, smaller UCP members could require 6–12 months, creating a fragmented “mosaic” of compliance where eligibility depends on geography rather than merit. One commenter noted that without a deadline, some jurisdictions might delay reevaluation indefinitely, effectively ending the program in those areas. Similarly, a trade association expressed the concern that absent a deadline for the submission of PNs, current DBE firms that do not submit PNs could hold up the restart of the program for those who have already submitted their documentation. Commenters suggested that the Department should have allowed for a phased implementation or a “grace period” where existing certifications remained valid while the new standards were applied to applicants.

DOT Response

The Department agrees with commenters that an open-ended reevaluation process is untenable and that a definitive deadline is essential to prevent administrative paralysis and achieve programmatic finality. To monitor actively the timely completion of these reevaluations, to ensure uniformity of practice, and to reactivate the goal setting process, the Department is codifying specific deadlines and reporting requirements under 49 CFR 26.111(c), as well as establishing a clear close-out mechanism for non-responsive firms under § 26.111(d).

UCPs must complete their reevaluations no later than December 24, 2026. The Department believes that December 24, 2026 is sufficient time for UCPs to complete the reevaluation process, which has been in place since October 3, 2025. A one-time three-

month extension may be granted by the Department for special circumstances, and only if requested in advance of the reevaluation deadline. To apply for this extension, the UCP must email the Department’s Office of Small and Disadvantaged Business Utilization (OSDBU) at DBEreevaluations@dot.gov.

After completing a reevaluation, each UCP must promptly email OSDBU at DBEreevaluations@dot.gov and provide the following data:

1. *Firms Maintaining Certification:* The UCP must identify the total number of DBEs that remain certified following the reevaluation. In addition, the notice must include a declaration that the UCP serves as the JOC for all retained DBEs;
2. *Firms Removed for Ineligibility:* The UCP must state the total number of firms disqualified and removed from the program because the owner failed to meet the required disadvantage criteria; and
3. *Non-Responsive Firms:* The UCP must report the total number of DBE firms that were not processed during the reevaluation due to the owner’s failure to respond to the notice requiring the submission of a PN with a PNW statement.

The Department reserves the right to review the UCP’s reevaluation process, including auditing any underlying documentation associated with a reported firm, at its discretion.

Finally, under the newly added § 26.111(d), UCPs will issue a final written notice of nonresponse to any DBE that fails to submit its documentation by March 24, 2027. These firms will be granted a final 90-day grace period to comply. If they fail to submit the required documentation within this 90-day window, they will be automatically disqualified. By codifying a 90-day grace period, paragraph (d) resolves the administrative paralysis identified by commenters and achieves three essential goals: due process, administrative finality, and program resumption. First, it ensures due process by providing under-resourced small businesses with a definitive, clearly communicated window to submit their complex documentation, protecting vulnerable firms from sudden, unexpected removal. Second, it guarantees administrative finality by giving UCPs a uniform mechanism to remove non-responsive firms automatically without enduring protracted administrative proceedings. Third, it provides timelines to ensure that the DBE and ACDBE programs fully resume in compliance with the revised certification standards.

The reevaluation process does not involve a full-scale recertification of current DBE firms. Under the rule, certified firms must establish their owners’ social and economic

disadvantage through the PN process. If an owner makes this showing successfully, it will be retained in the certifier’s program and in its directory without change. If a firm cannot do so successfully, it will be disqualified under the revised program.

Such a removal is not a decertification. A decertification involves a finding that one of the elements of eligibility (e.g., business size, ownership, control) that a firm demonstrated to obtain certification in the first place was incorrect or overtaken by events, or that the firm failed to cooperate with the certification process (e.g., failed to submit a timely annual Declaration of Eligibility). A disqualification under § 26.111 is different. It reflects that a firm failed to demonstrate that it met a new requirement established by this rule, the same requirement that first-time applicant now must meet. Consequently, the burden of proof and administrative due process provisions associated with decertifications (§§ 26.61 and 26.87) do not apply.

The Department understands that the terminology in § 26.111 created unintended ambiguity regarding the burden of proof applicable to reevaluations and enforcement-based removals. In order to cure the confusion regarding the burden of proof, the Department will amend §§ 26.111(a)(4) and 23.81(a)(4) by replacing the term “decertified” with “disqualified” and the term “recertified” with “reevaluated” thereby further clarifying that § 26.87 procedures do not apply.

The Department also adds language to §§ 26.111(d) and 23.81(d) to clarify that UCPs must follow due process protections outlined in § 26.86(a) for disqualification decisions. Any resulting disqualification letter must specifically detail the reasons for the decision and include verbatim appeal instructions exactly as they appear on the Department’s web page.

The Department agrees with the commenters that requiring firms to “reapply” in other States after reevaluation by their JOC would be unnecessarily burdensome and contrary to the streamlining goals of the interstate certification process. Once the JOC reevaluates a firm under the updated standards, other States should automatically accept that decision upon simple notification, such as a letter or a screenshot showing the firm’s status in the JOC’s updated DBE directory. The receiving UCP must use this documentation to record and track whether the out-of-State firm has been retained by its JOC. To prevent bureaucratic gridlock, no further

requirements may be imposed by UCPs. If a firm does not seek to reaffirm its interstate certification in another State within one year of the date it was reevaluated by its JOC, the firm must follow the regular § 26.85 interstate certification procedure as if it were seeking interstate certification for the first time in that State.

Consistent with the objective of minimizing bureaucratic delays, the Department notes that during the reevaluation process, UCPs are not permitted to refuse Uniform Certification Applications (UCA) from firms seeking certification as a DBE or ACDBE, or pause applications that were already in process. Nothing contained in the IFR or the final rule provides UCP certifiers with the authority to deny the acceptance of UCAs during the reevaluation process. Small businesses that were not certified previously who meet the new disadvantaged criteria should not be locked out of a program designed to assist them. Any pause or refusal in processing UCAs prevents new competition and limits the newly reconstituted pool of DBEs that prime contractors need to meet future goals. The Department intends to keep the regulatory intent of the program alive, and therefore, new applications should be entertained by the UCP.

Certifiers are expected to process applications using the new individualized criteria. New firms will be subject to the same requirements as those presently in the program. They must submit a PN and a current PNW statement. They must also complete the revised UCA and submit all other required program documentation. The Department maintains that a “grace period” allowing continued use of the race- and sex-based presumptions would be legally indefensible given the Department’s determination that those presumptions are unconstitutional. We agree that consistency among UCPs with respect to firms certified in multiple States is vital, but it does not believe that exact templates are appropriate for the PN, as the requirement mandates an individualized presentation of unique facts and circumstances that may not fit a rigid “fill-in-the-blank” format. However, the Department will consider issuing guidance materials to assist owners and UCPs in understanding the evidentiary standards required. UCPs are strongly encouraged to use these Department-issued resources to ensure a uniform standard of review and uniformity of practice.

13. Regulatory Impact Analysis and Paperwork Reduction Act

Comments

The Department received detailed comments regarding the economic analysis underlying the IFR, specifically challenging the estimated costs, the calculation of paperwork burdens, and the consideration of regulatory alternatives.

Several commenters challenged the Department’s determination that the IFR is not a “major rule” under the CRA. These commenters asserted that the rule would result in an annual effect on the economy of \$100 million or more. One trade association argued that the Department’s own Regulatory Impact Analysis (RIA) estimates compliance costs at approximately \$91.9 million, and when combined with the unquantified costs of market disruption, delayed projects, and lost business opportunities, the total impact clearly exceeds the \$100 million threshold.

Commenters also criticized the Department’s cost-benefit analysis as “circular and arbitrary,” arguing that the Department failed to quantify the benefits of the rule or explain why quantification was impossible. They contended that asserting “constitutional compliance” as a benefit that automatically outweighs nearly \$100 million in direct costs lacks evidentiary support and violates the principles of sound regulatory analysis under Executive Order 12866.

Commenters specifically attacked the methodology used to estimate the information collection burden under the PRA. One commenter noted that the Department’s estimate of 820,000 burden hours was based on “the average of three stakeholder responses,” arguing that a sample size of three is statistically invalid for a population of over 40,000 firms. Small business owners stated that the Department underestimated the time required to compile a PN and supporting documentation, with some estimating it would take significantly longer than the Department’s projection, forcing them to hire outside consultants. State agencies (UCPs) also commented that the IFR failed to account for the administrative cost to States for hiring additional staff or contractors to process the sudden influx of reevaluation submissions.

DOT Response

Several commenters challenged the cost-benefit analysis underlying the IFR, asserting that the Department failed to quantify benefits or justify compliance costs. The Department has reviewed these comments and affirms that the

IFR’s economic analysis was sound at the time of publication and remains valid. The cost estimates are based on the best available data, including Bureau of Labor Statistics (BLS) wage rate information and estimates derived from stakeholder input consistent with standard Paperwork Reduction Act (PRA) methodology as outlined in Section H.

The compliance costs identified in the IFR’s approximately \$95 million¹² in one-time transitional costs—reflect the burden of transitioning from the prior presumption-based system to an individualized determination system. Those costs are accrued upon the IFR’s effective date and are attributable to the IFR, not this final rule. This final rule imposes no additional compliance obligations and therefore has no independent economic impact that would qualify it as a major rule.

Regarding the PRA burden estimates, the Department relied on the best available data, given the need for immediate action. The reevaluation process is a one-time event for existing firms, not a recurring annual cost at this magnitude. The Department acknowledges that some firms may choose to hire consultants to assist with the PN but emphasizes that the PN is a statement of the owner’s own experiences, not a technical or legally complex document to be written by consultants or legal experts. The Department also points out that some DBE applicants already retain consultants to assist with their applications, further reducing any marginal cost of consultants to comply with this rule. The Department will monitor the actual burden during the implementation phase and adjust future Information Collection Requests (ICR) as necessary.

14. Alternatives Considered

Numerous commenters suggested that the Department should have considered less disruptive alternatives to the immediate elimination of presumptions.

¹² The aggregate economic impact of this rulemaking—encompassing both the interim final rule and this final rule—consists of approximately \$95 million in one-time transitional costs, primarily reflecting certification narrative burdens on DBE/ACDBE firms (\$91.9 million) and UCP reevaluation costs (\$3.4 million), plus recurring annualized costs of approximately \$1.8 million associated with ongoing reporting and program administration. These quantified costs are more than offset by the unquantifiable benefits of constitutional compliance, including elimination of ongoing litigation risk, restoration of equal protection principles in federally assisted contracting, and improved program integrity through individualized determinations of disadvantage.

Comments

Many stakeholders recommended that the Department transition the DBE program to a race-neutral Small Business Enterprise (SBE) model, similar to the existing SBE element in § 26.39, which would eliminate the need for complex social disadvantage narratives while still aiding small firms. One commenter proposed transitioning to a “microbusiness” participation requirement defined by employee count and gross receipts. Several commenters argued the Department should have allowed existing certifications to remain valid until their natural expiration date, applying the new standards only to applicants to avoid market shock.

DOT Response

The Department considered these alternatives but determined that they would not fulfill the statutory and constitutional mandates. The statutes authorizing the DBE and ACDBE programs (*e.g.*, the Infrastructure Investment and Jobs Act) specifically require the Department to assist “socially and economically disadvantaged individuals.” Although the Department encourages SBE participation, converting the entire program to a generic SBE model would ignore the statutory requirement to address social disadvantage, which persists independently of business size. The IFR preserves the statutory focus on social disadvantage but requires individualized proof rather than group presumptions. The Department rejected the option to “grandfather” existing certifications because doing so would allow the Government to continue utilizing race- and sex-based presumptions that it has determined are unconstitutional. The Department cannot knowingly perpetuate a constitutional violation for the sake of administrative convenience. Immediate reevaluation was necessary to cure the constitutional defect.

15. Airport Concession DBE (ACDBE) Specific Issues (Part 23)

Comments

ACDBE stakeholders, including airports, trade associations, and law firms representing concessionaires, raised concerns about the long-term nature of concession leases. They noted that unlike construction contracts, concession agreements often span many years, and abrupt disqualifications could place concessionaires in breach of contract regarding ACDBE participation requirements.

DOT Response

The Department recognizes the unique structure of airport concessions. Like part 26, existing concession agreements are not required to be modified by the IFR. However, participation by ACDBEs that are disqualified cannot be counted toward future ACDBE goals. The Department advises airport sponsors to work with concessionaires to navigate the reevaluation period without penalizing firms for regulatory changes outside their control, provided the concessionaire acts in good faith.

Separately, the Department is making a technical correction to change the heading of § 23.35 back to “Personal net worth,” which was retitled in error.

Conclusion

After careful consideration of the public comments received in response to the IFR, the Department affirms that the immediate removal of race- and sex-based presumptions from the DBE and ACDBE programs is necessary to ensure these programs comply with the equal protection guarantee of the Constitution. The Department acknowledges the significant concerns raised by stakeholders regarding the administrative burden of the reevaluation process, the temporary suspension of contract goals, and the potential for market disruption affecting small businesses. However, the Department concludes that these transitional challenges do not outweigh the Government’s overriding obligation to eliminate unconstitutional racial and sex classifications. The regulatory amendments implemented by the IFR, as modified in this issuance, remain in effect with the minor modifications described above.

IV. Regulatory Analyses and Notices

A. Executive Order 12866, 13563, and DOT Policies and Procedures

This final rule is a significant regulatory action under Executive Order 12866, *Regulatory Planning and Review*, as supplemented by Executive Order 13563, *Improving Regulation and Regulatory Review*. Accordingly, the Office of Management and Budget (OMB) has reviewed it under that Executive Order.

This final rule confirms the regulatory amendments implemented in the IFR with only minor modifications, such as clarifying IFR concepts like “similarly situated,” “economically disadvantaged in fact,” and deadlines for the reevaluation process. This rule is needed because the Department’s prior DBE regulations, which presumed social

and economic disadvantage based on race and sex, were determined to be unconstitutional, necessitating regulatory action to replace presumption-based eligibility with an individualized determination process.

The Department analyzed the IFR in a regulatory impact analysis. The Department’s economic analysis for the IFR, available in the rulemaking docket (DOT–OST–2025–0897), analyzed the costs and benefits of transitioning from race- and sex-based presumptions to an individualized determination system. That analysis remains the operative economic assessment for the IFR. The Department received comments questioning specific methodological choices, including the sample size for burden hour estimates and the comparison with SBA 8(a) program burden calculations. After review, the Department concludes that its methodology is appropriate. The policy rationale articulated in the IFR—that constitutional compliance benefits outweigh transitional compliance costs—applies with equal force to this final rule, which merely confirms the IFR with clarifying amendments.

The IFR came into force immediately upon publication in 2025. Since then, recipients have already begun the reevaluation process and some firms have already submitted personal narratives for this purpose. Since the IFR is in effect, the appropriate baseline for the costs and benefits of this final rule is today’s conditions, after the IFR has taken effect, rather than before it did. Since this final rule is no more than a clarification and response to comments of the IFR and therefore has no new economic impacts beyond those of the IFR, it has negligible economic impact on its own.

B. Executive Order 14192 (“Unleashing Prosperity Through Deregulation”)

The IFR and this final rule cumulatively will be considered one Executive Order 14192 deregulatory action because the unquantified benefits associated with constitutional compliance, elimination of ongoing litigation risk, restoration of equal protection principles in federally assisted contracting, and improved program integrity through individualized determinations of disadvantage outweigh the quantified costs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations,

and small governmental jurisdictions. Whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must conduct and publish for public comment a regulatory flexibility analysis. Because the Department is not required to publish a proposed rulemaking for this action, an analysis under the RFA is not required.

D. Executive Order 13132 *(“Federalism”)*

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, *Federalism*, and the rule satisfies the requirements of the Executive Order. This final rule does not impose any requirement that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government, (2) imposes substantial direct compliance costs on State and local governments, or (3) preempts State law.

E. Executive Order 13175 *(“Consultation and Coordination With Indian Tribal Governments”)*

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*. Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted annually for inflation with the base year of 1995). This rulemaking would not result in annual State expenditures exceeding the minimum threshold. The Department has determined that the requirements of the Title II of the Unfunded Mandates Reform Act of 1995 therefore do not apply to this rulemaking.

G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1D available at <https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts>.

Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). The purpose of this rulemaking is to amend the Department’s DBE and ACDBE regulations. Section 9(f) of DOT Order 5610.1D states that a DOT Operating Administration can use the categorical exclusions developed by another Operating Administration. This action is covered by the categorical exclusion listed in FTA implementing procedures, “[p]lanning and administrative activities that do not involve or lead directly to construction, such as: . . . promulgation of rules, regulations, directives . . .” 23 CFR 771.118(c)(4). In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

H. Paperwork Reduction Act

The PRA of 1995 (Pub. L. 104–13, 49 U.S.C. 3501, 3507) requires Federal agencies to obtain approval from OMB before undertaking a new collection of information imposed on ten or more persons, or continuing a collection previously approved by OMB that is set to expire.

This rule contains one additional modification to an information collection requirement that was previously approved beyond the information collections identified in the IFR, which is the MAP–21 DBE data collection described below. The modifications to this collection are burden reductions compared to the MAP–21 previously approved DBE data collection and are parallel to the changes identified in the IFR for ACDBEs identified as “ACDBE Annual Report of percentages of ACDBEs in various categories.” The MAP–21 data collection does not impose any

additional reporting burdens beyond those that existed prior to the IFR.

To ensure that the methodology for calculating cost burdens is consistent with the most recent information collections for the DBE and ACDBE programs, the Department is adjusting the cost burden information for the burdens identified in the IFR. The time burdens remain unchanged from the IFR. The Department is also modifying the time and cost estimate under another existing information collection, the Moving Ahead for Progress in the 21st Century Act (MAP–21) data collection for DBEs, given that it is a parallel requirement to the information collection entitled “ACDBE Annual Report of percentages of ACDBEs in various categories.” The revised methodology for adjusting the costs for the updated cost estimates in this final rule appears below, along with an updated chart and itemized list of collection instruments modified by the IFR and final rule.

The Department’s cost estimates utilize NAICS codes for Business and Financial Operations Occupations (NAICS 13–0000) for firm owner burden calculations and Compliance Officer categories for recipient burden calculations. These occupational categories were selected because they most closely approximate the personnel who would undertake the compliance activities required by this rule—specifically, preparing personal narratives (firm owners) and reviewing certification applications (agency compliance staff). The BLS wage data and the 1.62 multiplier for fully loaded compensation rates are consistent with standard DOT practice for regulatory cost estimation based off of the Bureau of Labor Statistics’ Employer Costs for Employee Compensation News Release.¹³

A recipient’s employee’s wage rate is based on BLS’ estimate of a Transit Agency Compliance Officer at \$31.31/hour.¹⁴ The wage rate is multiplied by 1.62 to get a fully loaded wage rate (*i.e.*, compensation rate) of \$50.72 to account for the cost of employer-provided benefits. The 1.62 loaded wage multiplier reflects the ratio of total compensation to wages and salaries for private industry workers, as reported in the Bureau of Labor Statistics’ Employer Costs for Employee Compensation

¹³ Bureau of Labor Statistics’ Employer Costs for Employee Compensation News Release (March 20, 2026), available at <https://www.bls.gov/news.release/eccec.htm>.

¹⁴ See Urban Transit Systems—May 2024 OEWS Industry-Specific Occupational Employment and Wage Estimates available at <https://www.bls.gov/oes/home.htm>.

(ECEC) survey. According to the most recent ECEC data, wages and salaries account for approximately 61.6 percent of total compensation, implying that total compensation is roughly 1.62 times the base wage. This multiplier accounts for employer-paid benefits including paid leave, supplemental pay, insurance, retirement and savings

contributions, and legally required benefits such as Social Security, Medicare, and unemployment insurance.
The airport employee wage rate taken from BLS' estimate of a Compliance Officer in Air Transportation at \$41.95/hour.¹⁵ The wage rate is multiplied by 1.62 to get a fully loaded wage rate

(compensation rate) of \$67.95 to account for the cost of employer-provided benefits.
For socially and economically disadvantaged business owners (SEDO), this analysis uses a wage rate without additional benefits, as a SEDO would pay the benefits to themselves.

OCCUPATIONAL EMPLOYMENT AND WAGES, MAY 2024, 13-0000 BUSINESS AND FINANCIAL OPERATIONS OCCUPATIONS (MAJOR GROUP), HOURLY WAGE, 50 PERCENT MEDIAN, \$38.90 ¹⁶

Requirement	Estimated cost burden (\$ million)	Timing
Certification narratives (firms)	31.9	One-time.
UCP reevaluations	4.15	One-time.
Interstate certification	0.16	One-time.
Bidders' list reporting	1.62	Annual.
ACDBE annual report	0.70	Annual.
MAP-21 data report	0.70	Annual.
Setting overall goals	0.60	Every three years.

- i. Reapplication for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage (Certification Narratives)

Respondents: Firms seeking to maintain their DBE/ACDBE certification.

Estimated Number of Respondents: 41,000.

Frequency: One time per respondent.

Total Annual Burden Hours: 820,000 (one-time burden).

Total Annual Cost Burden: \$31.898,000 (one-time burden).
- ii. UCP Reevaluation of Applications for DBE/ACDBE Certification Based on Individualized Showing of Social Disadvantage

Respondents: UCPs.

Estimated Number of Respondents: 53.

Frequency: One-time reevaluation of 41,000 applicant firms.

Total Annual Burden Hours: 82,000 (one-time burden).

Total Annual Cost Burden: \$4,149,040 (one-time cost).
- iii. Maintaining and Updating Bidders' Lists

Respondents: Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA) funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: 3 times per year.
- Total Annual Burden Hours:* 29,502.

Total Annual Cost Burden: \$1,619,156.

iv. ACDBE Annual Report of Percentages of ACDBEs in Various Categories

Respondents: State Departments of Transportation, District of Columbia, U.S. Virgin Islands, and Puerto Rico.

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: \$698,921.
- v. Reporting Percentages of DBEs in Various Categories (MAP-21 Data Report)

Estimated Number of Respondents: 53.

Frequency: Once per year.

Total Annual Burden Hours: 13,780.

Total Annual Cost Burden: \$698,921.
- vi. Setting Overall Goals for DBE Participation in DOT-Assisted Contracts

Respondents: DOT funding recipients.

Estimated Number of Respondents: 1,639.

Frequency: Once every three years.

Total Annual Burden Hours: 10,927.

Total Annual Cost Burden: \$599,987.
- vii. Providing Evidence of Certification to an Additional State When a Firm Certified in Its Home State Applies to Another State for Certification (Interstate Certification)

Respondents: DBE/ACDBE firms applying for interstate certification.
- Estimated Number of Respondents:* 4,100.

Frequency: Once.

Total Annual Burden Hours: 4,100.

Total Annual Cost Burden: \$159,490 (one-time cost).

Given that the modifications to the existing collection instruments as identified in the IFR cover modifications to existing information collections covered by OMB Control No. 2105-0585 and No. 2105-0586, the Department's information collection request submitted in conjunction with this final rule will cover the collection instruments from both information collections.

I. Congressional Review Act

The Department will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 49 CFR Parts 23 and 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Transportation.

¹⁵ See Support Activities for Air Transportation—May 2024 OEWS Industry-Specific Occupational Employment and Wage Estimates available at <https://www.bls.gov/oes/home.htm>.

¹⁶ See Occupational Employment and Wages, May 2024, 13-0000 Business and Financial Operations Occupations (Major Group), Hourly Wage, 50 percent Median, \$38.90, available at <https://www.bls.gov/news.release/pdf/ocwage.pdf>.

Issued at Washington, DC.

Sean P. Duffy,

Secretary of Transportation.

For the reasons stated in the preamble, the Department of Transportation amends 49 CFR parts 23 and 26 as follows:

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

- 1. The authority for part 23 continues to read as follows:

Authority: 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

- 2. Amend § 23.3 by revising the definition of “Socially and economically disadvantaged individual” to read as follows:

§ 23.3 What do the terms used in this part mean?

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67 of this subtitle.

* * * * *

- 3. Amend § 23.35 by revising the section heading to read as follows:

§ 23.35 Personal net worth.

- 4. Amend § 23.81 by:
 - a. Adding a heading to paragraph (a);
 - b. Revising paragraph (a)(4);
 - c. Adding a heading to paragraph (b);
 - d. Revising paragraph (c); and
 - e. Adding paragraph (d).

The additions and revisions read as follows:

§ 23.81 ACDBE reevaluation process.

(a) *Reevaluation.* * * *

(4) Issue a written decision to each firm reevaluated pursuant to paragraph (a)(3) of this section, stating either that it has been retained as an ACDBE or has been disqualified from the ACDBE program. For disqualified firms, the decision must follow the requirements of § 26.86(a) of this subtitle.

(b) *Relationship to 49 CFR 26.87.*

* * *

(c) *Deadline for completion.* Each UCP must complete the reevaluation process required under this section no later than December 24, 2026.

(1) *Extension.* A UCP may request a one-time extension of up to 90 days to complete the reevaluation process. The Office of Small and Disadvantaged Business Utilization (OSDBU) may grant this extension if it determines that good cause exists. UCPs must request extensions in advance of the reevaluation deadline.

(2) *Notice of completion.* Following the completion of the reevaluation process, each UCP must promptly email the Department's OSDBU at *DBEreevaluations@dot.gov*. Within three business days of emailing OSDBU, the UCP must send a copy of the email to all recipients of DOT funding (certifying and non-certifying agencies) within its jurisdiction. The email must provide the following data:

(i) *Total ACDBEs that remain certified.* The number of ACDBEs that remained certified following the reevaluation, including a certification that the UCP is the Jurisdiction of Original Certification (JOC) that certified the ACDBEs;

(ii) *Total ACDBEs disqualified.* The number of ACDBEs disqualified because an owner failed to meet the requirements of § 26.67 of this subtitle; and

(iii) *ACDBEs not processed due to nonresponse.* The number of ACDBEs that the UCP did not reevaluate because the owner failed to respond to the notice requiring the submission of Personal Narratives (PNs) and PNW statements.

(3) *Right of review.* The Department reserves the right to review the UCP's reevaluation process and the underlying documentation for any firm reported under paragraph (c)(2) of this section.

(d) *Nonresponsive firms.* Any ACDBE that fails to submit its owner's PN and PNW statement by the date the UCP completes its reevaluation process, as reported to the Department under paragraph (c)(2) of this section, must be issued a written notice of nonresponse by the UCP. The ACDBE has until March 24, 2027 to submit the PN and PNW statement to the UCP. If the UCP is granted an extension under paragraph (c)(1) of this section, the ACDBE must submit the owner's PN and PNW statement within 90 days of the UCP's extended deadline. Any firm that fails to submit the required documentation by the applicable deadline provided in this paragraph (d) will be automatically disqualified by the UCP without further administrative proceedings. The UCP need only issue a NOD, under § 26.68(a) of this subtitle, informing the firm that

it has been disqualified for failure to meet the requirements of § 26.67 of this subtitle.

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

- 5. The authority for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47113, 47123; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324 (23 U.S.C. 101 note); Sec. 150, Pub. L. 115–254, 132 Stat. 3215 (23 U.S.C. 101 note); Pub. L. 117–58, 135 Stat. 429 (23 U.S.C. 101 note).

- 6. Amend § 26.5 by revising the definition of “Socially and economically disadvantaged individual” to read as follows:

§ 26.5 Definitions.

* * * * *

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on a case-by-case basis. A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on a presumption based on race or sex. For that reason, all owners may qualify as socially and economically disadvantaged only if they meet the relevant criteria described in § 26.67.

* * * * *

- 7. Amend § 26.63 by revising paragraph (c)(1) to read as follows:

§ 26.63 General certification rules.

* * * * *

(c) * * *

(1) *Indian Tribes and NHOs.* A firm that is owned by an Indian Tribe or Native Hawaiian organization (NHO), rather than by Indians or Native Hawaiians as individuals, is eligible if the firm and its representatives meet all other certification requirements in this part (e.g., Size, Control, PNW). The officials that control these firms are not required to submit a § 26.67 personal narrative or participate in the § 26.111 mandatory reevaluation process.

* * * * *

- 8. Revise § 26.67 to read as follows:

§ 26.67 Social and economic disadvantage.

(a) *Non-presumptive disadvantage.* Except as stated in § 26.63(c), all applicable owner(s) must demonstrate

social and economic disadvantage (SED) affirmatively based on their own experiences and circumstances within American society, and without any presumptions based on race or sex.

(1) To satisfy the SED requirement and ensure all determinations of disadvantage are not based in whole or in part on a presumption of disadvantage based on race or sex, an owner must provide the certifier with a Personal Narrative (PN) that establishes the existence of disadvantage by a preponderance of the evidence based on individualized proof regarding specific instances of economic hardship, social barriers, or denied opportunities that impeded the owner's progress or success in education, employment, or business, including obtaining financing on terms available to non-disadvantaged individuals with comparable qualifications.

(2) The PN must identify at least one objective basis for the owner's disadvantaged status. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature (ODF) in sufficient detail to justify the owner's conclusion that it prompted economic hardship, social barriers, or denied opportunities that the owner experienced.

(3) The PN must state how and to what extent the impediments caused the owner economic harm, including a full description of the type and magnitude.

(4) The owner must attach to the PN a current PNW statement and any other financial information he considers relevant. If a certifier has a reasonable basis to believe that an owner who submits a PNW statement that is below the current PNW cap is not economically disadvantaged, the certifier may determine that the individual is not economically disadvantaged in fact under paragraph (b) of this section.

(b) *Economically disadvantaged in fact.* The certifier may conclude that a reasonable person would not consider the owner economically disadvantaged in fact (EDIF) compared to non-disadvantaged individuals with comparable qualifications.

(1) *Evidence to consider.* There are no limitations or exclusions. The certifier may consider individual's assets, income, access to credit and capital. (e.g., disproportionately expensive homes; premium luxury personal property; high-value stocks or retirement funds; unearned assets; substantial trust holdings). This includes avoiding the free use of, or ready access to, the benefits of such wealth. The certifier need only

demonstrate "ballpark" values based on available evidence.

Example 1 to paragraph (b)(1): An owner of an engineering firm has, or enjoys the benefits of, excessively high income of \$X; an exorbitant home worth approximately \$Y; substantial interests in outside businesses Q, R, and S; four rental properties of aggregate value \$Z; holds a high-value retirement account worth approximately \$V.

(2) [Reserved]

■ 9. Amend § 26.111 by:

- a. Adding a heading to paragraph (a);
- b. Revising paragraph (a)(4);
- c. Adding a heading to paragraph (b);
- d. Revising paragraph (c); and
- e. Adding paragraph (d).

The additions and revisions read as follows:

§ 26.111 The DBE reevaluation process

(a) *Reevaluation.* * * *

(4) Issue a written decision to each firm reevaluated pursuant to paragraph (a)(3) of this section, stating either that it has been retained as a DBE or has been disqualified from the DBE program. For disqualified firms, the decision must follow the requirements of § 26.86(a).

(b) *Relationship to § 26.87.* * * *

(c) *Deadline for completion.* Each UCP must complete the reevaluation process required under this section no later than December 24, 2026.

(1) *Extension.* A UCP may request a one-time extension of up to 90 days to complete the reevaluation process. The Office of Small and Disadvantaged Business Utilization (OSDBU) may grant this extension if it determines that good cause exists. UCPs must request extensions in advance of the reevaluation deadline.

(2) *Notice of completion.* Following the completion of the reevaluation process, each UCP must promptly email the Department's OSDBU at DBEreevaluations@dot.gov. The email must clearly state that the reevaluation process is complete for all UCP members, not just a subset of certifiers. Within three business days of emailing OSDBU, the UCP must send a copy of the email to all recipients of DOT funding (certifying and non-certifying agencies) within its jurisdiction. The email must provide the following data:

(i) *Total DBEs that remain certified.* The number of DBEs that remained certified following the reevaluation, including a certification that the UCP is the Jurisdiction of Original Certification (JOC) that certified the DBEs;

(ii) *Total DBEs disqualified.* The number of DBEs disqualified because an owner failed to meet the requirements of § 26.67; and

(iii) *DBEs not processed due to nonresponse.* The number of DBEs that the UCP did not reevaluate because the owner failed to respond to the notice requiring the submission of Personal Narratives (PNs) and Personal Net Worth (PNW) statements.

(3) *Right of review.* The Department reserves the right to review the UCP's reevaluation process and the underlying documentation for any firm reported under paragraph (c)(2) of this section.

(d) *Non-responsive firms.* Any DBE that fails to submit its owner's PN and PNW statement by the date the UCP completes its reevaluation process, as reported to the Department under paragraph (c)(2) of this section, must be issued a written notice of nonresponse by the UCP. The DBE has until March 24, 2027 to submit the PN and PNW statement to the UCP. If the UCP is granted an extension under paragraph (c)(1) of this section, the DBE must submit the PN and PNW statement within 90 days of the UCP's extended deadline. Any firm that fails to submit the required documentation by the applicable deadline provided in this paragraph (d) will be automatically disqualified by the UCP without further administrative proceedings. The UCP need only issue a NOD, under § 26.86(a), informing the firm that it has been disqualified for failure to meet the requirements of § 26.67.

[FR Doc. 2026–19688 Filed 9–24–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 71

[Docket No. FWS–HQ–NWRs–2026–1223; FXRS1261090000–267–FF09R20000]

RIN 1018–BI71

National Wildlife Refuge System; 2026–2027 Station-Specific Hunting and Sport Fishing Regulations; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS or Service), are correcting a final rule that appeared in the **Federal Register** on September 1, 2026. The rule opened or expanded hunting opportunities on 111 field stations, including 107 units of the National Wildlife Refuges System (Refuge System or NWRs) and 4 units of the National Fish Hatchery System (Hatchery System or NFHS).

DATES: This rule is effective September 25, 2026.

FOR FURTHER INFORMATION CONTACT: Julie Henning, Branch Chief of Conservation Planning and Policy, julie_henning@fws.gov, 571-389-3584. 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 are correcting the final rule that appeared in the **Federal Register** on September 1, 2026, at 91 FR 56290 (FR document 2026-17895). The rule opened or expanded hunting opportunities on 111 field stations, including 107 units of the National Wildlife Refugees System (Refuge System or NWRs) and 4 units of the National Fish Hatchery System (Hatchery System or NFHS). The September 1, 2026, final rule included erroneous paragraph designations for NFHS units as part of amendatory instruction 33 on page 56365 which resulted in incorrect paragraph designations for several new entries. This document corrects paragraph designations and cross references for regulations in title 50 Code of Federal Regulations part 71 at § 71.11 National fish hatcheries open for hunting. For clarity, we revise and republish § 71.11 with this document.

List of Subjects in 50 CFR Part 71

Fish, Fishing, Hunting, Wildlife.

Regulation Promulgation

Accordingly, part 71, subchapter E of chapter I, title 50 of the Code of Federal Regulations is corrected by making the following correcting amendments:

PART 71—HUNTING AND SPORT FISHING ON NATIONAL FISH HATCHERIES

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

Authority: Sec. 4, Pub. L. 73-121, 48 Stat. 402, as amended; sec. 4, Pub. L. 87-714, 76 Stat. 654; 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 1534.

■ 2. Revise and republish § 71.11 to read as follows:

§ 71.11 National fish hatcheries open for hunting.

The following hatcheries are open for hunting as governed by applicable Federal and State regulations, and are

listed in alphabetical order with additional hatchery-specific regulations.

(a) *Craig Brook National Fish Hatchery*—(1) *Migratory game bird hunting*. We allow the hunting of migratory game bird species authorized by the State on designated areas of the hatchery subject to the following conditions:

- (i) We prohibit night hunting.
- (ii) Hunters may enter the hatchery 1 hour before legal sunrise and must leave no later than 1 hour after legal sunset.
- (iii) We allow only portable stands and blinds for hunting, and they must be removed at the end of each day's hunt.

(2) *Upland game hunting*. We allow hunting of upland game species authorized by the State on designated areas of the hatchery subject to the conditions set forth at paragraphs (a)(1)(i) through (iii) of this section.

(3) *Big game hunting*. We allow hunting of big game species authorized by the State on designated areas of the hatchery subject to the conditions set forth at paragraphs (a)(1)(i) through (iii) of this section.

(b) *Green Lake National Fish Hatchery*—(1) *Migratory game bird hunting*. We allow the hunting of migratory game bird species, authorized by the State on designated areas of the hatchery subject to the following conditions:

- (i) We prohibit night hunting.
- (ii) Hunters may enter the hatchery 1 hour before legal sunrise and must leave no later than 1 hour after legal sunset.
- (iii) We allow only portable stands and blinds for hunting, and they must be removed at the end of each day's hunt.

(iv) Trapping, baiting, or hunting over bait is prohibited for all species.

(2) *Upland game hunting*. We allow hunting of upland game species authorized by the State on designated areas of the hatchery subject to the conditions set forth at paragraphs (b)(1)(i) through (iv) of this section.

(3) *Big game hunting*. We allow hunting of big game species authorized by the State on designated areas of the hatchery subject to the conditions set forth at paragraphs (b)(1)(i) through (iv) of this section.

(c) *Iron River National Fish Hatchery*—(1) *Migratory game bird hunting*. We allow duck, goose, coot, rail, snipe, woodcock, dove, and crow hunting on designated areas of the hatchery.

(2) *Upland game hunting*. We allow pheasant, bobwhite quail, ruffed and sharp-tailed grouse, Hungarian partridge, rabbit/hare, squirrel, coyote, fox, bobcat, raccoon, opossum, skunk,

weasel, and woodchuck hunting on designated areas of the hatchery.

(3) *Big game hunting*. We allow white-tailed deer, turkey, and bear hunting on designated areas of the hatchery subject to the following conditions:

(i) You must label tree stands and ground blinds with the owner's State hunting license number. The label must be readable from the ground.

(ii) You may place tree stands and ground blinds on the hatchery only from September 1 to December 31 annually.

(d) *Jordan River National Fish Hatchery*—(1) *Migratory game bird hunting*. We allow the hunting of migratory game bird species authorized by the State on designated areas of the hatchery subject to the following conditions:

(i) We allow entry into the hatchery 1 hour before legal sunrise and require hunters to leave the hatchery no later than 1 hour after legal sunset.

(ii) We prohibit shooting on or over any hatchery road and shooting within 50 feet (15 meters) from the centerline.

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iv) We allow the harvest of pigeon during any open season.

(v) You must remove all personal property, including but not limited to boats, decoys, blinds, blind materials, stands, platforms, and cameras, brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting*. We allow hunting of upland game species authorized by the State, except hunting of English sparrow and European starling, on designated areas of the hatchery subject to the following conditions:

(i) The conditions set forth at paragraphs (d)(1)(i) through (v) of this section apply.

(ii) We prohibit night hunting of upland game from 30 minutes after legal sunset until 30 minutes before legal sunrise the following day.

(iii) We allow the harvest of feral hogs, including Russian boar, during big game hunting.

(3) *Big game hunting*. We allow hunting of bear, elk, white-tailed deer, and turkey on designated areas of the hatchery subject to the conditions set forth at paragraphs (d)(1)(i) through (v) of this section.

(e) *Leadville National Fish Hatchery*—(1) *Migratory game bird hunting*. We allow migratory game bird hunting on designated areas of the hatchery.

(2) *Upland game hunting*. We allow upland game hunting on designated areas of the hatchery.

(3) *Big game hunting*. We allow big game hunting on designated areas of the hatchery subject to the following conditions:

(i) You must label tree stands and ground blinds with the owner's State hunting license number. The label must be readable from the ground.

(ii) You may place tree stands and ground blinds on the refuge only from September 1 to December 31 annually.

(4) *Sport fishing*. See § 71.12(l) for hatchery-specific fishing regulations for this hatchery.

(f) *Leavenworth National Fish Hatchery—(1) Migratory game bird hunting*. We allow migratory game bird hunting on designated areas of the hatchery subject to the following condition: We allow the use of dogs for hunting in accordance with State of Washington hunting regulations.

(2) *Upland game hunting*. We allow upland game hunting on designated areas of the hatchery subject to the following condition: We allow the use of dogs for hunting in accordance with State of Washington hunting regulations.

(3) *Big game hunting*. We allow big game hunting on designated areas of the hatchery subject to the following condition: We allow the use of dogs for hunting in accordance with State of Washington hunting regulations.

(4) *Sport fishing*. See § 71.12(m) for hatchery-specific fishing regulations for this hatchery.

(g) *Little White Salmon National Fish Hatchery—(1) Migratory bird hunting*. We allow hunting of crow on designated areas of the hatchery subject to the following conditions:

(i) We only allow portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all equipment at the end of each day's hunt.

(ii) We allow the use of dogs when hunting.

(2) *Upland game hunting*. We allow hunting of bobcat, grouse, partridge, and porcupine on designated areas of the hatchery subject to the conditions set forth at paragraphs (g)(1)(i) and (ii) of this section.

(3) *Big game hunting*. We allow hunting of bear, elk, black-tailed deer, mule deer, and turkey on designated areas of the hatchery subject to the conditions set forth at paragraphs (g)(1)(i) and (ii) of this section.

(4) *Sport fishing*. See § 71.12(n) for hatchery-specific fishing regulations for this hatchery.

(h) *Southwest Native Aquatic Resources and Recovery Center—(1) Migratory game bird hunting*. We allow the hunting of sandhill crane, light and

dark goose, duck, merganser, coot, mourning and white-winged dove, and band-tailed pigeon on designated areas of the center.

(2) *Upland game hunting*. We allow the hunting of Eurasian collared-dove; dusky (blue) grouse; pheasant; scaled quail; and Abert's, red, gray, and fox squirrel on designated areas of the center.

(3) [Reserved]

(i) *Pendill's Creek National Fish Hatchery—(1) Migratory game bird hunting*. We allow hunting of migratory game bird species authorized by the State on designated areas of the hatchery subject to the following conditions:

(i) We allow entry into the hatchery 1 hour before legal sunrise and require hunters to leave the hatchery no later than 1 hour after legal sunset.

(ii) We prohibit shooting on or over any hatchery road and shooting within 50 feet (15 meters) from the centerline.

(iii) We allow the use of dogs while hunting, provided the dog is under the immediate control of the hunter at all times.

(iv) We allow the harvest of pigeon during any open season.

(v) You must remove all personal property, including but not limited to boats, decoys, blinds, blind materials, stands, platforms, and cameras, brought onto the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

(2) *Upland game hunting*. We allow the hunting of upland game species authorized by the State, except for English sparrows and European starlings, on designated areas of the hatchery subject to the following conditions:

(i) The conditions set forth at paragraphs (i)(1)(i) through (v) of this section apply.

(ii) We prohibit night hunting of upland game from 30 minutes after legal sunset until 30 minutes before legal sunrise the following day.

(iii) We allow the harvest of feral hog, including Russian boar, during big game hunting.

(3) *Big game hunting*. We allow white-tailed deer, turkey, and bear hunting on designated areas of the hatchery subject to the conditions set forth at paragraphs (i)(1)(i) through (v) of this section.

(j) *Spring Creek National Fish Hatchery—(1) Migratory bird hunting*. We allow hunting of crow on designated areas of the hatchery subject to the following conditions:

(i) We only allow portable blinds and temporary blinds constructed of nonliving natural materials. Hunters

must remove all equipment at the end of each day's hunt.

(ii) We allow the use of dogs when hunting.

(2) *Upland game hunting*. We allow hunting of bobcat, grouse, partridge, and porcupine on designated areas of the hatchery subject to the following condition: The conditions set forth at paragraphs (j)(1)(i) and (ii) of this section apply.

(3) *Big game hunting*. We allow hunting of bear, elk, black-tailed deer, mule deer, and wild turkey on designated areas of the hatchery subject to the following condition: The conditions set forth at paragraphs (j)(1)(i) and (ii) of this section apply.

(4) *Sport fishing*. We allow sport fishing on designated areas of the hatchery subject to the following condition: We only allow fishing from legal sunrise to legal sunset.

Jillian Eanett,

*Acting Chief, Policy and Regulations Branch,
U.S. Fish and Wildlife Service.*

[FR Doc. 2026–19723 Filed 9–24–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 260813–0186; RTID 0648–XG056]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category September Fishery for 2026

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for Atlantic bluefin tuna (BFT) for the remainder of the September time period. The General category may only retain, possess, or land large medium and giant (*i.e.*, measuring 73 inches (185 centimeters (cm) curved fork length (CFL) or greater) BFT when the fishery is open. This action also waives the previously scheduled restricted-fishing days (RFDs) for the remainder of the September time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-

release and tag-and-release programs. On October 1, 2026, the fishery will reopen automatically and previously scheduled RFDs for the October through November time period will resume.

DATES: Effective 11:30 p.m., local time, September 24, 2026, through September 30, 2026.

FOR FURTHER INFORMATION CONTACT:

Becky Curtis, becky.curtis@noaa.gov, or Larry Redd, Jr., larry.redd@noaa.gov, by email, or by phone at 301-427-8503.

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

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure action for that category until the opening of the relevant subsequent quota period or until such date as specified.

NMFS recently published a final rule, which among other things, increased the BFT quota from 1,316.14 metric tons (mt) to 1,509.98 mt (not including the 62.5 mt ICCAT allocated to the U.S. to account for bycatch of BFT in pelagic longline fisheries in the vicinity of the management boundary and adjacent areas) (91 FR 53526, August 19, 2026). As described in § 635.27(a), the General category baseline quota is 815.4 mt. The General category baseline quota is suballocated to time periods. Relevant

to this action, the baseline subquota for the September time period is 216.1 mt.

Closure of the September 2026 BFT General Category Fishery

Based on reported landings to date for the BFT General category September time period, NMFS has determined that subquota for this time period is projected to be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.*, measuring 73 inches (185 cm) CFL or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on September 24, 2026. The BFT General category will automatically reopen October 1, 2026, for the October through November 2026 time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT and is taken consistent with the regulations at § 635.28(a)(1).

Waiver for Remaining September RFDs

On May 31, 2024 (89 FR 47095), NMFS published a final rule, which among other things, implemented RFDs every Tuesday, Friday, and Saturday from July 1 through November 30 of each year. Since the fishery will be closed for the remainder of the September time period, NMFS has decided to waive the previously scheduled RFDs for the remainder of that time period. Previously scheduled RFDs (*i.e.*, every Tuesday, Friday, and Saturday) will resume on October 1, 2026.

With the RFDs waived during a closure, consistent with § 635.23(a)(7) fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs described at § 635.26(a). All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the “Careful Catch and Release” brochure available at <https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/>.

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Per § 635.5(b)(2)(i)(A), dealers are required to submit landing reports within 24 hours of receiving BFT. Late reporting by dealers compromises NMFS’ ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required per § 635.5(a)(4) to report their own catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing <https://hmspermits.noaa.gov>, using the HMS Catch Reporting app, or calling 888-872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m. E.T.).

After the fishery reopens on October 1, depending on the level of fishing effort and catch rates of BFT at that time, and after consideration of all the criteria specified at § 635.27(a)(7), NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may access <https://hmspermits.noaa.gov>, for updates on quota monitoring and inseason adjustments.

Classification

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

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, this action because it is impracticable and contrary to the public interest for the following reasons. Specifically, the regulations implementing the HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest as this fishery is currently underway and, based on the most recent landings information, the

available time period subquota has been reached. Delaying this action could result in BFT landings that further exceed the adjusted September time period subquota, which may result in future potential quota reductions for other BFT categories or the 2027 General category quota, depending on the magnitude of a potential General category overharvest. Taking this action

does not raise conservation and management concerns and would support effective management of the BFT fishery. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota, and the inseason adjustment and closure criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C.

553(d)(3), there is good cause to waive the 30-day delay in effective date.

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

Dated: September 23, 2026.

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

[FR Doc. 2026–19681 Filed 9–23–26; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 91, No. 185

Friday, September 25, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Office of the Attorney General

8 CFR Chapter V

27 CFR Chapter II

28 CFR Chapter I

[Docket No. OAG196; AG Order No. 7205–2026]

Department of Justice; Response to Correspondence Requesting Rulemaking

AGENCY: Office of the Attorney General, Department of Justice.

ACTION: Petitions for rulemaking; denial.

SUMMARY: This document responds to 10 submissions received by the Department of Justice (“DOJ” or “the Department”) or its components that asked the Department or a component to initiate rulemaking. After reviewing these submissions, the Department declines to initiate rulemakings in response to them.

DATES: September 25, 2026.

FOR FURTHER INFORMATION CONTACT:

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

For submissions to the Bureau of Alcohol, Tobacco, Firearms, and Explosives: Vivian Chu, Office of Regulatory Affairs, Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Department of Justice, 99 New York Ave. NE, Washington, DC 20226; telephone: (202) 648–7070.

For other submissions: Christina Greer, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4254, 950 Pennsylvania Avenue NW, Washington, DC 20530; telephone: (202) 514–5739.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act provides that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.” 5 U.S.C. 553(e). The Department and its components have reviewed the submissions requesting rulemaking listed in Sections II and III of this Notice and decline to initiate the requested rulemaking actions for the reasons provided below.

II. Submissions Relating to Immigration Issues

A. Submission From 100 Law Professors Dated May 27, 2021

On May 27, 2021, 100 law professors submitted correspondence, “express[ing their] views” on the construction and application of the “unable or unwilling” element of the “refugee” definition. Recently, the Attorney General issued a decision¹ concluding that the legal framework within *Matter of A–B–*, 27 I&N Dec. 316 (A.G. 2018), is the best reading of the statute, inclusive of the “unable or unwilling” element of the refugee definition. See *Matter of S–S–F–M–*, 29 I&N Dec. 207, 208 (A.G. 2025). Moreover, the Attorney General instructed that inquiries regarding the proper application of the “unable or unwilling” standard “are legal questions appropriately resolved as part of the Attorney General’s authority to issue ‘controlling’ decisions ‘with respect to all questions of law.’” *Id.* at 209 (quoting Immigration and Nationality Act (“INA”), 103(a)(1), 8 U.S.C. 1103(a)(1)). Accordingly, as there is now current controlling agency precedent on the “unable or unwilling” standard, which specifically concludes that the issue is a legal question best left to case-by-case adjudication, the Department declines to undertake rulemaking as suggested in the law professors’ submission. The petition for rulemaking is, therefore, denied.

B. Submission From Jonathan M. Kaufman Dated January 5, 2022

On January 5, 2022, Jonathan M. Kaufman submitted correspondence requesting that the Department engage in rulemaking to implement the William

¹ Attorney General Pamela Bondi directed the Board of Immigration Appeals to refer the case for her review pursuant to 8 CFR 1003.1(h)(1)(i). See *Matter of S–S–F–M–*, 29 I&N Dec. 207, 207 (A.G. 2025).

Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), Public Law 110–457, 122 Stat. 5044, asserting that his client is entitled to a decision from an Immigration Judge that has been informed by regulations promulgated in accordance with the TVPRA. Although described in the correspondence as a petition for rulemaking, this letter more squarely seeks resolution of issues for a particular case that are more appropriately addressed through the administrative adjudication or appeals process.

Additionally, the Department is already considering potential regulatory action to implement the TVPRA and declines to take additional rulemaking action at this time. See, e.g., Spring 2025 Unified Agenda, RIN 1125–AA70, Implementation of Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008; Treatment of Unaccompanied Children, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=1125-AA70> [<https://perma.cc/QM54-QS29>]. Should the Department decide to engage in rulemaking on these topics in the future, the public is welcome to comment on any proposed rule the Department may publish, as appropriate.

C. Submission From Members of Congress Dated October 30, 2023

On October 30, 2023, four members of Congress (Senators Richard J. Durbin and Alex Padilla and Representatives Jerrold Nadler and Pramila Jayapal) submitted a letter to former Attorney General Merrick Garland and former Department of Homeland Security (“DHS”) Secretary Alejandro Mayorkas requesting rulemaking to amend custody procedures, including: shifting the burden of proof in bond proceedings; requiring consideration of an alien’s ability to pay bond when setting a bond amount; providing review of mandatory detention determinations under section 236(c) of the INA, 8 U.S.C. 1226(c); and scheduling periodic assessments of detained aliens to identify unreasonably prolonged detention. Since this letter was submitted, President Donald J. Trump issued an Executive Order titled “Securing Our Borders,” which establishes that it is the policy of the

United States “to take all appropriate action to secure the borders of our Nation” by “[d]etaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States.” E.O. 14165, 90 FR 8467 (Jan. 20, 2025). The Department does not believe that the requested actions comport with this directive. As such, the Department denies the petition for rulemaking. Should the Department decide to engage in rulemaking on these topics in the future, the public is welcome to comment on any proposed rule the Department may publish, as appropriate. The Department also notes, with respect to the request to provide aliens the opportunity to seek review of mandatory detention determinations, that Department regulations already provide that aliens who are removable because of criminal or terrorism-related grounds, and are therefore subject to mandatory detention under section 236(c)(1)(A)–(C) of the INA, 8 U.S.C. 1226(c)(1)(A)–(C), may seek “a determination by an [I]mmigration [J]udge that the alien is not properly included within” that class of aliens. 8 CFR 1003.19(h)(2)(ii).

D. Submission From Marta Alicia Mejia Alvarenga Dated September 11, 2023

Marta Alicia Mejia Alvarenga (“Mejia Alvarenga”), through counsel, submitted correspondence dated September 11, 2023, titled “Petition for Rulemaking Concerning the “‘Unable or Unwilling’ Standard, the Proper Application of That Standard, and the Meaning of the Statutory ‘One Central Reason’ Test” (*Matter of A–B–*, 28 I & N Dec. 307, 309 (A.G. 2021)),” in which Mejia Alvarenga requests that the Attorney General issue regulations clarifying certain requirements for asylum and a related form of protection from removal. The petition invokes President Joseph R. Biden’s Executive Order titled “Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” see E.O. 14010, 86 FR 8267 (Feb. 2, 2021), which ordered the Attorney General and Secretary of Homeland Security to promulgate regulations within 270 days addressing certain requirements for asylum and protection claims, *id.* at 8271, a deadline that had passed by the time of the correspondence. Mejia Alvarenga also expresses “surpris[e]” that a “draconian standard” for determining whether a

foreign government was or will be unable or unwilling to provide protection from a persecutor was applied to her asylum application and that the Department defended its application on judicial review. Finally, Mejia Alvarenga asks that the Attorney General issue the requested regulations unilaterally without the concurrence of the Secretary of Homeland Security, if obtaining such concurrence would “slow down” the process.

The Department declines to initiate rulemaking in response to this correspondence for three reasons. *First*, on his first day in office, President Trump revoked the Executive Order Mejia cites in her petition. See Sec. 3(a), E.O. 14159, 90 FR 8443, 8443 (Jan. 20, 2025) (“Protecting the American People Against Invasion”); Sec. 2(u), E.O. 14148, 90 FR 8237, 8238 (Jan. 20, 2025) (“Initial Rescissions of Harmful Executive Orders and Actions”). Thus, the basis for Mejia Alvarenga’s request for rulemaking has been revoked. *Second*, although labeled as a petition for rulemaking, the document more squarely relates to Mejia Alvarenga’s since-resolved challenge to her removal order and her arguments as to the proper standard to apply for determining whether a government is “unable or unwilling” to provide protection from a persecutor. Notably, the Fifth Circuit has denied her petition for review of her removal order. *Mejia-Alvarenga v. Garland*, 95 F.4th 319 (5th Cir. 2024). In so doing, the Fifth Circuit concluded that the formulation of the “unable or unwilling” standard applied to her—that is, whether the government condones the harm or is completely helpless to protect the alien—is “interchangeable” with the “unable or unwilling” standard. *Id.* at 324 (citing *Gonzales-Veliz v. Barr*, 938 F.3d 219, 233 (5th Cir. 2019)). *Third*, the Department is otherwise unable to evaluate Mejia Alvarenga’s request for rulemaking because she provides no other reasons why the Department should grant her broad request and fails to identify any specific regulatory changes that she wants the Department to pursue. For these reasons, the Department declines to initiate a rulemaking in response to Mejia Alvarenga’s correspondence. If the Department’s view changes, Mejia Alvarenga is welcome to comment on any proposed rule it may publish, as appropriate.

E. Submission From Sandra Beatriz Bustamante Leiva Dated September 11, 2023

On the September 11, 2023, Sandra Beatriz Bustamane Leiva and her sons,

through counsel, submitted a letter titled “Petition for Rulemaking Concerning ‘Circumstances in Which a Person Should Be Considered a Member of a “Particular Social Group,” as That Term is Used in 8 U.S.C. 1101(A)(42)(A)’ (Ex[e]cutive Order No. 14010, 86 FR 8267, 8271 (Feb. 2, 2021)).” The correspondence requests that the Department take regulatory action so that their cases can be “reviewed under new regulations.”

The Department notes that the Executive Order cited as the basis for the correspondence, Executive Order 14010, “Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,” has been revoked by two Executive Orders signed by President Trump on January 20, 2025. See E.O. 14159, 90 FR 8443; E.O. 14148, 90 FR 8238.

Accordingly, the Department will not be issuing rulemakings as directed by Executive Order 14010. Should the Department decide to engage in rulemaking on these topics in the future, the public is welcome to comment on any proposed rule the Department may publish, as appropriate.

F. Submission From the American Civil Liberties Union, et al., Dated April 15, 2024

The American Civil Liberties Union (“ACLU”) and 52 other organizations filed a petition dated April 15, 2024, titled “Petition for Rulemaking to Promulgate Regulations Governing the Provision of Interpreters for Affirmative Asylum Interviews,” in which they request that DOJ and DHS promulgate regulations governing the provision of interpreters for affirmative asylum interviews before U.S. Citizenship and Immigration Services (“USCIS”). The Department thereafter received letters supporting the petition from the New Mexico Immigrant Law Center, American Gateways, the American Translators Association, and the Florence Immigrant & Refugee Rights Project, among other organizations.

The Department is denying this petition because the Department does not have authority to amend regulations governing interviews before DHS’s asylum officers. As the petition for rulemaking recognizes, authority over the adjudication of asylum applications is divided between DOJ and DHS. The Homeland Security Act of 2002 (“HSA”), Public Law 107–296, 116 Stat. 2135, as amended, transferred the authority over affirmative asylum

applications from the Attorney General to the Secretary of Homeland Security. See HSA 451(b)(3), 6 U.S.C. 271(b)(3). Accordingly, DHS has authority over the consideration of affirmative asylum applications and the concomitant procedures for such matters pending at USCIS. See INA 103(a), 208(b), 8 U.S.C. 1103(a), 1158(b). The petition for rulemaking seeks an amendment to 8 CFR 208.9(g)(1), a DHS regulatory provision located in chapter 1 of title 8 of the Code of Federal Regulations. That provision governs interpreters in affirmative asylum interviews before USCIS and outlines the procedures applicable before USCIS in the affirmative asylum context—matters that are within the exclusive purview of DHS. Accordingly, the Department declines to initiate the rulemaking requested by the petition to amend the applicable DHS regulation.

G. Submission From Amica Center for Immigrant Rights Dated July 12, 2024

In a petition for rulemaking dated July 12, 2024, the Amica Center for Immigrant Rights, on behalf of itself and 28 other organizations, urged DOJ and DHS to adopt regulations allowing for Immigration Judge review of supervision conditions for aliens enrolled in the Alternatives to Detention (“ATD”) programs overseen by DHS. The organizations’ stated concerns were based on the expanded use of ATD programs, the lack of meaningful review of ATD conditions for specific aliens, and the alleged harms caused by the use of such ATD programs.

For the same reasons described in Section II.C of this Notice, the Department denies the petition. Specifically, since the petition was submitted, President Trump issued an Executive Order entitled “Securing Our Borders,” which establishes that it is the policy of the United States “to take all appropriate action to secure the borders of our Nation” by “[d]etaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States.” E.O. 14165, 90 FR 8467. The Department does not believe that the requested actions comport with this directive. As such, the Department denies the petition for rulemaking. Should the Department decide to engage in rulemaking on these topics in the future, the public is welcome to comment on any proposed rule the Department may publish, as appropriate.

H. Submission From the American Bar Association Dated December 12, 2024

On December 12, 2024, the American Bar Association (“ABA”) through its President, William R. Bay, submitted correspondence recommending that DOJ and DHS expedite Federal regulations that enhance protections for individuals seeking asylum due to “gender-based violence.” Specifically, the ABA recommended that DOJ and DHS: (1) amend procedural standards regarding credibility assessments and interpretations of the nexus prong and the particular social group ground for asylum and withholding of removal; (2) develop and implement trauma-informed procedures, training, and safeguards for all interviews, hearings, and adjudications of “gender-based” claims for protection; and (3) implement procedural safeguards to minimize the risk of re-traumatization during interviews and hearings.

The Department believes that the Attorney General’s recent decision in *Matter of S–S–F–M–*, 29 I&N Dec. 207, provides sufficient clarity regarding particular social group and nexus standards. Moreover, procedural standards regarding credibility assessments and interpretations of the nexus prong are sufficiently defined and explained in the regulations and case law. See INA 208(b)(1)(B)(i), 8 U.S.C. 1158(b)(1)(B)(i) (establishing that the protected ground must be “at least one central reason for persecuting the applicant”); *id.* 1158(b)(1)(B)(iii) (establishing the factors required for a credibility determination); *Matter of S–S–F–M–*, 29 I&N Dec. at 209–210. Finally, Immigration Judges receive robust training, and training requirements do not need to be addressed through regulation. See, e.g., *Massachusetts v. E.P.A.*, 549 U.S. 497, 527 (2007) (“[A]n agency has broad discretion to choose how best to marshal its limited resources and personnel to carry out its delegated responsibilities.”). Accordingly, the ABA’s request is denied.

III. Submissions Relating to Other Subjects

A. Submission From the American Clinical Laboratory Association Dated September 30, 2024

The American Clinical Laboratory Association (“ACLA”) submitted a petition dated September 30, 2024, pertaining to the Eliminating Kickbacks in Recovery Act of 2018 (“EKRA”), 18 U.S.C. 220. EKRA penalizes anyone who “pays or offers any remuneration (including any kickback, bribe, or rebate) . . . to induce” a referral of a

patient to a lab, as well as anyone who solicits such remuneration. 18 U.S.C. 220(a)(1)–(2). EKRA was enacted after the Department of Health and Human Services noted that abusive patient-brokering practices affected private health insurance plans and that there was a gap in enforcement because the Anti-Kickback Statute prohibited kickbacks impacting only public payors and did not apply to privately insured patients. Elayne J. Heisler & Jonathan H. Duff, Cong. Research Serv., R45423, *Public Health and Other Related Provisions in P.L. 115–271, the SUPPORT for Patients and Communities Act* at 60–61 (updated Dec. 3, 2018).

ACLA’s petition requests that the Attorney General issue rules to permit a laboratory or any other employer to provide remuneration, in any manner (including variable compensation), to an employed sales representative provided that the employee does not knowingly and willfully provide materially false or misleading information to healthcare providers or patients. This appears to circumscribe the scope of the statute to apply only in situations involving fraud, which is already prohibited under other statutes. In addition, it would contradict existing legal authority that recognizes that sales representatives providing misleading information “is not a necessary set of circumstances” for violating EKRA, although “it is sufficient.” *United States v. Schena*, 142 F.4th 1217, 1226 (9th Cir. 2025). It also misunderstands the legislation’s core purpose: preventing financial incentives that could compromise patient care. Even in the absence of fraud, such arrangements are harmful because they deprive patients of choice and lead to unfair competition, overutilization of services, unnecessary testing, and increased health care costs. See *Schena*, 142 F.4th at 1224–25 (kickback payments to physicians that induce referrals are illegal under EKRA); see also *United States v. Miles*, 360 F.3d 472, 481 (5th Cir. 2004) (discussing an Anti-Kickback Statute case in which a sales representative’s “judgment was shown to have been improperly influenced by the payments” without any fraudulent misrepresentations); *HHS-Office of Inspector Gen. Advisory Opinion No. 98–10* (Aug. 31, 1998) (Anti-Kickback Statute Advisory Opinion), <https://oig.hhs.gov/documents/advisory-opinions/385/AO-98-10.pdf> (certain marketing arrangements that include compensation based on a percentage of sales “appear to be associated with an increased potential for program abuse,

particularly overutilization and excessive program costs”).

While framed as a narrow exception, allowing variable compensation to sales representatives could effectively reintroduce the very kickback structures EKRA was designed to eliminate. Adopting a requirement that employees not knowingly and willfully provide false information would set a high bar for enforcement that could hinder efforts to prosecute cases where laboratories intentionally implement commission-based payment systems to directly reward referrals. The existing EKRA framework already permits reasonable employee compensation structures unrelated to referral volume, while restricting arrangements that create direct financial incentives for increasing referrals.

Finally, any claimed regulatory burden imposed by EKRA on the laboratory industry is substantially mitigated by the law’s age and established status. EKRA was signed into law by President Trump on October 24, 2018, and it has now been in effect for almost eight years, providing ample time for laboratories to adapt their business models and compliance programs to align with its requirements. The laboratory industry also has operated successfully under similar Anti-Kickback Statute restrictions for variable compensation in connection with Medicare and Medicaid for decades, with clear understanding of compliant compensation structures. *See United States ex rel. Lutz v. Mallory*, 988 F.3d 730, 738 (4th Cir. 2021) (“[F]ederal appellate courts have frequently, and indeed invariably, upheld Anti-Kickback Statute violations based on commission payments to third parties.”); *United States v. St. Junius*, 739 F.3d 193, 210 (5th Cir. 2013) (“The Anti-Kickback Statute prohibits receiving commissions in return for referring a Medicare patient to a Medicare provider.”). The Department has used its criminal enforcement power under EKRA judiciously and there are no allegations in the request for rulemaking that it has overreached. For these reasons, the Department denies ACLA’s petition.

B. Submission From Howard S. Spokane
Dated July 13, 2021

In July 2021, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) received a petition for rulemaking that suggested ATF create a new licensing requirement for people possessing “high-velocity” ammunition, which was developed for military use (the petitioner stated this was explained in *Wound Ballistics*, a 1940s

publication) and causes much more severe injuries than conventional ammunition. The petitioner suggested that this licensing requirement include: (1) a law enforcement right to periodically inspect to ensure the ammunition is stored safely; and (2) a psychiatrist’s certification that the applicant does not suffer from or have a history of mental illness.

ATF declines to pursue this rulemaking. The Gun Control Act of 1968, as amended, prohibits the manufacture, importation, and distribution of “armor piercing ammunition,” 18 U.S.C. 922(a)(7)–(8), and also requires that individuals engaged in the business of importing or manufacturing ammunition be licensed under 18 U.S.C. 922(a)(1)(B). However, there is no statutory authority to regulate the sale or mere possession of standard ammunition. As a result, ATF cannot establish a licensing framework to possess high-velocity ammunition, as the petitioner requests. To the extent that the petitioner considers high-velocity ammunition to also be armor-piercing ammunition, ATF also cannot pursue the petitioner’s request because determining whether ammunition is armor-piercing is a materials-based assessment under the law and does not measure or test velocity. If a given high-velocity ammunition is determined to be armor-piercing due to its materials, it will already be regulated under ATF’s current framework and additional regulation would be unnecessary. Moreover, even in cases of armor-piercing ammunition, ATF does not have statutory authority to license possession.

Dated: September 21, 2026.

Todd Blanche,
Attorney General.

[FR Doc. 2026–19642 Filed 9–24–26; 8:45 am]

BILLING CODE 4410–BB–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

9 CFR Parts 101 Through 118, 123, and 124

[Docket No: USDA–2026–0298]

Modernization of Regulations Under 9 CFR Parts 101–118 and 123–124; Extension of Comment Period

AGENCY: Office of the Secretary, U.S. Department of Agriculture.

ACTION: Request for Information; extension of comment period.

SUMMARY: The U.S. Department of Agriculture (USDA) is extending the public comment period by 20 days on its Request for Information (RFI) to solicit the public’s input on regulatory considerations related to 9 CFR parts 101–118, 123–124.

DATES: The comment period for the document originally published on September 11, 2026,

(91 FR 57828) is extended 20 days. Comments must be submitted on or before November 2, 2026.

ADDRESSES: USDA invites public comments on this RFI and encourages stakeholders, including farmers, industry representatives, and state and local governments, to provide input. You may submit comments, identified by docket number USDA–2026–0298, in the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Michael Poe, Office of the General Counsel, USDA, 1400 Independence Avenue SW, Washington, DC 20250–1400, (202) 769–8247.

SUPPLEMENTARY INFORMATION: An RFI published in the **Federal Register** on September 11, 2026 (91 FR 57828), seeks public feedback to gather information that would assist USDA in modernizing regulations in 9 CFR parts 101–118, 123–124.

The RFI established a 30-day comment period, ending October 13, 2026. During the initial comment period, USDA received public input asking for an extension. Additional time would allow for careful and thoughtful consideration on a multitude of subjects as USDA’s Animal and Plant Health Inspection Service (APHIS) Center for Veterinary Biologics seeks to modernize its veterinary biologics regulations under the Virus-Serum-Toxin Act.

Accordingly, USDA is extending the comment period for the RFI by an additional 20 days. Comments must be submitted on or before November 2, 2026.

Andrew Perry,
Associate Director, Office of the General Counsel.

[FR Doc. 2026–19710 Filed 9–24–26; 8:45 am]

BILLING CODE 3410–14–P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2026–12310; Airspace
Docket No. 26–ASW–15]

RIN 2120–AA66

Amendment of Class E Airspace; Del Rio, TX

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend the Class E airspace at Del Rio, TX. The FAA is proposing this action as the result of a biennial review of the airspace associated with Laughlin Air Force Base (AFB), Del Rio, TX. This proposal would also update the name and geographic coordinates of Laughlin AFB to coincide with the FAA's aeronautical database. This action would bring the airspace into compliance with FAA orders and support instrument flight rule (IFR) procedures and operations.

DATES: Comments must be received on or before November 9, 2026.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2026–12310 and Airspace Docket No. 26–ASW–15 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 7400.11M, 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: 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 would amend the Class E airspace at the affected airport to support IFR operations.

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 operations). 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 relevant to this action are published in paragraphs 6003 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 7400.11M, dated July 30, 2026, and effective September 15, 2026. These updates would be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11M, 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 modify the Class E airspace designated as an extension to a Class C surface area and the Class E airspace extending upward from 700 ft. above the surface at Del Rio, Texas due to a biennial review of the airspace associated with Laughlin AFB, Del Rio, Texas.

For the Laughlin AFB Class E airspace designated as an extension to a Class C surface area, the proposal would: (1) remove the extension north of the airport from the airport legal description as it is no longer required; (2) remove the extension from the 060° radial of the Laughlin VORTAC clockwise to the 195° radial, extending from the 5-mile radius of Laughlin AFB to the 5.5-mile radius as it is no longer required; (3) amend the extension southeast of the airport to extending southeast from the 5-mile radius of Laughlin AFB within 1-mile each side of the line from SWANT to MINNM and 1-mile each side of the 150° bearing from MINNM to 8 miles southeast of MINNM, excluding Mexican airspace (previously, 2.6 miles each side of the 145° radial of the Laughlin VORTAC extending from the 5.5-mile radius of Laughlin AFB to 6.6 miles southeast of the airport); (4) amend the extension northwest of Laughlin AFB to within 2 miles (previously 2.6 miles) each side of the 305° bearing (previously radial) from the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 10.5 miles (previously 6.6 miles) northwest of Laughlin AFB; (5) remove the extension within 1.8 miles each side of the 315° bearing from Laughlin AFB: RWY 13C-LOC extending from the 5-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; (6) add an extension within 1.8 miles each side of the 315° bearing from Laughlin AFB: RWY 13C-LOC extending from the 5-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; (7) remove the extension from the 333° radial of Laughlin VORTAC as it is no longer required; (8) remove the city associated with the airport to comply with changes to FAA Order JO 7400.2R, Procedures for Handling Airspace Matters; (9) update the geographic coordinates of Laughlin AFB to coincide with the FAA's aeronautical database; and (10) update the outdated term "Airport/Facility Directory" with "Chart Supplement."

For the Laughlin AFB Class E airspace extending upward from 700 ft. above the surface, the proposal would: (1) reduce the radius to within a 7.4-mile (previously 20 miles) radius of Laughlin AFB, excluding Mexican airspace; (2) add an extension within 2 miles each side of the 135° bearing from the Laughlin AFB: RWY 31C-LOC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; (3) add an extension within 1.9 miles each side of the 149° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; (4) add an extension extending southeast from the 7.4-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM to OTULE, excluding Mexican

airspace; (5) add an extension within 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; (6) add an extension within 2 miles each side of the 315° bearing from the Laughlin AFB: RWY 13C-LOC extending from the 7.4-mile radius to 11.5 miles northwest of Laughlin AFB; (7) remove the city associated with the airport in the header to comply with changes to FAA Order JO 7400.2R; and (8) update the name of the airport to Laughlin AFB (previously Laughlin ABF) to coincide with the FAA's aeronautical database.

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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified 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 7400.11M, Airspace Designations and Reporting Points, dated July 30, 2026, and effective September 15, 2026, is amended as follows:

Paragraph 6003 Class E Airspace Areas Designated as an Extension.

* * * * *

ASW TX E3 Del Rio, TX [Amended]

Laughlin AFB, TX
(Lat. 29°21'34" N, long. 100°46'41" W)
SWANT Waypoint
(Lat. 29°17'23" N, long. 100°45'37" W)
MINNM Waypoint
(Lat. 29°12'30" N, long. 100°44'20" W)
Laughlin VORTAC
(Lat. 29°21'39" N, long. 100°46'18" W)
Laughlin AFB: RWY 13C-LOC
(Lat. 29°20'52" N, long. 100°45'57" W)

That airspace extending upward from the surface extending southeast from the 5-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM and 1 mile each side of the 150° bearing from MINNM to 8 miles southeast of MINNM, excluding Mexican airspace; and within 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 5-mile radius of Laughlin AFB to 10.5 miles northwest of Laughlin AFB; and within 1.8 miles each side of the 315° bearing from Laughlin AFB: RWY 13C-LOC extending from the 5-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

ASW TX E5 Del Rio, TX [Amended]

Laughlin AFB, TX
(Lat. 29°21'34" N, long. 100°46'41" W)
Laughlin AFB: RWY 31C-LOC
(Lat. 29°22'10" N, long. 100°47'25" W)
Laughlin VORTAC
(Lat. 29°21'39" N, long. 100°46'18" W)
SWANT Waypoint
(Lat. 29°17'23" N, long. 100°45'37" W)
MINNM Waypoint
(Lat. 29°12'30" N, long. 100°44'20" W)
OTULE Waypoint
(Lat. 29°04'42" N, long. 100°39'17" W)
Laughlin AFB: RWY 13C-LOC
(Lat. 29°20'52" N, long. 100°45'57" W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Laughlin AFB, excluding Mexican airspace; and within 2 miles each side of the 135° bearing from the Laughlin AFB: RWY

31C-LOC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; and within 1.9 miles each side of the 149° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.4 miles southeast of Laughlin AFB; and extending southeast from the 7.4-mile radius of Laughlin AFB within 1 mile each side of line from SWANT to MINNM to OTULE, excluding Mexican airspace; and within 2 miles each side of the 305° bearing from the Laughlin VORTAC extending from the 7.4-mile radius of Laughlin AFB to 11.5 miles northwest of Laughlin AFB; and within 2 miles each side of the 315° bearing from the Laughlin AFB: RWY 13C-LOC extending from the 7.4-mile radius to 11.5 miles northwest of Laughlin AFB.

* * * * *

Issued in Fort Worth, Texas, September 23, 2026.

Courtney E. Johns,

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

[FR Doc. 2026-19708 Filed 9-24-26; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA-2026-C-10597]

Filing of Color Additive Petition From Doehler GmbH; Request To Amend the Color Additive Regulations To Provide for the Safe Use of Calcium Sulfate in Various Foods at Levels Consistent With Good Manufacturing Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a color additive petition, submitted by Doehler GmbH, c/o Hogan Lovells Cadwalader, proposing that we amend our color additive regulations to provide for the safe use of calcium sulfate in various foods at levels consistent with good manufacturing practice.

DATES: The color additive petition was filed on September 10, 2026.

ADDRESSES: For access to the docket to read background documents, 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.

FOR FURTHER INFORMATION CONTACT:

Stephen DiFranco, Office of Food Chemical Safety, Dietary Supplements, and Innovation, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240-402-2710.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 6C0342), submitted by Doehler GmbH, c/o Hogan Lovells Cadwalader, 555 13th Street NW, Washington DC, 20004. The petition proposes that we amend our color additive regulations in 21 CFR part 73 *Listing of Color Additives Exempt from Certification* to provide for the safe use of calcium sulfate at levels consistent with good manufacturing practice in: (1) coated candies; (2) dry milk; (3) whey products; (4) powdered creamers; and (5) icings and baked good fillings.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because granting of this petition would authorize the use of a substance intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. The petitioner has also claimed that this action is categorically excluded under 21 CFR 25.32(r) because granting of this petition would authorize the use of a substance that occurs naturally in the environment and the proposed uses do not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment. In addition, the petitioner has stated that, to their knowledge, no extraordinary circumstances exist. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Grace R. Graham,

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

[FR Doc. 2026-19658 Filed 9-24-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF No. 2026-0365; ATF No. 2025-46P]

RIN 1140-AA86

Revising Requirements and Exceptions for Storing Explosives

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) proposes amending Department of Justice regulations listing exceptions to the requirement that explosive materials must be stored in locked magazines. Specifically, ATF proposes adding a testing exception; removing restrictions limiting existing exceptions to materials being physically handled or transported to a site for storing or using; excepting materials to be imminently used or transported; and adopting a perforating gun exception. These changes would streamline on-site operations, acknowledge developments in industry practices, increase safety during these activities by reducing how often explosives are moved, and eliminate the requirement for type 3 magazines.

DATES: Comments must be submitted in writing, and must be submitted on or before (or, if mailed, must be postmarked on or before) November 24, 2026. Commenters should be aware that the federal e-rulemaking portal comment system will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1140-AA86, by either of the following methods—

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* ATF Rulemaking Comments; Mail Stop 6N-518, Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave. NE; Washington, DC 20226; *ATTN: RIN 1140-AA86.*

Instructions: All submissions must include the agency name and number (RIN 1140-AA86) for this notice of proposed rulemaking (“NPRM” or “proposed rule”). In addition, comments must be submitted in English or accompanied by an English

translation. ATF may post all properly completed comments it receives from either of the methods described above, without change, to the federal e-rulemaking portal, <https://www.regulations.gov>. This includes any personally identifying information (“PII”) or business proprietary information (“PROPIN”) submitted in the body of the comment or as part of a related attachment they want posted. Commenters who submit through the federal e-rulemaking portal and do not want any of their PII posted on the internet should omit PII from the body of their comment or in any uploaded attachments they want posted. If online commenters wish to submit PII with their comment, they should place it in a separate attachment and mark it at the top with the marking “CUI//PRVCY.” Commenters who submit through mail should likewise omit their PII or PROPIN from the body of the comment and provide any such information on the cover sheet only, marking it at the top as “CUI//PRVCY” for PII, or as “CUI//PROPIN” for PROPIN. Commenters must submit comments by using one of the methods described above, not by emailing the email address set forth in the following paragraph.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov>. Commenters must submit comments by using one of the methods described above, not by emailing the address set forth in the following paragraph.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave. NE; Washington, DC 20226, or by telephone at 202–648–7070.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Organized Crime Control Act of 1970 (“OCCA”), Public Law 91–452, 84 Stat. 922 (1970), added 18 U.S.C. chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials).¹ One of the

stated purposes for title XI was to reduce the “hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” Public Law 91–452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. See 18 U.S.C. 847. The Attorney General has delegated that responsibility to the Director of ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General.² See 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Regulations in 27 CFR part 555 implement title XI.

Currently, 27 CFR 555.205 requires that licensees/permittees store explosive materials in locked magazines at all times unless specific exceptions apply. These exceptions are limited to explosive materials “[i]n the process of manufacture,” “[b]eing physically handled in the operating process,” “[b]eing used,” or “[b]eing transported to a place of storage or use.”

There are three types of magazines in which federal explosives licensees/permittees may store high explosives under ATF’s regulations. High explosives (for example, dynamite, flash powders, and bulk salutes) are one of three classes of explosive materials and can detonate by means of a blasting cap when unconfined. § 555.202(a). They may be stored in type 1 magazines, which are permanent magazines; type 2 magazines, which are mobile and portable indoor or outdoor magazines; or type 3 magazines, which are portable outdoor magazines for temporarily storing explosives while attended. § 555.203.

In relevant part, type 1 and 2 magazines both must have a robust, bullet-resistant construction and must be theft-resistant through a variety of approved locking systems (e.g., two hooded padlocks). §§ 555.207, 555.208. The two types differ from each other mainly in terms of portability. Unlike type 3 magazines, they do not have to be attended because of the listed extra security features. Type 3 magazines are

of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this notice of proposed rulemaking refers to the Attorney General where relevant.

² In Attorney General Order Number 6353–2025, the Attorney General delegated authority to the Director to issue regulations pertaining to matters within ATF’s jurisdiction, including under OCCA, the National Firearms Act, and the Gun Control Act. ATF’s jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

portable and must be secured with at least one unhooded padlock, but they do not have to be bullet-resistant and may have only one lock, which does not have to be as tamper-resistant. § 555.209. They also must be attended because they are not as secure by virtue of being thinner and using less theft-resistant locks. *Id.* Type 3 magazines are also typically quite small, and thus usually cannot hold large amounts of explosive materials or large explosive items.

Generally, licensees/permittees have magazines suitable for unattended storage (e.g., type 1 or type 2 magazines) at their premises and therefore do not need a type 3 magazine on their premises. While some licensees/permittees manufacture, assemble, and use explosives at their business premises where they have type 1 or 2 magazines, most use them at places such as mines, construction sites, quarries, trenches, pipelines, roads and railways, oil fields, ski slopes, automotive sites, fireworks display sites, and avalanche sites. These sites (especially smaller sites) typically do not have type 1 or 2 magazines, so licensees/permittees typically use type 3 magazines to temporarily store explosives during operations at such sites, and transport the explosive materials back and forth at the beginning and end of each day to their business premises to store them overnight in type 1 or 2 magazines.

II. Proposed Rule

A. Changes to Exceptions

ATF regulations at § 555.205 require licensees/permittees to store explosive materials in one of the aforementioned types of storage magazines at all times (or in one of the types for low explosives or blasting agents, if applicable). However, although explosive materials can be highly sensitive to various stimuli—including movement—and therefore require safety and security measures at all times, such materials obviously cannot be stored while the licensee/permittee is using them. Therefore, § 555.205 also includes a set of exceptions to the storage requirement, related to using and transporting explosives.

The current regulations recognize exceptions for explosives involved in four different activities: (1) *explosives involved in the manufacturing process*, which includes activities like making the explosives or using explosive materials to make other explosives; (2) *explosives being physically handled during an operational process*, such as when physically handling explosive

¹ Some provisions of 18 U.S.C. chapter 40 still refer to the “Secretary of the Treasury.” However, the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, transferred the functions

components to assemble them into a larger device; (3) *using explosives*, which includes activities that use up the explosives, such as initiating them or consuming them; and (4) *transporting explosives*, which includes activities involved in moving explosives to another location. Under the current regulations, transporting explosives is only an exception if the explosives are being transported to a site where they will be stored or used.

ATF recognizes that there are other circumstances not listed as exceptions in § 555.205 in which the explosives industry is not reasonably able to store explosive materials in a magazine. There are many operating processes where a licensee/permittee does not physically handle the explosive materials but cannot store them in a magazine that meets the prescribed construction and locking requirements. For example, explosive materials undergoing temperature sensitivity testing cannot be stored in a traditional magazine because the testing must be conducted in a temperature-controlled test chamber. In these instances, the licensee/permittee is not physically handling the explosive materials during the testing, nor is the testing part of manufacturing, using, or transporting the explosive materials, so none of the existing exceptions would apply.

Currently, licensees/permittees must either request a variance to allow the explosives in this scenario to be in the testing chamber or must ensure the testing chamber meets the requirements to be a magazine, both of which are significantly burdensome options. ATF believes that including an exception for testing—which can often involve situations that need to continue uninterrupted or take place under other conditions not possible in a storage magazine—is appropriate and reasonable. Relatedly, removing the condition that licensees/permittees must be physically handling the explosives during operational processes to qualify for the exception is appropriate due to the modern variety of explosives that do not need to be physically handled during such operations.

Further, a licensee/permittee transporting explosive materials to a site where they will be used may not immediately start using them once at the site. In such cases, several hours can elapse until operations commence (due to weather, for example). During those hours, the explosives do not fall under the exceptions in § 555.205 and must be moved to a type 3 magazine on site. Later, when operations commence, the explosives must be moved back out of

the type 3 magazine to the place where they need to be used. These steps unnecessarily add extra moves for the explosives, which increases the chances that they might accidentally initiate. In addition, getting a type 3 magazine to the site, especially one large enough to store all the explosives, is costly. ATF believes it is more impractical and riskier to require transferring explosive materials on site from the delivery vehicle to a magazine and then from the magazine to where they will be used than it is to leave them in a delivery vehicle that is locked, stable, and attended, if the explosives will be used shortly after arriving on site.

In addition, licensees/permittees often need to transport explosive materials to locations for reasons other than using or storing them, such as when they transport the materials to distribute them to another licensee/permittee. They are unable to do this under the current transporting exception.

ATF therefore proposes to remove the restriction that explosive materials in transit must be going to or from a site where they will be stored or used. Removing this restriction would allow both of the transportation scenarios discussed in the two paragraphs above to be covered by the exception, as well as other situations one might expect to occur occasionally, such as when explosives are securely packed on a pallet for transporting but, due to a traffic or other delay, must wait on the loading dock for a few hours, or when the licensee/permittee brings extra explosives in case they are needed and those remain on the secured truck the entire day.

ATF informal guidance on the transporting exception currently permits explosives to remain in the delivery vehicle overnight when the driver must stop to sleep during transit and during other similar temporary stops because the Department of Transportation (“DOT”) defines such stops as part of transporting the materials, meaning they fall under DOT regulations for transporting, not ATF regulations for storing explosive materials. This proposed rule would not change this guidance. Explosives on a delivery vehicle must meet DOT requirements to ensure they are secure during transit, so keeping them in the vehicle until needed, instead of moving them to a magazine and back, presents no additional risk to public safety. Also, since DOT and ATF regulations have been in place, ATF is aware of no delivery vehicles containing explosive materials having been stolen, supporting ATF’s view that explosives on such

vehicles are at little risk of being diverted to illegal or unsafe uses.

Allowing explosive materials to remain in the delivery vehicle is also safer and less burdensome compared to the alternative currently in effect. Each time explosive materials are moved or handled, the risk of accident increases, and the cost of transporting a type 3 magazine of sufficient size to temporarily store explosive materials is quite high. Additionally, licensees/permittees (which includes their employees) typically remain with the explosive materials while they are waiting to be used or delivered, which reduces the risk of accident or theft.

For these reasons, ATF believes that expanding the activities excepted under § 555.205 would recognize industry challenges under the current rules and provide licensees/permittees with the ability to conduct their operations without costly and unnecessary storage requirements, while still reasonably ensuring safety. Specifically, the proposed rule would require explosive materials to be stored in a locked magazine unless they are: (1) in a manufacturing, operating, or testing process; (2) being used or designated for imminent use; or (3) being transported or awaiting imminent transport. This proposed change would add a new exception for explosives in the testing process and would expand the using and transporting exceptions by including items designated for or awaiting imminent use or transport. It would also remove the existing limitation that the materials must be transported to a place where they will be stored or used and the limitation that employees must be physically handling the materials in the operating process unless the materials are immediately stored in a magazine. Making these changes would allow ATF’s regulations to accommodate operational or logistical needs without negatively affecting public safety.

B. Incorporating Perforating Gun Exception From Ruling 2010–7

In addition, ATF proposes incorporating the exception for perforating guns that is in ATF Ruling 2010–7, with slight modifications.³ Licensees/permittees use perforating guns primarily to pierce oil and gas wells to prepare them for oil and gas operations. In November 2010, ATF issued Ruling 2010–7, which authorizes licensees/permittees, as a variance from the regulatory requirements, to store

³ ATF Ruling 2010–7, *Perforating Gun Storage*, (Nov. 24, 2010), <https://www.atf.gov/media/19091/download>.

loaded perforating guns in areas outside locked magazines, provided certain conditions were met. At that time, the length and weight of loaded perforating guns often made it difficult or impossible to store them within an explosives magazine as prescribed under the regulations. The ruling, in part, limited storing loaded perforating guns outside a magazine but inside a building to 50 pounds of total net explosives weight and limited storing them outside to 2,500 pounds of total net explosives weight across no more than 200 perforating guns.

Industry members who use perforating guns assemble each perforating gun to meet a specific purpose and function depending on oil or gas well conditions. Currently, most perforating guns used within the United States are approximately three inches in diameter and range between one to four feet long. Perforating guns are commonly housed within hollow thick-walled steel tubes and contain shaped charges that explode to pierce the well. Each individual shaped charge typically contains between 15 and 25 grams of high explosives and is initiated by using a detonating cord and a detonator. Although detonators are commonly attached to the assembly immediately prior to down-hole loading at the job site, perforating guns are sometimes armed with detonators when the gun is assembled, which requires detonator interrupter devices to be placed between the detonators and detonating cord to prevent unintended initiation.

Because an oil or gas well operation may urgently need perforating guns due to the varying conditions within the well operations, assembling them at the worksite, often under unsafe or adverse conditions, can significantly delay operations and place workers at risk. In addition, waiting until perforating guns are needed before beginning the assembly operation results in costly delays for the well operator. To facilitate perforating operations and meet job demands, many perforating gun operators must maintain a fixed amount of preloaded perforating guns that can be used on short notice. As a result, they need to be able to efficiently stockpile and store perforating guns until they are needed.

Since ATF issued Ruling 2010–7, the oil and gas industry has seen a significant shift toward horizontal perforating operations, which require a greater number of shorter perforating guns. The shift to smaller perforating guns has caused many licensees/permittees to request variances to exceed the current 200-gun limit for outside storage to accommodate their

business operations. Limiting the number of perforating guns, regardless of size, restricts the total net explosives weight for outside storage. When perforating guns were significantly larger, the 200-gun limit was an important restriction for safety purposes because each gun added more to the total explosive volume. However, for those licensees/permittees who acquire and store smaller perforating guns, limiting the number of guns limits the volume of explosives they can store even more, putting the limit well below the allowed 2,500-pound threshold for outside storage because smaller perforating guns contain less explosive material than the larger guns considered in the 2010 ruling.

Although the smaller perforating guns contain less explosive material, they are also more susceptible to theft because of their size. Many licensees/permittees therefore store their loaded perforating guns inside shipping containers or other buildings to increase theft resistance and to better protect them from inclement weather conditions. Although these structures and buildings store the explosives indoors, they do not meet the requirements to constitute magazines. Often, drilling locations, such as well sites, are not conducive to storing smaller perforating guns inside magazines, in part because of the remote or temporary site locations. Typically, perforating guns are not transported in a magazine, so the magazines are shipped separately, frequently on very large trucks that are not easy to navigate on narrow remote roads, at significant additional cost. The perforating guns remain in their transport configuration (e.g., banded and palletized, or crated) until they are needed for the day's operations whether they are stored within a magazine or another location. If the perforating guns are left outside, licensees/permittees can store up to 2,500 pounds of explosive materials.

ATF regulations restrict the total net explosives weight for storing explosive materials indoors (but not in a magazine) to 50 pounds. This means that indoor storage can be close to other buildings, highways, vehicles, etc., if the explosives total less than 50 pounds. The 2010 ruling retained this 50-pound limitation for storing perforating guns indoors but not in a magazine. As a result, in situations when licensees/permittees wish to increase security for 2,500 pounds of perforating guns by moving them indoors, they must transport a magazine in difficult conditions instead of using existing structures or obtain separate approval via another variance request.

When ATF grants such a variance, it requires licensees/permittees to meet the applicable quantity and distance requirements for storing these explosives outside, typically those set out in § 555.218. This table of distances still sets a weight limit for explosives, though it is higher than for indoor storage, and it also establishes a minimum distance between the explosives and inhabited buildings, highways, etc., to ensure public safety if there should be an accident. The applicable distance depends on the explosive impact of the weight being stored. In addition, ATF grants these variances only if the building is solely occupied by the licensee's/permittee's operations so that only the licensee/permittee would be impacted, and requires licensees/permittees to continue to meet all the other requirements for indoor storage, such as prohibiting spark-producing devices within the room, as well as maintaining the required security measures for outside storage. No security or safety issues have arisen in operations under these variances during the past 15 years.

As a result of both changes in common perforating gun size and theft concerns, ATF proposes to incorporate Ruling 2010–7, with slight modifications, to allow licensees/permittees to store perforating guns outside explosives magazines without having to request a variance, provided they meet the specified safety and security conditions. ATF is also proposing to update and streamline the conditions that are necessary to store perforated guns safely outside a storage magazine to account for changes in these devices and in security options since the ruling was published. Specifically, this rule proposes to remove the 200-gun limitation currently in ATF Ruling 2010–7 and to allow licensees/permittees to store more than 50 pounds of perforating guns inside buildings and structures, provided they meet the requirements described in the preceding paragraph. ATF believes changing the perforating-gun indoor storage focus from a maximum weight—that is still close to other structures and people and thus can still pose substantial risk to the public—to a requirement that such storage must comply with the applicable established table of distances, regardless of its weight, increases public safety. These changes from the current requirements in the 2010 ruling would therefore provide licensees/permittees greater operational flexibility without negatively affecting public safety.

C. Changes to Type 3 Magazine Requirement

ATF also believes that it is unnecessary for ATF to continue requiring licensees/permittees to use type 3 magazines for temporary, attended storage during the kinds of activities discussed above. Explosives operational processes (such as loading blast holes and assembling perforating guns) or manufacturing processes (such as combining explosive components to create a new explosives device) during which licensees/permittees currently temporarily store explosive materials inside a type 3 magazine are already excepted under the regulations at § 555.205, and the proposed changes discussed above would expand those exceptions. In addition, licensees/permittees typically immediately start unloading, handling, and using the explosive materials once they have been transported to the site, and under the proposed changes above, would be able to continue storing them in the delivery vehicle when they will be used imminently, though not immediately.

Further, under the current regulations, licensees/permittees transporting their explosive materials to a place where they will be used do not have to store them in a locked magazine while the materials are being transported. § 555.205. Most explosives licensees/permittees transport explosive materials to work sites in delivery vehicles that generally have not been designed to meet the construction requirements needed for unattended or attended magazines. However, the delivery vehicles are locked, and the licensees/permittees typically remain with the vehicle and explosive materials while they unload, handle, and use the explosive materials. In addition, the delivery vehicles must meet DOT standards (during land transportation) or Department of Homeland Security (“DHS”) standards (during sea transportation). Explosive materials are exempt from ATF’s explosives regulations while under DOT or DHS transporting authority and standards. See § 555.141(a)(1).

For these reasons, ATF believes that most explosives that might be candidates for storing in a type 3 magazine are already excepted from being in a locked magazine under § 555.205; would be excepted under § 555.205 as amended by this proposed rule; or are excepted under § 555.141. Therefore, ATF believes there is no need to continue requiring that licensees/permittees lock explosives in attended type 3 temporary storage magazines. Accordingly, ATF proposes to remove

the regulation at § 555.203(c), which establishes the current requirement to use type 3 magazines, and to remove and reserve the regulations at § 555.209, which establish the construction and locking standards for type 3 magazines.

This proposed rule would not prohibit licensees/permittees from continuing to use type 3 magazines if they wish. In some cases, it may be useful to use a type 3 magazine to comply with state or other storage requirements, for example, and licensees/permittees also frequently use type 3 magazines to keep detonators separate from other explosives. Licensees/permittees would still be able to use type 3 magazines for these and other similar purposes.

D. Benefits From the Proposed Changes

ATF anticipates that the proposed changes discussed in sections A, B, and C of this part would reduce regulatory burdens on the explosives industry by providing greater operational flexibility. Licensees/permittees would save costs associated with unnecessary magazine infrastructure or inefficiently moving materials in and out of magazines during short periods in which the materials might not be physically handled but are still in the operating process. Public safety would not be at risk because the excepted activities typically occur at secure locations or are overseen by responsible persons or employee possessors. In fact, public safety would benefit because the proposed changes would reduce how often explosives would need to be moved, thereby reducing both the risk of accident and the risk that explosive materials would be stolen or diverted. When explosives do not fall within the excepted activities, licensees/permittees would still be required to secure them in locked magazines.

By clarifying and broadening the storage exceptions, these proposed changes would allow licensees/permittees to more practically and efficiently manage explosive materials while maintaining appropriate security measures. Currently, licensees/permittees need to move explosives into magazines and then return them to the place where they are operating or testing, thereby moving the explosives more often, which greatly increases the risk of accident. Such movement may also disrupt longer testing situations. Allowing explosives to remain in a secure or monitored building or area reduces those moves and thus decreases the risk.

Finally, these proposed changes would permit licensees/permittees to be more efficient by reducing the time

necessary to move explosives back and forth while also reducing the risk of accident from moving explosives more frequently. The intent is to except situations where explosive materials are under a licensee’s/permittee’s direct control and supervision but are not actively being handled or immediately stored in a fixed magazine due to operational necessity.

III. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs 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 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

This proposed rule would amend 27 CFR part 555’s exceptions to the requirement that licensees/permittees must store explosives in secure magazines at all times. This rule proposes to add testing processes to existing exceptions for manufacturing and operating processes; to expand the using exception by adding explosives designated for imminent use and the transporting exception by adding explosives awaiting imminent transport; and to remove the restriction on the operating exception that limits it to explosives being physically handled, as well as the restriction on the transporting exception that limits it to explosives being transported to sites where they will be used or stored. In addition, this rule proposes to incorporate a slightly modified version of an existing exception for perforating guns, recognized in an ATF ruling since 2010. The proposed rule would be a deregulatory action easing burdens on the explosives industry by easing magazine storage requirements during testing, when explosives are designated for imminent use or awaiting imminent transport, and under circumstances where the explosives would be subject to a licensee’s/permittee’s direct control and supervision but are not actively being handled or immediately stored in a fixed magazine due to operational necessity.

The Office of Management and Budget (“OMB”) has determined that this rule would not be a “significant regulatory action” under Executive Order 12866. Therefore, it did not review this rule.

ATF provides the following analysis to comply with Executive Orders 12866 and 13563.

1. Need Statement

This proposed rule would be a deregulatory action to amend requirements for storing explosives to adjust to changes in industry operations, security practices, and ways in which explosives are used. The changes are not being proposed to address a particular market failure or delivery of government services. ATF is, however, modernizing its explosives regulations to better account for changes that have occurred over the decades since the regulations were drafted and to streamline them so they provide more flexibility and reduce burdens on the regulated industry while updating requirements for public safety. The proposed expanded exceptions to the storage requirements would better account for modern explosives handling and would eliminate the need for type 3 storage magazines. At the same time, the revised exceptions would maintain public safety because on-site and transporting operations already incorporate public safety requirements and standards.

2. Benefits

The proposed rule offers both quantitative and qualitative benefits. The proposed rule’s qualitative benefits include reduced burdens for industry that would arise from easing magazine storage requirements for explosives

during testing; when the explosives are designated for imminent use or awaiting imminent transport; and in circumstances in which the explosives would be under a licensee’s/permittee’s direct control and supervision but would not be actively handled or immediately stored in a fixed magazine due to operational necessity.

By clarifying and broadening storage exceptions, the proposed rule would allow licensees/permittees to more practically and efficiently manage explosive materials while maintaining appropriate security measures. Moreover, the proposed changes would reduce the need for on-site coordination among explosives and ordinance workers across the various sectors within the explosives industry.

The rule would reduce other burdens on industry as well, such as avoiding unnecessary expenditures, maintenance, and inspection time for required type 3 magazines. Another benefit is that moving the explosive materials less often (such as back and forth between the operating or manufacturing area and the magazine) would reduce the risk of accident and explosion. ATF estimates that the potential qualitative benefits of reduced inconvenience, compliance burdens, and risk of accident would be realized by approximately 9,100 explosives licensees/permittees engaged in commercial explosives use.

The proposed rule would also quantitatively decrease costs on the

industry for acquiring and transporting type 3 magazines to the operational site by essentially eliminating the requirement for temporary onsite storage. Most current industry operators have already purchased and currently own magazines, and the proposed rule would thus not result in immediate cost savings. However, industry newcomers would no longer be required to purchase and maintain type 3 magazines. And both current and future industry participants would receive relief from compliance burdens and risks arising from moving explosives more often.

According to ATF records, there were 1,035 new licensees/permittees in 2022, 868 in 2023, and 1,036 in 2024. These figures show an annual average of 980 new entrants per year. That volume of explosives licensees/permittees has been required to incur costs to procure, utilize, and maintain type 3 magazines for their commercial explosive activities on sites other than their business premises. As a result, approximately 980 new entrants each year would no longer have to expend these costs. ATF estimates that an average IME 22-compliant ⁴ type 3 magazine costs around \$500.⁵ If the average estimated new license/permit application rate continues in future as it has the past three years, the quantitative industry cost savings would be approximately \$490,000 a year. This assumed savings rate is projected over ten years in Table 1.

TABLE 1—ESTIMATED COST SAVINGS FOR NEW LICENSES/PERMITS OVER TEN YEARS *

Year	Cost savings undiscounted	Discounted 3%	Discounted 7%
1	\$490,000	\$475,728	\$457,944
2	490,000	461,872	427,985
3	490,000	448,419	399,986
4	490,000	435,359	373,819
5	490,000	422,678	349,363
6	490,000	410,367	326,508
7	490,000	398,415	305,147
8	490,000	386,811	285,184
9	490,000	375,544	266,528
10	490,000	364,606	249,091
Total	4,900,000	4,179,799	3,441,555
Annualized .....	.....	490,000	490,000

* The “undiscounted” column represents totals from the underlying costs. Consistent with guidance provided by OMB in Circular A–4, the “Discounted 3%” and “Discounted 7%” columns result from applying an economic formula to the number in each row of the “undiscounted” column to show how these future costs over time would be valued today; they do not contain totals from other tables.

In addition to the qualitative benefits accrued for approximately 9,100

explosives licensees/permittees outlined above, the quantitative benefits from the

proposed rule would be approximately \$4.90 million in cost savings over ten

⁴ For details on what this industry standard entails, see Inst. of Makers of Explosives, Recommendations for the Safe Transportation of Detonators in a Vehicle with Certain Other Explosive Materials, at 22 (Oct. 2019), https://www.ime.org/awS/IME/pt/sd/product/32566/_PARENT/layout_details/false.

⁵ Based on average estimates provided by ATF subject matter experts. Additional examples of pricing are online, such as at <https://www.justrite.com/dynaloc-explosive-storage-magazine-type-3-daybox-el510?srsId=AfmBOOo9xMnfhYIZm5EMh6dNN0oXTJU9kmQzlr76bfkwGVQR4N118Rt> [<https://perma.cc/UZW5-84ZB>].

years, discounted to \$4.18 million and \$3.44 million at 3 percent and 7 percent, respectively. The total annualized quantitative savings for the proposed rule would equal \$490,000 each year.

3. Costs

The proposed rule would not create costs for the regulated industry. This is because the proposed changes would be deregulatory in nature and primarily simplify and streamline the protocols requiring licensees/permittees to store explosives in magazines. The proposed rule is also unlikely to increase risks to public safety, which is a key objective for both ATF and industry partners alike. The excepted activities already typically occur at secure locations or are overseen by responsible persons or employee possessors, and explosives industry operators are already subject to other regulations requiring them to store unattended explosives and to use more secure storage magazines for explosives not in use for longer periods.

The current regulations relating to type 3 magazines, which the proposed rule would eliminate, are only applicable when storing explosives for a temporary period while they are attended by qualified personnel. However, during the kinds of activities when such temporary storage on another site is relevant, the explosives are, as a practical matter, being handled, unloaded, and otherwise attended as part of the operational or transportation environments where they are being used. Consequently, storing explosives in type 3 magazines is largely redundant. Licensees/permittees typically begin using the explosives once they arrive on site or they remain in the delivery vehicle, which is secure, still, and attended. Sites at which licensees/permittees use explosive materials are secure facilities, thereby making the light security characteristics of type 3 magazines redundant as well.

Furthermore, ATF estimates that the proposed changes would qualitatively increase public safety by decreasing how often the explosives would need to be stored and thus moved back and forth. Permitting explosives to stay on site while they are being actively used and during temporary breaks or preparatory stages (such as awaiting pick-up or in the delivery vehicle until work begins) decreases movement of these often-volatile materials, thereby reducing both the risk of accident and the risk that explosive materials might be stolen or diverted. When explosives do not fall within the excepted activities, licensees/permittees would still be required to secure them in locked magazines, reducing the public

safety risks otherwise associated with removing or relaxing magazine storage requirements for explosives. But, as this is an existing requirement, it would not give rise to any additional costs. The quantitative and qualitative benefits above are therefore not counterbalanced by material costs or increased public safety risks.

4. Regulatory Alternatives

ATF considered not modifying the regulations in § 555.205, an alternative known as the no-action alternative. The no-action alternative would not create any benefits or reduce any burdens. Specifically, the no-action alternative would leave undisturbed a qualitative risk to public safety by continuing to require unnecessary movement and disruption of explosives while using and testing them. This alternative would maintain onerous storage requirements during times that the explosives are already attended and within secure facilities. Retaining these regulations in their present form would require licensees/permittees to store explosives in type 3 magazines and attend such magazines during brief periods, such as breaks and operational and other activities involving use of the explosives, despite the fact that the explosives are already attended anyway and within secure facilities during such activities. It would also continue to cause the explosives to be moved back and forth more often, thereby maintaining increased risk of accidental detonations. Thus, the no-action alternative would provide no benefits, in addition to increasing the safety risk for licensees/permittees, the larger public, and property, relative to the proposed rule. As a result, ATF rejected this alternative and instead elected to propose revising the regulations.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice-and-comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M–25–20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing

costs associated with at least ten prior regulations. However, this proposed rule would not be an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and it would not impose total costs greater than zero. This proposed rule would reduce burdens on the explosives industry by easing magazine storage requirements for explosives, thereby reducing licensees'/permittees' magazine costs and providing significant qualitative benefits from not having to move explosives in and out of storage as often, along with other similar benefits. The proposed rule is also deregulatory in nature as it would remove requirements for storing explosives in type 3 temporary, portable magazines. These proposed changes would result in qualitative benefits that would accrue for approximately 9,100 explosives licensees/permittees, and quantitative benefits for all new licensees/permittees and small businesses, totaling \$4.90 million in savings over ten years. ATF estimates that no costs or increased risks to public safety would arise from this proposed rule, so the benefits would not be counterbalanced by material costs or increased public safety risks. Therefore, ATF expects this rule, if finalized as proposed, to qualify as an Executive Order 14192 deregulatory action (defined by OMB Memorandum M–25–20 as a final action that imposes total costs less than zero).

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) 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 proposed rule would not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

This proposed rule would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Director has determined that this proposed rule would not impose substantial direct compliance costs on state and local governments, preempt state law, or

meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies are required to conduct a regulatory flexibility analysis of any proposed rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the proposed rule would not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small 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.

The Director certifies, after consideration, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would be deregulatory because it would reduce burdens on the explosives industry by easing magazine storage requirements and reducing the time and cost burdens of moving the explosives back and forth to storage and of acquiring and transporting type 3 storage magazines to operational sites for that purpose. The proposed rule thereby reduces the risk that explosives will accidentally detonate. ATF estimates the rule would result in qualitative benefits for approximately 9,100 explosives licensees/permittees, the majority of which are small businesses, with additional quantitative benefits from cost savings approximating \$4.90 million over ten years. ATF estimates these cost savings would benefit the annual average of 980 new entrants, again, a majority of which are small entities, as they would no longer be required to procure, utilize, and maintain type 3 magazines for their commercial explosives activities on sites other than their business premises. Although these businesses would realize certain cost savings, ATF has determined that, based on the average revenue of licensees/permittees, the costs savings would be small enough that any savings would not constitute a significant economic impact on the licensees/permittees, and thus, the Director certifies that this rule would not have a significant economic impact

on a substantial number of small entities.

G. Unfunded Mandates Reform Act of 1995

This proposed rule does not include a federal mandate that might 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, and it would not significantly or uniquely affect small governments. Therefore, the ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501–3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts it has on existing information collections. An information collection includes any reporting, record-keeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. See 5 CFR 1320.3(c). This proposed rule would not create any new information collection requirements or impact any existing ones covered by the PRA.

I. Congressional Review Act

This proposed rule would not be a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

IV. Public Participation

A. Comments Sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. In addition, ATF requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference this document’s RIN 1140-AA86 and, if handwritten, must be legible. In addition, comments must be submitted in English or accompanied by an English translation. If submitting by mail, you must also include your complete first and last name and contact information. If submitting a comment through the federal e-rulemaking portal, as described in section IV.C of this preamble, you should carefully review and follow the website’s instructions on submitting comments. Whether you submit comments online or by mail, ATF will post them online. If submitting online as an individual, any information

you provide in the online fields for city, state, zip code, and phone will not be publicly viewable when the comment is published on <https://www.regulations.gov> by ATF. However, if you include such personally identifiable information (“PII”) in the body of your online comment, it may be posted and viewable online. Similarly, if you submit a written comment with PII in the body of the comment, it may be posted and viewable online. Therefore, all commenters should review section IV.B of this preamble, “Confidentiality,” regarding how to submit PII if you do not want it published online. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain comments containing excessive profanity as part of this rulemaking’s administrative record, but will not publish such documents on <https://www.regulations.gov>. ATF will treat all comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to handwriting or technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date.

B. Confidentiality

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, and except as provided below, available for public viewing on the internet through the federal e-rulemaking portal, and subject to the Freedom of Information Act (“FOIA”), at 5 U.S.C. 552. Commenters who submit by mail and who do not want their name or other PII posted on the internet should submit their comments with a separate cover sheet containing their PII. The separate cover sheet should be marked with “CUI//PRVCY” at the top to identify it as protected PII under the Privacy Act. Both the cover sheet and comment must reference RIN 1140-AA86. For comments submitted by mail, information contained on the cover sheet will not appear when posted on the internet, but any PII that appears within the body of a comment will not be redacted by ATF and may appear on the internet. Similarly, commenters who submit through the federal e-rulemaking portal and who do not want any of their PII posted on the internet should omit such PII from the body of their comment or in any uploaded attachments. However, PII entered into the online fields designated for name, email, and

other contact information will not be posted or viewable online.

A commenter may submit to ATF information identified as proprietary or confidential business information by mail. To request that ATF handle this information as controlled unclassified information (“CUI”), the commenter must place any portion of a comment that is proprietary or confidential business information under law or regulation on pages separate from the balance of the comment, with each page prominently marked “CUI//PROPIN” at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it receives, but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under FOIA. In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

C. Submitting Comments

Submit comments using either of the two methods described below (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- *Federal e-rulemaking portal:* ATF recommends that you submit your comments to ATF via the federal e-rulemaking portal at <https://www.regulations.gov> and follow the instructions. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section of this document. Written comments must appear in minimum 12-point font size, include the commenter’s first and last name and full mailing address, and may be of any length. See also section IV.B of this preamble, “Confidentiality.”

Disclosure

Copies of this proposed rule and the comments received in response to it are available through the federal e-rulemaking portal, at <https://www.regulations.gov> (search for RIN 1140-AA86).

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and record-keeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 555 as follows:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

§ 555.203 [Amended]

■ 2. Amend § 555.203 by removing paragraph (c) and redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

■ 3. Revise § 555.205, including its heading, to read as follows:

§ 555.205 Explosives storing requirement and exceptions.

(a) *Storing requirement.* All explosive materials must be kept in locked magazines meeting the standards in this subpart except when they fall under one of the exceptions in this section.

(b) *General exceptions.* Explosives are excepted from paragraph (a) of this section’s storing requirement when they are:

- (1) in a manufacturing, operating, or testing process;
- (2) being used or are designated for imminent use; or
- (3) being transported or awaiting imminent transport.

(c) *Perforating guns exception.* Licensees/permittees may store perforating guns in locations outside locked magazines, whether indoors or outdoors, under the conditions below.

(1) *Conditions applying in all cases.* Licensees/permittees storing perforating guns outside a locked magazine must:

- (i) Include a detonator interrupter device in perforating guns armed with detonators or initiating devices;
- (ii) Install a handling cap, plug, or other closing device on both ends of hollow-type carrier guns;
- (iii) Secure perforating guns with exposed explosive components (e.g., those that consist of sealed charges mounted on strips or wires) that are not mounted in a carrier assembly in a way that prevents the components from being removed without authorization (e.g., store them within a locked room inside a building, or within a transportation carrier or other protective housing assembly);

(iv) Store perforating guns with exposed explosives that are not contained within a secure tube (e.g., tube-less strips or wire guns) only in an indoor location;

(v) Visually inspect all buildings, areas, or vehicles containing perforating guns at least once every three calendar days to ensure no one has entered or attempted to enter without authority and that no one has removed the perforating guns;

(vi) Maintain a daily summary of magazine transactions, as prescribed in § 555.127, for each building, area, or vehicle that contains perforating guns. Express the quantity as the number of individual perforating guns stored within each separate building, area, or vehicle. Provide to any ATF official the quantity and description of explosive products contained within each individual perforating gun on request;

(vii) Store all perforating guns in a manner that prevents them from accidentally moving or discharging;

(viii) Notify the authority having jurisdiction over fire safety where the stored perforating guns are located, in accordance with requirements in § 555.201(f); and

(ix) Notify ATF in writing at EIPB@atf.gov that the licensee/permittee will be storing perforating guns outside a locked magazine, at least three business days prior to storing them at a given location.

(2) *Additional indoor conditions.* Licensees/permittees storing perforating guns in an indoor location must also:

- (i) Store no more than 50 pounds of explosives inside any building or structure unless the building or structure meets the quantity and distance requirements in § 555.218 and the building or structure is occupied solely by the licensee/permittee to support their explosives operations; and
- (ii) Lock the building or structure housing the loaded perforating guns or have a responsible person or employee possessor attend it, at all times, to prevent unauthorized access.

(3) *Additional outdoor conditions.* Licensees/permittees storing perforating guns in an outdoor location must also:

- (i) Secure the perimeter of the area(s) containing loaded perforating guns using a security fence with a locked gate or enclose the entire facility with a security fence that has a locked gate at each entrance point. The security fence must be at least six feet high and have firmly anchored posts to ensure its structural stability. The gates must be locked at all times securely enough to prevent unauthorized access;
- (ii) Lock the doors on vehicles or trailers containing perforating guns and

immobilize the vehicle or trailer to prevent it from moving, being moved, or being accessed without authority (*e.g.*, using a kingpin locking device, steering wheel locking device, lockable disconnect, etc.). Remove the ignition key and secure it away from the vehicle;

(iii) Park all vehicles or trailers loaded with perforating guns in an area not susceptible to fire propagation (*e.g.*, on bare dirt, gravel, rock, paving, or closely mowed grass); and

(iv) Comply with the quantity and distance requirements in § 555.218 for each outdoor area or vehicle containing perforating guns, but store no more than 2,500 pounds of net explosives weight in each outdoor area or vehicle containing perforating guns.

§ 555.209 [Removed and reserved]

■ 4. Remove and reserve § 555.209.

Robert Cekada,

Director.

[FR Doc. 2026–19692 Filed 9–24–26; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

[Docket No. ATF–2026–0364; 2025R–34P]

RIN 1140-AA67

Explosives Magazine Safety Requirements

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) proposes amending Department of Justice (“Department”) regulations to streamline requirements for maintaining structures used for storing explosives, called “magazines.” ATF proposes consolidating many requirements from four regulatory sections into one, while eliminating other provisions within those sections. The new section would address three topics: safety requirements outside a magazine, inside a magazine, and storing requirements. This proposal would remove unnecessary provisions and examples confusing to the public; update other provisions; and rescind two regulatory sections. The consolidated regulation would also incorporate ATF guidance authorizing alternative methods for storing explosives within containers.

DATES: Comments must be submitted in writing, and must be submitted on or before (or, if mailed, must be postmarked on or before) November 24, 2026. Commenters should be aware that the federal e-rulemaking portal comment system will not accept comments after midnight Eastern Time on the last day of the comment period.

ADDRESSES: You may submit comments, identified by RIN 1140-AA67, by either of the following methods—

- *Federal e-rulemaking portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* ATF Rulemaking Comments; Mail Stop 6N–518, Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave. NE; Washington, DC 20226; *ATTN:* RIN 1140-AA67.

Instructions: All submissions must include the agency name and number (RIN 1140-AA67) for this notice of proposed rulemaking (“NPRM” or “proposed rule”). ATF may post all properly completed comments it receives from either of the methods described above, without change, to the federal e-rulemaking portal, <https://www.regulations.gov>. This includes any personally identifying information (“PII”) or business proprietary information (“PROPIN”) submitted in the body of the comment or as part of a related attachment they want posted. Commenters who submit through the federal e-rulemaking portal and do not want any of their PII posted on the internet should omit it from the body of their comment and in any uploaded attachments that they want posted. If online commenters wish to submit PII with their comment, they should place it in a separate attachment and mark it at the top with the marking “CUI//PRVCY.” Commenters who submit through mail should likewise omit their PII or PROPIN from the body of the comment and provide any such information on the cover sheet only, marking it at the top as “CUI//PRVCY” for PII, or as “CUI//PROPIN” for PROPIN. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. In accordance with 5 U.S.C. 553(b)(4), a summary of this rule may be found at <https://www.regulations.gov>. Commenters must submit comments by using one of the methods described above, not by emailing the address set forth in the following paragraph.

FOR FURTHER INFORMATION CONTACT:

Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services; Bureau of Alcohol, Tobacco, Firearms, and Explosives; 99 New York Ave. NE; Washington, DC 20226, or by telephone at 202–648–7070.

SUPPLEMENTARY INFORMATION:

I. Background

Title XI of the Organized Crime Control Act of 1970 (“OCCA”), Public Law 91–452, 84 Stat. 922 (1970), added 18 U.S.C. chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials).¹ One of the stated purposes for title XI was to reduce the “hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” Public Law 91–452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. *See* 18 U.S.C. 847. The Attorney General has delegated that responsibility to the Director of ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General.² *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Regulations in 27 CFR part 555 implement title XI.

Federal law requires any person who stores explosive materials to do so in conformity with federal regulations. *See* 18 U.S.C. 842(j). Currently, under the regulations at 27 CFR 555.212, smoking, matches, open flames, and spark-producing devices are prohibited in any explosives magazine,³ within 50 feet of an outdoor magazine, and in any room containing an indoor magazine. In addition, the regulation at § 555.213(b) prohibits licensees/permittees⁴ from

¹ Some provisions of 18 U.S.C. chapter 40 still refer to the “Secretary of the Treasury.” However, the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this proposed rule refers to the Attorney General where relevant.

² In Attorney General Order Number 6353–2025, the Attorney General delegated authority to the Director to issue regulations pertaining to matters within ATF’s jurisdiction, including under OCCA, the National Firearms Act, and the Gun Control Act. ATF’s jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

³ A magazine is any building or structure, other than an explosives manufacturing building, used for storing explosive materials. *See* 27 CFR 555.11.

⁴ A licensee is any federal explosives importer, manufacturer, or dealer licensed under 27 CFR part 555. A permittee is any user of explosives for a

storing detonators in the same magazine with other explosive materials, except in limited circumstances.

Similarly, under the regulations at § 555.214 licensees/permittees must not place containers of explosive materials directly against a wall or block ventilation; must store containers of explosive materials so that markings⁵ are visible, easily counted, and easily checked during inspection; may not unpack or repack metal containers in the magazine or within 50 feet of the magazine or other explosive materials; must close containers of explosive materials while they are being stored; and must use non-sparking tools to open or close containers of explosive materials.

The requirement to store containers so that markings are visible has been the subject of particular discussion in the past. This requirement is beneficial in that it helps ensure that containers can be easily counted and checked, thus allowing efficient and reasonable inspections while minimizing the need to move explosive materials. This requirement, however, can also be difficult to implement, and some licensees/permittees have informed ATF that it is often impractical to store explosive materials in a way that allows the label on each container to be visible. For example, shippers often stack multiple containers of explosive materials on a pallet, but this arrangement does not lend itself to easy access to each container or the ability to see each one of its markings. Similarly, space limitations may compel licensees/permittees to arrange containers in consecutive rows, with little or no space between the rows. In both situations, the labels and markings on containers that are not in the front row are not visible, making it difficult for ATF to inspect them.

After considering these situations and industry input, ATF issued ATF Ruling 2010–2,⁶ which authorizes licensees/permittees to use a variance from § 555.214's visible-markings

requirement, as long as the licensees/permittees meet other requirements. If the containers have identical markings on the labels, licensees/permittees may store them so that some of the containers or labels are not readily visible, as long as the stocks of explosive materials can be reasonably accessed, counted, and checked during an inspection. If the containers are of different explosive materials, or are of the same materials but with different dates or shift codes on the labels, licensees/permittees may store them so that the labels on some of the containers are not readily visible, as long as the licensee/permittee (1) maintains an accurate, complete, and updated list of all the explosive materials on the pallet or in the stacked group, including the markings for each container and the quantity and type of explosive materials, and (2) ensures they can be reasonably accessed, counted, and checked during inspection.

Additionally, under the regulations at § 555.215, licensees/permittees must keep the interior of explosive magazines clean; must clean floors contaminated by explosive materials; must destroy deteriorated explosive materials according to the manufacturer's instructions; must keep the area around the magazine clear of rubbish, brush, or dry grass; and must keep volatile materials more than 50 feet from an outdoor magazine.

II. Proposed Rule

ATF has embarked on an effort to modernize federal explosives regulations. This proposed rule would contribute to that ongoing effort by streamlining explosives storage requirements in 27 CFR 555.212, 555.213, 555.214, and 555.215 by combining the requirements into § 555.212. The proposed new § 555.212 would also incorporate guidance from ATF Ruling 2010–2, allowing licensees/permittees to store explosives containers in magazines so that markings on some of the containers are not visible, as long as the licensee/permittee maintains an accurate list of the explosive materials and containers. ATF Ruling 2010–2 would be rescinded when the final rule is effective.

Consolidating these regulations would make it easier for persons who store explosive materials to find all the magazine safety and maintenance requirements in one section. In addition to consolidating, ATF also proposes eliminating some requirements to better align with industry practices without compromising public safety, revising the requirements to be easier to read,

removing extra detail, and grouping requirements for greater clarity.

The requirements in the current § 555.212, regarding the prohibition against smoking and open flames, would be consolidated into a single paragraph in the new § 555.212. That prohibition would be grouped with a new paragraph that would clarify that transportation vehicles may temporarily park near a magazine to load and unload explosive materials.

The requirements in § 555.214, regarding storing explosives within types 1, 2, 3, and 4 magazines, would remain separate paragraphs in the new § 555.212. The regulation would still require explosive materials containers to be stored so that the markings are visible because doing so better facilitates accurate inventories, accounting, and inspections while minimizing movement of the explosive materials. However, the proposed rule would permit licensees/permittees to store explosives containers on a pallet or in a stacked group in which some of the labels and markings are not visible, as long as the licensee/permittee maintains an accurate, complete, and updated list of the explosive materials on the pallet or stacked group.

ATF would revise the general requirement in § 555.214(c) that persons be at least 50 feet from a magazine when unpacking or repacking explosive materials except when the materials are in fiberboard or other nonmetal containers. Rather than stating the exceptions to the requirement, which are extra details that have been confusing to members of the regulated public, ATF would clarify that the requirement applies only to explosives stored in metal containers, thereby changing it from an apparently broad restriction with two exceptions to a narrow restriction that clearly applies only when using metal containers. ATF also would eliminate the unnecessary requirement in § 555.214(c) that explosives containers must be closed while being stored, due to changes in modern explosives and storage options.

ATF would retain the requirement in § 555.214(d) that licensees/permittees may use only tools made of non-sparking materials to open or close explosives containers. However, this proposed rule would eliminate the additional specifications on which materials must be used to make these tools. In addition, licensees/permittees would no longer need to ensure that the containers of explosive materials are not placed against the magazine wall or do not interfere with the ventilation. These proposed changes align with current industry practices as well as

lawful purpose who has obtained either a user permit or limited permit under part 555. See 27 CFR 555.11.

⁵ This rule uses the term "markings" in a manner synonymous with the term "marks" as used in previous ATF regulations and guidance documents. Although both terms have been used in the past, ATF intends to generally use the term "markings" going forward based on public feedback that the term "marks" can sometimes be confusing. The regulatory text proposed by this rule accordingly also uses the term "markings."

⁶ ATF Ruling 2010–2, *Visibility of Marks on Explosive Containers Stored in Magazines* (June 4, 2010), <https://www.atf.gov/explosives/docs/ruling/2010-2-visibility-marks-explosives-containers-stored-magazines/download> [<https://perma.cc/CE23-4NWF>].

developments in technology and magazine construction that have addressed the concerns that first gave rise to the requirements. Thus, the proposed changes do not pose a threat to public safety.

The requirements in § 555.215, regarding storing explosives within relevant magazines, would become separate paragraphs in the new § 555.212. Licensees/permittees would still have to keep magazines clean, but the extra details about grit, paper, empty packages, and containers would be removed. This is because industry practices, independent of ATF's regulations, have evolved over the years as trade associations and other industry members have recognized the safety-related and financial benefits of maintaining magazines, thereby rendering these aspects of the regulations moot. In addition, ATF would eliminate the requirement to keep magazines dry because magazines that meet the construction requirements in subpart K will stay dry inside. All brooms and other cleaning utensils used in magazines would still have to be non-sparking. Floors contaminated by explosive materials and deteriorated explosive materials would still have to be cleaned or destroyed, respectively, in accordance with manufacturer instructions. Licensees/permittees would still have to maintain a 25-foot perimeter surrounding an outdoor magazine that would have to be kept free of rubbish, brush, or dry grass. However, trees of any height would be permitted within the 25-foot perimeter because of developments in industry practices that have rendered the existing regulatory tree restriction moot.

Finally, the requirement to keep volatile materials at least 50 feet from an outdoor magazine would be incorporated into the paragraph with smoking and open flames because the same general requirements apply to these hazards. However, ATF would include a new exception to the requirement not to store volatile materials in a magazine by permitting fuel to be stored in vehicular magazines.⁷

III. Statutory and Executive Order Review

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs 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 (Improving Regulation and Regulatory Review) emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

The Office of Management and Budget ("OMB") has determined that this proposed rule would not be a "significant regulatory action" under Executive Order 12866. Therefore, it did not review this rule. ATF provides the following analysis to comply with Executive Orders 12866 and 13563.

1. Need Statement

This rule proposes several simplifying and deregulatory amendments to clarify conditions, expectations, and requirements related to explosives storage in order to reduce burdens on the regulated industry and increase understanding and compliance, while minimizing public safety implications. The maintenance requirements in existing regulations are split apart in an inefficient manner and include unnecessary requirements that can be confusing without adding safety benefits. Consolidating the provisions and removing or streamlining requirements as proposed would address these issues and reduce compliance burdens.

2. Benefits

The benefits of the proposed regulatory changes are mostly qualitative and de minimis. They include reducing inconvenience, aligning regulatory requirements more closely with certain industry practices—which make certain requirements unnecessary due to changes in materials and construction options—and avoiding potential confusion among industry partners. Both ATF and industry partners consider implementing precautions to safeguard explosives to be a key objective. In line with that perspective, most explosives industry members have, since the regulations were last updated, adopted policies and precautions within their own industry standards to avoid loss of life, serious bodily harm, and destructive consequences of accidental detonations on private facilities and public infrastructure. Streamlining and consolidating the regulatory requirements, eliminating extra details, and making the writing easier to understand would reduce potential confusion for industry newcomers and

smaller operations and provide some relief from minor compliance burdens.

3. Costs

ATF does not expect any costs to result from the proposed rule. The proposed changes are deregulatory in nature and primarily modify storing and housekeeping regulations to simplify and streamline the protocols, while retaining key provisions that continue to substantially enhance public safety. To ATF's knowledge, none of the provisions ATF proposes removing has been essential to preventing any explosives incident involving a magazine. As a result, ATF proposes removing them from the regulations as unnecessary. It is ATF's informed view, based on decades of experience with the current regulations and frequent discussions with members of industry, that doing so will not require sacrificing safety. The qualitative benefits discussed above are therefore not counterbalanced by material costs or increased public safety risks.

4. Regulatory Alternatives

Alternative 1: The primary alternative considered to this proposed rule was to continue under the regulatory status quo. The current regulatory requirements are broad and repetitive, imposing inconveniences on regulated industry, requiring practices that are aligned less closely with industry developments, and causing potential confusion among industry partners. This alternative was deemed to pose a larger qualitative burden on the public than the approach adopted in this proposed rule without any countervailing increase in public safety.

Alternative 2: ATF considered the alternative of retaining Ruling 2010–2 as a variance while keeping the regulatory requirement for visible labels and markings intact. However, ATF believes that having two separate requirements within the ruling based on whether the markings are similar or different causes unnecessary confusion. ATF also believes that having one requirement, regardless of the markings on the packaged explosive materials, would provide industry with a single clear requirement.

Alternative 3: ATF considered rescinding the regulatory requirement for visible markings entirely. However, ATF believes that rescinding the requirement would increase the need to move explosive materials to verify the markings during ATF inspections and when industry members conduct their own inventories. Moving explosive materials more often would increase the risk of accidents because such materials

⁷ A vehicular magazine is, essentially, any vehicle that meets Department of Transportation requirements for transporting explosive materials. ATF will be adding a definition of this term to § 555.11 in another rule.

are often highly sensitive to motion triggers. Allowing industry members the option to instead provide ATF with a list of explosive materials when markings are not visible would decrease the need to move explosive materials to see markings on other stacks while still facilitating ATF inspections and industry inventories.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice-and-comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M–25–20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with such new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations. However, this proposed rule would not be an Executive Order 14192 regulatory action because it is not a significant regulatory action as defined by Executive Order 12866 and would not impose total costs greater than zero. This proposed rule would simplify and reduce requirements for maintaining storage magazines to clarify conditions, expectations, and requirements; reduce burdens on regulated industry members; and increase understanding and compliance. It would result in qualitative benefits to the public without increasing costs or burdens. As a result, ATF expects this rule, if finalized as proposed, to qualify as an Executive Order 14192 deregulatory action (defined by OMB Memorandum M–25–20 as a final action that imposes total costs less than zero).

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization in Federal Regulations) 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 proposed rule would not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

This proposed rule would not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Director has determined that this proposed rule would not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. Executive Order 12988

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, agencies are required to conduct a regulatory flexibility analysis of any proposed rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the proposed rule would not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small 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.

The Director certifies, after consideration, that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule is deregulatory because it proposes to reduce burdens on industry by streamlining magazine maintenance requirements, eliminating unnecessary requirements, and consolidating the remaining requirements in one section. It therefore would reduce time and compliance burdens for small businesses and would create no costs or barriers to entry.

G. Unfunded Mandates Reform Act of 1995

This proposed rule does not include a federal mandate that might 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, and it would not significantly or uniquely affect small governments. Therefore, the ATF has determined that no actions are

necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

H. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (“PRA”), 44 U.S.C. 3501–3521, agencies are required to submit to OMB, for review and approval, any information collection requirements a rule creates or any impacts the rule has on existing information collections. An information collection includes any reporting, recordkeeping, monitoring, posting, labeling, or other similar actions an agency requires of the public. See 5 CFR 1320.3(c). This proposed rule, if finalized, would require revising an existing information collection covered by the PRA under OMB control number 1140–0030, Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed under Title 18 U.S.C. chapter 40 Explosives (the title of which would be revised to Records and Supporting Data Requirements for Explosives Licensees/Permittees). It would do so by incorporating into the new 27 CFR 555.212 the requirement currently found in Ruling 2010–2 that licensees/permittees must maintain an accurate, complete, and updated list of all the explosive materials in containers being stored on a pallet or in a stacked group if the containers and their labels are not all visible. There is no form associated with this information collection request (“ICR”).

Title: Records and Supporting Data Requirements for Explosives Licensees/Permittees.

OMB control number: 1140–0030.

ATF form number: None.

Summary of the information collection: 18 U.S.C. 842(f) states that it is unlawful for any licensee/permittee willfully to manufacture, import, purchase, distribute, or receive explosive materials without making such records as are required by regulation, including, but not limited to, a statement of intended use, the name, birthdate, birthplace, social security number or taxpayer identification number, and residence address of any person to whom a licensee/permittee distributes explosive materials (or comparable information for any entity to which the licensee/permittee distributes the materials).

ATF regulations at §§ 555.121 through 129 set out the record-keeping requirements for all explosives licensees/permittees. The records cover daily importing, manufacturing, receiving, storing, and disposing activities for all explosive materials

covered under 18 U.S.C. chapter 40. In addition to the information specified in the statute, each licensee/permittee must maintain all records on acquiring or disposing of explosive materials, whether temporarily or permanently. These include records on importing, producing, shipping, receiving, selling, or other methods of acquiring or disposing of explosives.

Need for information and proposed use: Title XI of the Organized Crime Control Act of 1970 was enacted to reduce domestically perpetrated criminal acts involving explosives and today covers both domestic and foreign terrorism acts, and ATF's regulations in 27 CFR part 555 were developed to implement the statute and its safety goals. The regulations require licensees/permittees to maintain records to show where and to whom they transfer explosive materials and where those materials are located. This regime ensures that the licensee/permittee and ATF will be able to readily notice any diversions and that ATF will be immediately notified if such materials are lost or stolen. The records also serve to meet statutory requirements. Without these records, accounting for explosive materials would be negatively affected, which in turn would increase the threat to public safety.

Description of the respondents:

Federal explosives licensees/permittees.
Number of respondents: 9,096 respondents.

Frequency of response: Annually.

Burden of response: 12.6 hours. This proposed rule would add 0.1667 additional burden hours per respondent to this ICR.

Annual burden of response: 114,610 hours. This proposed rule would add 1,516 industry burden hours to the existing burden for a total of 116,126 total hours.

I. Congressional Review Act

This proposed rule would not be a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

IV. Public Participation

A. Comments Sought

ATF requests comments on the proposed rule from all interested persons. ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. In addition, ATF requests comments on the costs or benefits of the proposed rule and on the appropriate methodology and data for calculating those costs and benefits.

All comments must reference this document's RIN 1140-AA67 and, if

handwritten, must be legible. If submitting by mail, you must also include your complete first and last name and contact information. If submitting a comment through the federal e-rulemaking portal, as described in section IV.C of this preamble, you should carefully review and follow the website's instructions on submitting comments. Whether you submit comments online or by mail, ATF will post them online. If submitting online as an individual, any information you provide in the online fields for city, state, zip code, and phone will not be publicly viewable when ATF publishes the comment on <https://www.regulations.gov>. However, if you include such personally identifying information ("PII") in the body of your online comment, it may be posted and viewable online. Similarly, if you submit a written comment with PII in the body of the comment, it may be posted and viewable online. Therefore, all commenters should review section IV.B of this preamble, "Confidentiality," regarding how to submit PII if you do not want it published online. ATF may not consider, or respond to, comments that do not meet these requirements or comments containing excessive profanity. ATF will retain comments containing excessive profanity as part of this rulemaking's administrative record but will not publish such documents on <https://www.regulations.gov>. ATF will treat all comments as originals and will not acknowledge receipt of comments. In addition, if ATF cannot read your comment due to handwriting or technical difficulties and cannot contact you for clarification, ATF may not be able to consider your comment.

ATF will carefully consider all comments, as appropriate, received on or before the closing date.

B. Confidentiality

ATF will make all comments meeting the requirements of this section, whether submitted electronically or on paper, and except as provided below, available for public viewing on the internet through the federal e-rulemaking portal, and subject to the Freedom of Information Act (5 U.S.C. 552). Commenters who submit by mail and who do not want their name or other PII posted on the internet should submit their comments with a separate cover sheet containing their PII. The separate cover sheet should be marked with "CUI//PRVCY" at the top to identify it as protected PII under the Privacy Act. Both the cover sheet and comment must reference this RIN 1140-AA67. For comments submitted by mail, information contained on the cover

sheet will not appear when posted on the internet but any PII that appears within the body of a comment will not be redacted by ATF and may appear on the internet. Similarly, commenters who submit through the federal e-rulemaking portal and who do not want any of their PII posted on the internet should omit such PII from the body of their comment and in any uploaded attachments. However, PII entered into the online fields designated for name, email, and other contact information will not be posted or viewable online.

A commenter may submit to ATF information identified as proprietary or confidential business information by mail. To request that ATF handle this information as controlled unclassified information ("CUI"), the commenter must place any portion of a comment that is proprietary or confidential business information under law or regulation on pages separate from the balance of the comment, with each page prominently marked "CUI//PROPIN" at the top of the page.

ATF will not make proprietary or confidential business information submitted in compliance with these instructions available when disclosing the comments that it receives but will disclose that the commenter provided proprietary or confidential business information that ATF is holding in a separate file to which the public does not have access. If ATF receives a request to examine or copy this information, it will treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). In addition, ATF will disclose such proprietary or confidential business information to the extent required by other legal process.

C. Submitting Comments

Submit comments using either of the two methods described below (but do not submit the same comment multiple times or by more than one method). Hand-delivered comments will not be accepted.

- *Federal e-rulemaking portal:* ATF recommends that you submit your comments to ATF via the federal e-rulemaking portal at <https://www.regulations.gov> and follow the instructions. Comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that is provided after you have successfully uploaded your comment.

- *Mail:* Send written comments to the address listed in the **ADDRESSES** section

of this document. Written comments must appear in minimum 12-point font size, include the commenter's first and last name and full mailing address, and may be of any length. See also section IV.B of this preamble, "Confidentiality."

Disclosure

Copies of this proposed rule and the comments received in response to it are available through the federal e-rulemaking portal, at <https://www.regulations.gov> (search for RIN 1140-AA67).

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and recordkeeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

For the reasons discussed in the preamble, ATF proposes to amend 27 CFR part 555 as set forth below:

PART 555—COMMERCE IN EXPLOSIVES

■ 1. The authority citation for 27 CFR Part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

■ 2. Revise § 555.212, including its heading, to read as follows:

§ 555.212 Storage safety and maintenance requirements.

(a) *Outside a magazine.* Licensees/permittees:

(1) Must maintain a 25-foot perimeter around all outdoor magazines that is free of rubbish, brush, and dry grass;

(2) May temporarily park vehicles that transport explosive materials near a magazine to load and unload explosive materials;

(3) Must unpack or repack all metal containers of explosive materials outside a magazine, at least 50 feet from the magazine; and

(4) May not allow smoking, open flames, spark- or flame-producing devices, and volatile materials (except fuel in temporarily parked vehicular magazines) within 50 feet of any outdoor magazine.

(b) *Inside a magazine.* Licensees/permittees:

(1) Must keep magazines clean and clean any magazine contaminated by explosive materials according to the manufacturer's advice or instructions;

(2) Must destroy any deteriorating explosive materials in accordance with the manufacturer's advice or instructions;

(3) May not allow smoking, open flames, spark- or flame-producing

devices, and volatile materials in any magazine or within any room containing an indoor magazine; and

(4) Must use only non-sparking tools and cleaning utensils within a magazine. They may use forklifts, pallet jacks, and other similar equipment within a magazine to safely move explosives.

(c) *Storing requirements.* Licensees/permittees:

(1) Must store containers of explosive materials so that markings are visible unless the licensee/permittee maintains and keeps available for inspection an accurate, complete, and updated list of all the explosive materials on a pallet or in a stacked group;

(2) May not store detonators in the same magazine with other explosive materials, except under the following circumstances:

(i) In a type 4 magazine, licensees/permittees may store detonators that will not mass-detonate with electric squibs, safety fuses, shock tubes, igniters, and igniter cords; and

(ii) In a type 1 or type 2 magazine, licensees/permittees may store detonators with delay devices and any of the items listed in paragraph (c)(2)(i) of this section; and

(3) May not store in magazines forklifts, pallet jacks, or other similar equipment used to move explosives.

■ 3. Amend § 555.213 by removing the designation from paragraph (a) and removing all of paragraph (b).

■ 4. Remove and reserve § 555.214.

§ 555.214 [Reserved]

■ 5. Remove and reserve § 555.215.

§ 555.215 [Reserved]

Robert Cekada,

Director.

[FR Doc. 2026-19691 Filed 9-24-26; 8:45 am]

BILLING CODE 4410-FY-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2025-0244; FRL-13461-01-R4]

Air Plan Approval; Kentucky; Campbell-Clermont Area Maintenance Plan for the 2010 1-Hour SO₂ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the

Commonwealth of Kentucky on February 20, 2025, for the purpose of establishing a second 10-year maintenance plan for the Kentucky portion of the Campbell-Clermont, Kentucky-Ohio maintenance area for the 2010 1-hour sulfur dioxide National Ambient Air Quality Standards. The EPA is proposing to approve this SIP revision because the Commonwealth has demonstrated that it is consistent with the Clean Air Act.

DATES: Written comments must be received on or before October 26, 2026.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2025-0244 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Nelsha Athauda, Multi Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9360. Ms. Athauda can also be reached via electronic mail at athauda.nelsha@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, the EPA is approving the Commonwealth's February 20, 2025, SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. The details of Kentucky's submission, as well as the EPA's rationale for approval is described in more detail in the direct final rule. If no

adverse comments are received in response to this rule, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time. Please note that if the EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

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

Dated: September 15, 2026.

Kevin McOmber,

Regional Administrator, Region 4.

[FR Doc. 2026–19667 Filed 9–24–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 26–29; RM–12016; DA 26–1014; FR ID 369324]

Television Broadcasting Services Norwell, Massachusetts; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of February 10, 2026, concerning the modification of its rules in the Table of Allotments. The document contained an incorrect DA number.

DATES: The proposed rule published February 10, 2026, at 91 FR 5881, is corrected as of September 25, 2026.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.

- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by hand or messenger delivery, by commercial courier, or by the U.S. Postal Service. *All filings must be addressed to the Secretary, Federal Communications Commission.*

- Hand-delivered or messenger-delivered paper filings for the Commission's Secretary are accepted between 8:00 a.m. and 4:00 p.m. by the FCC's mailing contractor at 9050 Junction Drive, Annapolis Junction, MD 20701. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial courier deliveries (any deliveries not by the U.S. Postal Service) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

- Filings sent by U.S. Postal Service First-Class Mail, Priority Mail, and Priority Mail Express must be sent to 45 L Street NE, Washington, DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202–418–0530.

FOR FURTHER INFORMATION CONTACT: Emily Harrison, Media Bureau, at Emily.Harrison@fcc.gov, (202) 418–1665.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of February 10, 2026, in FR Doc. 2026–02623, on page 5882, in the second column, correct the first paragraph in the **SUPPLEMENTARY INFORMATION** section to read:

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, in MB Docket No. 26–29; RM–12016; DA 26–1014, adopted and released on February 5, 2026. The full text of this document is available online at <https://docs.fcc.gov/public/attachments/DA-26-1014A1.pdf>.

Dated: September 22, 2026.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–19682 Filed 9–24–26; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 91, No. 185

Friday, September 25, 2026

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–NOP–26–1024; NOP–26–07]

National Organic Program: Notice of Intent To Extend and Revise a Previously Approved Information Collection (2027)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the U.S. Department of Agriculture, Agricultural Marketing Service's intention to request an extension and revision of a previously approved information collection titled *National Organic Program* (OMB Control Number: 0581–0191).

DATES: Comments on this notice must be received by November 24, 2026 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments by using the electronic process available at <http://www.regulations.gov/>. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**. All comments received will be posted without change to <http://www.regulations.gov/> and will be included in the record and made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

FOR FURTHER INFORMATION CONTACT: Erin Healy, Director, Standards Division, National Organic Program; phone: (202) 720–3252; email: erin.healy@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Title: National Organic Program.

OMB Control Number: 0581–0191.

Expiration Date of Current Approval: May 31, 2027.

Type of Request: Notice of intent to extend and revise a previously approved information collection for three years.

Abstract: The U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) is requesting that the Office of Management and Budget (OMB) extend the approval for the currently approved collection, *National Organic Program* (NOP) (OMB Control Number 0581–0191), for three years past its existing expiration date of May 31, 2027. AMS is also requesting that OMB approve the proposed revisions to the *National Organic Program* information collection described in this notice. AMS is requesting the extension of this previously approved *National Organic Program* collection so that it may continue to fully implement USDA organic regulations and enforcement as mandated by the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. chapter 94).

Authority

The OFPA authorized the Secretary of Agriculture to establish the NOP and accredit certifying agents to certify that farms and businesses meet national organic standards. Under OFPA, the purpose of the NOP is to: (1) establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate interstate commerce in fresh and processed food that is organically produced (7 U.S.C. 6501).

Information Collection

On December 21, 2000, the Secretary established the NOP under USDA AMS, and the USDA organic regulations, which established the *National Organic Program* information collection, were published (7 CFR part 205; 65 FR 80548). The *National Organic Program* collection has been used at the Federal level to evaluate the compliance of organically produced products, evaluate the effectiveness of the program, and to inform program management decisions and policy changes.

Respondents

Respondents to the *National Organic Program* collection include operations seeking or maintaining USDA organic certification, USDA-accredited certifying agents and their inspectors, certifying agents that are not USDA-accredited and their operations who are certified organic under equivalence arrangements exporting organic products to the United States, and State and foreign program officials. The collected information is used by accredited certifying agents and their inspectors, State and foreign program officials, and AMS.

Additional respondents to this collection include entities seeking accreditation as certifying agents, members of the public petitioning a change to the National List of Allowed and Prohibited Substances portion of the USDA organic regulations (7 CFR 205.600 through 205.607), and members of the public submitting allegations of fraudulent organic activities (complaints). This collected information is used by AMS.

Forms

In addition to generic descriptions of information to be collected (described in the USDA organic regulations, 7 CFR part 205), the *National Organic Program* collection includes three forms: (1) TM–10CG, Application for Accreditation; (2) TM–11, Export Certificate; and (3) NOP 2110–1, NOP Import Certificate.

Respondents who use form TM–10CG, Application for Accreditation include entities seeking accreditation as certifying agents or seeking to renew their accreditation. Respondents who use form TM–11, Export Certificate are domestic certified organic operations seeking to export organic goods to a country with an organic trade arrangement requiring the form (currently Japan and Taiwan) and their certifying agents. Respondents who use form NOP 2110–1, NOP Import Certificate are foreign certified operations seeking to export certified organic products to the United States and USDA-certified organic operations seeking to import those products, and their certifying agents.

The information collected with TM–10CG, Application for Accreditation is used by AMS. The information collected with TM–11, Export Certificate and NOP 2110–1, NOP Import Certificate, is

used by accredited certifying agents and their inspectors, State and foreign program officials, and AMS.

Revisions to Forms

TM-10CG, Application for Accreditation. AMS intends to revise the explanatory/instructional text in form TM-10CG, Application for Accreditation. The existing form instructs the respondent to attach records with their submission that demonstrate their compliance with the *Evidence of expertise and ability* section of the USDA organic regulations for entities seeking accreditation (7 CFR 205.504). This requires certifying agents to provide evidence of their staff's expertise and operation's ability to carry out certification activities. AMS intends to remove the requirement to include this expertise and ability evidence with the respondent's initial submission of the form. Instead, this information will be submitted later in the application process. This revision will lower the occurrence of duplicative and incomplete responses from respondents, streamlining the process for both respondents and AMS.

NOP 2110-1, NOP Import Certificate. AMS intends to revise the explanatory/instructional text in form NOP 2110-1, NOP Import Certificate. The existing form identifies item 7 as "RECIPIENT IN THE U.S. (NAME AND ADDRESS)." AMS plans to change item 7 to read "CERTIFIED ORGANIC IMPORTER IN THE U.S. (NAME AND ADDRESS)." This revision will clarify the type of information the respondent should record and will lower the occurrence of erroneous responses from respondents resulting in duplicative submissions, streamlining the process for both respondents and AMS.

Other Revisions

AMS intends to revise the *National Organic Program* collection to refine the estimate of burden due to routine changes in numbers used during calculations. For example, the number of certified organic operations changes over time, so burden estimates will be refined to reflect updated data.

AMS also intends to revise the *National Organic Program* collection to remove burden estimates related to the Transition to Organic Partnership Program, as the program concludes on December 31, 2026, and will be obsolete by the time this extension request is submitted to OMB.¹ These respondents included operations (e.g., farmers) seeking to transition their agricultural

operation to USDA certified organic production, operations looking to expand their existing USDA certified organic operation and/or acreage, and existing USDA certified organic operations looking to serve in a mentorship role to the above listed respondents. The collected information was used by AMS and Transition to Organic Partnership Program cooperators.

Finally, AMS intends to make minor revisions to the *National Organic Program* collection to incorporate and revise estimates of paperwork burdens currently detailed in four separate collections associated with recent USDA organic certification-related rulemaking. Upon OMB approval of this revised collection, AMS will submit a Discontinuation Request to OMB to delete the four individual collections:

1. *Strengthening Organic Enforcement* information collection (0581-0321): Approved October 24, 2023, expires October 31, 2026.²

2. *Origin of Livestock-Variance Request* information collection (0581-0343): Approved January 05, 2024, expires January 31, 2027.

3. *Organic Livestock and Poultry Standards* information collection (0581-0293): Approved August 27, 2024, expires August 31, 2027.

4. *Market Development for Mushrooms and Pet Food* information collection (0581-0347): Approved February 09, 2026, expires February 28, 2027.

Where these four collections contain burden estimates that already exist or overlap with the *National Organic Program* collection, AMS will incorporate and revise estimates as necessary to eliminate overlapping or duplicative estimates. For example, the *Strengthening Organic Enforcement* collection includes respondents who must label bulk nonretail containers. Labeling is a routine activity that is already accounted for in the *National Organic Program* collection and would overestimate the overall burden if AMS did not incorporate the *Strengthening Organic Enforcement* collection's estimate into the related, existing burden in the *National Organic Program* collection's estimate.

These four collections contain some unique burden estimates not currently present in the *National Organic*

Program collection. AMS will incorporate these burdens into the *National Organic Program* collection's estimate. For example, the *Strengthening Organic Enforcement* collection outlined specific training hour requirements for certain organic personnel. This type of burden was not previously estimated in the *National Organic Program* collection, so this estimate will be added. Similarly, the *Origin of Livestock-Variance Request* collection contains a burden related to livestock operations submitting variance requests to their certifying agent. This estimate will also be added to the *National Organic Program* collection.³

AMS does not intend to carry over one-time burdens from these four individual collections that no longer apply. The burdens from these collections that no longer apply include respondents who needed to comply with new provisions of those rules for the first time. For example, one-time reporting burdens in *Strengthening Organic Enforcement*, *Origin of Livestock-Variance Request*, *Organic Livestock and Poultry Standards*, and *Market Development for Mushrooms and Pet Food* collections included organic operations updating their existing OSPs and accredited certifying agents developing new procedures as required by the rule.^{4 5}

Estimate of Paperwork Burden

Estimate of Burden: The total annual burden estimated for the *National Organic Program* collection is described below. This estimated burden includes time needed for training; record creation and administration; and preparation, review, and submission of reports. Respondents include producers and handlers of certified and exempt organic products, applicants for organic certification, organic inspectors, certifying agents, State governments, petitioners, complainants, and foreign-based certifying agents and certified organic operations importing organic products to the United States.

Estimated Number of Respondents: 56,827.

Estimated Number of Responses per Respondent: approximately 9.1.

Estimated Burden per Response: approximately 8.3 hours.

Estimated Total Annual Burden on Respondents: 4,274,732.82 hours.

² *Strengthening Organic Enforcement*: 88 FR 3548, January 19, 2023. As the *Strengthening Organic Enforcement* information collection (0581-0321) expires October 31, 2026, AMS is requesting a 1-year approval extension of that information collection in a separate **Federal Register** notice (AMS-NOP-26-1321) to allow AMS time to complete the revisions described here.

³ *Origin of Livestock-Variance Request*: 88 FR 25289, April 26, 2023.

⁴ *Organic Livestock and Poultry Standards*: 88 FR 75394, November 02, 2023.

⁵ *Market Development for Mushrooms and Pet Food*: 89 FR 104367, December 23, 2024.

¹ <https://www.ams.usda.gov/services/organic-certification/topp>.

Request for Comments

This notice invites comments on the revisions being made to the *National Organic Program* collection and whether the revisions accurately reflect the time required for respondents to respond to this information collection. This notice relates strictly to Paperwork Reduction Act (44 U.S.C. chapter 35) requirements (<https://digital.gov/guides/ptra>) and is part of the routine process through which AMS requests continued approval from OMB to continue collecting information necessary to implement the OFPA and the USDA organic regulations. While this notice invites comments, commenters should know that changes to the USDA organic regulations are outside the scope of this activity. AMS invites comments on the following items:

1. If there are any concerns with the proposed revisions to the explanatory/instructional text in form TM-10CG, Application for Accreditations;
2. If there are any concerns with the proposed revisions to the explanatory/instructional text in form NOP 2110-1, NOP Import Certificate; and
3. If there are any refinements or corrective suggestions to AMS's plan to incorporate the burden estimates currently in the four separate collections *Strengthening Organic Enforcement*, *Origin of Livestock-Variance Request*, *Organic Livestock and Poultry Standards*, and *Market Development for Mushrooms and Pet Food*.

AMS also invites public comment on the entire *National Organic Program* information collection regarding the following topics:

- i. Whether the collection of information continues to be necessary for the proper performance of the functions of the NOP, including whether the information has practical utility;
- ii. The accuracy of the burden estimates of the collection of information;
- iii. Ways to enhance the quality, utility, and clarity of the collected information; and
- iv. Ways to minimize the burden of the collection of information on those who must respond, including the use of automated collection techniques or other forms of information technology.

Comments received will inform AMS's submission to OMB. AMS responses to received comments will be summarized in a Supporting Statement submitted to OMB. This Supporting Statement will be accessible to the public by searching for OMB Control Number "0581-0191" on <http://www.reginfo.gov/>.

To submit a comment, access the background documents (such as the "AMS-71 Grid" used to estimate burden), or read comments received, search for Docket ID "AMS-NOP-26-1024" on <http://www.regulations.gov/>. See the **ADDRESSES** section above for more information on submitting a public comment.

Authority: 7 U.S.C. chapter 94.

Erin Morris

Administrator, Agricultural Marketing Service.

[FR Doc. 2026-19623 Filed 9-24-26; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments are required regarding: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by October 26, 2026 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Risk Management Agency

Title: Area Risk Protection Insurance.
OMB Control Number: 0563-0083.

Summary of Collection: FCIC is a wholly owned Government corporation created February 16, 1938 (7 U.S.C. 1501). The program was amended previously, but Public Law 96-365, dated September 26, 1980, provided for nationwide expansion of a comprehensive crop insurance program. The Federal Crop Insurance Act (Act), as amended in later years, further expanded the role of the crop insurance program to be the principal tool for risk management by producers of agricultural commodities. The Act further required that the crop insurance program operate on an actuarially sound basis. To meet these goals, existing crop programs must be improved and expanded, new crop products developed, and new insurance concepts studied for possible implementation. Meeting these goals requires the collection of a wide range of information (data elements). These data elements are used in part to determine insurance coverage, premiums, subsidies, payments, and indemnities. It creates an information database used to support continued development and improvements in crop insurance products available to producers and which meet the goal of a sound insurance program. The Act was again amended on June 20, 2000, by Public Law 106-224 which mandates changes to crop insurance regulations, provides for independent review of crop insurance products by persons experienced as actuaries and in underwriting, and gives contracting authority for the development of new products.

Need and use of the Information: The Area Risk Protection Insurance (ARPI) includes three separate plans of insurance: (1) Area Revenue Protection which protects against price declines and automatically includes Upside Harvest Price Protection (UHPP) which protects against price increases; (2) ARP with the Harvest Price Exclusion, which excludes UHPP and protects against price declines but not against price increases; and (3) Area Yield Protection which only protects against loss of yield. Using a wide range of data elements producers are required to report specific data when they apply for ARPI such as acreage and yields. Insurance companies accept applications; issue policies; establish and provide insurance coverage; compute liability, premium, subsidies,

and losses; indemnify producers; and report specific data to FCIC as required in Appendix III/M13 Handbook.

If producers and insurance companies did not submit the required data at the specified time, accurate liabilities, premium, and subsidies may not be determined, errors may not be resolved timely, producers may not receive accurate indemnities, payments may be late, crop insurance may not be actuarially sound as mandated by the Act.

Description of Respondents: Business-for-not-for-profit; Farms.

Number of Respondents: 14,755.

Frequency of Responses: Annually.

Total Burden Hours: 56,765.

Rachelle Ragland-Greene,

Departmental Collection Clearance Officer.

[FR Doc. 2026-19629 Filed 9-24-26; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[RHS-26-MFH-0298]

Multifamily Housing Preservation Pilot and Multifamily Housing Guaranteed Loan Notice of Loan-to-Cost Percentage Change for Option 3 (Continuous Guarantee)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency) of the United States Department of Agriculture (USDA) issues this notice to implement two related actions. The first action is the Multifamily Housing (MFH) Preservation Pilot (the Pilot). This action has 3 parts: MFH Rural Rental Housing Loan (MFH Section 515) and MFH Section 538 Guaranteed Rural Rental Housing Program (MFH Section 538) programmatic variations involving transfers; MFH Section 515 transfers utilizing Low Income Housing Tax Credits (LIHTC); and Variations specific to MFH Section 538 for the First 200 Transactions. The transfers for above address three types of preservation related transfers: MFH Section 515 ownership transfers that do not fall within the Simple Transfer Pilot; MFH Section 515 ownership transfers involving Low Income Housing Tax Credits (LIHTC); and MFH Section 538 transactions regardless of whether a transfer is involved up to the first 200 guaranteed loans. In addition to both the MFH 515 and MFH 538 programmatic changes and transfer changes, the Agency includes a DSCR change for the

MFH 538 program, among other variations to that program, for the first 200 guaranteed loans in the Pilot. The Agency will use the Pilot to determine if it can improve program delivery efficiency for transactions that facilitate preservation of the low-income housing units in rural America while maintaining appropriate risk management of the portfolio. While the Pilot is active, the Agency will evaluate the Pilot's progress and identify opportunities to improve regulations, remove regulatory barriers, and reduce duplicative application requirements. These specific actions are critical for preserving assets in the MFH portfolio, which are aging and face significant delays and regulatory hurdles for transfers that significantly impact the assets long-term viability and overall portfolio risk; not only to the Agency but especially to the Rural population who reside in these assets. Therefore, for all parties involved, the Agency takes immediate action to ensure the Agency, owners and residents do not continue to struggle with the weight of government regulations slowing preservation of affordable, decent, safe and sanitary rural rental housing. The second action is Multifamily Housing Guaranteed Loan Notice of Loan-to-Cost Percentage Change. This action addresses a change to the loan terms for the MFH Section 538 Guaranteed Rural Rental Housing Program (MFH Section 538) under Option 3 (Continuous Guarantee) only. This action is not a part of the Pilot. Specifically, this action changes the maximum loan-to-cost percentage for loans guaranteed under Option Three (Continuous Guarantee) from 70 percent to 80 percent. The Agency is aligning with other federal agencies and the market to ensure demand for the guaranteed loans used for preservation and production of affordable, decent, safe and sanitary rural rental housing.

DATES: The pilot will begin on October 9, 2026 and continues until September 25, 2028.

FOR FURTHER INFORMATION CONTACT:

Jonathan Bell, Director, Production and Preservation Division, MFH, Rural Development, United States Department of Agriculture, via email: MFHprocessing1@usda.gov or phone at: 202-205-9217.

To submit an application for the Pilot, refer to "Application and Submission Information" section of this notice.

SUPPLEMENTARY INFORMATION:

Authority

Sections 506(b), 515, and 538 of the Housing Act of 1949, as amended (42 U.S.C. 1476(b), 1485, and 1490p-2).

Background

The MFH Programs support the expansion and revitalization of rural rental housing by providing loans, loan guarantees, and grants to property owners. The MFH Programs promote rental housing affordability for low-income households, elderly individuals, domestic farm laborers, disabled individuals, and their families.

The Housing Act of 1949, as amended (Act) (42 U.S.C. 1472 *et seq.*), authorizes USDA to provide MFH loan guarantees, direct loans, and grants to support the development of economically designed and constructed rural rental, cooperative, and farm labor housing. Owners must operate these properties as affordable, decent, safe, and sanitary housing for eligible very-low-, low-, and moderate-income households.

The MFH Program utilizes a variety of tools to revitalize and preserve the physical and financial health of more than 12,000 properties currently in USDA's rural rental housing portfolio. 42 U.S.C. 1476(b) provides for the conduct of demonstration or pilot programs which may include procedures and requirements that differ from existing published standards, rules, regulations, or policies. Under the Pilot, the Agency will apply all program requirements that are not expressly waived by this Notice.

The Agency commits to preserving affordable, decent, safe, and sanitary multifamily housing in its existing portfolio for very-low-, low-, and moderate-income households. In partnership with nonprofit and for-profit owners of Agency-financed or Agency-guaranteed properties, the Agency has provided affordable housing in rural communities for more than 60 years. The MFH Program provides affordable rental housing for rural low-income households comprising approximately 400,000 units; 95 percent of which are in the MFH Section 515 portfolio. The Agency increasingly relies on third-party financed preservation efforts for existing properties financed with the MFH Section 515 loans. These third-party financed preservation efforts often are paired with ownership transfers to sustain the portfolio and maintain affordability. The MFH Program must increase and expedite transfer activity as properties age, mortgages approach maturity, and long-term owners engage in estate planning or heirs resolve

succession issues. The current transfer approval and closing timeframes often exceed the timeframes of third-party lenders and funders. These delays potentially jeopardize transactions. While third-party financing has become more common, the Agency has and continues to use its MFH Section 538 as part of a preservation effort by the private sector.

Not to be confused with this Pilot, the Agency previously implemented a separate Simple Transfer Pilot in 2022 (87 FR 75457, December 9, 2022, 91 FR 18275, April 9, 2026) to evaluate the existing regulations and remove regulatory barriers to reduce application requirements for change in ownership transfers when there is no third-party financing involved. Building on the success of the Simple Transfer Pilot, the Agency expands removal of regulatory barriers and ownership transfers to include additional transfers. To reiterate, the Pilot applies to three types of transfers: (1) MFH Section 515 ownership transfers that do not fall within the Simple Transfer Pilot; (2) MFH Section 515 ownership transfers involving Low Income Housing Tax Credits (LIHTC); and (3) MFH Section 538 transactions regardless of whether a transfer is involved up to the first 200 guaranteed loans.

The Agency anticipates the Pilot will encompass approximately 10 percent of its overall Section 515 portfolio.

The Agency engaged stakeholders extensively to solicit feedback on current challenges and recommendations for reducing regulatory barriers to the transfer process and for supporting the long-term preservation of the MFH portfolio. Stakeholders identified challenges that include a lack of clarity around Agency requirements, processes, and timelines; inconsistencies and delays in Agency third-party report reviews; and duplicative or unnecessary Agency application requirements that increase costs and waste time. Stakeholders also identified additional Agency regulatory encumbrances that pose challenges to expanding and preserving the long-term affordability of rural housing.

These stakeholders' concerns substantially overlap with issues identified in mixed-finance transactions involving programs of the Department of Housing and Urban Development (HUD). The substantial overlap consists primarily of duplicative capital-needs and review requirements. Accordingly, the Agency intends to test targeted alignment where permissible to reduce burden and improve preservation outcomes where these overlaps exist.

As stated above, to address these issues, the Agency is implementing the Pilot. Throughout the Pilot, the Agency will evaluate the results and consider whether to incorporate successful elements into regulatory changes involving the MFH Section 515 and MFH Section 538 regulations contained within the 7 CFR part 3560 and 7 CFR part 3565 respectively.

Separate from the Pilot, but in tandem with the Pilot, the notice announces an increase to the loan-to-cost-percentage from 70 to 80 percent or less of the total development cost for MFH Section 538 guarantees that meet the Agency's requirement for Option Three (Continuous Guarantee) in 7 CFR part 3565. The Agency expects this action to increase preservation and production applications.

Discussion of the Pilot

The Pilot includes components the Agency anticipates will reduce processing times and support long-term preservation of the MFH portfolio. The Agency uses this Pilot to test adjustments to MFH Section 515 and MFH Section 538 servicing and transfer processes.

Consistent with recent RHS modernization efforts, the Agency will emphasize practical changes that improve service delivery and align selected processes with comparable Federal housing programs where appropriate.

Pilot MFH Section 515 and MFH Section 538 Programmatic Variations Involving Transfers

Third-Party Appraisal Report Requirement Flexibility for MFH Section 515

The Agency has determined the requirements for obtaining third-party reports and Agency review of these reports may add significant time and expense to transfer transactions. As a result, the Agency implements the following changes to transfers:

The Agency may expedite appraisal reviews by temporarily foregoing the requirement in 7 CFR 3560.753(b) for a technical review by an Agency appraiser. Agency appraisers may conduct reviews only when the Agency determines that a review is necessary to protect the Government's interest. The Agency may conduct reviews at any time, randomly, or when an appraisal identifies select items such as Conventional Rents for Comparable Units (CRCU) rents that propose a significant rent increase or a significant building cost relative to market. The Agency will review these appraisals

consistent with the Agency's mission to provide affordable, decent, safe and sanitary rural rental housing. The Agency will seek to ensure prompt reviews when these reviews occur.

The Agency will expand the situations in which applicants do not need to obtain an appraisal under 7 CFR 3560.406(d)(3)(i) and 7 CFR 3560.406(d)(3)(ii). For the duration of the Pilot, if the Agency holds the first lien position and the total value of the loans that the new borrower assumes as a part of an ownership transfer or sale equals 50 percent or less of the property's current value, as reflected in current property tax records, or such other documentation approved by the Agency. The Agency will determine the security value of the housing project through either: (1) an Agency review of monitoring reports under Subpart H of 7 CFR part 3560 or (2) an appraisal paid for by the borrower and conducted in accordance with Subpart P of 7 CFR part 3560.

Streamlined Processing Authority for MFH Section 515 and MFH Section 538 Low Risk Transfers

The Agency may rely on qualified lenders, nonprofit preservation partners, or other Agency approved participants to process low-risk transfer applications using Agency-approved templates, certifications, and checklists. The Agency will make the final determination on all transfer applications. The Agency determines low-risk through considering factors such as physical condition, financial performance, compliance history, and transaction complexity. The Agency may suspend or revoke this authority when performance, compliance, or risk concerns arise.

Credit Report Submission Requirements for MFH Section 515 and MFH Section 538

The Agency clarifies that, in accordance with 7 CFR 3560.852, MFH Section 515 applicants must submit a current (within 6 months) comprehensive credit report for: (1) the entity, (2) the general partner and/or managing member, and (3) all controlling sub-entities and/or natural persons. The Agency will accept current comprehensive credit reports from Experian, Equifax, and TransUnion, or Dun & Bradstreet.

The Agency confirms no change, in accordance with 7 CFR 3565, MFH Section 538 applicants will continue to use credit reports for the borrower and for any individual who holds more than a 25 percent financial interest in the property, and the borrower must

provide those reports to the Agency. If the organization is newly formed and has not established organizational activity records, the lender must obtain credit reports for principal members, stockholders, and/or partners who each hold at least a 25 percent ownership interest. The Agency may request additional individual credit reports as needed. If the borrower organization has a substantial interest in another organization, such as a tax credit investor, the lender must obtain a credit report for that organization in the same manner. The borrower must demonstrate sufficient financial resources to meet the transaction requirements.

Construction and Design Flexibilities for MFH Section 515

The Agency simplifies its construction-related requirements with the intention of providing greater flexibility and support for the long-term preservation of the MFH Program portfolio.

The Agency adopts the following definition for Construction Monitoring only for MFH Section 515: the Agency's oversight of construction and/or rehabilitation to verify compliance with approved plans and program requirements and to protect the Agency's security interest in the property. Monitoring may include report reviews, certifications, and other documentation.

Additionally, instead of relying on the standards in 7 CFR part 1924, the applicant will design and construct Pilot projects to meet applicable Federal accessibility requirements, State and local codes, Agency required affordable, decent, safe, and sanitary standards, and any additional requirements deemed necessary.

HUD Environmental and Capital Planning Documentation Reliance for Both MFH Section 515 and Section 538

The Agency may accept recent HUD environmental review documentation, capital needs assessments, or related third-party reports to satisfy overlapping MFH Program requirements for Pilot properties that also receive HUD financing, subsidy, insurance, or recapitalization support. The "21st Century ROAD to Housing Act" under Section 103 of H.R. 6644 21st Century ROAD to Housing Act and other sections include environmental provisions and certain exemptions for MFH Program properties. The Agency may accept HUD environmental review documentation in accordance with 7 CFR part 1b and may require

supplemental documentation as determined by the Agency.

Expanded Eligible Use for MFH Section 515 Transfers

The Agency may allow borrowers to use MFH Section 515 subsequent loans to purchase a property as part of the transfer. The Agency will treat this property acquisition by a transferee as an eligible use under 7 CFR 3560.73(a) when the transfer supports the Agency's mission of affordable, decent, safe, and sanitary standards.

Distressed Property Preservation Track for MFH Section 515 Transfers

The Agency may designate a property as distressed or at risk of loss from the affordable housing stock based on physical condition, financial performance, compliance concerns, or recapitalization barriers. For these properties, the Agency will prioritize such transfers and apply accelerated review, expanded use of preservation tools, or modified documentation requirements to facilitate transfers that preserve the Agency's mission of affordable, decent, safe, and sanitary standards.

Pilot MFH Section 515 Transfers Utilizing Low Income Housing Tax Credits (LIHTC)

Developer Fee for MFH Section 515 Transfers

The Agency will allow, for Pilot transactions, a developer fee consistent with the maximum amount that the State Housing Finance Agency's Qualified Allocation Plan (QAP) permits for the LIHTC award or, where applicable, any lower maximum that other Federal or State funding sources require. The pilot developer fee will replace the developer fee set forth in 7 CFR 3560.63.

Return on Investment (ROI) for MFH Section 515 Transfers

The Agency will not apply the additional ROI standards in 7 CFR 3560.68(a) and (b). Instead, the owner's additional ROI will follow 7 CFR 3560.68(c), provided the resulting rents do not exceed Conventional Rents for Comparable Units (CRCU). The Agency will carefully evaluate CRCU and urges all parties to carefully underwrite to ensure the Agency achieves its primary mission of affordable housing that does not exceed local market rental rates.

Replacement Reserve Requirements for MFH Section 515 Transfers

The Agency revises the Capital Needs Assessment (CNA) requirements by allowing additional report types that

evaluate a property's physical condition and eliminate the need for multiple assessments. In addition to the requirements set forth at 7 CFR 3560.406(d)(5), the Agency may accept a Physical Needs Assessment (PNA) or a CNA that a tax credit allocating agency has approved instead of an Agency prescribed CNA.

The Agency may also accept the LIHTC allocating agency's underwriting amounts for annual reserve deposit requirements.

For properties with HUD-assisted or HUD-insured financing, the Agency may accept a HUD-compliant or HUD-accepted CNA in satisfaction of MFH capital needs requirements when the report's scope, effective date, and methodology adequately address the property's preservation needs and risk profile. The Agency will consider HUD reserve analyses or lender certifications for reserve adequacy in establishing annual reserve deposits, while retaining authority to require additional reserves when MFH-specific conditions warrant.

For all of the above Replacement Reserve Requirements for MFH Section 515 Transfers the Agency maintains the right in its sole discretion to ultimately accept or reject a CNA or PNA based upon its mission of affordable, decent, safe, and sanitary standards.

Standard Transfer Requirements

Except as modified by this Pilot, the Agency maintains the standard transfer requirements in effect in 7 CFR 3560.406. The Agency may also determine that other servicing actions, such as reamortization, deferral or other preservation-oriented restructuring tools under 7 CFR part 3560, are more appropriate based on circumstances applying to a specific property.

Pilot Variations Specific to MFH Section 538 for the First 200 Transactions

Debt Service Coverage Ratio for MFH Section 538

The Agency reduces the MFH Section 538 debt service coverage ratio (DSCR) requirement set forth in 7 CFR 3565.303(d)(2) and (f)(2) to 1.11 for the first 200 loans closed under MFH Section 538. The Agency may approve a lower DSCR for MFH Section 538, if appropriate, based on the lender's analysis of current market conditions and comparable properties in the project's market area. The Agency will publish any revisions to the DSCR through a notice in the **Federal Register**.

Financial Statements Requirements for MFH Section 538

The lender must obtain financial statements from borrowers and, if requested by the Agency, the lender must provide certified financial statements from borrowers.

Developer Fee for MFH Section 538

The Agency limits a developer's fee to 15 percent of total development costs when sources other than LIHTC or a Federal or State government program fund the fee, or if a project includes a MFH Section 538 but no other Federal or State government program provides financing.

Rent and Income Standards Alignment for MFH Section 538

For MFH Section 538 applications that also involve LIHTC and HUD financing or subsidy, the Agency may defer to the applicable Federal or State program requirements where doing so reduces duplicative administration and remains consistent with the Agency's statutory authority. Such alignment includes, but is not limited to, capital planning documentation or related program preservation requirements.

Risk-Tiered Underwriting and Documentation for MFH Section 538

For MFH Section 538 transactions that the Agency processes under the Pilot, the Agency may apply risk-tiered underwriting and documentation standards. The documentation requirements will vary depending on the risk-tier of the transactions. The Agency will determine tiers by considering the presence of rental assistance, LIHTC equity, operating history, and market strength. The Agency will notify the public of the tiers and documentation requirements. In doing so, the Agency aligns its review standards with approaches that comparable Federal affordable housing programs use, while preserving RHS underwriting authority and lender accountability.

Application and Submission Information

This Pilot applies to: (1) MFH Section 515 ownership transfers that do not fall within the Simple Transfer Pilot; (2) MFH Section 515 ownership transfers involving Low Income Housing Tax Credits (LIHTC); and (3) MFH Section 538 transactions regardless of whether a transfer is involved up to the first 200 guaranteed loans. Applicants seeking transfers must follow the submission process that the Agency outlines on its website ([https://www.rd.usda.gov/](https://www.rd.usda.gov/programs-services/multifamily-housing-)

[programs/multifamily-housing-direct-loans#to-apply](https://www.rd.usda.gov/programs-services/multifamily-housing-direct-loans#to-apply)). Click on the link, "Transfer of Ownership Application Submission Process." Applicants seeking MFH Section 538 must follow the submission process that the Agency outlines on its website: <https://www.rd.usda.gov/programs-services/multifamily-housing-loan-guarantees#to-apply>.

Pilot Evaluation and Metrics

The Agency will track the Pilot outcomes, including processing times, report costs, preservation of affordable units, physical and financial performance indicators. The Agency will use this data to evaluate whether the Pilot improves service delivery, reduces unnecessary delay, and supports long-term preservation without increasing program risk. At the conclusion of the Pilot in {month} 2028, the Agency will make appropriate regulatory changes to incorporate the successful aspects of the Pilot. Under Section 506(b) of the Housing Act of 1949, Pilot expenditures must stay within the statutory annual cap; if costs exceed that limit, RHS will end the pilot.

Public Notice of Programmatic Loan-to-Cost Percentage Increase for MFH Section 538

A previous **Federal Register** Notice (84 FR 2487, February 7, 2019) set the loan-to-cost percentage requirement for the Continuous Guarantee to 70 percent or less of the total development cost. As set forth in 7 CFR 3565.52(c), the Agency will define the loan-to-cost percentage. With this Notice, the loan-to-cost percentage is now being increased to 80 percent or less of the total development cost for loan guarantees that meet the Agency's requirement for Option Three (Continuous Guarantee).

Paperwork Reduction Act

The regulatory exceptions for this Pilot contain no new reporting or recordkeeping burdens under OMB control number 0575-0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex,

disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint (<https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint>) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Mail Stop 9410, Washington, DC 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

George Kelly,

Administrator, Rural Housing Service.

[FR Doc. 2026-19659 Filed 9-24-26; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-123-2026]

Foreign-Trade Zone (FTZ) 57, Notification of Proposed Production Activity; Eli Lilly and Company; (Drug Products); Concord, North Carolina

Eli Lilly and Company submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Concord, North Carolina within Subzone 57F. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 17, 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: Incretin-based therapy for blood glucose and weight management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; CGRP monoclonal antibody for migraine prevention drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-17A monoclonal antibody for chronic inflammatory conditions drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; Incretin-based therapy for blood glucose management in type 2 diabetes drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; Multi-incretin therapy for weight and metabolic management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-13-targeted therapy for atopic dermatitis management drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-23-targeted therapy for inflammatory bowel disease management drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; and Amyloid-targeted therapy for early Alzheimer's disease drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes (duty free).

The proposed foreign-status materials/components include: Incretin-based therapy for blood glucose and weight management drug substance; Incretin-based therapy for blood glucose and weight management drug product in vials or semi-finished syringes; CGRP monoclonal antibody for migraine prevention drug substance; CGRP monoclonal antibody for migraine prevention drug product in vials or semi-finished syringes; IL-17A monoclonal antibody for chronic inflammatory conditions drug substance; IL-17A monoclonal antibody

for chronic inflammatory conditions drug product in vials or semi-finished syringes; Incretin-based therapy for blood glucose management in type 2 diabetes drug substance; Incretin-based therapy for blood glucose management in type 2 diabetes drug product in vials or semi-finished syringes; Multi-incretin therapy for weight and metabolic management drug substance; Multi-incretin therapy for weight and metabolic management drug product in vials or semi-finished syringes; IL-13-targeted therapy for atopic dermatitis management drug substance; IL-13-targeted therapy for atopic dermatitis management drug product in vials or semi-finished syringes; IL-23-targeted therapy for inflammatory bowel disease management drug substance; IL-23-targeted therapy for inflammatory bowel disease management drug product in vials or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug product in vials or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug substance; Amyloid-targeted therapy for early Alzheimer's disease drug product in vials or semi-finished syringes; Amyloid-targeted therapy for early Alzheimer's disease drug substance; Medicine delivery device, and parts thereof—including Cap Cartridge Holder, Dry Side Subassembly, Damping Cup, RNS Puller, Base Cap; Medicine delivery device needles; Glass vials; and Syringes (duty free).

The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 or section 301 of the Trade Act of 1974, depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status as described in 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 November 4, 2026.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact John Frye at John.Frye@trade.gov.

Dated: September 22, 2026.

Colin Agostisi,
Executive Secretary.

[FR Doc. 2026-19699 Filed 9-24-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-122-2026]

Foreign-Trade Zone (FTZ) 93, Notification of Proposed Production Activity; Eli Lilly and Company; (Drug Products); Durham, North Carolina

Eli Lilly and Company submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Durham, North Carolina within Subzone 93K. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on September 17, 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: Incretin-based therapy for blood glucose and weight management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; CGRP monoclonal antibody for migraine prevention drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-17A monoclonal antibody for chronic inflammatory conditions drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; Incretin-based therapy for blood glucose management in type 2 diabetes drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; Multi-incretin therapy for weight and metabolic management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-13-targeted therapy for atopic dermatitis management drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; IL-23-targeted therapy for inflammatory bowel disease management drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug product in dosage/package form in filled syringes, vials, or delivery pens or semi-finished syringes; and Amyloid-

targeted therapy for early Alzheimer's disease drug product in dosage/ packaged form in filled syringes, vials, or delivery pens or semi-finished syringes (duty free).

The proposed foreign-status materials/components include: Incretin-based therapy for blood glucose and weight management drug substance; Incretin-based therapy for blood glucose and weight management drug product in vials or semi-finished syringes; CGRP monoclonal antibody for migraine prevention drug substance; CGRP monoclonal antibody for migraine prevention drug product in vials or semi-finished syringes; IL-17A monoclonal antibody for chronic inflammatory conditions drug substance; IL-17A monoclonal antibody for chronic inflammatory conditions drug product in vials or semi-finished syringes; Incretin-based therapy for blood glucose management in type 2 diabetes drug substance; Incretin-based therapy for blood glucose management in type 2 diabetes drug product in vials or semi-finished syringes; Multi-incretin therapy for weight and metabolic management drug substance; Multi-incretin therapy for weight and metabolic management drug product in vials or semi-finished syringes; IL-13-targeted therapy for atopic dermatitis management drug substance; IL-13-targeted therapy for atopic dermatitis management drug product in vials or semi-finished syringes; IL-23-targeted therapy for inflammatory bowel disease management drug substance; IL-23-targeted therapy for inflammatory bowel disease management drug product in vials or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug product in vials or semi-finished syringes; Amylin receptor-targeted therapy for weight management drug substance; Amyloid-targeted therapy for early Alzheimer's disease drug product in vials or semi-finished syringes; Amyloid-targeted therapy for early Alzheimer's disease drug substance; Medicine delivery device, and parts thereof—including Cap Cartridge Holder, Dry Side Subassembly, Damping Cup, RNS Puller, Base Cap; Medicine delivery device needles; Glass vials; and Syringes (duty free).

The request indicates that certain materials/components are subject to duties under section 232 of the Trade Expansion Act of 1962 or section 301 of the Trade Act of 1974, depending on the country of origin. The applicable section 232 and section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status as described in 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 November 4, 2026.

A copy of the notification will be available for public inspection in the "Online FTZ Information System" section of the Board's website.

For further information, contact John Frye at John.Frye@trade.gov.

Dated: September 22, 2026.

Colin Agostisi,

Executive Secretary.

[FR Doc. 2026-19698 Filed 9-24-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-914]

Certain Superabsorbent Polymers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2023–2024

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable September 25, 2026.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain superabsorbent polymers (SAP) from the Republic of Korea (Korea) were not sold in the United States at less than normal value (NV) during the period of review (POR), December 1, 2023, through November 30, 2024.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3797.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 2026, Commerce published in the *Federal Register* the *Preliminary Results* of the 2023–2024 administrative review of the antidumping duty order on SAP from Korea and invited interested parties to comment.¹ We received no comments from interested parties on the *Preliminary Results*. Accordingly, we made no changes to the *Preliminary*

Results, and thus, no decision memorandum accompanies this notice. 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 SAP. For a full description of the scope, see the *Preliminary Results* PDM.

Final Results of Review

In the *Preliminary Results*, we determined that LG Chem, Ltd. (LGC) did not make sales of subject merchandise at less than NV during the POR. As noted above, Commerce received no comments concerning the *Preliminary Results*. Therefore, for these final results, we continue to determine the below final weighted-average dumping margin exists for the period December 1, 2023, through November 30, 2024:

Producer/exporter	Weighted-average dumping margin (percent)
LG Chem, Ltd	0.00

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.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because we calculated a zero percent margin in the final results of this review for LGC, in accordance with 19 CFR 351.212, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

¹ See *Certain Superabsorbent Polymers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2023–2024*, 91 FR 30278 (May 22, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Certain Superabsorbent Polymers from the Republic of Korea: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Duty Investigation; Notice of Amended Final Determination; Notice of Amended Antidumping Duty Order*, 90 FR 302 (January 3, 2025) (*Order*).

For entries of subject merchandise during the POR produced by LGC, for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue appropriate assessment instructions directly to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for LGC will be zero, the rate established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or in the original less-than-fair-value (LTFV) investigation but the producer is, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review or the LTFV investigation, the cash deposit rate will continue to be 26.05 percent, which is the all-others rate established by Commerce in the LTFV investigation.³ 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 review period. Failure to comply with this requirement could result in Commerce's presumption that

reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/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 violation which subject to sanction.

Notification to Interested Parties

These final results are being issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 21, 2026.

Scot Fullerton,
Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026–19625 Filed 9–24–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–833]

Large Diameter Welded Pipe From the Republic of Türkiye: 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 large diameter welded pipe (welded pipe) from the Republic of Türkiye (Türkiye) was sold in the United States at less than normal value during the period of review (POR), May 1, 2024, through April 30, 2025.

DATES: Applicable September 25, 2026.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beuley, 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) 482–3269.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2026, Commerce published the *Preliminary Results* and invited interested parties to comment.¹ No interested party submitted comments on the *Preliminary Results*. Accordingly, the final results remain unchanged from the *Preliminary Results*, the *Preliminary Results* are, hereby, adopted as the final results, and no 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 Order²

The merchandise covered by the *Order* is welded pipe from Türkiye. For a complete description of the scope of the *Order*, see the *Preliminary Results* PDM.

Final Results of Review

For these final results, we determine that the following weighted-average dumping margins exist for the period May 1, 2024, through April 30, 2025:

Producer/exporter	Weighted-average dumping margin (percent)
HDM Celik Boru Sanayi Ve Ticaret A.S. ³	1.89
Cimtas Boru Imalatirali Ticaret Ltd	1.89

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with the final results of review 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 results in the **Federal Register**, in accordance

¹ See *Large Diameter Welded Pipe from the Republic of Türkiye: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2024–2025*, 91 FR 31420 (May 27, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

² See *Large Diameter Welded Pipe from the Republic of Turkey: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order*, 84 FR 18799 (May 2, 2019); and *Large Diameter Welded Pipe from the Republic of Turkey: Notice of Court Decision Not in Harmony With Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination Pursuant to Court Decision; and Notice of Revocation of Antidumping Duty Order, in Part*, 85 FR 35262 (June 9, 2020) (*Amended Final Determination*) (collectively, *Order*).

³ This rate also applies to HDM Spiral Kaynakli Celik Boru A.S., the English name of which is HDM Spirally Welded Steel Pipe Inc.

³ See *Order*.

with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results*, there are no new calculations to disclose.

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).

HDM Celik reported the entered value for all of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of those same sales. For entries of subject merchandise during the POR produced by HDM for which HDM did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate in the *Amended Final Determination* of the LTFV investigation (*i.e.*, 1.57 percent),⁴ if there is no rate for the intermediate company(ies) involved in the transaction.⁵

For Cimtas, the company that was not selected for individual examination, we will instruct CBP to liquidate entries at the rate assigned in these final results of review, calculated as noted in the "Rate for Company Not Selected for Individual Examination" section, above.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin

established in these final results of this administrative review; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 1.57 percent, the all-others rate established in the *Amended Final Determination*.⁶ 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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), 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 sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: September 21, 2026.

Scot Fullerton,

Acting Deputy Assistant Secretary, for Antidumping and Countervailing Duty Operations.

[FR Doc. 2026-19626 Filed 9-24-26; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XG057]

Marine Mammals; File No. 29859

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Seth Newsome, Ph.D., Department of Biology, MSC03-2020, 1 University of New Mexico, Albuquerque, New Mexico 87131-0001, has applied in due form for a permit to import, export, and receive marine mammal parts for scientific research.

DATES: Written comments must be received on or before October 26, 2026.

ADDRESSES: The application and related documents are available for review upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include "File No. 29859" in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Shasta McClenahan, Ph.D., (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant proposes to receive, import, and export parts from up to 25 individual cetaceans and 25 individual pinnipeds (excluding walrus), annually. Sources of foreign and domestic parts may include animals in foreign countries stranded alive or dead or that died during rehabilitation, animals killed incidental to legal commercial fishing operations, or samples from other authorized persons or collections. Parts would be used for isotope analysis

⁴ See *Amended Final Determination*, 85 FR at 35263.

⁵ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

⁶ See *Amended Final Determination*, 85 FR at 35263.

to study foraging distribution. The permit would be valid for 10 years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: September 22, 2026.

Larissa Plants,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2026–19695 Filed 9–24–26; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Trademark Trial and Appeal Board (TTAB) Actions

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comments.

SUMMARY: The United States Patent and Trademark Office (hereafter “USPTO” or “Agency”) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comments on the information collection renewal of 0651–0040, which helps the USPTO assess the impact of its information collection requirements and minimize the reporting burden to the public. Public comments were previously requested via the **Federal Register** on June 10, 2026, during a 60-day comment period (91 FR 35180). This notice allows for an additional 30 days for public comments.

DATES: To ensure consideration, you must submit comments regarding this information collection on or before October 26, 2026.

ADDRESSES: Written comments and recommendations for this information collection should be submitted within

30 days of the publication of this notice on the following website, <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the information collection or the OMB Control Number, 0651–0040. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT:

- This information collection request may be viewed at <https://www.reginfo.gov/>. Follow the instructions to view the Department of Commerce, USPTO information collections currently under review by OMB.

- **Email:** InformationCollection@uspto.gov. Include “0651–0040 information request” in the subject line of the message.

- **Mail:** Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

- **Telephone:** Latoya Brown, Trademark Trial and Appeal Board, 571–272–4283.

SUPPLEMENTARY INFORMATION:

Title: Trademark Trial and Appeal Board (TTAB) Actions.

OMB Control Number: 0651–0040.

Abstract: The USPTO administers the Trademark Act of 1946, 15 U.S.C. 1051 *et seq.*, as amended, which provides for the federal registration of trademarks, service marks, collective marks and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the USPTO. Section 13 of the Trademark Act, 15 U.S.C. 1063, allows individuals and entities who believe that they would be damaged by the registration of a mark to file an opposition to the registration of the mark and to file a request for an extension of time to file an opposition. Section 14 of the Trademark Act, 15 U.S.C. 1064, allows individuals and entities to file a petition to cancel a registration of a mark. Section 20 of the Trademark Act, 15 U.S.C. 1070, allows individuals and entities to appeal any final decision of the examiner in charge of the registration of marks or a final decision by an examiner in an *ex parte* expungement proceeding or *ex parte* reexamination proceeding.

The USPTO administers certain provisions of the Trademark Act of 1946 through the regulations at 37 CFR part

2, which contains the various rules that govern the filings identified above and other submissions filed in connection with *inter partes* and *ex parte* proceedings. These petitions, notices, extensions, and additional papers are filed with the Trademark Trial and Appeal Board (TTAB), an administrative tribunal empowered to determine the right to register and subsequently determine the validity of a trademark. The information in this collection must be submitted electronically through TTAB’s electronic filing system. If applicants or entities wish to submit the petitions, notices, extensions, and additional papers in *inter partes* and *ex parte* proceedings, they may use the forms provided through the TTAB’s electronic filing system. This information collection includes the items needed for individuals or entities to file *inter partes* and *ex parte* proceedings regarding federal registration of their trademarks or service marks.

Information is collected pursuant to the provisions of the Trademark Act of 1946. The responses in this information collection are a matter of public record and are used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, as both common law trademark owners and federal trademark registrants must actively protect their own rights.

Forms:

- PTO–2120 (Notice of Opposition)
- PTO–2151 (Papers in *Inter Partes* Cases)
- PTO–2153 (Request for Extension of Time to File an Opposition)
- PTO–2188 (Petition for Cancellation)
- PTO–2189 (*Ex Parte* Appeal General Filing)
- PTO–2190 (Notice of Appeal)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent’s Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual

Respondents: 44,550 respondents.

Estimated Number of Annual

Responses: 76,000 responses.

Estimated Time per Response: The USPTO estimates that the responses to this information collection will take the public approximately 10 minutes (0.17 hours) to 21 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed item(s) to the USPTO.

Estimated Total Annual Respondent Burden Hours: 1,016,891 hours.

Estimated Total Annual Respondent Non-hourly Cost Burden: \$10,725,464. Since the publication of the 60-day notice, the USPTO has updated the postage costs associated with this information collection. The UPTO estimates that the average postage cost for a mailed submission, using a Priority Mail legal flat rate envelope, will be \$13.25. The USPTO estimates approximately 35 submissions per year may be mailed to the USPTO, for an estimated total postage cost of \$464 per year. This results in a decrease of \$303 in non-hourly cost burden, for a new estimated total annual respondent non-hourly cost burden of \$10,725,464.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2026–19613 Filed 9–24–26; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic–Central America–United States Free Trade Agreement (“CAFTA–DR”)

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR.

SUMMARY: The Committee for the Implementation of Textile Agreements (“CITA”) has determined that certain polyester/cuprammonium yarn-dyed twill lining fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product is added to the list in Annex 3.25 of the CAFTA–DR in unrestricted quantities.

DATES: *Applicable Date:* September 25, 2026.

ADDRESSES: <https://otexaproduct.trade.gov/otexacapublicsite/requests/cafta> under “Approved Requests,” File Number: CA2026005.

FOR FURTHER INFORMATION CONTACT: Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2043 or Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR; Section 203(o)(4) of the Dominican Republic–

Central America–United States Free Trade Agreement Implementation Act (“CAFTA–DR Implementation Act”), Public Law 109–53; the Statement of Administrative Action accompanying the CAFTA–DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA–DR provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR provides that this list may be modified pursuant to Article 3.25.4, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to the CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic–Central America–United States Free Trade Agreement*, 73 FR 53200) (“CITA’s Procedures”).

On August 14, 2026, CITA received a Commercial Availability Request (“Request”) from BK House LLC for certain polyester/cuprammonium yarn-dyed twill lining fabric, as specified below. On August 18, 2026, in accordance with CITA’s Procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) must be submitted by August 28, 2026, and any Rebuttal to a Response (“Rebuttal”) must be submitted by September 3, 2026, in accordance with sections 6 and 7 of CITA’s Procedures. No interested entity

submitted a Response to the Request advising CITA of its objection to the Request with an offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA’s Procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA–DR Commercial Availability proceedings, at <https://otexaproduct.trade.gov/otexacapublicsite/shortsupply/cafta>.

Specifications: Certain Polyester/Cuprammonium Yarn-Dyed Twill Lining Fabric

HTS: 5407.93.20.

Fiber Content: 52% to 60% Polyester, 40% to 48% Cuprammonium.

Fabric Construction: Twill.

Fabric Finishing Processes: Yarn-dyed.

Weight: 72 to 82 g/m².

Width: 132.08 to 137.16 cm (52 to 54 inches).

Joshua Kroon,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2026–19673 Filed 9–24–26; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic–Central America–United States Free Trade Agreement (“CAFTA–DR”)

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR.

SUMMARY: The Committee for the Implementation of Textile Agreements (“CITA”) has determined that certain polyester/cuprammonium dyed twill lining fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product is added to the list in Annex 3.25 of the CAFTA–DR in unrestricted quantities.

DATES: *Applicable Date:* September 25, 2026.

ADDRESSES: <https://otexaprod.trade.gov/otexacapublicsite/requests/cafta> under "Approved Requests," File Number: CA2026004.

FOR FURTHER INFORMATION CONTACT:

Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2043 or Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA—DR; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA—DR Implementation Act"), Public Law 109-53; the Statement of Administrative Action accompanying the CAFTA—DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA—DR provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA—DR have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA—DR provides that this list may be modified pursuant to Article 3.25.4, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA—DR; *see also* section 203(o)(4)(C) of the CAFTA—DR Implementation Act.

The CAFTA—DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA—DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to the CAFTA—DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) ("CITA's Procedures").

On August 14, 2026, CITA received a Commercial Availability Request ("Request") from BK House LLC for certain polyester/cuprammonium dyed

twill lining fabric, as specified below. On August 18, 2026, in accordance with CITA's Procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA—DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by August 28, 2026, and any Rebuttal to a Response ("Rebuttal") must be submitted by September 3, 2026, in accordance with sections 6 and 7 of CITA's Procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request with an offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA—DR Implementation Act, and section 8(c)(2) of CITA's Procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA—DR.

The subject product has been added to the list in Annex 3.25 of the CAFTA—DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA—DR Commercial Availability proceedings, at <https://otexaprod.trade.gov/otexacapublicsite/shortsupply/cafta>.

Specifications: Certain Polyester/Cuprammonium Dyed Twill Lining Fabric

HTS: 5407.92.10.

Fiber Content: 52% to 60% Polyester, 40% to 48% Cuprammonium.

Fabric Construction: Twill.

Fabric Finishing Processes: Dyed.

Weight: 72 to 82 g/m².

Width: 132.08 to 137.16 cm (52 to 54 inches).

Joshua Kroon,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2026-19672 Filed 9-24-26; 8:45 am]

BILLING CODE 3510-DR-P

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA—DR.

SUMMARY: The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain viscose printed twill lining fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA—DR countries. The product is added to the list in Annex 3.25 of the CAFTA—DR in unrestricted quantities.

DATES: *Applicable Date:* September 25, 2026.

ADDRESSES: <https://otexaprod.trade.gov/otexacapublicsite/requests/cafta> under "Approved Requests," File Number: CA2026006.

FOR FURTHER INFORMATION CONTACT:

Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-2043 or Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA—DR; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act ("CAFTA—DR Implementation Act"), Public Law 109-53; the Statement of Administrative Action accompanying the CAFTA—DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA—DR provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA—DR have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA—DR provides that this list may be modified pursuant to Article 3.25.4, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA—DR; *see also* section 203(o)(4)(C) of the CAFTA—DR Implementation Act.

The CAFTA—DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA—DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA—DR")

AGENCY: The Committee for the Implementation of Textile Agreements.

Annex 3.25 list of products determined to be not commercially available in the territory of any Party to the CAFTA—DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) (“CITA’s Procedures”).

On August 14, 2026, CITA received a Commercial Availability Request (“Request”) from BK House LLC for certain viscose printed twill lining fabric, as specified below. On August 18, 2026, in accordance with CITA’s Procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA—DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) must be submitted by August 28, 2026, and any Rebuttal to a Response (“Rebuttal”) must be submitted by September 3, 2026, in accordance with sections 6 and 7 of CITA’s Procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request with an offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA—DR Implementation Act, and section 8(c)(2) of CITA’s Procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA—DR.

The subject product has been added to the list in Annex 3.25 of the CAFTA—DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA—DR Commercial Availability proceedings, at <https://otexaprod.trade.gov/otexacapublicsite/shortsupply/cafta>.

Specifications: Certain Viscose Printed Twill Lining Fabric

HTS: 5408.24.90.

Fiber Content: 100% Viscose Rayon.

Fabric Construction: Twill.

Fabric Finishing Processes: Printed.

Weight: 70 to 80 g/m².

Width: 137.16 to 139.70 cm (54 to 55 inches).

Joshua Kroon,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2026–19674 Filed 9–24–26; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (“CAFTA—DR”)

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA—DR.

SUMMARY: The Committee for the Implementation of Textile Agreements (“CITA”) has determined that certain polyester/viscose dyed twill lining fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA—DR countries. The product is added to the list in Annex 3.25 of the CAFTA—DR in unrestricted quantities.

DATES: *Applicable Date:* September 25, 2026.

ADDRESSES: <https://otexaprod.trade.gov/otexacapublicsite/requests/cafta> under “Approved Requests,” File Number: CA2026007.

FOR FURTHER INFORMATION CONTACT:

Laurie Mease, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2043 or Laurie.Mease@trade.gov.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA—DR; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (“CAFTA—DR Implementation Act”), Public Law 109–53; the Statement of Administrative Action accompanying the CAFTA—DR Implementation Act; and Presidential Proclamation 7987 (February 28, 2006).

Background: The CAFTA—DR provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA—DR have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA—DR provides that this list may be modified pursuant to Article 3.25.4, when the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA—DR; see also section 203(o)(4)(C) of the CAFTA—DR Implementation Act.

The CAFTA—DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for

interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamation 7987, the President delegated to CITA the authority under section 203(o)(4) of CAFTA—DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to the CAFTA—DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement*, 73 FR 53200) (“CITA’s Procedures”).

On August 14, 2026, CITA received a Commercial Availability Request (“Request”) from BK House LLC for certain polyester/viscose dyed twill lining fabric, as specified below. On August 18, 2026, in accordance with CITA’s Procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA—DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) must be submitted by August 28, 2026, and any Rebuttal to a Response (“Rebuttal”) must be submitted by September 3, 2026, in accordance with sections 6 and 7 of CITA’s Procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request with an offer to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA—DR Implementation Act, and section 8(c)(2) of CITA’s Procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA—DR.

The subject product has been added to the list in Annex 3.25 of the CAFTA—DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA—DR Commercial Availability proceedings, at <https://otexaprod.trade.gov/otexacapublicsite/shortsupply/cafta>.

Specifications: Certain Polyester/Viscose Dyed Twill Lining Fabric

HTS: 5515.11.00.

Fiber Content: 48% to 56% Polyester, 44% to 52% Viscose.

Fabric Construction: Twill.
Fabric Finishing Processes: Dyed.
Weight: 81 to 90 g/m².
Width: 127.00 to 142.24 cm (50 to 56 inches).

Joshua Kroon,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2026–19675 Filed 9–24–26; 8:45 am]

BILLING CODE 3510-DR-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; AmeriCorps Seniors Application Instructions, Progress Reporting, Independent Living and Respite Surveys

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted an information collection request (ICR) for the AmeriCorps Seniors application instructions, progress reporting, and independent living and respite surveys.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 26, 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: Robin Corindo, AmeriCorps Seniors, 202–489–5578, or by email at rcorindo@americorps.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;

- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment on this information collection was published in the **Federal Register** on June 25, 2026, at 91 FR 38408. The comment period ended August 24, 2026. Two public comments were received in response to that notice. Both supported consolidating the Progress Report Supplement questions into the Project Progress Report. One supported continuation of the Independent Living and Respite Survey while the other supported reviewing the survey to shorten it. AmeriCorps Seniors is reviewing the survey but seeks to continue using the existing survey in the meantime. The consolidation of the PRS into the PPR results in a 1,250 hour decrease in burden hours.

Title of Collection: AmeriCorps Seniors Application Instructions and Progress Reporting.

OMB Control Number: 3045–0035.

Type of Review: Revision.

Respondents/Affected Public:

Businesses and organizations, and State, local, or Tribal governments.

Total Estimated Number of Annual Responses: 1,250.

Total Estimated Number of Annual Burden Hours: 5,000.

Abstract: The AmeriCorps Seniors Grant Application is used by prospective and existing sponsors of AmeriCorps Seniors projects under the AmeriCorps Seniors RSVP (RSVP), AmeriCorps Seniors Foster Grandparent Program (FGP), AmeriCorps Seniors Senior Companion Program (SCP), and AmeriCorps Seniors Senior Demonstration Program (SDP). The Project Progress Report (PPR) and Progress Report Supplement are currently used to report progress toward accomplishing work plan goals and objectives, reporting volunteer and service outputs, reporting actual outcomes related to self-nominated performance measures, meeting challenges encountered, describing significant activities, and requesting technical assistance. This revision eliminates the Progress Report Supplement and incorporate some of the Supplement questions into the PPR instead. The Application Instructions

and PPR forms in this package conform to AmeriCorps’ web-based electronic grants management system. The SCP Independent Living Survey and SCP Respite Survey are instruments that collect information from Senior Companion clients and caregivers. The purpose of the surveys is to allow SCP projects to measure the impact of independent living and respite services on clients’ and caregivers’ social ties and perceived social support. These surveys may also be used by RSVP projects that provide independent living and respite services. AmeriCorps also seeks to continue using the currently approved information collection until the revised information collection is approved by OMB. The currently approved information collection is due to expire on September 30, 2026.

John Leverston,

Acting Director, AmeriCorps Seniors.

[FR Doc. 2026–19641 Filed 9–24–26; 8:45 am]

BILLING CODE 6050-28-P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; President’s Volunteer Service Award

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Corporation for National and Community Service, operating as AmeriCorps, has submitted a request to renew the President’s Volunteer Service Award information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by October 26, 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: Emily Stock, Project Manager for Volunteer Initiatives, 202–606–3836, or by email at estock@americorps.gov.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of AmeriCorps, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment on this information collection was published in the **Federal Register** on July 20, 2026, at 91 FR 45267. The comment period ended September 18, 2026. Three comments were received in response to that notice. All three expressed support of PVSA generally and two expressly stated their strong support of the proposal to renew the information collection. One stated that the 20-minute requirement represents the minimum administrative input necessary to collect verifiable volunteer hours and represents an efficient and well-calibrated requirement to give certifying entities sufficient structure to log and confirm service hours. Another stated their support for renewing the current information collection without creating additional administrative burdens and while continuing to modernize the program through online tools to improve the experience for participating organizations. In response, AmeriCorps is continuing to review how online tools could be employed. The third commenter encouraged the Agency to consider several renovations to the PVSA program overall, which the Agency will consider and will account for any implications on the information collection that may result.

Title of Collection: President's Volunteer Service Award.

OMB Control Number: 3045-0086.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations, and State, local, or Tribal governments, Individuals.

Total Estimated Number of Annual Responses: 200,000.

Total Estimated Number of Annual Burden Hours: 66,666.

Abstract: AmeriCorps is soliciting comments concerning its proposed renewal of the President's Volunteer Service Awards (PVSA) application, parts A, B, C, D and E. The application form is used by organizations to review information on individuals' service contributions to determine eligibility and qualification for the President's Volunteer Service Award. AmeriCorps seeks to renew the current information collection without revisions. The information collection will be used in the same manner as the existing application. The currently approved information collection is due to expire on September 30, 2026.

John Leverston,

Acting Director, AmeriCorps Seniors.

[FR Doc. 2026-19640 Filed 9-24-26; 8:45 am]

BILLING CODE 6050-28-P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF-2026-HQ-0100]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as "the Department", "Department of War" or "DoW") has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 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:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Intercontinental Ballistic Missile Hardened Intersite Cable Right-of-Way Landowner Questionnaire; AF Form 3951; OMB Control Number 0701-0141.

Type of Request: Extension.
Number of Respondents: 2,834.
Responses per Respondent: 1.
Annual Responses: 2,834.
Average Burden per Response: 15 minutes.

Annual Burden Hours: 709.

Needs and Uses: This form collects updated landowner/tenant information as well as data on local property conditions which could adversely affect the Hardened Intersite Cable System (HICS) such as soil erosion, projected/building projects, evacuation plans, etc. This information also aids in notifying landowners/tenants when HCIS preventative or corrective maintenance becomes necessary to ensure uninterrupted Intercontinental Ballistic Missile command and control capability. The information collection requirement is necessary to report changes in ownership/lease information, conditions of missile cable route and associated appurtenances, and projected building/excavation projects. The information collected is used to ensure system integrity and to maintain a close contact public relations program with involved personnel and agencies.

Affected Public: Business or other for-profit; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.
DoD Clearance Officer: Mr. Reginald Lucas.

Dated: September 21, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19604 Filed 9-24-26; 8:45 am]

BILLING CODE 3911-44-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-HA-0960]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as "the Department", "Department of War" or "DoW") has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 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:

Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Continued Health Care Benefit Program (CHCBP); DD Form 2837; OMB Control Number 0720-0066.

Type of Request: Extension.

Number of Respondents: 1,034.

Responses per Respondent: 1.

Annual Responses: 1,034.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 259.

Needs and Uses: The information collection requirement is necessary for individuals to apply for enrollment in CHCBP. CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care coverage under the Military Health System.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19610 Filed 9-24-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-OS-2048]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the OUSD (P&R) announces a proposed public information collection and seeks

public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 24, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Oversight and Compliance Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Federal Voting Assistance Program, Defense Support Services Center/Personnel Readiness Management Agency, Under Secretary of War for Personnel and Readiness, 4800 Mark Center Drive, Suite 05E22, Alexandria, VA 22350-5000, Sara Hedlund, (571) 372-0712.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Post-Election Voting Survey of State Election Officials; OMB Control Number 0704-0643.

Needs and Uses: The primary objective of the Post-Election Voting Survey of State Election Officials, conducted on behalf of the Federal Voting Assistance Program (FVAP), is to gather feedback from the State Election

Officials (SEOs) responsible for administering the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) on behalf of the military and overseas voters. This customer service focused survey will help FVAP understand how it can best engage election officials and identify areas where its processes can be improved. This ongoing evaluation will help determine the extent to which FVAP is achieving its mission and what actions FVAP might be able to take in the future to improve its products and services. Conducting this research will help FVAP meet its federal and congressional mandates in terms of ensuring that UOCAVA voters are receiving adequate support from state officials in the registration and voting process for federal elections. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges. To obtain the necessary information, the Post-Election Voting Survey of State Election Officials project will use data collected from the population of SEOs from all 50 U.S. States, the District of Columbia, and the four U.S. territories covered under UOCAVA: Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands.

Affected Public: Individuals or households.

Annual Burden Hours: 13.75 hours.

Number of Respondents: 55.

Responses per Respondent: 1.

Annual Responses: 55.

Average Burden per Response: 15 minutes.

Frequency: Biennially.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19607 Filed 9-24-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2026-HA-2049]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Health Agency (DHA)

announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 24, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Oversight and Compliance Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Amanda Grifka, 703-681-1771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Professional Fulfillment Index Survey; OMB Control Number 0720-PFIS.

Needs and Uses: The Professional Fulfillment Index (PFI) survey will be used as a method of program evaluation and quality improvement project as it aims to align the core values of agency, connection, service, and efficacy to workforce engagement. The survey will allow for systematic, reliable, and timely assessment of the impact of

events, actions, and interventions on the well-being and engagement of the Military Health System (MHS) workforce in a way that will enable quick iteration and focus of limited resources on areas of highest impact.

Affected Public: Federal government; individuals or households.

Annual Burden Hours: 1,167.

Number of Respondents: 7,000.

Responses per Respondent: 1.

Annual Responses: 7,000.

Average Burden per Response: 10 minutes.

Frequency: As required.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19611 Filed 9-24-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2026-OS-1622]

Submission for OMB Review; Comment Request

AGENCY: Cost Assessment and Program Evaluation (CAPE), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as “the Department”, “Department of War” or “DoW”) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 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: Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Cost and Software Data Report (CSDR); Cost Data Summary Report (DD Form 1921), Functional Cost-Hour Report (DD 1921-1), Progress Curve Report (1921-2), and Sustainment

Functional Cost-Hour Report (DD Form 1921-5); OMB No. 0704-0671.

Type of Request: Extension.

Contractor Work Breakdown Structure

Annual Burden Hours: 30,552.

Number of Respondents: 228.

Responses per Respondent: 4.

Annual Responses: 912.

Average Burden per Response: 33.5 hours.

Cost Data Summary Report DD-1921

Annual Burden Hours: 17,753.1.

Number of Respondents: 228.

Responses per Respondent: 4.4.

Annual Responses: 1,003.

Average Burden per Response: 17.7 hours.

Functional Cost and Hours Report DD-1921-1

Annual Burden Hours: 44,198.

Number of Respondents: 228.

Responses per Respondent: 3.6.

Annual Responses: 820.

Average Burden per Response: 53.9 hours.

Progress Curve Report DD-1921-2

Annual Burden Hours: 56,088.

Number of Respondents: 228.

Responses per Respondent: 1.

Annual Responses: 228.

Average Burden per Response: 246 hours.

Contractor Business Data Report DD-1921-3

Annual Burden Hours: 16,330.

Number of Respondents: 115.

Responses per Respondent: 1.

Annual Responses: 115.

Average Burden per Response: 142 hours.

Sustainment Functional Cost-Hour Report DD-1921-5

Annual Burden Hours: 5,676.

Number of Respondents: 40.

Responses per Respondent: 2.2.

Annual Responses: 88.

Average Burden per Response: 64.5 hours.

Cost and Software Data Reporting DD-2794

Annual Burden Hours: 23,712.

Number of Respondents: 228.

Responses per Respondent: 1.

Annual Responses: 228.

Average Burden per Response: 104 hours.

Needs and Uses: The intent of the Cost Data Summary Report (DD Form 1921), Functional Cost-Hour Report (DD 1921-1), Progress Curve Report (1921-2), and Sustainment Functional Cost-Hour Report (DD Form 1921-5) are to

capture direct and indirect actual and estimated cost and quantity data on major Government contracts on an annual or event-driven basis. The collected data is the primary data source utilized when completing cost estimates. Respondents are any weapon system contractor or government entity with contracts, subcontracts, or agreements that are required to provide Cost and Software Data Reports based on all anticipated costs that individually or collectively surpass the corresponding dollar thresholds established in DoDI 5000.73.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: September 21, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19608 Filed 9-24-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2025-HQ-0202]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as “the Department”, “Department of War” or “DoW”) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 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: Reginald Lucas, (571) 372-7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: United States Naval Academy Sponsor Program; OMB Control Number 0703-0054.

Type of Request: Reinstatement.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: The United States Naval Academy (USNA) Plebe Sponsor Program is a unique program offered through the Naval Academy that pairs midshipmen with faculty, staff, and local community area families to provide local support and a “home away from home” for midshipmen that is mutually beneficial to both the midshipman and the sponsor. This information collection is needed to determine the eligibility and overall compatibility between sponsor applicants and fourth-class midshipmen at USNA. In their first year, midshipmen desiring to participate in the program are assigned to sponsors from the local community area. An analysis of the information collected is performed by the Sponsor Program Officer in Charge to best match sponsor with a midshipman. Without this information collection, the sponsor program would not be able to determine if a sponsor family was “safe” to place a midshipman with nor appropriately match the interests of the midshipman with those of the sponsor family.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: September 21, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19605 Filed 9-24-26; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2026-HQ-0430]

Privacy Act of 1974; System of Records

AGENCY: Department of Navy, Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying and reissuing a current system of records titled, “DON Child

and Youth Program,” NM01754-3. This system of records was originally established to verify children’s health and immunization status, determine program eligibility for children and families, and support childcare programs designed to meet their needs. This system of records notice (SORN) is being updated to align with current cybersecurity policies, guidelines, and regulations. These updates include incorporating the DoD standard routine uses (A through J) and expanding the information collection authority and purpose. These changes ensure the Navy and Marine Corps Child and Youth Program can maintain accurate family and staff records for reporting. Lastly, the DoD is also modifying additional sections to improve clarity and reflect changes.

DATES: This system of records is effective upon publication; however, comments on the routine uses will be accepted on or before October 26, 2026. The Routine Uses are effective at the close of the comment period, unless comments have been received from interested members of the public that require modification and republication of the notice.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Oversight and Compliance Directorate, Regulatory Division, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory M. Cason, Director (Acting), Department of the Navy (DON) FOIA/Privacy Act Program Office, 2000 Navy Pentagon, Washington, DC 20350-2000, (202) 685-6533.

SUPPLEMENTARY INFORMATION:

I. Background

The DON provides a comprehensive range of high-quality, affordable childcare and youth services for

dependents of eligible military and DoD civilian personnel. The program is designed to support the operational readiness of the force by ensuring that dependents are in a safe, healthy, and nurturing environment, thereby enabling service members and civilian employees to focus on their respective missions. Services are delivered through a variety of platforms, including Child Development Centers (CDCs), Family Child Care (FCC) homes, School-Age Care (SAC), and Youth Programs, which collectively cater to children from six weeks to eighteen years of age. The DON utilizes an online application and data management system to support the Child and Youth Program (CYP) mission. This system is essential to managing key programmatic functions, such as determining and verifying child and family for services, tracking health and immunization information to ensure the safety and well-being of all participants, and ensuring the program is responsive to the needs of the children and families it serves. Subject to public comment, the DoD proposes to update this SORN to add the standard DoD routine uses (routine uses A through J). Additionally, the following sections of this SORN are being modified: (1) the System Location section to reflect changes in the in the physical storage location of the system records; (2) the System Manager section to update the titles, contact information, and specific offices of the system managers; (3) the Authority Section to incorporate newly enacted statutory or regulatory authorities that authorize this system; (4) the Purpose section to expand the operational scope of the system; (5) the Categories of Individuals Covered by the System section to expand the individuals covered; (6) the Categories of Records to remove the SSN, and to clarify how the records relate to the revised Category of Individuals; (7) the Policies and Practice for Retrieval of Records eliminate the use of Social Security Numbers (SSNs) for record retrieval by transitioning to DoD ID and DoD Benefits numbers; (8) the Retention and Disposal section to reflect the approved disposition; (9) the Administrative, Technical, and Physical Safeguards to update the safeguards protecting personal information; (10) the Record Access Procedures section to identify the appropriate component to which a request for should be directed; (11) the Record Source Categories to clarify record sources, (12) the Contesting and the Notification Procedures sections to update the appropriate citation for notifications; and (13) the Exemption section to

update and clarify the specific regulatory language and statutory provisions that govern system exemptions.

DoD SORNs are published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Oversight and Compliance Directorate, Privacy and Civil Liberties Division website at <https://pclt.defense.gov/DIRECTORATES/Privacy-and-Civil-Liberties-Directorate/Privacy/SORNs>.

II. Privacy Act

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

DON Child and Youth Program, NM01754–3.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Navy and Marine Corps Child and Youth Program or Family Service Centers are located at various installations both in CONUS and overseas. Official mailing addresses are published in <https://public.militarychildcare.csd.disa.mil/>.

SYSTEM MANAGERS:

A. Policy and Compliance Manager, Navy Installations Command, 716 Sicard Street, SE, Suite 1000, Washington Navy Yard, D.C. 20374–5140.

B. Program Manager, Child and Youth Programs (CYP), U.S. Marine Corps, Manpower and Reserve Affairs, Marine and Family Programs Division, 3280 Russell Road, MCB Quantico, VA 22134–5009.

C. Secondary Managers: Navy and Marine Corps CYP Directors located at various installations both in CONUS and overseas manage paper records on-site.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Navy; 10 U.S.C. 8043, Headquarters, Marine Corps; DoD Instruction (DoDI) 6060.2, Child Development Programs (CDPS); DoDI 6060.4, Youth Services (YS) Policy; DoD Instruction (DoDI) 6025–18, Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs; OPNAV Instruction 1700.9 series, Child and Youth Programs; Marine Corps Order P1710.30E, Children, Youth, and Teen Program (CYTP).

Purpose(s) of the System: The purpose of this system of records is to effectively administer the DoD CYP to meet the needs of service members and their families. Specifically, information in this system is used to:

A. Determine eligibility and priority for services and manage enrollment.

B. Ensure the health, safety, and proper development of each child by verifying health status and immunizations.

C. Calculate and administer program fees in accordance with DoD’s sliding scale fee policy.

D. Support program administration and operational requirements, such as ensuring proper staffing.

E. Meet required statistical reporting obligations for demographic data, including race and ethnicity.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any member of the Armed Forces or DoD personnel receiving services under the Navy Child and Youth Program or the Marine Corps Children, Youth, and Teen Program. These members include families (sponsor, spouse, children, emergency contacts), staff, contractors, volunteers, Family Child Care (FCC) Providers and Household Family Members.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal information includes first and last name; DoD ID number; home and work address; telephone numbers; email addresses; and emergency contact information. Sex, date and place of birth, race, ethnicity, marital status, relationship (e.g., sponsor-to-child), and pictures. Medical information, which may include health status, special needs, required accommodations, immunization dates, and medical waivers. Families (Sponsor, Spouse, Children) information includes, service, rank & military status, employer command name, and spouse’s work status, Total Family Income (TFI), child-specific information includes school attending and grade level, and children’s developmental profiles.

B. Staff professional information includes educational references, prior work experience, and training records.

C. Contractors, Volunteers, Family Child Care (FCC) Providers & Household Family Members professional and performance information includes employment history, education records, and performance ratings. Provider website URL, provider program type, records related to fire and safety reports, housing and environmental health inspections, payment records, Child Development Center and Family Child Care insurance coverage, base security checks, and information from Federal, State, and local agencies related to screening. License Information (State, Number, Issue Date) and Accreditation Information (Accrediting Body, Expiration).

Note: This system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs (DoDI 6025.18) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoDI 6025.18 may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

RECORD SOURCE CATEGORIES:

Records and information stored in this system are obtained from sponsors seeking program services and/or applying as child care providers or as participants of the child development homes; background checks from federal, state and local authorities or Naval Criminal Investigative Service; housing officers; information obtained from the Family Advocacy Program records; base security officers; base fire, safety and health officers; local family child care monitors and parents of children enrolled; health care providers, employers, and others providing information identified in the categories of records in the system.

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 of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is relevant and necessary.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency, in coordination with an Office of Inspector General, for the purpose of conducting an audit, investigation, inspection, evaluation, or other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To local, State and Federal officials involved in Child Care Services, if required, in the performance of their official duties relating to child abuse reporting and investigations.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in paper and electronic storage media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by last name of the individual covered by the system, DoD ID Number, and DoD Benefits Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are kept and destroyed 3 years after the individual is no longer in/eligible for the Child Development Program or leaves the installation CYP. No records are destroyed for an active patron or provider. Records may be kept longer if there is an active legal investigation.

Records are destroyed by burning, shredding, macerating, pulping, degaussing, erasing or other appropriate means.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Physical access to terminals, terminal rooms, buildings, activities grounds are controlled by locked terminals and rooms outside of regular working hours. Computer facilities and terminals are in restricted areas accessible only to authorized persons. Child Youth Management Systems can be accessed by a combination of username and password, Common Access Card/Public Key Infrastructure to enable encryption and verification of user's identity to restrict user access to those authorized persons who have a need to know. Records are available to only those authorized persons who have a need to know and are kept in locked containers. DON Child and Youth Program consists

of web-based applications hosted on virtual servers on an approved DoD Information Network with applicable site-specific physical and environmental controls.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should address written inquiries to the Navy or Marine Corps FOIA Requester Service Center, Office of Freedom of Information, <https://www.jag.navy.mil/foia/>. Signed written requests should contain the name and number of this system of records notice along with full name, current address, and email address of the individual. Must reasonably describe the records being requested, must state the category of the requester for fee purposes (*i.e.*, commercial, media, educational or other), must contain an agreement to pay all fees that might be incurred, must state whether a copy of the record is desired, or inspection of records only. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

If executed outside the United States: “I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).”

If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).”

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD has exempted records maintained in this system from 5 U.S.C. 552a(c)(3) and (4), (d)(1), (2), (3), and (4); (e)(1), (2) (3), (4)(G)–(I), (5), and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) and (j)(2), as applicable. An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), and (c), and published in 32 CFR part 310. In addition, when exempt records received

from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the prior systems of records from which they originated and claims any additional exemptions set forth here. For additional information contact the system manager.

HISTORY:

May 27, 2010, 75 FR 29728

[FR Doc. 2026–19612 Filed 9–24–26; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2026–HQ–0298]

Submission for OMB Review; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense (referred to herein as “the Department”, “Department of War” or “DoW”) has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by October 26, 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:

Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Naval Academy Candidate Application Package; USNA Forms 1110/7, 1110/21, 5500/1, 5710/1, 1531/11, 1531/16, and 1531/17; OMB Control Number 0703–0036.

Type of Request: Revision.

Request for Information

Number of Respondents: 26,500.
Responses per Respondent: 1.
Annual Responses: 26,500.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 2,208.

International Applicant Nominations

Number of Respondents: 128.
Responses per Respondent: 1.
Annual Responses: 128.
Average Burden per Response: 5 minutes.
Annual Burden Hours: 11.

Preliminary Application

Number of Respondents: 16,000.
Responses per Respondent: 1.
Annual Responses: 16,000.
Average Burden per Response: 60 minutes.
Annual Burden Hours: 16,000.

Application Process

Number of Respondents: 14,000.
Responses per Respondent: 1.
Annual Responses: 14,000.
Average Burden per Response: 120.96 minutes.
Annual Burden Hours: 28,225.

Recommendations and Evaluations

Number of Respondents: 70,775.
Responses per Respondent: 1.
Annual Responses: 70,775.
Average Burden per Response: 59.61 minutes.
Annual Burden Hours: 70,317.

Accepted Candidate Package

Number of Respondents: 1,200.
Responses per Respondent: 5.23.
Annual Responses: 6,279.
Average Burden per Response: 54.66 minutes.
Annual Burden Hours: 5,720.

Total

Number of Respondents: 112,603.
Annual Responses: 133,682.
Annual Burden Hours: 122,481.
Needs and Uses: This information requirement is used to determine the eligibility, competitive standing, and the scholastic and leadership potential of candidates for an appointment to the United States Naval Academy (USNA). Prior performance, including academic achievements, involvement in extracurricular activities and performance in leadership positions, has been found to be an excellent predictor of success. Without this information, the Naval Academy’s ability to recruit qualified candidates will be seriously impacted. An analysis of the information collected is made by the Admissions Board in order to gauge the qualifications of individual candidates. Respondents are applicants for admission to the USNA, persons interested in applying for admission to the USNA, school officials for those applicants, Chain of Command officials for active-duty applicants, person’s providing recommendations for

applicants, Blue and Gold Officers, Embassy or Naval Attachés for international applicants from other countries, and local law enforcement officials.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

DoD Clearance Officer: Mr. Reginald Lucas.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19624 Filed 9-24-26; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN-2026-HQ-0397]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the United States Marine Corps (USMC) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 24, 2026.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Director of Administration and Management, Oversight and Compliance Directorate, Regulatory Division, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Marine Corps Marathon, PO Box 188, Quantico, VA 22134, ATTN: Lieutenant Colonel Kenneth A. Tarr, or call 703-432-8132.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Marine Corps Marathon Organization (MCMO) Participant Registrations; OMB Control Number 0712-0005.

Needs and Uses: The Marine Corps Marathon Organization (MCMO) is tasked with the management of the Marine Corps Marathon (MCM) races on behalf of the Marine Corps. The MCM Race Application collection is necessary to register individuals for MCM races, identify participants for timing and results purposes, determine award categories, and to ensure appropriate contact information is on file if emergency treatment is required. The collection serves a secondary purpose to foster marketing relationships for the Marine Corps and provide participation data for future event planning and promotion.

Affected Public: Individuals or households.

Annual Burden Hours: 8,967.

Number of Respondents: 61,300.

Responses per Respondent: 1.

Annual Responses: 61,300.

Average Burden per Response: 2 minutes (Volunteer Registration); 5 minutes (MCM Kids Race, MCM 17.75K, Quantico 12K, and Turkey Trot registrations); 10 minutes (MCM Weekend and Historic Half Weekend registrations)

Frequency: On Occasion.

Dated: September 22, 2026.

Stephanie J. Bost,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2026-19609 Filed 9-24-26; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[Docket No.: ED-2026-SCC-2509]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Campus Safety and Security Survey

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 26, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting "Department of Education" under "Currently Under Review," then check the "Only Show ICR for Public Comment" checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the "View Information Collection (IC) List" link. Supporting statements and other supporting documentation may be found by clicking on the "View Supporting Statement and Other Documents" link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Amy Wilson, (202) 987-1318.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Campus Safety and Security Survey.

OMB Control Number: 1840–0833.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 5,784.

Total Estimated Number of Annual Burden Hours: 2,604.

Abstract: The collection of information through the Campus Safety and Security Survey (CSS) is necessary under section 485 of the Higher Education Act of 1965, as amended, with the goal of increasing transparency surrounding college safety and security information for students, prospective students, parents, employees and the general public. The survey is a collection tool to compile the annual data on campus crime and fire safety. The data collected from the individual institutions by the Department of Education (ED) is made available to the public through the Campus Safety and Security Data Analysis and Cutting Tool as well as the College Navigator.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–19680 Filed 9–24–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–2476]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before October 26, 2026.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education”

under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, 202–453–5967.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: eZ-Audit: Electronic Submission of Financial Statements and Compliance Audits.

OMB Control Number: 1845–0072.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments; Individuals and Households.

Total Estimated Number of Annual Responses: 6,632.

Total Estimated Number of Annual Burden Hours: 6,603.

Abstract: eZ-Audit is a web-based process designed to facilitate the submission of compliance and financial statement audits, expedite the review of those audits by the Department, and provide more timely and useful information to public, non-profit and proprietary institutions regarding the Department’s review. eZ-Audit establishes a uniform process under which all institutions submit directly to the Department any audit required under the Title IV, HEA program regulations. eZ-Audit continues to have minimal number of financial template line items and general information

questions. There has been no change to the form or method of submission.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–19644 Filed 9–24–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–564–000]

Natural Gas Pipeline of America, LLC; Horizon Pipeline Company, LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed North Extension Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental effects of the North Extension Project involving construction and operation of facilities by Natural Gas Pipeline of America, LLC (Natural) and Horizon Pipeline Company, LLC (Horizon) in Grundy, McHenry, Lake, Livingston and Will Counties, Illinois and Kenosha County, Wisconsin. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your

comments so that the Commission receives them in Washington, DC, on or before 5:00 p.m. Eastern Time on October 22, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on August 12, 2026, you will need to file those comments in Docket No. CP26–564–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Natural and Horizon provided landowners with a fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are

available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; a comment on a particular project is considered a "Comment on a Filing"; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–564–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public

Participation at (202) 502–6595 or OPP@ferc.gov.

Summary of the Proposed Project

Natural and Horizon propose the construction and operation of: (i) a new 11,107 horsepower (HP) compressor station (CS), CS 119, in Lake County, Illinois; (ii) addition of a new 31,900 HP compressor unit and re-wheeling of the existing compressor unit 1 at the existing CS 312 in Livingston County, Illinois; (iii) addition of a new 11,107 HP compressor unit at the existing CS 113 in Will County, Illinois; (iv) a new pipeline lateral consisting of approximately 11.5 miles of pipeline starting in Lake County, Illinois and ending in Kenosha County, Wisconsin with appurtenant facilities; (v) a new meter station at the terminus of the lateral, (vi) a new valve site in Kenosha County, Wisconsin and (vii) upgrades to existing valve sites in McHenry and Grundy Counties, Illinois. According to Natural and Horizon, the purpose of the North Extension Project is to provide 185,000 dekatherms per day of incremental firm natural gas transportation service to Wisconsin Electric Power Company. The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed facilities including the use of workspaces, additional temporary workspaces, contractor yards, and access roads would require the use of about 331.4 acres of land. Following construction, Natural and Horizon would permanently maintain about 82.0 acres of land to operate the project. About 90 percent of the proposed pipeline route parallels existing utility easements.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss effects that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FercOnlineSupport@ferc.gov or call toll free, (866) 208–3676 or TTY (202) 502–8659.

- air quality and noise; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Natural and Horizon. This preliminary list of issues may change based on your comments and our analysis:

- farmland (row cropping, pastures);
- prairie remnants;
- wetlands and waterbodies;
- noise; and
- nighttime lighting.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environmental-environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law

and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list,

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26-564-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. *This email address is unable to accept comments.*

Or

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: September 22, 2026.

Carlos D. Clay,
Deputy Secretary.

[FR Doc. 2026-19664 Filed 9-24-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Exempt Wholesale Generator filings:

Docket Numbers: EG26-324-000.

Applicants: Washington East Solar LLC.

Description: Washington East Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/22/26.

Accession Number: 20260922-5083.

Comment Date: 5 p.m. ET 10/13/26.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER10–2126–010; EL25–91–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits Response to 07/08/2025 Show Cause Order.

Filed Date: 9/4/25.

Accession Number: 20250904–5159.

Comment Date: 5 p.m. ET 9/25/25.

Docket Numbers: ER10–2126–011; EL26–2–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits Response to 10/16/2025 Show Cause Order.

Filed Date: 12/12/25.

Accession Number: 20251212–5331.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER18–92–008.

Applicants: Carroll County Energy LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 9/22/26.

Accession Number: 20260922–5108.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER22–907–006.

Applicants: Indeck Niles, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 9/22/26.

Accession Number: 20260922–5098.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER23–982–002.

Applicants: CPV Three Rivers, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 9/22/26.

Accession Number: 20260922–5105.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER23–2979–002.

Applicants: CPV Maple Hill Solar, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 9/22/26.

Accession Number: 20260922–5104.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–2720–003.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment:

1166R48 Oklahoma Municipal Power Authority NITSA and NOA to be effective 9/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5054.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–2920–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment:

2198R41 Kansas Power Pool NITSA NOA to be effective 9/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5022.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3023–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment:

1636R35 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 9/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5014.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3024–002.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment:

1875R11 Kansas Electric Power Cooperative, Inc. NITSA and NOA to be effective 9/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5021.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3188–001.

Applicants: Sprague Energy Solutions LLC.

Description: Tariff Amendment:

Deficiency Filing to be effective 9/19/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5051.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3276–001.

Applicants: Southwest Power Pool, Inc.

Description: Tariff Amendment:

1276R42 Evergy Metro NITSA NOA to be effective 7/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5030.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3812–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Rutherford Amended and Restated Rate Schedule No. 317 to be effective 12/31/9998.

Filed Date: 9/21/26.

Accession Number: 20260921–5255.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3813–000.

Applicants: Midcontinent

Independent System Operator, Inc.

Description: § 205(d) Rate Filing:

2026–09–21_Att X—Legacy Queue Acceleration Proposal to be effective 10/19/2026.

Filed Date: 9/21/26.

Accession Number: 20260921–5258.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: ER26–3814–000.

Applicants: Duke Energy Carolinas, LLC.

Description: § 205(d) Rate Filing: DEC-Blue Ridge Amended and Restated Rate Schedule No. 315 to be effective 12/31/9998.

Filed Date: 9/21/26.

Accession Number: 20260921–5260.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3815–000.

Applicants: Northern Indiana Public Service Company LLC.

Description: Cost Recovery Filing of Northern Indiana Public Service Company LLC.

Filed Date: 9/21/26.

Accession Number: 20260921–5330.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3816–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: Rate Schedule No. 191—Engineering & Procurement Agreement to be effective 9/23/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5053.

Comment Date: 5 p.m. ET 10/13/26.

Docket Numbers: ER26–3817–000.

Applicants: EDPR Scarlet III LLC.

Description: Initial Rate Filing: Certificate of Concurrence for LGIA Co-Tenancy Agreement to be effective 9/23/2026.

Filed Date: 9/22/26.

Accession Number: 20260922–5075.

Comment Date: 5 p.m. ET 10/13/26.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number. Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding. eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Dated: September 22, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–19661 Filed 9–24–26; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. CP26–556–000]****Tres Palacios Gas Storage LLC; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Tres Palacios Smith Cavern Expansion Project**

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the Tres Palacios Smith Cavern Expansion Project involving construction and operation of facilities by Tres Palacios Gas Storage LLC (Tres Palacios) in Matagorda and Wharton Counties, Texas. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC, on or before 5:00 p.m. Eastern Time on October 22, 2026. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission

staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on July 22, 2026, you will need to file those comments in Docket No. CP26–556–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission’s current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Tres Palacios provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to

assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP26–556–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or OPP@ferc.gov.

Summary of the Proposed Project

The Tres Palacios Smith Cavern Expansion Project would increase Tres Palacios’ ability to provide firm storage services and interruptible hub services in the Gulf Coast region and add approximately 24.8 billion cubic feet (Bcf) of new working gas capacity and increase injection capabilities at the Tres Palacios Gas Storage Facility.

The Tres Palacios Smith Cavern Expansion Project would consist of the following facilities:

- convert three existing salt brine caverns into natural gas salt dome storage caverns (Smith Caverns 5, 6, and 7);
- construct and install 5.4 miles of new 36-inch-diameter pipeline loop (Mainline Loop Line 300) and three, approximately 1.7 mile 16-inch-diameter pipeline Cavern Laterals (100–F, 100–G, and 100–H);
- construct and operate the new El Campo Compressor Station, including four new reciprocating compressor units with associated compression equipment and associated two pipeline interconnects;
- upgrades at the existing Tres Palacios Gas Storage Facility to add three new reciprocating compressor units with associated compression equipment upgrades, six new cooling bays, and one new 750 million standard cubic feet per day gas dehydration system;
- modifications at three existing metering and regulation stations; and
- construct and install related appurtenant facilities in Matagorda and Wharton Counties, Texas.

The general location of the project facilities is shown in appendix 1.¹

Land Requirements for Construction

Construction of the proposed facilities would disturb approximately 185.0 acres. Following construction, Tres Palacios would maintain about 61.0 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 94 percent of the proposed Mainline Loop Line 300 pipeline route parallels existing pipeline, utility, or road rights-of-way.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;

- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary² and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.³ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁴ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; Native American Tribes; environmental and public interest groups; other interested parties; and local libraries and media outlets. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

- (1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP26–556–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address

¹ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208–3676 or TTY (202) 502–8659.

² For instructions on connecting to eLibrary, refer to the last page of this notice.

³ Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

⁴ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

as it appeared on this notice. This email address is unable to accept comments.

Or

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

(Authority: 18 CFR 2.1)

Dated: September 22, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-19663 Filed 9-24-26; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP26-1265-000.

Applicants: Delta Mississippi Gas Company, LLC, Spire Mississippi Inc.

Description: Joint Petition for Limited Waiver of Capacity Release Regulations, et al., Request for Expedited Action and Request for Shortened Comment Period of Delta Mississippi Gas Company, LLC, et al.

Filed Date: 9/21/26.

Accession Number: 20260921-5318.

Comment Date: 5 p.m. ET 10/5/26.

Docket Numbers: RP26-1266-000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—26.09.22 Negotiated Agreements to be effective 10/1/2026.

Filed Date: 9/22/26.

Accession Number: 20260922-5027.

Comment Date: 5 p.m. ET 10/5/26.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502-6595 or OPP@ferc.gov.

Dated: September 22, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026-19662 Filed 9-24-26; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OPRM-FAD-241]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-993-3272 or <https://www.epa.gov/nepa>.

Weekly receipt of Environmental Impact Statements (EIS)

Filed September 14, 2026 10 a.m. EST
Through September 21, 2026 10 a.m. EST

Pursuant to CEQ Guidance on 42 U.S.C. 4332.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20260126, Draft, TVA, MS, Hope Solar and Storage Project Draft Environmental Impact Statement, Comment Period Ends: 09/29/2026, Contact: Elizabeth Smith 865-632-3035.

EIS No. 20260127, Final, USAF, OR, Basing F-35A Lightning II Formal Training Unit at Kingsley Field Air National Guard Base, Klamath Falls, Oregon, Contact: Alicia Treece 240-612-8531.

EIS No. 20260128, Draft, FERC, TX, Corpus Christi Liquefaction Stage IV, LLC's et al. CCL Stage 4 Project et al., Comment Period Ends: 11/09/2026, Contact: Office of External Affairs 866-208-3372.

Dated: September 21, 2026.

Prasad Chumble,

Acting Director, Federal Activities Division.

[FR Doc. 2026-19676 Filed 9-24-26; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Benjamin W. McDonough, Secretary of the Board, 20th Street and Constitution Avenue

NW, Washington, DC 20551-0001, not later than October 13, 2026.

A. Federal Reserve Bank of Minneapolis (Mark Nagle, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291. Comments can also be sent electronically to MA@mpls.frb.org:

1. *Rachel Elizabeth Bonsall*, *New York City, New York*; to join the Raleigh Family Control Group, a group acting in concert, to retain voting shares of Lake Elmo Bancshares, Inc., and thereby indirectly retain voting shares of Lake Elmo Bank, both of Lake Elmo, Minnesota.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-19701 Filed 9-24-26; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to

remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Unless otherwise noted, comments regarding the 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 October 13, 2026.

A. Federal Reserve Bank of Cleveland (Jenni M. Frazer, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566. Comments can also be sent electronically to *Comments*.

applications@clev.frb.org:

1. *Middlefork Financial Group, Hyden, Kentucky*; to engage in community development activities pursuant to section 225.28(b)(12) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Keith Dudley, Vice President) 101 Market Street, San Francisco, California 94105-1579.

Comments can also be sent electronically to *SF.Supervision*.

Comments.Applications@sf.frb.org:

1. *JGS Jr. Family Holding Corporation, Salt Lake City, Utah*; to engage in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2026-19702 Filed 9-24-26; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Matching Program

AGENCY: Centers for Medicare and Medicaid Services, Department of Health and Human Services.

ACTION: Notice of a new matching program.

SUMMARY: In accordance with subsection (e)(12) of the Privacy Act of 1974, as amended, the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), is providing notice of the re-establishment of a matching program between CMS and the Do Not Pay Working System, which is administered by the U.S.

Department of the Treasury, Bureau of Fiscal Service (Fiscal Service).

DATES: The deadline for comments on this notice is October 26, 2026. The re-established matching program will commence not sooner than 30 days after publication of this notice, provided no comments are received that warrant a change to this notice. The matching program will be conducted for an initial term of 36 months (approximately October 19, 2026 to October 18, 2029) and within 3 months of expiration may be renewed for three additional years if the parties make no change to the matching program and certify that the program has been conducted in compliance with the matching agreement.

ADDRESSES: Interested parties may submit written comments on this notice to the CMS Privacy Act Officer by mail at: Division of Security, Privacy Policy & Oversight, Information Security & Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid Services, Location: N1-14-56, 7500 Security Blvd., Baltimore, MD 21244-1850, or email walter.stone@cms.hhs.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions about the matching program, you may contact John Sofokles, Government Technical Lead, Center for Program Integrity, Centers for Medicare & Medicaid Services, at 410-786-6373, by email at john.sofokles@cms.hhs.gov, or by mail at 7500 Security Blvd., Baltimore, MD 21244.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), provides certain protections for individuals applying for and receiving federal benefits. The law governs the use of computer matching by federal agencies when records in a system of records (meaning, federal agency records about individuals retrieved by name or other personal identifier) are matched with records of other federal or non-federal agencies. The Privacy Act requires agencies involved in a matching program to:

1. Enter into a written agreement, which must be prepared in accordance with the Privacy Act, approved by the Data Integrity Board of each source and recipient federal agency, provided to Congress and the Office of Management and Budget (OMB), and made available to the public, as required by 5 U.S.C. 552a(o), (u)(3)(A), and (u)(4).

2. Notify the individuals whose information will be used in the matching program that the information they provide is subject to verification through matching, as required by 5 U.S.C. 552a(o)(1)(D).

3. Verify match findings before suspending, terminating, reducing, or making a final denial of an individual's benefits or payments or taking other adverse action against the individual, as required by 5 U.S.C. 552a(p).

4. Report the matching program to Congress and the OMB, in advance and annually, as required by 5 U.S.C. 552a(o) (2)(A)(i), (r), and (u)(3)(D).

5. Publish advance notice of the matching program in the **Federal Register** as required by 5 U.S.C. 552a(e)(12).

This matching program meets these requirements. It re-establishes matching begun in 2020 to address improper payments using the Do Not Pay Working System, as described in 85 FR 58062.

Barbara Demopolous,

CMS Privacy Act Officer, Division of Security, Privacy Policy & Oversight, Information Security and Privacy Group, Office of Information Technology, Centers for Medicare & Medicaid.

Participating Agencies

The U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, and the U.S. Department of the Treasury, Bureau of Fiscal Service (Fiscal Service).

Authority for Conducting the Matching Program

The Payment Integrity Information Act of 2019 (31 U.S.C. 3351 *et seq.*) establishes the DNP Initiative and requires, for the purposes of identifying and preventing improper payments, each executive agency to have access to, and use of, the relevant databases in DNP to verify payment or award eligibility. Additional authorities for this matching program include Executive Order 13520, *Reducing Improper Payments* (74 FR 62201); Executive Order 14249, *Protecting America's Bank Account Against Fraud, Waste, and Abuse* (90 FR 14011); and OMB Memorandum M-25-32, *Preventing Improper Payments and Protecting Privacy Through Do Not Pay*. Additional information regarding the authorities for the collection and maintenance of information is contained within the system of records notices listed below.

Purpose(s)

The purpose of the matching program is to provide CMS with information from the Treasury's Do Not Pay Working System, which CMS will use to identify providers and suppliers who are ineligible for Medicare enrollment; to promptly suspend or revoke the Medicare billing privileges of the identified disqualified providers and

suppliers; to enable recoupment of past payments made to those providers and suppliers; to assist CMS in detecting and preventing fraud, waste, abuse and avoid making future improper payments to disqualified providers and suppliers; and to enhance patient safety for beneficiaries in CMS programs.

Categories of Individuals

The categories of individuals involved in the matching program are individual providers and suppliers who bill Medicare for payment.

Categories of Records

The categories of records used in the matching program are identifying data and payment eligibility status data. To request information from Treasury's Do Not Pay Working System, CMS will provide Fiscal Service with the following information about a Medicare provider or supplier: Tax Identification Number (TIN), Business Name, Person First Name, Person Middle Name, Person Last Name, Address, City Name, State Code, Person Date of Birth, Person Sex, Vendor/Payee Phone Number, Vendor/Payee Email Address.

When Fiscal Service is able to match the TIN and other identifying data provided by CMS, Fiscal Service will disclose to CMS the following information with respect to that provider or supplier:

Record Code
Payee Identifier
Agency Location Code
Tax Identification Type
Tax Identification Number
Whether a Record Belongs to a Business or Individual or Government
Data Universal Numbering System (DUNS) Number
Payee Business Name
Payee Business DBA Name
Person Full Name
Person First Name
Person Middle Name
Person Last Name
Address
Person Date of Birth
Person Sex
Vendor/Payee Status
Phone Type
Vendor/Payee Phone Number
Vendor/Payee Fax Number
Vendor/Payee Email Address
Vendor/Payee Active Date
Vendor/Payee Expiration Date
Agency Record Grouping
Match Type
Match Source
Match Level
Match Date/Time
Matched Party Type
Matched Tax ID Number
Matched Tax ID Type Code (alternate)

Matched Tax ID Number (alternate)
Match DUNS Number
Matched Full Name
Matched First Name
Matched Middle Name
Matched Last Name
Matched Business Name
Matched DBA Business Name
Matched Birth Date
Matched Death Date
Matched List Status Code
Matched List Status Code Description
Matched List Effective Date
Matched Address
Matched City
Matched State Code
Matched Zip Code
Matched Country Code

System(s) of Records

The records used in this matching program will be disclosed from the following systems of records, as authorized by routine uses published in the System of Records Notices (SORNs) cited below:

A. System of Records Maintained by CMS

- The Provider Enrollment, Chain, and Ownership System (PECOS), System No. 09-70-0532, 71 FR 60536 (Oct. 13, 2006), 78 FR 32257 (May 29, 2013) and 83 FR 6591 (Feb. 14, 2018).

B. System of Records Maintained by Fiscal Service

- The Department of the Treasury, Bureau of the Fiscal Service .017—Do Not Pay Payment Verification Records, 85 FR 11776 at 11803 (Feb. 27, 2020)

[FR Doc. 2026-19643 Filed 9-24-26; 8:45 am]

BILLING CODE 4120-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS-10398 #34, #37, #97, #98, and #102]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the "generic" clearance process. Generally, this is an

expedited process by which agencies may obtain OMB's approval of collection of information requests that are "usually voluntary, low-burden, and uncontroversial collections," do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938-1148 (CMS-10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 9, 2026.

ADDRESSES: When commenting, please reference the applicable form number (CMS-10398 #____) and the OMB control number (0938-1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS-10398 #____/OMB control number: 0938-1148, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/medicare/regulations-guidance/legislation/paperwork-reduction-act-1995/pralisting>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at 410-786-4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collections

1. *Title of Information Collection:* Model Application Template and Instructions for State Child Health Plan Under Title XXI of the Social Security Act, State Children's Health Insurance Program; *Type of Information Collection Request:* Revision of an active collection of information request; *Use:* The collected information is used by CMS to review State compliance with Federal statutory and regulatory requirements, approve State plan submissions and SPAs, document required assurances and descriptions, and support oversight of State administration of CHIP. The revised SPA template adds an assurance to the CHIP state plan indicating that the state Medicaid agency does not make payment under the plan for sex-rejecting procedures for children under the age of 19; *Form Number:* CMS-10398 #34 (OMB control number: 0938-1148); *Frequency:* Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 41; *Total Annual Responses:* 112; *Total Annual Hours:* 448. (For policy questions regarding this collection contact Abigail Walsh at 410-786-0746.)

2. *Title of Information Collection:* Medicaid Managed Care Rate Development Guide; *Type of Information Collection Request:* Revision of an active collection of information request; *Use:* The Guide outlines the rate development standards and CMS' expectations for documentation included in rate certifications such as descriptions of base data used, trend factors to base data, projected benefit and non-benefit costs, and any other considerations or adjustments used when setting capitation rates. The information must be included within the rate certification in adequate detail to allow CMS to

determine compliance with applicable provisions of part 438, including that the data, assumptions, and methodologies used for rate development are consistent with generally accepted actuarial principles and practices and that the capitation rates are appropriate for the populations and services to be covered. CMS is required to annually publish the Medicaid Managed Care Rate Development Guide; *Form Number:* CMS-10398 #37 (OMB control number: 0938-1148); *Frequency:* Annually and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 137; *Total Annual Hours:* 1,233. (For policy questions regarding this collection contact Rebecca Burch Mack at 303-844-7355.)

3. *Title of Information Collection:* Sex-Rejecting Procedures Medicaid State Plan Amendment Template; *Type of Information Collection Request:* New collection of information request; *Use:* The provisions are associated with our August 13, 2026, final rule (CMS-2451-F) which provides the authority for State plan amendments (SPAs) to collect assurances from states regarding the operation of state Medicaid programs. The template has been developed to simplify state SPA submissions to add an assurance to their state plan indicating that the Medicaid agency does not claim Federal financial participation (FFP) under the plan for sex-rejecting procedures for children under the age of 18; *Form Number:* CMS-10398 #97 (OMB control number: 0938-1148); *Frequency:* Once and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 168. (For policy questions regarding this collection contact Marlana Thieler at 410-786-6274.)

4. *Title of Information Collection:* Medicaid Emergency Response Templates; *Type of Information Collection Request:* New collection of information request; *Use:* In March 2020, CMS created a Medicaid Disaster Relief SPA template that combined multiple, time-limited State Plan options into a single document and included flexibilities specific to the COVID-19 PHE passed in the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act which are no longer in effect. This iteration's 2026 templates do not include any flexibilities related to a specific PHE, thereby making them usable for all future PHEs; *Form Number:* CMS-10398 #98 (OMB control number: 0938-1148); *Frequency:* Once

and occasionally; *Affected Public*: State, Local, or Tribal Governments; *Number of Respondents*: 33; *Total Annual Responses*: 33; *Total Annual Hours*: 62. (For policy questions regarding this collection contact Michala Walker at 816-426-6503.)

5. *Title of Information Collection*: Medicaid Prior Authorization Assurances State Plan Amendment Template; *Type of Information Collection Request*: New collection of information request; *Use*: On January 17, 2024, CMS published its Interoperability and Prior Authorization final rule (CMS-0057-F) to improve health information exchange and streamline prior authorization processes that involve state Medicaid fee-for-service (FFS) programs. The rule introduced decision timeframes for prior authorization requests and how State Medicaid agencies must notify providers of those decisions. This 2026 iteration's template has been developed to simplify the SPA submission to add these assurances to their state plan; *Form Number*: CMS-10398 #102 (OMB control number: 0938-1148); *Frequency*: Once and occasionally; *Affected Public*: State, Local, or Tribal Governments; *Number of Respondents*: 56; *Total Annual Responses*: 56; *Total Annual Hours*: 280. (For policy questions regarding this collection contact Marlana Thieler at 410-786-6274.)

William N. Parham, III,

Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2026-19707 Filed 9-24-26; 8:45 am]

BILLING CODE 4169-69-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-7395]

Naveed Aslam: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debaring Naveed Aslam from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Aslam was convicted of a felony under Federal law for conduct that relates to the regulation of a drug product under the FD&C Act. Dr. Aslam

was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of July 9, 2026 (30 days after receipt of the notice), Dr. Aslam has not responded. Dr. Aslam's failure to respond and request a hearing constitutes a waiver of Dr. Aslam's right to a hearing concerning this matter.

DATES: This order is applicable September 25, 2026.

ADDRESSES: Any application by Dr. Aslam for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) may be submitted at any time as follows:

Electronic Submissions

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

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

Written/Paper Submissions

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

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

Instructions: All applications must include the Docket No. FDA-2025-N-7395. Received applications will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at

<https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. 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, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law

for conduct relating to the regulation of any drug product under the FD&C Act. On November 17, 2025, Dr. Aslam was convicted as defined in section 306(l)(1) of the FD&C Act in the U.S. District Court for the Eastern District of Michigan, when the court entered judgment against him after his plea of guilty to one count of the illegal sale or trade of prescription drugs, in violation of 21 U.S.C. 333(a)(2) (section 303(a)(2) of the FD&C Act), which constitutes a felony under Federal law.

The underlying facts supporting the conviction are as follows: As described in the Indictment and Plea Agreement in Dr. Aslam's case, Dr. Aslam was a licensed oncologist practicing medicine at Somerset Hematology Oncology, P.C. (Somerset). Dr. Aslam and Somerset were healthcare entities under 21 CFR 203.3(q) because Dr. Aslam, through Somerset, provided medical treatment to patients. Through Somerset, Dr. Aslam had access to several prescription cancer medications that he could buy from drug distributors, including Distributor-1, a publicly traded company that distributed prescription drugs including Enhertu®, Padcev®, Poteligeo®, Tivdak®, and Trodelvy®.

Samer Youssef owned and operated SMA Patient Care LLC (SMA), which was both a retail pharmacy and engaged in the wholesale distribution of prescription drugs. SMA and its customers were not healthcare entities under 21 CFR 203.3(q). Youssef operated SMA with the assistance of Houda Bazzi. As part of Youssef and Bazzi's business, they learned about customers who wanted to purchase certain prescription drugs, and they worked to acquire the prescription drugs and re-sell them at a profit. Youssef and Bazzi, however, did not have access to several prescription cancer drugs.

Dr. Aslam came to an agreement with Youssef and Bazzi to purchase and acquire prescription cancer drugs for purposes of selling these drugs to and through SMA and its customers. But as a healthcare entity, it was unlawful for Dr. Aslam to buy and resell prescription cancer drugs because he was only allowed to buy drugs to administer to his patients. Thus, to obtain these prescription drugs from Distributor-1 for purposes of the illegal resale to SMA and its customers, Dr. Aslam made or caused to be made numerous false and misleading statements including that these drugs were to be purchased to treat patients pursuant to a valid prescription and that they would be resold in compliance with the law. Immediately after receiving the prescription drugs, Dr. Aslam contacted

Bazzi and Youssef, and they arranged to pick up the drugs from Somerset for resale to their customers.

From 2019 to 2023, Dr. Aslam used his medical license and arrangement with Distributor-1 to purchase more than 20 different prescription cancer drugs that he resold to and through SMA, including for example, Enhertu®, Poteligeo®, Tivdak®, and Trodelvy®. He did so without ensuring the drugs—many of which required special handling or were infusion drugs—were shipped properly. None of the prescription drugs were administered or intended to be administered to treat patients as required by law and the applicable contract terms with Distributor-1. Dr. Aslam profited from his purchase and resale of illegally purchased prescription cancer drugs by charging SMA more than he paid Distributor-1, sharing the profit when SMA resold the drugs for more than he charged SMA for the drugs, and receiving rebates and discounts from Distributor-1 based on the amount of qualifying drugs he purchased. During this time period, Dr. Aslam bought from Distributor-1 more than \$16 million in prescription drugs that he resold to SMA. Based on a comparison of records showing how much Dr. Aslam paid Distributor-1 and how much SMA paid Dr. Aslam and Somerset, Dr. Aslam received \$2,601,568.47 in proceeds from the sales.

As a result of this conviction, FDA sent Dr. Aslam, by certified mail, on June 1, 2026, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the FD&C Act, that Dr. Aslam was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act. The proposal informed Dr. Aslam of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Aslam received the proposal and notice of opportunity for a hearing on June 9, 2026. Dr. Aslam failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Director, Division of Enforcement, finds that Dr. Naveed Aslam has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act.

As a result of the foregoing finding, Dr. Aslam is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(B) and 306(c)(2)(A)(ii) of the FD&C Act).

Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses in any capacity the services of Dr. Aslam during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Aslam provides services in any capacity to a person with an approved or pending drug product application during his period of debarment, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act. In addition, FDA will not accept or review any abbreviated new drug application from Dr. Aslam during his period of debarment, other than in connection with an audit under section 306(c)(1)(B) of the FD&C Act. Note that, for purposes of sections 306 and 307 of the FD&C Act, a “drug product” is defined as a “drug subject to regulation under section 505, 512, or 802 of this [FD&C] Act [(21 U.S.C. 355, 360b, 382)] or under section 351 of the Public Health Service Act [(42 U.S.C. 262)]” (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd))).

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–19654 Filed 9–24–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–3326]

Reauthorization of the Biosimilar User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is hosting a hybrid public meeting to discuss proposed recommendations for the reauthorization of the Biosimilar User Fee Act (BsUFA) for fiscal years (FYs) 2028 through 2032. The BsUFA authorizes FDA to collect user fees to support the process for the review of biosimilar biological product applications. The current legislative authority for BsUFA expires in September 2027. At that time, new legislation will be required for FDA to continue collecting user fees in future fiscal years. Following discussions with the regulated industry and periodic consultations with public stakeholders, the Federal Food, Drug, and Cosmetic Act (the FD&C Act) directs FDA to publish the recommendations for the reauthorized program in the **Federal Register**, hold a meeting at which the public may present its views on such recommendations, and provide for a period of 30 days for the public to provide written comments on such recommendations. FDA will then consider such public views and comments and revise such recommendations, as necessary.

DATES: The public meeting will be held on October 26, 2026, from 9 a.m. to 12 p.m. Eastern Time, and will take place in person and virtually. Either electronic or written comments on the proposed recommendations must be submitted by November 25, 2026.

ADDRESSES: The hybrid public meeting will be held in-person at the FDA White Oak Campus, 10903 New Hampshire Ave., Building Conference Center, the White Oak 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. Participants must be REAL ID compliant to access Federal facilities. For additional information regarding REAL ID, refer to <https://www.dhs.gov/real-id/real-id-faqs>. For security and parking information, please refer to <https://www.fda.gov/about-fda/visitor-information> and <https://www.fda.gov/about-fda/visitor-information/visitor-parking-and-campus-map>.

You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before November 25, 2026. The <https://www.regulations.gov> electronic filing system will accept comments

until 11:59 p.m. Eastern Time at the end of November 25, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2015-N-3326 for "Reauthorization of the Biosimilar User Fee Act; 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:

Thamar Bailey, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4171, Silver Spring, MD 20993-0002, 301-796-6645, BSUFAReauthorization@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

FDA is announcing a hybrid public meeting to begin the reauthorization process for BsUFA, the legislation that authorizes FDA to collect user fees to support the process for the review of biosimilar biological product applications. The current authorization of the program (BsUFA III) expires in

September 2027. Without new legislation, FDA will no longer be able to collect user fees for future fiscal years to help fund the process for the review of biosimilar biological product applications. Section 744I(f)(5) of the FD&C Act (21 U.S.C. 379j–53(f)(5)) requires that after FDA holds negotiations with regulated industry and periodic consultations with patient and consumer advocacy groups, we do the following: (1) present the recommendations to the relevant Congressional committees, (2) publish the recommendations in the **Federal Register**, (3) provide a period of 30 days for the public to provide written comments on the recommendations, (4) hold a meeting at which the public may present its views, and (5) after consideration of public views and comments, revise the recommendations as necessary.

This notice, the comment period, and the public meeting described in this notice help satisfy these requirements. After the public meeting, we will revise the recommendations as necessary and present our proposed recommendations to the relevant Congressional committees. The purpose of the meeting is to hear the public's views on the proposed recommendations for the reauthorized program (BsUFA IV). The following information is provided to help potential meeting participants better understand the history and evolution of the BsUFA program and the status of the proposed BsUFA IV recommendations.

II. What is BsUFA and what does it do?

The following information is provided to help potential meeting participants better understand the history and evolution of the BsUFA program and its status. BsUFA is a law that authorizes FDA to assess and collect fees from drug companies that submit marketing applications for certain biosimilar biological products. BsUFA was originally enacted in 2012 under the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) for a 5-year period. Congress reauthorized BsUFA (BsUFA II) for an additional 5 years, through FY 2022, under the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52). BsUFA was most recently reauthorized in 2022 under Title IV of the FDA User Fee Reauthorization Act of 2022 (FDAUFRA) (Pub. L. 117–180), extending the program through FY 2027 (BsUFA III).

BsUFA's intent is to provide additional revenues so that FDA can hire staff, improve systems, and continue a well-managed biosimilar

biological product review process to make biosimilar biological product therapies available to patients sooner without compromising review quality or FDA's high standards for safety, efficacy, and quality. As part of FDA's agreements with industry during prior BsUFA authorizations, the Agency agreed to certain performance and procedural goals and other commitments, which are documented on FDA's website. The goals apply to the process for the review of biosimilar biological product applications, including biosimilar biological product development meetings, review of applications and supplements, and other review activities. FDA's website provides more information about BsUFA, including the statutory text of FDAUFRA, the BsUFA III Commitment Letter, key **Federal Register** documents, BsUFA-related guidances, BsUFA user fee rates, performance reports, and financial reports available at <https://www.fda.gov/industry/fda-user-fee-programs/biosimilar-user-fee-amendments>.

The current authorization of BsUFA (BsUFA III) introduced new supplement categories, timelines, and performance goals to expedite the review of supplemental biosimilar biological product applications. It established new procedures and performance goals for the review of use-related risk analysis and human factors protocol submissions, aimed at advancing the development of biosimilar biological product-device combination products. To improve overall meeting management, BsUFA III modified two meeting types (Biosimilar Initial Advisory and Type 4), created a new meeting type (Type 2a), and provided a new follow-up opportunity after meetings or written-response-only communication. The agreement introduced a regulatory science pilot program focused on advancing the development of interchangeable biosimilar biological products and improving the efficiency of biosimilar biological product development. It included additional commitments to advance interchangeable biosimilar biological product development through publishing foundational guidances and stakeholder engagement. BsUFA III included commitments to promote best practices in communication between FDA and sponsors during application reviews, enhance inspection communication, and provide guidance on alternative tools to assess manufacturing facilities.

BsUFA III built upon the financial enhancements included in BsUFA II to ensure optimal use of user fee resources,

transparency around the use of financial resources, and management of the carryover balance. The agreement committed FDA to leveraging cloud technology to modernize the Electronic Submissions Gateway and to establish and progress a data and technology modernization strategy. A comprehensive list of the deliverables developed to meet BsUFA III commitments is available on FDA's website at <https://www.fda.gov/industry/biosimilar-user-fee-amendments/completed-bsufa-iii-deliverables>.

III. Proposed BsUFA IV Recommendations

In preparing the proposed recommendations to Congress for BsUFA reauthorization, FDA conducted discussions with the regulated industry and consulted with patient and consumer advocacy groups, as required by law. We began the BsUFA reauthorization process by publishing a notice in the **Federal Register** (90 FR 52967, November 24, 2025) requesting public input on the reauthorization and announcing a public meeting that was held on December 3, 2025. The meeting included a presentation by FDA, remarks from representatives of regulated industry, and public comments from representatives of a number of different stakeholder groups, including patient advocates, consumer advocacy groups, health care professionals, and academic researchers. The materials from the meeting, including a transcript and webcast recording, can be found at <https://www.fda.gov/industry/public-meeting-reauthorization-biosimilar-user-fee-act-bsufa-12032025>.

Following the December 2025 public meeting, FDA conducted negotiations with the regulated industry and held monthly consultations with patient and consumer advocacy groups from April 2026 through June 2026. As directed by Congress, FDA posted minutes of these meetings on its web page, BsUFA IV: Fiscal Years 2028–2032, available at <https://www.fda.gov/industry/biosimilar-user-fee-amendments/bsufa-iv-fiscal-years-2028-2032>.

The proposed enhancements for BsUFA IV address many of the priorities identified by public stakeholders, the regulated industry, and FDA. The proposed enhancements modify aspects of the program to match advances in science and changes in the industry, establish new processes to increase efficiency and enhance communication, advance a lifecycle approach to addressing manufacturing issues, and enhance regulatory and financial

transparency. Across the commitment letter, FDA proposes to remove one-time commitments completed under BsUFA III and streamline the text where possible. The full text of the proposed BsUFA IV Commitment Letter can be found on the Agency's web page, BsUFA IV: Fiscal Years 2028–2032, available at <https://www.fda.gov/industry/biosimilar-user-fee-amendments/bsufa-iv-fiscal-years-2028-2032>. Each significant new or modified enhancement is described briefly below.

A. Original and Resubmitted Supplemental Biosimilar Biological Product Applications

To streamline and simplify review, FDA proposes to modify the supplement categories and timelines. FDA proposes to replace the BsUFA III supplement categories with two categories that correspond with either 4- or 6-month review timelines. FDA also proposes to issue guidance and/or a manual of policies and procedures on (1) post-approval submissions to 351(k) applications that seek to make labeling changes to conform to changes in reference product labeling and (2) submissions for unbranded 351(k) application labeling. These enhancements are described in section I.A.2 of the proposed BsUFA IV Commitment Letter.

B. Provisional Determinations

To facilitate Agency action on biosimilar biological applications upon the expiration of applicable exclusivity periods, FDA proposes to establish a structured process and review timeline for approval requests submitted for applications in a provisional determination status, which refers to applications that otherwise meet applicable licensure standards but cannot be approved due to an unexpired period of exclusivity. FDA also proposes to issue guidance or a manual of policies and procedures on the provisional determination process. These enhancements are described in section I.A.6. of the proposed BsUFA IV Commitment Letter.

C. Imminent Action

To promote efficient review, FDA proposes to enable the Agency to work 60 days past an application goal date to address discrete, late-arising, resolvable issues to help avoid otherwise unnecessary provisional determinations and complete response actions. This enhancement is described in section I.A.7. of the proposed BsUFA IV Commitment Letter.

D. New Target Action Date

To enhance communication with applicants, FDA proposes to establish a process under which the Agency would notify the applicant of an anticipated missed biologics license application (BLA) or supplement goal date, establish a new internal target action date, and identify the issue(s) responsible for the delay. If the new target action date is not met, the Agency would contact the applicant and provide an update on the issue causing delay and the estimated timeline for action, when possible. These enhancements are described in section I.A.8. of the proposed BsUFA IV Commitment Letter.

E. Initial Pediatric Study Plan

To enhance the efficiency of initial pediatric study plan (iPSP) submissions, FDA proposes to publish a biosimilar-specific iPSP template and make it available for public comment. FDA proposes to finalize the template following consideration of public comments. FDA also proposes to issue guidance addressing pediatric study plans for biosimilar products and how biosimilar applicants can meet applicable Pediatric Research Equity Act (PREA) requirements. These enhancements are described in section I.C. of the proposed BsUFA IV Commitment Letter.

F. Multi-Dose Pharmacokinetic and/or Pharmacodynamic Study and Comparative Efficacy Study Protocol Review

To help ensure applicants receive feedback on critical questions prior to study initiation, FDA proposes to implement a process for prioritizing review of multi-dose pharmacokinetic and/or pharmacodynamic study or comparative efficacy study (CES) protocols. FDA proposes to update relevant manuals of policies and procedures and standard operating policies and procedures describing processes and timelines for protocol review to account for this enhancement. This enhancement is described in section I.H. of the proposed BsUFA IV Commitment Letter.

G. Meeting Management

To improve overall meeting management, FDA proposes three enhancements: (1) eliminating the biosimilar initial advisory (BIA) meeting; (2) providing sponsors with the option to request a written response only (WRO) for all BsUFA meeting types; and (3) allowing applicants to use the follow-up opportunity to seek clarification of FDA's advice following a meeting, a WRO, or a correspondence

that responds to a sponsor's meeting question. Additionally, FDA proposes revising the biosimilar biological product development (BPD) Type 2b meeting description. This update replaces the BIA meeting with the Type 2b meeting as a sponsor's initial interaction with FDA to discuss a proposed development program. These enhancements are described in section I.I. of the proposed BsUFA IV Commitment Letter.

H. Combination Products

To support the development of biosimilar biological-device combination products, FDA proposes to establish human factors (HF) protocol review goals and issue guidance on alternative approaches to comparative use HF studies. FDA also proposes expanding the BPD Type 2b meeting description to allow sponsors to request a review of use-related risk analysis, comparative analysis, or HF study protocols. These enhancements are described in section I.J. of the proposed BsUFA IV Commitment Letter.

I. Advancing Chemistry, Manufacturing, and Controls Facility Assessment: A Risk-Based Lifecycle Approach

To support the timely development and availability of biosimilar products, FDA proposes to introduce a risk-based lifecycle approach to identifying and addressing manufacturing facility deficiencies. This proposed BsUFA IV chemistry, manufacturing, and controls (CMC) facility lifecycle program is designed to facilitate a proactive approach to addressing manufacturing facility deficiencies through new and enhanced engagement mechanisms between FDA and the regulated industry that may happen before, during, and after an application review cycle. The program introduces a new option for a single CMC facility pre-submission meeting to discuss manufacturing facilities for a proposed application to facilitate readiness before a facility evaluation and inspection. The program also introduces a new post-pre-license inspection (PLI) meeting, when needed, to discuss inspection findings that may impact application approval and corrective actions that may address identified approvability issues. In addition, the program introduces a CMC facility post-action meeting for applications that receive a complete response due in part to manufacturing facility deficiencies. This meeting provides an opportunity to discuss and understand the deficiencies that should be corrected before the application can be approved. FDA proposes to issue guidance describing the implementation

of the facility lifecycle program, as well as conduct a third-party assessment and associated public workshop to assess the program's effectiveness and its impact on facility-issue driven complete responses. These enhancements are described in section I.K. of the proposed BsUFA IV Commitment Letter.

J. BsUFA Regulatory Science Pilot Program

Given the goals for the BsUFA regulatory science pilot program were met, FDA proposes sunsetting the program at the end of BsUFA III. If the Agency conducts regulatory science research using BsUFA operating funds during BsUFA IV, FDA proposes the Agency would notify industry and make the research results publicly available, as appropriate. These enhancements are described in section I.L. of the proposed BsUFA IV Commitment Letter.

K. BLA Revocation and Reissuance

To facilitate the transfer of 351(k) BLA(s) between applicants, FDA proposes establishing a 180-day timeline for revoking and reissuing licenses following the receipt of a complete transfer request. The proposed 180-day timeline does not apply in instances when (1) transfers include BLAs regulated by both the Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research or (2) the BLA has outstanding facility issues. This enhancement is described in section I.M. of the proposed BsUFA IV Commitment Letter.

L. Assessment of BsUFA Review Program for Pre-Investigational New Drug Applications, Investigational New Drug Applications, and BLAs

To understand and enhance the efficiency of the biosimilar development and regulatory review program, FDA proposes a third-party assessment of review processes, outcomes, and communications between FDA and sponsors during first cycle review. This assessment will help FDA and regulated industry understand challenges and best practices and provide recommendations to help FDA and sponsors (1) limit first cycle complete responses (for applications that are ultimately approvable) and missed goal dates; (2) increase the effectiveness and efficiency of key review processes, communications, and materials; and (3) assess the use of imminent action, new target action dates, and review clock extensions. This enhancement is described in section I.N. of the proposed BsUFA IV Commitment Letter.

M. Continued Enhancement of User Fee Resource Management

FDA will build on the financial enhancements included in prior authorization cycles to ensure optimal use of user fee resources and the alignment of staff to workload through the continued operation of the Agency's resource capacity planning capability. FDA will also continue activities to promote transparency of the use of financial resources in support of the BsUFA program through publication of a 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 Financial Report submitted to Congress. FDA proposes to offer annual technical staff meetings with regulated industry to support the transparency and understanding of BsUFA program finances, and to publish minutes from these meetings on its public website. These enhancements are described in section II of the proposed BsUFA IV Commitment Letter.

N. Enhancements to Fee Mechanisms

While the proposed statutory framework for setting the annual revenue amount is generally consistent with the current authorization, some updates are proposed for BsUFA IV. The updates include the discontinuation of the Strategic Hiring and Retention Adjustment, limits on the use of the Capacity Planning Adjustment, and a reduction in the maximum operating reserve.

BsUFA IV proposes a personnel compensation and benefits (PC&B) set-aside. This PC&B set-aside would ensure that FDA will reserve the funding needed to restaff the BsUFA program at a level consistent with fiscal year 2025, with appropriate adjustments for terminated staff and those intended to be transferred to Shared Services. The PC&B set-aside would ensure that the funds that are set aside will only be used for purposes relating to the hiring and retaining of staff for the review of biosimilar biological product applications. Until FDA's BsUFA-fee-funded PC&B spend exceeds the amount established as the PC&B target amount, the Capacity Planning Adjustment would be unavailable. FDA proposes to redirect existing resources to fund enhancements for BsUFA and restaff the BsUFA program in targeted areas.

The BsUFA IV agreement proposes fee structure changes. BsUFA IV would eliminate the initial, annual, and reactivation BPD fees. For sponsors that intend to submit more than one BLA that contains substantially the same

information about the drug substance, BsUFA IV would also introduce a tiered application fee to incentivize such sponsors to submit the BLAs at the same time. This simultaneous filing structure allows the Agency to realize efficiencies in review workload. The proposed tiered application fee structure establishes: (1) a full application fee without the current statutory fee differentiation based on clinical data; (2) no fee for BLAs containing substantially the same information about the drug substance (or drug substances in the case of either a fixed-combination product or a combination product) as another BLA submitted by the same sponsor on the same day; and (3) a half application fee for BLAs containing substantially the same information about the drug substance (or drug substances in the case of either a fixed-combination product or a combination product) as another BLA submitted by the same sponsor on a prior day. BsUFA IV also proposes to update the eligibility for the small business waiver to only companies based in the United States (*i.e.*, applicants created or organized under the laws of any State).

IV. Public Meeting Information

A. Purpose and Scope of the Meeting

The meeting will include presentations by FDA and panels with FDA and regulated industry representatives to present and discuss the agreed-upon proposed enhancements. The meeting will also provide an opportunity for other interested parties, including scientific and academic experts, healthcare professionals, representatives of patient and consumer advocacy groups, and the general public, to verbally comment on the proposed enhancements. A draft agenda and other background information for the public meeting will be posted at: <https://www.fda.gov/industry/biosimilar-user-fee-amendments/bsufa-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/biosimilar-user-fee-amendments/bsufa-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 participants from each

organization. Registrants will receive confirmation when they have been accepted. If you need special accommodations due to a disability, please email BsUFAReauthorization@fda.hhs.gov no later than October 16, 2026, 11:59 p.m. Eastern Time.

Opportunity for Public Comment: During online registration, you may indicate if you wish to make a public comment. 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 public comments and request time jointly. Following the close of registration, we will determine the amount of time allotted to each commenter and the approximate time each comment is to begin, and will notify participants by October 19, 2026. All requests to make a public comment during the meeting must be received via registration by October 16, 2026, 11:59 p.m. Eastern Time. Onsite registration for public comments on the day of the public meeting will not be provided. No commercial or promotional material will be permitted to be presented or distributed 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/biosimilar-user-fee-amendments/bsufa-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 FDA's public web page at <https://www.fda.gov/industry/biosimilar-user-fee-amendments/bsufa-iv-fiscal-years-2028-2032>.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-19660 Filed 9-24-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-N-9505]

Robotically-Assisted Surgical Devices—Premarket Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance titled “Robotically-Assisted Surgical Devices—Premarket Submissions.” This draft guidance provides draft recommendations for premarket submissions for robotically-assisted surgical devices (RASDs). This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by November 24, 2026 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2026-N-9505 for “Robotically-Assisted Surgical Devices—Premarket Submissions.” Received comments will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

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

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

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

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document titled “Robotically-Assisted Surgical Devices—Premarket Submissions” to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5441, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 301–796–6353.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document provides draft recommendations regarding non-clinical and clinical

testing and premarket submission content for RASDs. RASDs are teleoperated, software-controlled systems that integrate robotic technologies and subassemblies that are designed to assist qualified practitioners in precisely positioning and controlling multiple surgical instruments to safely and effectively perform open, minimally invasive, or endoluminal procedures. The draft recommendations reflect FDA’s current thinking for these devices and are intended to promote consistency and facilitate efficient review of premarket submissions.

This draft guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on robotically-assisted surgical devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

As we develop final guidance on this topic, FDA will consider comments on costs or cost savings the guidance may generate, relevant for Executive Order 14192.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by

downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at <https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products>. This guidance document is also available at <https://www.regulations.gov>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>. Persons unable to download an electronic copy of “Robotically-Assisted Surgical Devices—Premarket Submissions” may send an email request to CDRH-Guidance@fda.hhs.gov to receive an electronic copy of the document. Please use the document number GUI01500081 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part; Guidance; or FDA form	Topic	OMB Control No.
807, subpart E	Premarket notification	0910–0120
814, subparts A through E	Premarket approval	0910–0231
812	Investigational Device Exemption	0910–0078
860, subpart D	De Novo classification process	0910–0844
“Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program”.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices	0910–0756
800, 801, 809, and 830	Medical Device Labeling Regulations; Unique Device Identification	0910–0485
820	Current Good Manufacturing Practice (CGMP); Quality Management System Regulation (QMSR).	0910–0073
822	Postmarket Surveillance of Medical Devices	0910–0449
50, 56	Protection of Human Subjects and Institutional Review Boards	0910–0130
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies	0910–0119

Grace R. Graham,
Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–19704 Filed 9–24–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2026-N-10606]

Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—New Drug Application (NDA) 219694 for Atropine Sulfate Ophthalmic Solution, 0.01%

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Dermatologic and Ophthalmic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on October 30, 2026, from 8:30 a.m. to 3 p.m. Eastern Time.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. #1503), Silver Spring, MD 20993-0002. The public will also have the option to participate, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings, including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm>.

FDA is establishing a docket for public comment on this meeting. The docket number is FDA-2026-N-10606. The docket will close on October 29, 2026. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of October 29, 2026. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Comments received on or before October 19, 2026, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA-2026-N-10606 for "Dermatologic and Ophthalmic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—New Drug Application (NDA) 219694 for atropine sulfate ophthalmic solution, 0.01% submitted by Sydnexis, Inc., for

slowing of myopia progression in children 3 years of age or older." 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." FDA 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 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 the 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: LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993-0002, 301-796-2855 or email: DODAC@hhs.fda.gov. A notice in the **Federal Register** about last minute modifications that impact a previously announced

advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at <https://www.fda.gov/AdvisoryCommittees/default.htm> and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform. The Committee will discuss new drug application (NDA) 219694, for atropine sulfate ophthalmic solution 0.01%, submitted by Sydnexis, Inc. The proposed indication (use) is for slowing of myopia progression in children 3 years of age or older.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference and/or video conference meeting will be available at the location of the advisory committee meeting and at <https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 19, 2026, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 1:00 p.m. and 2:00 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, whether they would like to present online or in-person, and an indication of the approximate time requested to make their presentation on

or before October 14, 2026, 5:00 p.m. Eastern Time. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. Similarly, room for interested persons to participate in-person may be limited. If the number of registrants requesting to speak in-person during the open public hearing is greater than can be reasonably accommodated in the venue for the in-person portion of the advisory committee meeting, FDA may conduct a lottery to determine the speakers who will be invited to participate in-person. The contact person will notify interested persons regarding their request to speak by October 15, 2026. Persons attending FDA's advisory committee meetings are advised that FDA is not responsible for providing access to electrical outlets.

For press inquiries, please contact the HHS Press Room at <https://www.hhs.gov/press-room/index.html> or 202-690-6343.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at <https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to 21 CFR 10.19, the requirements in 21 CFR 14.22(b), (f), and (g) relating to the location of advisory committee meetings are hereby waived to allow for this meeting to take place using an online meeting platform in conjunction with the physical meeting room (see location). This waiver is in the interest of allowing greater transparency and opportunities for public participation, in addition to convenience for advisory committee members, speakers, and guest speakers. The conditions for

issuance of a waiver under 21 CFR 10.19 are met.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-19700 Filed 9-24-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2025-N-6692]

Jeffrey Thies: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debaring Jeffrey Thies for a period of 10 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Thies was convicted of two felony counts under Federal law for trafficking in counterfeit goods and aiding and abetting. The factual basis supporting Mr. Thies's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Thies was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of July 13, 2026 (more than 30 days after receipt of the notice), Mr. Thies had not responded. Mr. Thies's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable September 25, 2026.

ADDRESSES: Any application by Mr. Thies for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted at any time as follows:

Electronic Submissions

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

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

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

Written/Paper Submissions

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

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

Instructions: All applications must include the Docket No. FDA-2025-N-6692. Received applications will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- *Confidential Submissions*—To submit an application with confidential information that you do not wish to be made publicly available, submit your application only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of your application. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. 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, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT:

Jaime Espinosa, Division of Field Enforcement, Office of Field Regulatory Operations, Office of Inspections and Investigations, Food and Drug Administration, 240-402-8743, or debarments@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On August 6, 2025, Mr. Thies was convicted as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the Eastern District of Pennsylvania, when the court accepted his plea of guilty and entered judgment against him on two counts for the felony offenses of trafficking in counterfeit goods in violation of 18 U.S.C. 2320(a)(1) and aiding and abetting in violation of 18 U.S.C. 2. The underlying facts supporting the conviction are as follows:

As contained in the Indictment and in the Government's Change of Plea Memorandum, from in or around 2020 through in or around January 2023, Mr. Thies operated websites, including "seppillshop.com," through which he trafficked counterfeit "sex pills." In order to obtain and manufacture the counterfeit pills, Mr. Thies smuggled counterfeit Viagra and Cialis pills and packaging and the active ingredients sildenafil and tadalafil into the United States from foreign suppliers in China and India. Viagra and Cialis are prescription drug products that are approved by FDA for distribution

within the United States for certain medical conditions. Under Federal law, and in order to ensure public health safety, genuine prescription drug products must be manufactured and distributed under strict quality control standards and may be dispensed only upon a doctor's prescription and by a licensed pharmacist.

On or about December 16, 2020, a federal agent acting in an undercover capacity visited a website controlled by Mr. Thies. The website advertised for sale a large number of pills listed as "male enhancement products," which were available for purchase in various quantities and packages. The agent placed an order for two packs of "sex pills": "80 Pill Steal Variety Pack" and "50 Pill All Imports Variety Pack." The agent paid a total of \$99.98 to an account controlled by Mr. Thies. Two days later, on December 18, 2020, the agent received an email from seppillshop@gmail.com that confirmed the pills were shipped by U.S. mail, provided a tracking number, and offered a cell phone number registered to Mr. Thies for any additional assistance. When the agent sent a follow-up email, Mr. Thies responded and apologized for the delay.

On or about January 13, 2021, the agent received a parcel with his order of pill packs in an undercover mailbox. The parcel sent by Mr. Thies contained a variety of pills. Some pills were in unmarked blister packs; others were in capsules and packaging with names including "Superman," "Black Mamba," and "Blue Rhino." Much of the wording on the packaging was in a foreign language. The parcel also included a blue and silver box labeled "U.S.A. Viagra" with a glass vial labeled "U.S.A. Viagra," which contained 10 blue almond-shaped tablets imprinted with "USA" on each side. Law enforcement identified fingerprints on the parcel and its contents that matched Mr. Thies's fingerprints. The Viagra packaging and pills were counterfeit.

On January 11, 2023, law enforcement executed a federal search warrant at Mr. Thies's home in Philadelphia, Pennsylvania. In his residence, agents found a pill laboratory in the basement work area where Mr. Thies manufactured, packaged, and prepared to ship counterfeit pills to consumers. Agents seized his computers, phones, and other items consistent with the trafficking of counterfeit pills, such as pill bottles, pill presses, baking flour, various packages of male enhancement pills, other packaging and shipping materials, empty capsules, and counterfeit Viagra and Cialis pills. Most of these items were found on and

around a dirty, non-sterile bench area in the basement laboratory where multiple house cats also lingered. Specifically, agents seized from Mr. Thies's residence 90 tablets purporting to be Viagra and 90 tablets purporting to be Cialis. The Viagra and Cialis packaging and pills were counterfeit. The counterfeit marks and trade names, "Viagra" and "Cialis," used by Mr. Thies were identical or substantially indistinguishable from the genuine marks owned by Pfizer, Inc./ Viartis, Inc. and Eli Lilly & Company, and Mr. Thies used the marks in connection with purported "sex pills," which were likely to confuse or deceive consumers into believing that the product was made by the genuine owner of the trademark. Mr. Thies was present at his residence at the time of the search.

During the search, Mr. Thies admitted to law enforcement that he sold male enhancement pills on his websites, including on *sexpillshop.com*, sometimes receiving up to three orders a day. On January 13, 2023, Mr. Thies met with law enforcement agents and again admitted that he sold male enhancement pills on his websites for years. He also stated he previously sold pills on eBay and social media platforms, but that his accounts were closed upon being told that he could not sell counterfeit products on those platforms.

Law enforcement searched and reviewed the email accounts Mr. Thies operated, including *sexpillshop@gmail.com* and *jeffmetthies@gmail.com*. These email accounts contained lengthy correspondence between Mr. Thies and foreign suppliers of male enhancement pills, ingredients, and packaging, including suppliers from China and India, and customers who purchased pills from his website. At times, Mr. Thies faced impediments to importing counterfeit pills and packaging from foreign countries. When his shipments were seized or took longer to arrive, Mr. Thies would direct his foreign suppliers to use different names and different shipping addresses, in order to disguise or conceal the destination of the shipments. In an email on April 28, 2021, for example, Mr. Thies told a supplier, "CHANGE IT TO [an alias name] AND MAKE IT APARTMENT #3 INSTEAD OF #1." On June 7, 2021, Mr. Thies was made aware through an email from a global shipping company that his package had been detained by United States Customs and Border Protection. Mr. Thies responded by stating, "I have 2 options[,] contesting isn't one of them." In other emails, Mr. Thies was told by foreign suppliers that they were disguising or concealing the contents of

shipments to avoid policies that prohibited the sale of certain drugs. For example, Mr. Thies received an email from a Chinese supplier stating, "[s]ince Alibaba [a Chinese e-commerce marketplace] forbids the sale of sildenafil [the active ingredient in Viagra], we drafted the credit order under the name of NMN, and the real goods are sildenafil." Mr. Thies sold over \$90,000 worth of pills to consumers throughout the United States during the relevant time period.

FDA sent Mr. Thies, by certified mail, on June 8, 2026, a notice proposing to debar him for a 10-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Thies's felony convictions under Federal law for trafficking in counterfeit goods in violation of 18 U.S.C. 2320(a)(1) and aiding and abetting in violation of 18 U.S.C. 2 were for conduct relating to the importation of any drug or controlled substance into the United States because Mr. Thies illegally smuggled and trafficked counterfeit prescription drug products into the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C that the Agency considered applicable to Mr. Thies's offenses and concluded that the offenses warranted the imposition of a 10-year period of debarment, consisting of two 5-year debarment periods for each felony count to run consecutively.

The proposal informed Mr. Thies of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Thies received the proposal and notice of opportunity for a hearing on June 11, 2026. Mr. Thies failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Division of Field Enforcement Director, Office of Inspections and Investigations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Director, Division of Enforcement, finds that Mr. Jeffrey Thies has been convicted of felonies under Federal law for conduct relating to the importation into the United States of any drug or

controlled substance. FDA finds that the offenses should be accorded a debarment period of 10 years, consisting of two consecutive 5-year debarment periods as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Thies is debarred for a period of 10 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Thies during his period of debarment is a prohibited act.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026-19655 Filed 9-24-26; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft NIH Policy on Sharing Summary Level Study Results With Clinical Research Participants

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: NIH seeks public input on its proposed NIH Policy on Sharing Summary Level Study Results with Clinical Research Participants, including ways to promote and enable the research community to share summary level study results with clinical research participants.

DATES: To ensure consideration, comments must be submitted on or before October 26, 2026.

ADDRESSES: Comments must be submitted electronically to: <https://osp.od.nih.gov/comment-form-draft-sharing-summary-results-policy/>. Comments are voluntary and may be submitted anonymously. You may also voluntarily include your name and contact information with your response. Other than your name and contact information, please do not include in the response any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. After the NIH Office of Science Policy (OSP) has finished reviewing the responses, the responses may be posted to the OSP website without redaction.

FOR FURTHER INFORMATION CONTACT:

Adam Berger, Ph.D., Director, Clinical and Healthcare Research Policy Division, Office of Science Policy, (301) 496-9838 or SciencePolicy@od.nih.gov.

SUPPLEMENTARY INFORMATION:**Background**

Partnership with the public is essential to driving meaningful scientific advances capable of improving the health of all. Returning value to individuals who participate in clinical research enhances partnerships and enables NIH to foster innovative health discoveries, strengthen scientific resources to prevent disease, expand medical knowledge, and uphold the highest standards of integrity and accountability in scientific research. As outlined by the Novel and Exceptional Technology and Research Advisory Committee (see: https://osp.od.nih.gov/wp-content/uploads/2025/12/NExTRACs-ENGAGE-Report_FINAL.pdf), returning research results is one important strategy for returning value to research participants.

Sharing research results with clinical research participants, their communities, others who could benefit from the results, and the broader scientific audience can improve clinical research engagement, accelerate the pace of scientific progress and improve scientific outcomes to ensure that NIH-supported research translates discoveries into improved health for Americans. Sharing results can, importantly, help to build trust and communication between researchers and participants, improve participant recruitment and retention rates, enhance clinical research study design and feasibility, and ensure health discoveries are meaningful, accessible, and understandable for patients, clinicians, and participants who may benefit from the research (see: <https://doi.org/10.1136/bmjopen-2025-107270>). (see: <https://doi.org/10.1016/j.conctc.2023.101136>) (see: <https://doi.org/10.1017/cts.2024.568>). Furthermore, incentivizing participation in clinical research to strengthen retention bolsters rigor in clinical research. Establishing NIH policy to make sharing summary level study results standard practice directly supports the goals of HHS's Operation TrialBlazer (see: <https://www.hhs.gov/sites/default/files/operation-trialblazer.pdf>), which seeks to strengthen America's leadership in clinical research.

NIH has a longstanding commitment to making the results and data generated from the research supported by the agency available to the public and has

been taking additional steps to further these efforts to strengthen the science, enhance transparency, create value for communities, and foster trust in research. For example, researchers must proactively plan for how they intend to make their scientific data available under the NIH Policy for Data Management and Sharing (see: <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-21-013.html>), clinical trials must report their results in *ClinicalTrials.gov* under the NIH Policy on the Dissemination of NIH-Funded Clinical Trial Information (see: <https://grants.nih.gov/policy-and-compliance/policy-topics/clinical-trials/reporting/nih-policy>), and published results are made accessible to the public under the NIH Public Access Policy (see <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-25-047.html>). Yet, these efforts have largely focused on sharing data with the scientific community, and not directly to participants.

Some clinical research studies are actively sharing research results with participants. However, the inconsistency in practice across the entirety of the research enterprise leaves a significant gap (see: <https://doi.org/10.1080/17512433.2019.1615441>) (see: <https://pubmed.ncbi.nlm.nih.gov/31827902>). To address this gap and strengthen engagement and transparency with participants, NIH intends to set clear requirements for sharing summary level study results in plain language with participants, unless justifiably not appropriate. Reflecting best practices, the goal of this new policy is to ensure that clinical research participants are responsibly informed about the outcomes and overall results, in ways that are understandable and meaningful to them. Responsible sharing of summary level study results with participants demonstrates that participants are partners in the research process—ensuring findings are shared back with them in an honest, accessible, and thoughtful way that respects the trust and investment to which they contributed.

Summary level study results, also commonly known as aggregate research results, are concise overviews of a clinical research study after all data are compiled and analyzed, with information on the objective, conduct, methodology as appropriate, cumulative outcomes or key findings, relevance, limitations, and potential implications of the clinical research study. Summary level study results are distinct from individual research results that are participant-specific, such as individual lab results. Research participants may want to receive summary level study

results for many reasons, including to understand possible implications of the studies they participate in, and where applicable, to inform their health behaviors. Sharing summary level study results with participants has been identified as a best practice by both research participants and the research community, and offering to share summary level study results with participants enhances transparency, demonstrates respect for participants' contributions, and fosters trust and engagement in clinical research.

To inform the development of a Draft Policy on Sharing Summary Level Study Results with Clinical Research Participants, NIH engaged stakeholders in Spring 2026 by seeking input through a public listening session and an on-demand portal for written input. In particular, commenters provided perspectives on topics posed by NIH related to what to include in summary level study results, as well as how and when to share summary level study results with participants. NIH recognizes that many researchers have already employed successful return tactics, and NIH seeks to leverage best practice to implement a minimally low burden approach. NIH also recognizes that expectations for robust sharing of summary level study results with participants may in some cases require additional support for participants for whom summary level study results may provide more questions than answers. Thus, to achieve the goals of a new policy, NIH intends to provide additional supplemental materials for the community, which will also be informed by input received from this request for information.

Draft NIH Policy on Sharing Summary Level Study Results With Clinical Research Participants

I. Purpose

Through the NIH Policy on Sharing Summary Level Study Results with Clinical Research Participants (also referred to as the Sharing Summary Results Policy), NIH is furthering its commitment to engaging research participants as partners. This Policy would establish the requirement for researchers and institutions to responsibly share summary level study results with clinical research participants in plain language, unless justifiably not appropriate, for all NIH-supported clinical research.

II. Scope

The Sharing Summary Results Policy applies to all clinical research, including clinical trials, supported in whole or in part by NIH, regardless of NIH funding level or funding mechanism, including the NIH Intramural Research Program. This Policy is applicable to all competing award applications, competitive revisions,

proposals for new clinical research contracts or orders, and other funding agreements (e.g., Other Transactions, Cooperative Agreements), received on or after [six months of the publication of a final policy]. This Policy is applicable to all intramural clinical research projects, conducted on or after [six months of the publication of a final policy], including on-going or new studies.

III. Compliance and Enforcement

All recipients of NIH support for clinical research will be required to comply with this Policy, which will be included in the applicable terms and conditions of the award or agreement and in applicable NIH intramural policies and procedures. Failure to comply may provide a basis for enforcement actions, including but not limited to, additional special terms and conditions or termination, consistent with applicable grant regulations; applicable NIH policies and procedures, including NIH intramural policies and procedures; the Federal Acquisition Regulations; and/or other authorities, as appropriate. Enforcement actions may affect future funding decisions for the recipient institution, as authorized in the NIH Grants Policy Statement. In cases where NIH proposes to suspend, limit, or terminate financial assistance because of noncompliance with this Policy, applicable HHS and Public Health Service procedures shall govern.

IV. General Definitions

Clinical Research (see: <https://grants.nih.gov/grants/glossary.htm#ClinicalResearch>).

Research with human subjects that is:

1. Patient-oriented research. Research conducted with human subjects (or on material of human origin such as tissues, specimens, and cognitive phenomena) for which an investigator (or colleague) directly interacts with human subjects. It includes: (a) mechanisms of human disease, (b) therapeutic interventions, (c) clinical trials, or (d) development of new technologies; or
2. Epidemiological and behavioral studies; or
3. Outcomes research and health services research.

Studies falling under 45 CFR part 46.101(b)(4) (the "Common Rule" prior to July 19, 2018) and 45 CFR part 46.104(d)(4) (the "Revised Common Rule" effective July 19, 2018, Exemption 4) are not considered clinical research by this definition.

Clinical Trial (see: <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-15-015.html>).

Per the NIH Definition of Clinical Trial (see: <https://grants.nih.gov/grants/guide/notice-files/NOT/OD/15/015.html>), a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of those interventions on health-related biomedical or behavioral outcomes.

Plain Language

Communication, including written, verbal, visual, and other methods, that is clear, concise, well-organized, and follows best

practices for communicating with public audiences appropriate to the research topic or field, culture, and context. Communication should convey content relevant to the study results without using unnecessary words, jargon, acronyms, or expressions.

Primary Completion Date (see: <https://clinicaltrials.gov/study-basics/glossary#p~:text=a%20clinical%20trial./Primary%20completion%20date./The%20date%20on>).

The date that the final participant was examined or received an intervention for the purposes of final collection of data for the primary outcome, whether the clinical study concluded according to the pre-specified protocol or was terminated. In the case of clinical studies with more than one primary outcome measure with different completion dates, this term refers to the date on which data collection is completed for all of the primary outcomes.

Summary Level Study Results

A concise overview of a clinical research study after all data are compiled and analyzed, with information on the objective, conduct, methodology as appropriate, cumulative/aggregate outcomes or key findings, relevance, limitations, and potential implications of the study.

V. Requirements

The Sharing Summary Results Policy requires NIH-supported researchers conducting clinical research studies to:

- Share summary level study results in plain language with research participants.
 - For clinical trials: no later than one year after the primary completion date, or by the date results must be reported in *ClinicalTrials.gov* in accordance with NIH GPS 4.1.3.1 (see: https://grants.nih.gov/grants/policy/nihgps/html5/section_4/4.1.3_clinical_trials_registration_and_reporting_in_clinicaltrials.gov_requirement.htm) or NIH Policy Manual Chapter 3007, whichever is later, to align with existing reporting requirements that are specific to clinical trials.
 - For extramural clinical research that is not a clinical trial: no later than the end of the period of performance, as defined in NIH GPS 1.2 (see: https://grants.nih.gov/grants/policy/nihgps/html5/section_1/1.2_definition_of_terms.htm#~:text=The%20time%20interval%20between,as%20Budget%20period), if the analyses needed to finalize summary level study results are complete. If the analyses are not completed by this time, researchers must provide a status update to NIH and to research participants to inform them when, where, and how they will receive summary level study results.
 - For all NIH intramural clinical research studies including clinical trials, researchers must provide annual status updates to participants to inform them when, where, and how they will receive summary level study results, beginning no later than six months after the policy effective date.
 - If sharing summary level study results with research participants is justifiably not appropriate and summary level study results will not be shared, exceptions may be

requested, subject to NIH Institute, Center, or Office (ICO) approval. Generally, a justification should be submitted before the enrollment of the first participant. If no exception is requested or if the exception is not approved by the NIH ICO, sharing summary level study results is required.

- Researchers are encouraged to consult with research participants, IRBs, and relevant institutional officials to determine effective strategies for integrating sharing summary level study results with research participants in plain language into clinical research study designs and planning phases to ensure timely sharing with research participants.

- Ensure that research participants are offered, whether or not they receive summary level study results.

- If the clinical research study experiences unforeseen circumstances, and it is no longer possible to share summary level study results, this information must be shared with participants. This communication must provide details on why sharing is no longer possible. Any change is subject to NIH approval. Changes are also subject to IRB approval, as necessary.

- Confirm with NIH that summary level study results were shared, or a status update was provided to research participants. For NIH-funded extramural research institutions, this should occur in the Research Performance Progress Report (RPPR) during close out.

Proposed Supplemental Guidance

The NIH recognizes that meaningful engagement with research participants is already taking place, including studies that are successfully sharing summary level study results with participants and communities. However, as a taxpayer funded institution reliant on public trust and participation, it is critical that the research community work in tandem to share best practices and leverage expertise. Additional resources may be required to ensure participant preferences are prioritized when sharing summary level study results. To that end, NIH is considering the value of issuing supplemental guidance to assist in supporting aspects of this policy, addressing participant preferences and experiences, best practices for researchers, and implementation needs. NIH is seeking feedback on these topics and the corresponding issues listed below. Please note these are proposed rather than final guidance topics and this list is not exhaustive. If you feel additional supplemental guidance is needed beyond what is being proposed, be sure to identify the proposed topic in your response. Your input will help inform and shape potential supplemental guidance aimed at assisting researchers to effectively share summary level study results with clinical research participants.

I. Participant Preferences and Experiences

NIH is seeking input to better understand what information clinical research participants would like to receive as shared summary level study results. The agency believes incorporation of participant preferences is essential for sharing summary level study results in a meaningful way. Participant preferences may be shaped by their personal experiences or by what they believe would be important to know in the future. Your feedback will help ensure researchers develop and share summary level study results that are relevant, valuable, and meaningful to participants; and are transparent in communicating expectations with participants.

The NIH is interested in receiving information on:

- What participants find valuable when receiving summary level study results and what, in addition to the final result(s), they find relevant to be shared.
- Participants' preferred method(s) for receiving summary level study results and expectations for what information should be communicated.
- Participant/family/community concerns about receiving summary level study results, and how they could be addressed.

II. Best Practices for Researchers

NIH recognizes that many researchers are already leading the way in sharing summary level study results with clinical research participants. The agency aims to learn from these existing efforts to identify best practices for the research community. Clinical research encompasses a broad spectrum of research studies, with unique considerations for different scenarios. By understanding how the research community currently prepares and shares summary level findings, NIH can develop potential guidance reflecting this expertise. Your feedback on current methods and challenges will help establish best practices and ensure the research community has the necessary resources to share clear and impactful summary level study results with clinical research participants.

The NIH is interested in receiving information on:

- Effective, low burden approaches for developing summary level study results that are in plain language and culturally and contextually appropriate.
- Key elements that are most important to include, helpful formats, and strategies to promote understanding.
- Considerations for identifying which results should be returned (e.g.,

primary vs. secondary results) including for specific study populations, study designs, and longitudinal studies.

- Situations where sharing summary level study results is not possible or desirable.
- Considerations for sharing summary level study results with individuals other than the research participants, such as parents/guardians/caregivers of participants.

III. Implementation Needs

NIH acknowledges that sharing summary level study results with clinical research participants requires dedicated resources. The agency is seeking your expertise to identify tools, methods, and resources that are most effective for this process, from creation to dissemination of the summary level study results. Importantly, NIH recognizes that sharing summary level study results with participants, while integral to the research process, will incur costs, and seeks to fully understand the reasonable and necessary costs associated with activities needed to enable sharing of summary level study results. Your feedback will ensure that NIH can provide support and address the implementation needs of the research community.

The NIH is interested in receiving information on:

- Types of activities required to share summary level study results to participants and the anticipated costs associated with those activities for different kinds of studies.
- Information on resources, infrastructure and other non-monetary supports that would help prospectively plan for and implement the requirement to share summary level study results in a way that is understandable and meaningful to all clinical research participants in a study.
- Any existing methods, tools, best practices, or guiding principles that enable sharing summary level study results more effectively.

Request for Input

The National Institutes of Health (NIH) is seeking public input on a new policy proposal requiring summary level study results from NIH supported clinical research to be shared with participants of those studies. NIH is also seeking input on areas for which supplemental guidance would enable successful implementation with minimal administrative burden. Through this policy, NIH intends to strengthen respectful, transparent partnerships with clinical research participants and enable them to benefit

through translation of discoveries into improved health.

NIH seeks public input on its proposed NIH Policy on Sharing Summary Level Study Results with Clinical Research Participants, including ways to promote and enable the research community to share summary level study results with clinical research participants. NIH welcomes input from researchers, clinical research participants, clinicians, professional organizations, and other interested members of the public. Comments are also sought on specific considerations for how NIH can promote and enable the research community to feasibly share summary level study results with clinical research participants with minimal administrative burden. This feedback may inform the identification of topics and content for potential supplemental guidance.

This notice is being published in accordance with a statement made by the NIH Director found here (<https://www.nih.gov/about/nih/nih/director/statements/roadmap/engaging/public/partners/clinical/research>).

Dated: September 18, 2026.

Matthew Memoli,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2026–19706 Filed 9–24–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request an Revision From OMB of One Current Public Collection of Information: Law Enforcement Officers (LEOs) Flying Armed

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently-approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0072, that we will submit to OMB for a revision in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves gathering information from federal, state, county or municipal armed law enforcement officers (LEOs) who require specialized screening at the checkpoint.

DATES: Send your comments by November 24, 2026.

ADDRESSES: Comments may be emailed to TSAPRA@tsa.dhs.gov or delivered to the TSA PRA Officer, Information Technology, TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh at the above address, or by telephone (571) 227-2062.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), 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. The ICR documentation will be available at <https://www.reginfo.gov> upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

TSA has broad statutory authority to assess security risk for any mode of transportation, develop security measures for dealing with that risk, and enforce compliance with those measures.¹ TSA's mission includes the screening of individuals, accessible property, checked baggage, and cargo before boarding or loading on an aircraft to prevent or deter the carriage of any explosive, incendiary, or deadly or dangerous weapon on the aircraft.

Under 49 CFR 1540.107, individuals are required to submit to screening and inspection before entering a sterile area of an airport or boarding an aircraft. The prohibition on carrying a weapon, however, does not apply to LEOs required to carry a firearm or other

weapons while in the performance of law enforcement duties at the airport. See 49 CFR 1540.111(b). In addition, LEOs may fly armed if they meet the requirements of 49 CFR 1544.219. This section includes requirements for being a federal, municipal, county, or state law enforcement officer; authorization to carry the weapon; training for flying armed; validation of the need for the weapon to be accessible aboard the aircraft; and notification requirements. *Id.* This section also discusses prohibitions related to alcoholic beverage consumption, as well as the appropriate location of the weapon while aboard the aircraft. *Id.*

TSA has established a specialized screening process for federal, state, county or municipal LEOs when they are flying armed and need to go through screening at the checkpoint. When this situation occurs, LEOs are required to complete TSA Form 413A, Checkpoint Sign-In Log, or register using a new digital platform, LEO Flying Armed (LEOFA) Pass Application, as further discussed below.

The information collected on TSA Form 413A includes identifying information for the LEOs; an affirmation that they are authorized to fly armed on official business and that they have an operational need to have their weapon accessible during the flight in accordance with 49 CFR part 1544; and identification of weapons they are carrying.

TSA is revising the information collection to include the new digital platform, LEOFA Pass Application. The platform collects the same information as the TSA Form 413A, and also collects additional data elements, including the LEO's work email address, work desk phone number, date of birth, and driver's license and/or passport number.

The TSA Security Operations Center and the Law Enforcement/Federal Air Marshal Service use the information required by the TSA Form 413A and LEOFA Pass Application to have situational awareness of armed LEOs' presence on flights conducted by 49 CFR parts 1544 and/or 1546 regulated parties (aircraft operators and foreign air carriers). This real-time situational awareness is necessary in the event of an emergency on board the aircraft, such as a disruptive passenger, air piracy, or other threat to the safety and security of a commercial aircraft.

Respondents to this information collection are state, county or municipal LEOs travelling with their weapons. TSA estimates that there are an average of 21,661 responses to the TSA Form 413A, with each checking-in activity requiring 4 minutes (0.0667 hours) to

complete. In addition, TSA estimates that there will be 130,608 responses to the LEOFA Pass Application with each LEOFA Pass transaction having a one-time online LEOFA Pass registration process form that takes 5 minutes (0.0833 hours) or completing an online flight information form that takes 2 minutes (0.0333 hours).

TSA estimates an average annual number of responses for TSA Form 413A and LEOFA Pass Application to be approximately 152,269 responses. Also, TSA estimates the total annual hour burden for this collection to be 7,449 hours.

Dated: September 23, 2026.

Christina A. Walsh,

*Paperwork Reduction Act Officer,
Information Technology, Transportation
Security Administration.*

[FR Doc. 2026-19703 Filed 9-24-26; 8:45 am]

BILLING CODE 9110-05-P

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

[Docket No. FR-6568-N-07]

**Notice of HUD-Held Healthcare Loan
Sale (HLS 2027-1)**

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of sale of 11 healthcare mortgage loans secured by 11 properties.

SUMMARY: HUD is announcing the competitive, sealed bid sale of 11 unsubsidized healthcare mortgage loans, without Federal Housing Administration (FHA) insurance. This sale, referred to as HLS 2027-1, is scheduled to occur on or about November 17, 2026. The sale supports HUD's efforts to maximize recoveries and reduce the cost of holding defaulted assets. This notice describes the general bidding process for the sale, as well as the entities and individuals who are ineligible to bid.

DATES:

Bidder's Information Package (BIP) Available: On or about October 9, 2026.

Bid Date: On or about November 17, 2026 (bids must be submitted during specified hours).

Anticipated Award Date: On or before November 20, 2026.

Closing Date: On or about December 9, 2026.

ADDRESSES: Prospective bidders must complete, sign, and submit a Confidentiality Agreement and a

¹ See 49 U.S.C. 114.

Qualification Statement that meet HUD's requirements. These documents will be accessible via Mission Capital Advisors' bidding platform at market.missioncap.com, where participants can also register and submit all required documentation electronically. Questions about the bidder qualification process may be sent to the Transaction Specialist at 1-844-709-0763 or HUDSales@FalconAssetSales.com.

FOR FURTHER INFORMATION CONTACT: John Lucey, Director, Office of Asset Sales, U.S. Department of Housing and Urban Development, 451 7th St. SW, Washington, DC 20410; telephone 202-402-3927 (this is not a toll-free number), or at John.W.Lucey@hud.gov. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION: HUD is announcing its intention to sell 11 unsubsidized, non-performing healthcare mortgage loans (the "Mortgage Loans") in Loan Sale HLS 2027-1. The Mortgage Loans will be sold without FHA insurance and with HUD servicing released. The offering includes 11 first-lien mortgage notes secured by 11 healthcare skilled nursing and assisted living facilities located in nine states. Qualified bidders will have the opportunity to submit competitive, sealed bids for the Mortgage Loans. For bidding purposes, HUD will stratify the loans into pools, grouping them by characteristics such as loan performance, property type, geographic location, and lien position. Pools may contain single or multiple loans. Bidders may submit offers on one or more pools.

Bidder Eligibility

Eligibility requirements are detailed in the Qualification Statement, which outlines HUD's restrictions on bidding based on prior involvement with the Mortgage Loans. Certain entities and individuals are prohibited from participating in the sale, as described in the Qualification Statement.

The full loan listing and additional sale details are included in the Bidder's Information Package (BIP), available to qualified bidders upon submission of an acceptable Confidentiality Agreement and Qualification Statement via the bidding platform.

Bidding Process

The BIP provides detailed instructions on bidding procedures for HLS 2027-1. It will also include a standardized, non-negotiable Loan Sale Agreement that governs the terms of the sale. For access to the BIP and to register for the sale, qualified bidders must submit an executed Confidentiality Agreement and a completed Qualification Statement via the bidding platform.

As part of its bid, each bidder must submit a minimum deposit of the greater of \$100,000 or 10 percent of the aggregate price of all their bids. If a bidder's total bid is less than \$100,000, the minimum deposit shall be not less than 50 percent of the bidder's aggregate bid. HUD will evaluate all bids and select the successful bid(s) in its sole and absolute discretion. For any winning bidder, the bid deposit becomes non-refundable and will be credited toward the final purchase price. Any deposit amount exceeding the purchase price will be refunded. Deposits submitted by unsuccessful bidders will be returned after notification of the winning bid(s). Closings are expected to occur on or about December 9, 2026.

The Loan Sale Agreement, included in the BIP, sets forth additional terms and conditions of the sale. To maintain a fair and competitive auction process, neither the bidding procedures nor the Loan Sale Agreement are subject to negotiation.

Due Diligence Review

The BIP describes the due diligence process for reviewing loan files in HLS 2027-1. Qualified bidders will be able to access loan information electronically. Further information on performing a due diligence review of the Mortgage Loans is provided in the BIP.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from HLS 2027-1 at any time prior to the award date. HUD also reserves the right to reject bids, in whole or in part, without prejudice against HUD's right to include the Mortgage Loans in a later sale. The Mortgage Loans will not be withdrawn after the award date except as is specifically provided for in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans, pursuant to Section 204(a) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, (12 U.S.C. 1715z-11a(a)).

Mortgage Loan Sale Procedure

HUD selected a competitive auction as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

To bid in the sale, a prospective bidder must complete, execute, and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are among those INELIGIBLE to bid on the Mortgage Loans being sold in HLS 2027-1:

1. A mortgagor or healthcare operator, including its principals, affiliates, family members, and assigns, with respect to one or more of the Mortgage Loans being offered in the Loan Sale, or an Active Shareholder (as such term is defined in the Qualification Statement);

2. With respect to any other HUD multifamily and/or healthcare mortgage loan not offered in the Loan Sale, any mortgagor or healthcare operator, including any Related Party (as such term is defined in the Qualification Statement) of either, that has failed to file financial statements or is otherwise in default under such mortgage loan or is in violation or noncompliance of any regulatory or business agreements with HUD and that fails to cure such default or violation by no later than the first day of the month of the Bid Date;

3. Any individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 2 of the Code of Federal Regulations, Part 2424;

4. Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with HLS 2027-1;

5. Any employee of HUD, a member of such employee's family, or an entity owned or controlled by any such employee or member of such an employee's family;

6. Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under provisions (3) through (5) above to assist in preparing its bid on any Mortgage Loan;

7. An FHA-approved mortgagee, including any principals, affiliates, or assigns thereof, that has received FHA

insurance benefits for one or more of the Mortgage Loans being offered in the Loan Sale;

8. An FHA-approved mortgagee and/or loan servicer, including any principals, affiliates, or assigns thereof, that originated one or more of the Mortgage Loans being offered in the Loan Sale if the Mortgage Loan defaulted within two years of origination and resulted in the payment of an FHA insurance claim;

9. Any affiliate, principal, employee, contractor, or subcontractor of any person or entity that, within the two-year period prior to the Bid Date, serviced any of the Mortgage Loans or performed other services for or on behalf of HUD with respect to any of the Mortgage Loans; and/or

10. Any employee, officer, director or any other person that provides or will provide services to the prospective bidder with respect to the Mortgage Loans that, within the two-year period prior to the Bid Date, serviced any of the Mortgage Loans or performed other services for or on behalf of HUD with respect to any of the Mortgage Loans.

Other entities/individuals not described herein may also be restricted from bidding on the Mortgage Loans, as fully detailed in the Qualification Statement.

The Qualification Statement provides further details pertaining to eligibility requirements. Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in HLS 2027–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding HLS 2027–1, including, but not limited to, the identity of any successful bidder and its bid price or bid percentage for the Mortgage Loans, upon the closing of the sale of the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to HLS 2027–1, HUD may be required to disclose information relating to HLS 2027–1 pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to HLS 2027–1 and does not establish HUD's policy for the sale of other mortgage loans.

Joseph M. Gormley,

President of the Government National Mortgage Association performing the delegable duties of the Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2026–19683 Filed 9–24–26; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7103–N–08; OMB Control No.: 2528–0276]

60-Day Notice of Proposed Information Collection: 2027 Rental Housing Finance Survey

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 24, 2026.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Peter Mateyka, Survey Statistician, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410. Comments may also be submitted via email to PDRPublicComments@hud.gov.

FOR FURTHER INFORMATION CONTACT: Peter Mateyka, Survey Statistician, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Peter.J.Mateyka@hud.gov, telephone (202) 402–5873. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or

communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available supporting documents for the proposed collection may be obtained from Mr. Mateyka.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: 2027 Rental Housing Finance Survey.

OMB Approval Number: 2528–0276.

Type of Request: Revision of a currently approved collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Rental Housing Finance Survey (RHFS) provides a measure of financial, mortgage, and property characteristics of rental housing properties in the United States. RHFS focuses on mortgage financing of rental housing properties, with emphasis on new originations for purchase-money mortgages and refinancing, and the characteristics of these new originations.

The RHFS collects data on property values of residential structures, characteristics of residential structures, rental status and rental value of units within the residential structures, commercial use of space within residential structures, property management status, ownership status, a detailed assessment of mortgage financing, and benefits received from Federal, state, local, and non-governmental programs. Many of the questions are the same or similar to those found on the 1995 Property Owners and Managers Survey, the rental housing portion of the 2001 Residential Finance Survey, and previous collections of the Rental Housing Finance Survey. In the 2027 RHFS, HUD plans to collect new data on the types of rental properties owned by owners who own multiple properties; new categories of maintenance and repair costs, including costs associated with natural disasters; new categories of capital improvement costs, including improvement and replacement costs associated with natural disasters; and data on evictions and the eviction process. This survey does not duplicate work done in other existent HUD surveys or studies that deal with rental units financing.

Policy analysts, program managers, budget analysts, and Congressional staff

can use the survey's results to advise executive and legislative branches about the mortgage finance characteristics of the rental housing stock in the United States and the suitability of public policy initiatives. Academic researchers and private organizations will also utilize the data to facilitate their research and projects. The Department of Housing and Urban Development

(HUD) needs the RHFS data for the following two reasons:

1. This is the only source of information on the rental housing finance characteristics of rental properties.
2. HUD needs this information to gain a better understanding of the mortgage finance characteristics of the rental housing stock in the United States to

evaluate, monitor, and design HUD programs.

Respondents: Owners and managers of rental properties.

Estimated Number of Respondents: 10,000.

Frequency of Response: One time every three years.

Average Hours per Response: 1.

Total Estimated Burdens: 10,000 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
RHFS	10,000	1	10,000	1	10,000	\$44.50	\$445,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

44 U.S.C. 3507.

Todd M. Richardson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2026-19651 Filed 9-24-26; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7110-N-16; OMB Control No. 2502-0322]

60-Day Notice of Proposed Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* November 24, 2026.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection can be sent within 60 days of publication of this notice to www.regulations.gov. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Darian Ziegler, PRA Liaison, Department of Housing and Urban Development, 451 7th Street SW, Room 9110, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT:

Darian Ziegler, PRA Liaison, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 9110, Washington, DC 20410; email darian.ziegler@hud.gov, or telephone (202) 402-4144. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available supporting documents for the proposed collection may be obtained from Ms. Ziegler.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the

information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Disclosure of Adjustable Rate Mortgage (ARM) Rates.

OMB Approval Number: 2502-0322.

Type of Request: Extension of currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: Mortgage lenders must provide loan applicants wishing to obtain an FHA-insured Adjustable Rate Mortgage (ARM) with a pre-loan disclosure that includes a written explanation of the ARM loan features. Loan servicers must also provide mortgagors with adjustable rate mortgages an annual ARM Disclosure Notice at least 25 days before any adjustment to a mortgagor's monthly payment may occur, advising the borrower of the new interest rate, the new monthly payment, index value and how the adjustment was calculated. Lenders generate the ARM Disclosures electronically and generally provide these disclosures on paper to their borrowers or in electronic formats. HUD collects the pre-loan ARM disclosure as part of the origination case binder. HUD may collect post-closing ARM disclosures as part of HUD's program monitoring and enforcement activities, *e.g.*, when a loan is selected for HUD's post-endorsement quality review, or the lender sends the file to HUD for claim. HUD may review collected disclosures to ensure compliance with the ARM disclosure requirements.

Respondents: Lenders.

Estimated Number of Respondents: 60,609.

Estimated Number of Responses: 60,609.

Frequency of Response: One per FHA insured adjustable rate loan.

Average Hours per Response: 0.05.

Total Estimated Burdens: 3,030.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

44 U.S.C. 3507.

Paul M. Olin,

Acting General Deputy Assistant Secretary for Housing.

[FR Doc. 2026-19650 Filed 9-24-26; 8:45 am]

BILLING CODE 4210-67-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1523]

Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof (II); Notice of Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 11, 2026, under section 337 of the Tariff Act of 1930, as amended, on behalf of Netlist, Inc. of Irvine, California. A supplement to the complaint was filed on August 25, 2026. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory (DRAM) devices, products containing the same, and components thereof by reason of the

infringement of certain claims of U.S. Patent No. 10,025,731 ("the '731 patent"); U.S. Patent No. 10,217,523 ("the '523 patent"); U.S. Patent No. 12,373,366 ("the '366 patent"); and U.S. Patent No. 12,675,407 ("the '407 patent"). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205-2000. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>.

FOR FURTHER INFORMATION CONTACT:

Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205-2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2025).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on September 22, 2026, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1-13 and 16-18 of the '731 patent; claims 1-15, 17, and 18 of the '523 patent; claims 1-14 and 16-28 of the '366 patent; and claims 1-20 of the '407 patent, and whether an industry in the

United States exists or is in the process of being established as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is "certain DRAM devices (specifically, DDR5 generation DIMM), and products containing the same (such as servers, computing systems, and storage systems), and components thereof";

(3) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) *The complainant is:* Netlist, Inc., 111 Academy Way, Suite 100, Irvine, CA 92617.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Micron Technology, Inc., 8000 South Federal Way, Boise, ID 83716

Micron Semiconductor Products, Inc., 8000 South Federal Way, Boise, ID 83716

Hewlett Packard Enterprise Co., 1701 E Mossy Oaks Road, Spring, TX 77389

Lenovo Group Ltd., Lincoln House, 23rd Floor, Taikoo Place, 979 King's Road, Quarry Bay, Hong Kong

Lenovo (United States) Inc., 8001 Development Drive, Morrisville, NC 27560

Super Micro Computer, Inc., 980 Rock Ave., San Jose, CA 95131

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Commission is interested in the development of a thorough record on domestic industry in this investigation to facilitate a holistic review of all

relevant considerations. Accordingly, the presiding administrative law judge may wish to consider what information will be necessary to make a determination with respect to complainant's domestic industry allegations under subparagraphs (A), (B), and (C) of section 337(a)(3) based on an industry that exists or is in the process of being established; including the extent to which these allegations rely on expenditures made by third parties; and the extent to which expenditures are made outside the United States related to the domestic industry article(s) by any entity.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: September 23, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-19697 Filed 9-24-26; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-647 and 731-TA-1517-1519 (Review)]

Passenger Vehicle and Light Truck Tires From South Korea, Taiwan, Thailand, and Vietnam; Notice of Commission Determination To Conduct Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to the Tariff Act of 1930 to determine whether revocation of the countervailing duty order on passenger vehicle and light truck tires from Vietnam and the antidumping duty orders on passenger vehicle and light truck tires from South Korea, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date.

DATES: September 4, 2026.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202-708-1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

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 through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

SUPPLEMENTARY INFORMATION: On September 4, 2026, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). The Commission found that both the domestic and respondent interested party group responses from South

Korea, Thailand, and Vietnam to its notice of institution (91 FR 32439, June 1, 2026) were adequate, and determined to conduct full reviews of the orders on imports from South Korea, Thailand, and Vietnam. The Commission also found that the respondent interested party group response from Taiwan was inadequate but determined to conduct a full review of the order on imports from Taiwan in order to promote administrative efficiency in light of its determinations to conduct full reviews of the orders with respect to South Korea, Thailand, and Vietnam. A record of the Commissioners' votes will be available from the Office of the Secretary and at the Commission's website.

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: September 22, 2026.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2026-19628 Filed 9-24-26; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 21, 2026, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Puerto Rico in the lawsuit entitled *United States v. Steri-Tech, Inc.*, Civil Action No. 3:25-cv-01319.

The United States filed this lawsuit under the Clean Air Act. The United States' Complaint seeks injunctive relief and civil penalties for violations of the regulations that govern emission of ethylene oxide from Defendant's sterilization facility in Salinas, Puerto Rico. The Consent Decree requires the defendant to perform injunctive relief (compliance with a 99.99% removal efficiency standard for ethylene oxide) and pay a \$700,000 civil penalty.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Principal Deputy Assistant Attorney General, Energy and Natural Resources Division, and should refer to *United States v. Steri-Tech, Inc.*, D.J. Ref. No. 90-5-2-1-12790. All comments must be submitted no later than 30 days after the publication date

of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Principal Deputy Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Any comments submitted in writing may be filed by the United States in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Eric D. Albert,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2026–19677 Filed 9–24–26; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

On September 16, 2026, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Eastern District of North Carolina in the lawsuit entitled *United States of America and the State of North Carolina v. Domtar Paper Company, LLC*, Civil Action No. 4:26–cv–00172.

The lawsuit was initiated by a complaint filed by the United States and the State of North Carolina (the “Trustees”) in their capacity as the legally designated trustees for natural resources in North Carolina. The complaint alleged, inter alia, that the Defendant was liable for damages for injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances at and from the Plymouth Mill Superfund Site (the “Site”) near the Town of Plymouth, North Carolina, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

The Consent Decree resolves the claims of the Trustees against the Defendant for a total payment of \$1,905,000. Of this amount, \$1,750,000 will be paid into the United States’ Damage Assessment and Restoration Revolving Fund (“DARR Fund”) managed by the U.S. Department of Commerce, through the National Oceanic Atmospheric Administration, to fund future projects to restore injured natural resources near the Site. The remaining \$155,000 will be paid to the U.S. Department of the Interior Natural Resource Damages Assessment and Restoration Fund to be used to fund the Trustees’ administrative costs to plan, oversee, and monitor restoration. In addition, the Defendant will record a conservation agreement on property adjoining the Roanoke River to preserve bottomland forest on the property to benefit water quality and fish nursery habitat, and complete several restoration projects to benefit fish in the Roanoke River such as reduced cooling water intake withdrawals and lighting improvements and improvements for the Town of Plymouth Waterfront Park. In return for these payments and restoration activities, the United States and the State will confer on the Defendant covenants not to sue for natural resource damages known as of the date of lodging of the Consent Decree.

In accordance with CERCLA and the National Environmental Policy Act, the Trustees have also written a Draft Restoration Plan and Environmental Assessment (Draft RP/EA) that described proposed alternatives for restoring the natural resources and natural resource services injured by the release of hazardous substances from the Site. The restoration alternatives evaluated in the Draft RP/EA are (1) No Action/Natural Recovery; (2) Additional Modifications to the Domtar Plymouth Mill Cooling Water Intake System and Seasonal Outages; (3) Lighting Modifications at the Plymouth Facility; (4) Waterfront Park Improvements; (5) Warren Neck Conservation; (6) Floodplain Reconnection, Wetland Protection, and Fish Passage Improvements; and (7) Mush Island Perpetual Conservation Easement..

The publication of this notice opens a period for public comment on the proposed Consent Decree and the Draft RP/EA.

Comments on the proposed Consent Decree should be addressed to the Principal Deputy Assistant Attorney General, Energy and Natural Resources Division, and should refer to *United States of America and the State of North Carolina v. Domtar Paper Company,*

LLC, D.J. Ref. No. 90–11–3–07838/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Principal Deputy Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the proposed Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Comments on the Draft RP/EA may be submitted to the Trustees either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>Howard.Schnabolk@noaa.gov.</i>
By mail	NOAA, 2234 South Hobson Avenue, Charleston, SC 29405, Attn: Draft Restoration Plan/Environmental Assessment Weyerhaeuser Co. Plymouth Mill NR DAR.

All comments must be submitted no later than thirty (30) days after the publication date of this notice. If emailing, please include “Draft RP/EA Weyerhaeuser Co. Plymouth Mill NR DAR” in the subject line. During the public comment period, a copy of the Draft RP/EA will be available electronically at: <http://darrp.noaa.gov/hazardous-waste/trustees-see-public-comment-plan-restore-lower-roanoke-river-resources>.

Scott D. Bauer,

Assistant Section Chief, Environmental Enforcement Section, Energy and Natural Resources Division.

[FR Doc. 2026–19665 Filed 9–24–26; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Modification to Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On September 22, 2026, the Department of Justice lodged with the United States District Court for the Northern District of West Virginia a proposed modification to the consent decree entered by the Court on March 21, 2019 in the lawsuit entitled *United States of America and State of West Virginia v. Exxon Mobil Corporation*, Civil Action No. 1:18-00195-TSK.

The Consent Decree resolved claims asserted by the United States and the State of West Virginia against Exxon Mobil Corporation (“Exxon”) for injunctive relief and costs pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. 9606 and 9607, in connection with the Sharon Steel Corporation/Fairmont Coke Works Superfund Site in Fairmont, West Virginia (“Site”).

The Consent Decree, among other things, requires Exxon to implement the remedy selected by EPA for the Site in a Record of Decision (“ROD”), dated December 19, 2017. That remedy included installation of a permeable reactive barrier to address groundwater contamination, remediation of wetlands, and institutional controls. Exxon has completed the wetlands remediation and institutional controls components of the selected remedy.

In planning for the groundwater component of the selected remedy, the Parties determined that a permeable reactive barrier would not be effective in achieving the remedial action objectives in the estimated time frame identified in the ROD and would require perpetual maintenance. In lieu of a permeable reactive barrier, Exxon developed and proposed a more direct source of treatment—Liquid Alkaline Injection—which can remediate contaminated groundwater more quickly and effectively than the reactive barrier.

Earlier this year, following a 30-day public comment period, EPA amended the ROD for the Site to require Liquid Alkaline Injection rather than a permeable reactive barrier. The proposed modification would (1) require Exxon to implement the groundwater component of the selected remedy as amended by the 2026 ROD amendment, (2) modify related provisions of the Consent Decree, and

(3) update notice and reporting requirements.

The publication of this notice opens a period for public comment on the modification to consent decree. Comments should be addressed to the Assistant Attorney General, Energy and Natural Resources Division, and should refer to *United States and State of West Virginia v. Exxon Mobil Corporation*, D.J. Ref. No. 90–11–3–06663/2. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	pubcomment-ees.enrd@usdoj.gov .
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611

Any comments submitted in writing may be filed in whole or in part on the public court docket without notice to the commenter.

During the public comment period, the modification to consent decree may be examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the modification to consent decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Jason A. Dunn,
Assistant Section Chief, Environmental Enforcement Section, Energy and Natural Resources Division.

[FR Doc. 2026–19637 Filed 9–24–26; 8:45 am]

BILLING CODE 4410–15–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Governance and Performance Review Committee of the Legal Services Corporation (LSC) Board of Directors will meet on September 30, 2026. The meeting will begin at 3:00 p.m. Eastern Time and continue until the conclusion of the Committee’s agenda.

PLACE: Public notice of virtual meeting. LSC will conduct its September 30, 2026, meeting virtually via videoconference.

Public Observation: Unless otherwise noted herein, the committee meeting will be open to public observation via LSC’s YouTube channel: <https://www.youtube.com/@LegalServicesCorp/streams>.

www.youtube.com/@LegalServicesCorp/streams.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Meeting Schedule

1. *Wednesday, September 30, 2026—Governance and Performance Review Committee Meeting*

Start Time—3:00 p.m. ET

a. Matters to be discussed include a preview of the annual Board and Committee evaluation process.

CONTACT PERSON FOR MORE INFORMATION:

Kimberly Little, Board and Executive Coordinator, at (202) 295–1500. Questions may also be sent by electronic mail to the Office of the Corporate Secretary at updates@lsc.gov.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at <https://www.lsc.gov/about-lsc/board-meeting-materials>.

(Authority: 5 U.S.C. 552b.)

Dated: September 23, 2026.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2026–19689 Filed 9–23–26; 4:15 pm]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET**Request for Information; Domestic and Near Shore Manufacturing of Essential Medicines on the ASPR 86 List**

AGENCY: Office of Management and Budget.

ACTION: Request for information.

SUMMARY: The Office of Management and Budget (OMB) is conducting market research to identify new and unused (idle) domestic, U.S.-based, and near shore production capabilities for Finished Dose Forms (FDF), Active Pharmaceutical Ingredients (API), and Key Starting Materials (KSM) associated with the Administration for Strategic Preparedness and Response (ASPR) 86 list of essential medicines. Responses will be shared with federal agencies that have requirements for essential medicines or responsibilities for strengthening the domestic industrial base for essential generic pharmaceuticals.

DATES: Responses to this request for information will be accepted for consideration until October 26, 2026.

ADDRESSES: Responses must be submitted electronically through [regulations.gov](https://www.regulations.gov). Mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be considered.

Instructions: Federal eRulemaking Portal: Go to www.regulations.gov search “Domestic and Near Shore Manufacturing of Essential Medicines RFI” to submit your comments electronically. Information on how to use [Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ” (<https://www.regulations.gov/faq>). Should you choose to include proprietary information or confidential business information in your submission, please ensure you use appropriate markings and handling instructions to alert OMB as to the nature of information being submitted and maintain proper handling. Your response will be shared with other Federal agencies and entities.

Privacy Act Statement: OMB is issuing this request for information (RFI) pursuant to its authorities under 31 U.S.C. 501 *et seq.* Comments and commenter information are maintained under the OMB Public Input System of Records, OMB/INPUT/01. The system of records notice accessible at 88 FR 20913 (<https://www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records>) includes a list of routine uses associated with the collection of this information.

Disclaimer: Participation in this RFI is strictly voluntary. OMB will use your feedback to inform sound decision-making on topics related to this RFI regarding potential government-wide actions to revitalize the domestic manufacturing base, create new opportunities for U.S. firms and workers, and position U.S. businesses to compete and lead globally in strategic industries. This announcement should not be construed as a commitment of any kind by the U.S. Government. The U.S. Government is in no way liable to pay for or reimburse any companies or entities that respond to this announcement. Nothing in this announcement constitutes an obligation on the part of the U.S. Government. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to Robert Orr, Deputy to the Associate Director of Economic Policy, Office of Management and Budget, tel: 202–395–1390, or email the Made in

America Office at MadeInAmerica@omb.eop.gov with “Domestic and Near Shore Manufacturing of Essential Medicines on the ASPR 86 List” in the subject line.

SUPPLEMENTARY INFORMATION:

1. Executive Summary

OMB is conducting market research to identify new and idle domestic, U.S.-based, and near shore production capabilities for FDFs, APIs, and KSMs associated with the ASPR 86 list of essential medicines. The list is provided as an attachment to this RFI. OMB is also seeking equivalent information on the following antibiotics which are not on the ASPR 86 list: Amoxicillin and Ciprofloxacin, due to potential supply chain vulnerabilities. This RFI is open to participation from all entities that are not Foreign Entities of Concern (FEOC). For purposes of this RFI, FEOC means a person owned by, controlled by, or subject to the jurisdiction or direction of a government of China, Russia, Iran, or North Korea.

Information is requested from qualified manufacturers within the pharmaceutical, chemical, and petrochemical sectors. Responses will be shared with federal agencies that have requirements for essential medicines or responsibilities for strengthening the domestic industrial base for essential generic pharmaceuticals. Feedback may be used to help inform near-term federal acquisition efforts (both enterprise and government-wide), which might include limiting competition for a federal contract to a particular source or sources to achieve industrial mobilization, and related efforts to inform potential sources of financial assistance.

2. Background

This RFI is driven by the urgent need to ensure domestic and near shore production of pharmaceutical products for the American people as a matter of national security. The initiative directly supports the established objective to secure the domestic production of the essential medicines, and their precursors, listed in the ASPR 86 list in eighteen months. And to reduce or eliminate dependence on medicines produced by FEOCs.

Most essential medicine APIs are not made domestically, leaving the country vulnerable to foreign supply disruptions, especially from adversarial nations. A majority of KSMs needed to produce generic medicines are not manufactured in the United States.

This RFI seeks information both to optimize use of existing domestic or near shore capacity and to better

understand ongoing or planned actions to create new domestic or near shore capacity for essential generic pharmaceuticals on the ASPR 86 list. Schedule 2 Controlled substances and branded drugs on the ASPR 86 list are not priorities for this RFI.

3. Statement of Need

The primary objective is to identify existing and new domestic, U.S.-based or near shore production capabilities for FDFs, APIs, and KSMs associated with the ASPR 86 list of essential medicines. We are seeking information on all aspects of the manufacturing lifecycle, from raw material sourcing to finished product. This information will be used to shape federal policies, programs and potential partnerships to re-shore production and eliminate supply chain risks.

4. Data Availability

To facilitate a comprehensive assessment of market opportunities to leverage existing or new capabilities, the Government intends to provide qualified respondents with access to historical federal spend data related to the essential medicines categorized under the ASPR 86 list and a comprehensive list of associated APIs and KSMs. Access protocols and confidentiality requirements for this data will be distributed to interested parties upon request.

5. Feedback

a. Entity Overview

If your entity has idle capacity or is planning new capacity to produce FDFs, APIs, or KSMs on the ASPR 86 list domestically or at a near shore location, please provide the following information:

- i. legal entity name.
- ii. headquarters location.
- iii. unique entity identifier, if registered in the System for Award Management.

b. Feasibility Feedback—Idle Capacity

If your entity has idle capacity to produce FDFs, APIs, or KSMs on the ASPR 86 list domestically or at a near shore location, please provide and the following information, broken out by FDF, API, and KSM:

- i. *Identifier:* Molecule name, description, national drug code.
- ii. *Manufacturing site:* Location of existing site.
- iii. *Available capacity:* Amount of current production, amount of unused capacity and estimated timeline to reach full operational capacity.

iv. *Regulatory compliance*: Current FDA registration status for each molecule/NDC.

v. *Technical capabilities*: Confirmation of FDF, API, and KSM synthesis or formulation capabilities relevant to the ASPR 86 list.

vi. *Sourcing strategies*: Supply chain mapping for upstream inputs, including specific countries of origin.

vii. *Required demand*: Price per unit needed to operate at full capacity.

viii. *Financing*: A description of financing that may be sought to fill or increase production—debt, equity, offtake contract, other. Reason for financing (*e.g.*, restart cost, additional labor).

ix. *Cost considerations*: Industry perspectives on key cost drivers.

4.3. Feasibility Feedback—New Capacity

If your entity is actively planning to domestically produce FDFs, APIs, or KSMs on the ASPR 86 list domestically or at a near shore location, please provide the following information broken out by FDF, API, and KSM:

i. *Identifier*: Molecule name, description, national drug code.

ii. *Manufacturing site*: Location of existing or planned site for new production.

iii. *Facility status*: Identify if site is existing, brownfield, or greenfield. If not existing, identify if funding has been secured for construction and/or renovation.

iv. *Anticipated capacity*: Level of planned production.

v. *Required demand*: Level of demand and projected cost per unit needed to

produce the product and maintain long-term domestic viability.

vi. *Regulatory compliance*: Current FDA registration status.

vii. *Technical capabilities*: Confirmation of FDF, API, and KSM synthesis or formulation capabilities relevant to the ASPR 86 list.

viii. *Sourcing strategies*: Supply chain mapping for upstream inputs, including specific countries of origin.

ix. *Financing*: A description of financing that may be sought to establish new production—debt, equity, offtake contract, other. Reason for financing (*e.g.*, restart cost, additional labor).

x. *Cost considerations*: Industry perspectives on key cost drivers.

Michael Stumo,

Director, Made in America Office.

BILLING CODE 3110-01-P

ASPR 86 List of Essential Medicines

#	ASPR medicine	API / drug substance	KSM or critical upstream input
1	Acetaminophen	Acetaminophen	4 aminophenol
2	Acyclovir	Acyclovir	Purine starting material, commonly 2 amino 6 chloropurine, plus protected hydroxyethoxymethyl side chain precursor; route specific
3	Adenosine	Adenosine	Adenine plus D ribose, or fermentation derived nucleoside intermediate depending process
4	Albuterol	Albuterol, usually albuterol sulfate	Substituted salicylaldehyde / acetophenone aromatic precursor carrying the salbutamol carbon skeleton; regulatory KSM is route specific
5	Alteplase	Alteplase	Recombinant production cell bank and cell culture inputs; conventional small molecule KSM designation is not applicable
6	Amiodarone	Amiodarone	2 butylbenzofuran intermediate plus iodinated benzoyl / phenoxy precursor; route specific
7	Ampicillin	Ampicillin	6 aminopenicillanic acid, 6 APA, plus D phenylglycine derivative
8	Apixaban	Apixaban	Lactam / pyrazole aryl intermediates used to assemble the apixaban scaffold; regulatory KSM is route specific
9	Argatroban	Argatroban	Protected L arginine derivative plus tetrahydroquinoline carboxylic acid intermediate
10	Aspirin	Acetylsalicylic acid	Salicylic acid
11	Atropine	Atropine	Tropine plus tropic acid
12	Azithromycin	Azithromycin	Erythromycin A
13	Bictegravir / Emtricitabine / Tenofovir alafenamide	Bictegravir; emtricitabine; tenofovir alafenamide	Three independent API supply chains. Bictegravir intermediates are route specific; emtricitabine uses fluorinated cytosine / oxathiolane intermediates; TAF derives from tenofovir / PMPA related phosphonate intermediate
14	Calcium gluconate	Calcium gluconate	Gluconic acid or gluconate plus pharmaceutical grade calcium source
15	Cefepime	Cefepime	7 aminocephalosporanic acid, 7 ACA, derived cephalosporin nucleus plus aminothiazolyl oxime side chain
16	Ceftazidime / Avibactam	Ceftazidime; avibactam	Ceftazidime: 7 ACA derived nucleus plus aminothiazolyl oxime side chain. Avibactam: synthetic bicyclic / diazabicyclooctane intermediates; route specific
17	Ceftriaxone	Ceftriaxone	7 ACA derived cephalosporin nucleus plus aminothiazolyl methoxyimino side chain
18	Chlorhexidine	Chlorhexidine	Hexamethylenediamine and chlorophenyl biguanide precursor chemistry
19	Continuous renal replacement solution	Electrolyte solution, multiple ingredients	Sodium chloride, potassium chloride where used, calcium chloride, magnesium chloride, sodium bicarbonate or lactate, glucose; this is a formulation rather than a single API
20	Dantrolene	Dantrolene	5 nitro 2 furaldehyde plus aminophenyl hydantoin intermediate

21	Daptomycin	Daptomycin	Fermentation organism / production cell bank and fermentation feedstocks ; no single conventional synthetic KSM
22	Dexamethasone	Dexamethasone	Advanced corticosteroid nucleus intermediate derived from steroid feedstock; precise KSM is process specific
23	Dextrose 50% injection	Dextrose	Pharmaceutical grade glucose / dextrose , generally derived from starch hydrolysate
24	Diltiazem	Diltiazem	Chiral substituted glycidate / epoxide plus 2 aminothiophenol derived intermediate
25	Diphenhydramine	Diphenhydramine	Benzhydryl chloride or benzhydrol plus 2 dimethylaminoethanol
26	Dobutamine	Dobutamine	Catechol phenethylamine and substituted phenylalkyl intermediates ; route specific
27	Doxycycline	Doxycycline	Oxytetracycline , fermentation derived
28	Enoxaparin	Enoxaparin sodium	Unfractionated porcine intestinal mucosal heparin
29	Epinephrine	Epinephrine	Catechol derived adrenalone / amino ketone intermediate
30	Etomidate	Etomidate	Substituted imidazole carboxylate and chiral phenethyl precursor ; route specific
31	Fentanyl	Fentanyl	N phenethyl 4 piperidone, NPP , with aniline in the classic route
32	Fluconazole	Fluconazole	2,4 difluoroaryl carbonyl intermediate plus 1,2,4 triazole
33	Furosemide	Furosemide	2,4 dichloro 5 sulfamoylbenzoic acid plus furfurylamine
34	Haloperidol	Haloperidol	4 chlorophenyl hydroxypiperidine intermediate plus fluorobutyrophenone intermediate
35	Heparin	Heparin sodium	Porcine intestinal mucosa / crude heparin
36	Hydralazine	Hydralazine	1 chlorophthalazine plus hydrazine
37	Hydromorphone	Hydromorphone	Morphine or thebaine derived opiate intermediate , depending route
38	Ibuprofen	Ibuprofen	Isobutylbenzene
39	Immune globulin	Human immune globulin	Human plasma ; no small molecule KSM
40	Insulin regular	Human insulin	Recombinant microbial cell bank plus fermentation inputs ; no conventional chemical KSM
41	Intralipid 20%	Soybean oil lipid emulsion	Purified soybean oil, egg phospholipids, glycerol
42	Ipratropium bromide	Ipratropium bromide	Atropine / tropane intermediate , followed by N isopropyl quaternization
43	Isoflurane	Isoflurane	Halogenated ether precursor ; exact regulatory starting material depends on fluorination / chlorination route
44	Labetalol	Labetalol	Substituted salicylamide / acetophenone intermediate plus benzylamine fragment ; route specific
45	Lactulose	Lactulose	Lactose
46	Levetiracetam	Levetiracetam	S 2 aminobutanamide derivative plus 4 halobutyl precursor
47	Levofloxacin	Levofloxacin	Chiral fluorinated quinolone intermediate ; KSM designation is route specific
48	Levothyroxine	Levothyroxine sodium	Iodinated L tyrosine intermediates, including diiodotyrosine derived material
49	Lidocaine / Epinephrine	Lidocaine; epinephrine	Lidocaine: 2,6 dimethylaniline plus chloroacetyl intermediate and diethylamine. Epinephrine: catechol derived adrenalone intermediate
50	Linezolid	Linezolid	Fluoro morpholinyl aniline intermediate plus oxazolidinone side chain precursor
51	Lorazepam	Lorazepam	2 amino 2',5 dichlorobenzophenone derived benzodiazepine intermediate

52	Magnesium sulfate	Magnesium sulfate	Magnesium mineral / magnesium oxide or hydroxide plus sulfuric acid
53	Meropenem	Meropenem	Protected carbapenem 4 AA nucleus plus pyrrolidinylthio side chain intermediate
54	Methylprednisolone	Methylprednisolone	Advanced corticosteroid / pregnane nucleus intermediate ; precise KSM depends on synthetic route
55	Metoprolol	Metoprolol	4 (2 methoxyethyl)phenol plus epichlorohydrin , followed by isopropylamine
56	Metronidazole	Metronidazole	2 methyl 5 nitroimidazole plus hydroxyethylating precursor
57	Micafungin	Micafungin sodium	FR901379 fermentation derived echinocandin intermediate , followed by semisynthetic side chain modification
58	Midazolam	Midazolam	Halogenated amino benzophenone / benzodiazepine ring precursor ; route specific
59	Morphine	Morphine sulfate / morphine	Poppy straw concentrate / opium derived morphine alkaloid stream
60	Naloxone	Naloxone	Thebaine / oxymorphone derived opiate intermediate
61	Nitroglycerin	Nitroglycerin	Glycerol plus nitric acid , with sulfuric acid process chemistry
62	Norepinephrine	Norepinephrine	Catechol derived amino alcohol / amino ketone intermediate
63	Ondansetron	Ondansetron	Carbazolone / carbazole intermediate plus imidazole containing side chain precursor ; route specific
64	Oxytocin	Oxytocin	Protected amino acids and peptide fragments used in solid phase or solution peptide synthesis
65	Pantoprazole	Pantoprazole	2 mercapto 5 difluoromethoxybenzimidazole plus substituted chloromethyl pyridine intermediate
66	Penicillin G	Benzylpenicillin	Fermentation organism plus phenylacetic acid side chain feedstock
67	Phenylephrine	Phenylephrine	3 hydroxy substituted acetophenone / amino alcohol precursor ; route specific
68	Phenytoin	Phenytoin	Benzil plus urea
69	Piperacillin / Tazobactam	Piperacillin; tazobactam	Piperacillin: 6 APA derived penicillin nucleus / ampicillin intermediate plus dioxopiperazine side chain . Tazobactam: penicillanic acid / 6 APA derived beta lactam nucleus
70	Potassium chloride	Potassium chloride	Potassium mineral brine / potash derived KCl ; no synthetic KSM in the conventional API sense
71	Propofol	Propofol	Phenol plus propylene / isopropylating feedstock to produce 2,6 diisopropylphenol
72	Rocuronium	Rocuronium bromide	Steroidal androstane nucleus intermediate ; exact KSM is route specific
73	Sodium bicarbonate injection	Sodium bicarbonate	Sodium carbonate plus carbon dioxide , or equivalent bicarbonate production process
74	Sodium phosphate	Sodium phosphate salts	Phosphoric acid plus sodium hydroxide / sodium carbonate
75	Succinylcholine	Succinylcholine chloride	Succinic acid / succinyl chloride derivative plus choline
76	Surfactant	Pulmonary surfactant	Product dependent : animal lung extract and phospholipids for animal derived products; defined phospholipids and peptide components for synthetic products
77	Tacrolimus	Tacrolimus	Streptomyces production strain, fermentation media, and downstream fermentation intermediate
78	Thiamine	Thiamine	Substituted pyrimidine intermediate plus thiazole intermediate
79	Ticagrelor	Ticagrelor	Triazolotriazine core intermediate plus chiral difluorophenyl cyclopentane fragment ; route specific
80	Topical / surface alcohol based sanitizers	Ethanol and/or isopropyl alcohol	Ethanol or isopropanol feedstock
81	Trimethoprim / Sulfamethoxazole	Trimethoprim; sulfamethoxazole	Trimethoprim: 3,4,5 trimethoxybenzaldehyde derived intermediate . Sulfamethoxazole: sulfonyl chloride aromatic intermediate plus 3 amino 5 methylisoxazole
82	Valganciclovir	Valganciclovir	Ganciclovir plus protected L valine derivative
83	Vancomycin	Vancomycin	Amycolatopsis production strain and fermentation inputs
84	Vasopressin	Vasopressin	Protected amino acids / peptide fragments used in peptide synthesis
85	Vitamin K	Phytonadione, vitamin K1	2 methyl 1,4 naphthoquinone / menadione related intermediate plus phytol side chain
86	Voriconazole	Voriconazole	Fluoropyrimidine / triazole containing chiral intermediates ; precise KSM is route specific

[FR Doc. 2026–19646 Filed 9–24–26; 8:45 am]

BILLING CODE 3110–01–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 26–054]

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2025—Continuation**AGENCY:** National Aeronautics and Space Administration.**ACTION:** Notice announcing no penalty inflation adjustment for civil monetary penalties for 2026.**SUMMARY:** The National Aeronautics and Space Administration (NASA) is notifying the public that its civil monetary penalty amounts will not increase for the 2026 calendar year. NASA is required by statute to amend its regulations annually to make

inflation adjustments to civil monetary penalties it assesses or enforces. In accordance with guidance from the Office of Management and Budget (OMB), NASA will continue to use the 2025 civil monetary penalty levels because there is no cost-of-living adjustment for 2026.

FOR FURTHER INFORMATION CONTACT: Bryan Diederich, bryan.r.diederich@nasa.gov, 202.358.0216.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the Inflation Adjustment Act) requires agencies to adjust civil monetary penalties annually for inflation. These adjustments are based on the Consumer Price Index for All Urban Consumers (CPI-U) for the month of October of the preceding year. For 2026, the Bureau of Labor Statistics did not publish the October 2025 CPI-U due to a lapse in appropriations. As a result, OMB Memorandum M-26-11 (April 17, 2026) directs agencies not to apply an inflation adjustment for 2026 and to continue using 2025 penalty levels.

II. No Adjustment for 2026

Consistent with the guidance provided in M-26-11, NASA is not making any adjustments to civil monetary penalties under the Inflation Adjustment Act in calendar year 2026.

Jamie M. Krauk,

*Director, Office of the Executive Secretariat,
National Aeronautics and Space
Administration.*

[FR Doc. 2026-19687 Filed 9-24-26; 8:45 am]

BILLING CODE 7510-13-P

**NUCLEAR REGULATORY
COMMISSION**

[Docket No. 50-289; EAXX-429-00-000-
1773009788; NRC-2026-0397]

**Constellation Energy Generation, LLC;
Christopher M. Crane Clean Energy
Center; Environmental Assessment
and Finding of No Significant Impact**

AGENCY: Nuclear Regulatory
Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), as the lead agency, and the U.S. Department of Energy (DOE) Office of Energy Dominance Financing (EDF), as a cooperating agency, are issuing an environmental assessment (EA) and finding of no significant impact (FONSI) evaluating the reasonably foreseeable

environmental effects from proposed Federal actions related to reauthorizing power operations at the Christopher M. Crane Clean Energy Center (CCEC). Specifically, the NRC is considering issuance of an exemption and three license amendments, which were requested by Constellation Energy Generation, LLC (CEG) to support the potential reauthorization of power operations at the CCEC. The DOE EDF's proposed action is a decision on providing Federal financial assistance (a loan guarantee) for refueling and resumption of power operations at the CCEC.

DATES: The EA and FONSI referenced in this document are available on September 25, 2026.

ADDRESSES: Please refer to Docket ID NRC-2026-0397 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2026-0397. Address questions about Docket IDs in *Regulations.gov* to Bridget Curran; telephone: 301-415-1003; email: Bridget.Curran@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

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

- *NRC Public Project Website:* The EA and FONSI along with information regarding the CCEC, including licensing, operation, decommissioning, and

potential restart, is available at <https://www.nrc.gov/info-finder/reactors/ccec>.

FOR FURTHER INFORMATION CONTACT:

Kevin Folk, telephone: 301-415-6944; email: Kevin.Folk@nrc.gov, or Ashley Waldron, telephone: 301-415-7317; email: Ashley.Waldron@nrc.gov. Both are staff of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CCEC, formerly Three Mile Island Nuclear Station, Unit 1 (TMI-1), consists of a single pressurized-water nuclear reactor located in Dauphin County, Pennsylvania, on Three Mile Island in the Susquehanna River. Originally licensed for operation on April 19, 1974, the NRC issued a renewed facility operating license (RFOL) for TMI-1 on October 22, 2009, with the license term expiring on April 19, 2034.

On June 20, 2017, and September 26, 2019, Exelon Generation Company, LLC, the licensee who then operated the facility, submitted certifications that it would permanently cease operations of TMI-1 and had permanently removed fuel from the reactor vessel, respectively, in accordance with paragraph 50.82(a)(1) of title 10 of the *Code of Federal Regulations* (10 CFR). Upon the NRC's docketing of these certifications, the RFOL no longer authorized operation of the reactor or emplacement or retention of fuel into the reactor vessel, as provided by 10 CFR 50.82(a)(2).

CEG is seeking to return the CCEC to power operations and has submitted for NRC approval an exemption request and three license amendment requests (LARs) in support of allowing the resumption of power operations through April 19, 2034, the previous expiration date of the facility's RFOL.

A notice of opportunity to request a hearing and petition for leave to intervene was published in the **Federal Register** on February 24, 2026, regarding the three LARs. Consistent with the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations, the NRC did not publish a notice of opportunity for hearing on the exemption request.

The NRC staff prepared a draft EA and draft FONSI in accordance with 10 CFR 51.30, "Environmental assessment," documenting its environmental review of the proposed actions related to reauthorizing power operations at the CCEC. The NRC staff issued the draft EA and draft FONSI with a notice in the

Federal Register and offered a 30-day public comment period in accordance with 10 CFR 51.33, “Draft finding of no significant impact; distribution.” The draft FONSI stated that the NRC staff had preliminarily determined that the proposed Federal actions will not have a significant effect on the quality of the human environment.

The environmental review included fulfillment of the NRC’s obligations related to Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101, *et seq.*) (NHPA). The regulation in 36 CFR 800.8, “Coordination with the National Environmental Policy Act,” allows agencies to use their National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) process to fulfill the requirements of Section 106 of the NHPA. Therefore, pursuant to 36 CFR 800.8(c), the NRC used its process for the preparation of the EA on the proposed actions to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

After consideration of the public comments, the NRC staff finalized the EA, which is summarized in Section II of this document. Based on this final EA and in accordance with 10 CFR 51.31, “Determinations based on environmental assessment,” the NRC staff has determined that the preparation of an environmental impact statement (EIS) is not necessary and has prepared a FONSI in accordance with 10 CFR 51.32, “Finding of no significant impact.” The FONSI is detailed in Section III of this document.

II. Summary of Environmental Assessment

Description of the Proposed Federal Actions and Need

The NRC’s proposed actions are decisions on whether to grant or deny CEG’s interdependent, connected licensing and regulatory requests, including any revisions or supplements thereto or other regulatory or licensing requests submitted to the NRC, that are necessary to support reauthorizing power operations and refueling of the CCEC reactor. The DOE EDF’s proposed action is a decision on providing Federal financial assistance for refueling and resumption of power operations at the CCEC pursuant to CEG’s loan guarantee agreement with the DOE that was issued pursuant to the Energy Policy Act (EPA) of 2005.

The need for the NRC proposed actions, which would collectively

support the reauthorization of power operations and refueling of the CCEC under the existing RFOL, is to provide 835 megawatts-electric of baseload power generation capability to the Pennsylvania, New Jersey, and Maryland electric grid. In support of its decision to pursue the resumption of power operations at the CCEC, CEG cites a 20-year power purchase agreement signed in 2024 with Microsoft to supply carbon-free energy from the CCEC to Microsoft’s data centers located within the PJM Interconnection LLC’s electric grid. The need for the DOE proposed action (Federal financial assistance in the form of a loan guarantee) is to implement DOE’s authority under Title XVII of the EPA of 2005, which was reauthorized, amended, and revised by the Inflation Reduction Act of 2022 (42 U.S.C. 16517) and the One Big Beautiful Bill Act (Pub. L. 119–21 (July 4, 2025)) to create the EDF Program. The purpose of the EDF Program is to finance projects and facilities in the United States that retool, repower, repurpose, or replace energy infrastructure that has ceased operations or enable operating energy infrastructure to increase capacity or output.

Environmental Impacts of the Proposed Federal Actions

In the EA, the NRC staff assessed the potential reasonably foreseeable environmental effects (impacts) from the proposed actions associated with the following relevant resource areas: land use and visual resources; meteorology, air quality, and noise; surface water resources; groundwater resources; ecological resources (terrestrial and aquatic); Federally protected ecological resources; historic and cultural resources; socioeconomic conditions; radiological and nonradiological human health; waste management; uranium fuel cycle and transportation; and postulated accidents. The NRC staff also considered decommissioning impacts as well as greenhouse gas emissions and climate change effects. The NRC staff determined that the environmental impacts of the proposed actions would be NOT SIGNIFICANT for each potentially affected environmental resource area. In addition, the NRC staff determined that the projected effects of climate change would not alter any of the impact determinations described in the EA.

Environmental Impacts of Alternatives to the Proposed Federal Actions

The NRC staff considered a reasonable range of alternatives to the proposed

actions, including an analysis of any environmental impacts of not implementing the proposed actions (*i.e.*, the no-action alternative). The alternatives discussion in an EA does not need to be as extensive as would be required for an EIS. The NRC staff determined that there are no alternatives that meet the need for the proposed actions. For the no-action alternative, the NRC staff determined that the environmental impacts could potentially be SIGNIFICANT such as those associated with the construction and operation of new replacement power facilities. In contrast, the potential environmental impacts from the proposed actions of reauthorizing power operations at the existing CCEC would be NOT SIGNIFICANT for each potentially affected environmental resource area. Therefore, the NRC staff concluded that there are no environmentally preferable alternatives to the proposed actions.

III. Finding of No Significant Impact

The proposed Federal actions before the NRC are whether to grant requests for an exemption and license amendments to support reauthorizing power operations at the CCEC through the remainder of its RFOL term (to April 19, 2034). The NRC staff has conducted an environmental review of these actions and prepared an EA. This FONSI incorporates by reference the EA summarized in Section II of this notice and referenced in Section IV of this notice. Based on its determination in the EA that the environmental impacts of the proposed actions would be NOT SIGNIFICANT for each potentially affected resource area, the NRC staff has determined that the proposed Federal actions will not have a significant effect on the quality of the human environment. Accordingly, the NRC staff has made a determination not to prepare an EIS for the proposed Federal actions and that a FONSI is warranted.

This FONSI and the related environmental documents referenced throughout this notice are available for public inspection as discussed in the EA and Section IV of this notice. At the conclusion of the NRC environmental review, the DOE EDF will publish a separate notice or decision document, as appropriate.

IV. Availability of Documents

The EA and related documents identified in the following table are available to interested parties through ADAMS, as indicated.

Document description	ADAMS accession No.
Environmental Assessment and Finding of No Significant Impact for the Christopher M. Crane Clean Energy Center Reauthorization of Power Operations Project, dated September 18, 2026.	ML26231A018.
Constellation Energy Generation, LLC; Christopher M. Crane Clean Energy Center; Draft Environmental Assessment and Draft Finding of No Significant Impact, dated June 8, 2026.	ML26149A334; 91 FR 34658.
Draft Environmental Assessment and Draft Finding of No Significant Impact for the Christopher M. Crane Clean Energy Center Reauthorization of Power Operations Project, June 2026.	ML26120A058.
Constellation Energy Generation, LLC; Christopher M. Crane Clean Energy Center; Applications for Amendments to Renewed Facility License Involving Proposed No Significant Hazards Consideration Determination and Containing Safeguards Information and Order Imposing Procedures for Access to Safeguards Information; License amendment request (LAR); notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures, dated February 24, 2026.	ML26013A106; 91 FR 8910.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: September 22, 2026.

For the Nuclear Regulatory Commission.

Stephen Koenick,

Chief, License Renewal Environmental Branch, Division of Licensing Projects II, Office of Nuclear Reactor Regulation.

[FR Doc. 2026–19603 Filed 9–24–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of September 28, October 5, 12, 19, 26, and November 2, 2026. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public/meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please contact the Reasonable Accommodations Resource by email at Reasonable_Accommodations.Resource@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of September 28, 2026

Tuesday, September 29, 2026

9:30 a.m. All Employees Meeting (Public Meeting) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the TWFN Auditorium, 11545 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address <https://video.nrc.gov/>.

Week of October 5, 2026—Tentative

There are no meetings scheduled for the week of October 5, 2026.

Week of October 12, 2026—Tentative

Thursday, October 15, 2026

9:00 a.m. CDT Nuclear Regulatory Commission Reorganization First 100 Days: Enhancing Reactor and Materials Oversight Integration and Performance (Public Meeting) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the NRC Region IV offices at 1600 East Lamar Boulevard, Arlington, Texas 76011–4511. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address <https://video.nrc.gov/>.

Week of October 19, 2026—Tentative

There are no meetings scheduled for the week of October 19, 2026.

Week of October 26, 2026—Tentative

There are no meetings scheduled for the week of October 26, 2026.

Week of November 2, 2026—Tentative

There are no meetings scheduled for the week of November 2, 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: September 23, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–19715 Filed 9–23–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08903; NRC–2026–4522]

Homestake Mining Company of California; Grants Reclamation Project; License Amendment Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering an application for an amendment of License No. SUA–1471 (Docket No. 040–08903) which would authorize Homestake Mining Company of California (HMC) for its former conventional uranium mill near Grants, New Mexico, known as the Grants Reclamation Project, to replace its Groundwater Corrective Action Program and its currently approved groundwater protection standards with Alternate Concentration Limits. The amendment would revise license conditions 15, 28, 35, 36, and 42.

DATES: A request for a hearing or petition for leave to intervene must be filed by November 24, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–4522 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking website:** Go to <https://www.regulations.gov> and search

for Docket ID NRC–2026–4522. 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(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin ADAMS Public Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The license amendment request is available in ADAMS under Package Accession No. ML26183A208.

- *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.

- *Public Library*: A copy of the license application can be accessed at the following public library: Grants Public Library, 1101 N 1st Street, Grants, NM 87020.

- *NRC's Public website*: HMC's license application is available under the NRC's public website at <https://www.nrc.gov/facilities-safety/facility-finder/decommissioning/uranium/homestake>, while the application is under review.

FOR FURTHER INFORMATION CONTACT: Melanie Wong, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2432; email: *Melanie.Wong@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC has received, by letter dated June 30, 2026 (ADAMS Package Accession No. ML26183A208), a license amendment request (LAR) from Homestake Mining Company of California (HMC) to revise its Groundwater Corrective Action Program and its currently approved groundwater protection standards with alternate concentration limits (ACLs) in accordance with part 40 of title 10 of the *Code of Federal Regulations*, Appendix

A. The licensee's submittal (ACL LAR) has proposed changes to license conditions 15, 28, 35, 36, and 42 and is submitted pursuant to 10 CFR part 2 and 10 CFR part 40.

The HMC Grants Reclamation Project (GRP), located 5.5 miles northeast of Milan, NM, is a conventional uranium mill site under reclamation. Uranium processing started in the late 1950's and continued until 1990. The GRP is in the decommissioning phase. In the ACL LAR, HMC states that further groundwater restoration is not technically feasible, and that the proposed ACLs, along with restrictions to access and use of groundwater, will ensure protectiveness of human health, safety, and the environment at the points of exposure.

The NRC staff found the application acceptable for a technical review (ADAMS Package Accession No. ML26226A106). The determination to accept the LAR for docketing does not constitute a determination that the ACL LAR should be approved and does not preclude the NRC staff from requesting additional information as the review proceeds. Prior to deciding on HMC's application, the NRC will need to make the findings required by the Atomic Energy Act of 1954 as amended (the Act), and the Commission's rules and regulations. The NRC's findings will be documented in a safety evaluation report and an environmental review in accordance with 10 CFR part 51. The environmental review will be the subject of a subsequent notice in the **Federal Register**.

II. Opportunity to Request a Hearing and Petition for Leave to Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's "Agency Rules of Practice and Procedure" in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the 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).

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 on the NRC's public website at <https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate>.

III. 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 their 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.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: September 22, 2026.

For the Nuclear Regulatory Commission.

Jane Marshall,

Director, Division of Decommissioning, Closure, Analysis, and Financial Oversight, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2026-19649 Filed 9-24-26; 8:45 am]

BILLING CODE 7590-01-P

PEACE CORPS

Privacy Act of 1974; System of Records

AGENCY: Peace Corps.

ACTION: Notice of a new system of records.

SUMMARY: As required by the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Circulars A-108 and A-130, the Peace Corps Office of Planning and Performance (OPP) is issuing a public notice of its new system of records Peace Corps Customer Relationship Management (Agency CRM) System of Records ("PC 38"). The Office of Planning and Performance (OPP) manage and utilizes a management database system to monitor, track, and analyze all interactions with prospective

and current Peace Corps applicants from the time they visit the agency website, its social media pages, apply for volunteer service and their volunteer activity throughout their volunteer service. This system of records contains information on members of the public who become leads and visit the Peace Corps websites, social media pages and apply to become applicants as well as those who are current volunteers and through completion of volunteer service.

DATES: Submit comments on or before October 26, 2026 This new system will be effective October 26, 2026.

ADDRESSES: Send written comments, identified by the docket number and title, to the Peace Corps, ATTN: James Olin, Government Information Specialist, Office of Compliance and Risk, 1275 First Street NE, Washington, DC 20526, or by email at pcf@peacecorps.gov. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: James Olin, Government Information Specialist, Office of Compliance and Risk, 1275 First Street NE, Washington, DC 20526; pcf@peacecorps.gov; or 202-692-2507.

SUPPLEMENTARY INFORMATION: Section 5 of the Peace Corps Act of 1960, as amended (codified as 22 U.S. Code § 2504) authorizes the recruitment and enrollment of Peace Corps volunteers. Under this section, the agency is granted the authority to enroll qualified United States citizens and nationals for service abroad, and the operational power to select, train, and manage volunteers. As part of the Recruitment Analytics and Identity Resolution Initiative (RAIRI) the agency will sync anonymized Client IDs, currently assigned to leads, with the non-anonymized lead records stored in Peace Corps' customer relationship management database, and with applicant tracking internal systems, PCrm, Volunteer Applicant Tracking System (DOVE) and Medical Applicant Exchange System (MAXx).

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), which governs the collection and protection of personal information by federal agencies, the Peace Corps is establishing a new system of records to manage personal information from members of the public who become leads and applicants who interact with Peace Corps' website, social media and volunteer recruitment activities. The system will also track applicant responses to recruitment methods, progress through the application process, and completion of volunteer service. This system will connect lead and applicant data,

training, and volunteer service to optimize recruitment strategies and assess applicant and volunteer retention and volunteer program outcomes. It will also integrate internal platforms, including PCrm, Volunteer Information Database Application (VIDA), Security Incident Management System (SIMS), Peace Corps Recruitment and Marketing (PCrm), Returned Peace Corps Volunteer Outreach (RPCV Outreach), the Director's Correspondence Log, MAXx and DOVE, to track applicant communications with staff regarding applications, medical clearance, and program success. This initiative underscores the agency's commitment to safeguarding personal information and improving operational effectiveness.

SYSTEM NAME AND NUMBER:

Peace Corps Customer Relationship Management System of Records (Agency CRM), PC-38.

SECURITY CLASSIFICATION:

Moderate.

SYSTEM LOCATION:

Records are maintained in an electronic form on a Software as a Service (SaaS) platform under contract with the Peace Corps, Office of Information Systems, 1275 First St. NE, Washington, DC 20002.

SYSTEM MANAGER(S):

The Director of Office of Planning and Performance, and the Chief Information Officer, Office of Information Systems, Peace Corps, 1275 First St. NE, Washington, DC 20002.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 4 of the Peace Corps Act of 1961, as amended (22 U.S.C. 2504; the Privacy Act of 1974, 5 U.S.C. 552a, and Peace Corps Manual Section (MS) 129: Office of Information Systems and MS 542: Information Security Program.

PURPOSE(S) OF THE SYSTEM:

The Peace Corps will utilize this system to effectively track, monitor, and analyze interactions with both potential and current applicants and volunteers. The primary purpose of the system is to support the recruitment and retention process, and gain insight into the best practices in marketing, recruitment, onboarding, retention, and volunteer matriculation throughout the entire duration of volunteer service. By collecting, managing, and analyzing the aggregation of these records and data points, the Peace Corps aims to improve operational efficiency, maintain accurate documentation, and uphold

best practices for volunteer recruitment, engagement and retention.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers members of the public who interact with the agency's social media and website, and are assigned a client ID through Google Analytics; applicants, trainees, and volunteers of the Peace Corps; authorized users who access Peace Corps computer networks, enterprise servers, or certain agency database systems related to applicants, trainees and volunteers; and personnel responsible for maintaining records, privacy and security, and software applications within these network systems. In addition, this system includes individuals who recruit prospective applicants and volunteers, as well as those who analyze applicant and volunteer data for the purposes of supporting recruitment, onboarding, retention, and program evaluation.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Office of Information Systems is responsible for maintaining the category of Peace Corps Customer Relationship Management System of Records. This system includes information pertaining to members of the public who become leads, applicants seeking to become volunteers, trainees, volunteers, and returned Peace Corps volunteers. The system maintains additional records after the leads become applicants, and volunteers. These records may include personal identifiers such as name, email address, home address, telephone number, Social Security Number, demographic information (including race, ethnicity, disabilities, etc.), birth date, marital status, fingerprints, citizenship status, government-provided identification documents and the Client ID provided by Google Analytics. The records may also contain detailed information about applicants, trainees and volunteers that include:

- Their application to become a volunteer (e.g., reason for applying, educational history, employment history, military history, prior community service activities, criminal history, medical history, skills, certifications, and references, etc.).
- Peace Corps service history and experience (e.g., descriptions of activities, performance reviews, disciplinary concerns, health related to volunteer service, reasonable accommodation, leave requests, service-related travel and service training).
- Benefits (e.g., health benefits, stipends, loan forbearance).

- Emergency contacts and beneficiaries.

Additionally, the system contains program participant descriptions and information regarding recruitment program activities, as well as details about services received by volunteer participants. The records may also include information obtained after the completion of the volunteer program.

The records maintained in this system also cover several aspects of electronic communication and access within the Peace Corps. These include documentation of interoffice and internet email activity, such as the email addresses of both sender and receiver, the subject line, and the date and time each message was sent or received.

Additionally, the system tracks user activity on Peace Corps networks. Records include user identification, the date and time each user logs on or logs off, and any instances where access to unauthorized files or directories is denied. Internet access from Peace Corps computers is also recorded, capturing the internet Protocol (IP) address used, the specific sites accessed, and the corresponding date and time of each connection.

Further records relate to system access, documenting the user ID of individuals accessing the system, the date and time of access, and the processes being run on the system. Verification and authorization activities are also recorded, including details such as user IDs, passwords, usernames, titles, and agency affiliations, to ensure proper security and oversight of system access.

RECORD SOURCE CATEGORIES:

The Office of Information Systems is responsible for maintaining the record source of categories for the Peace Corps Customer Relationship Management System of Records. The source for information in the system comes from the individuals who provide their information or their representative. The information sources may also include authorized Peace Corps staff members, contractors, Peace Corps volunteers, and other individuals or entities associated with Peace Corps and the internal electronic platforms such as PCrm, Medical Applicant Exchange System (MAXx), Volunteer Applicant Tracking System (DOVE) and Google Analytics. Most records are generated internally from computer activity logs individuals covered by the system and management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the Peace Corps may disclose all or a portion of the records or information contained in this system outside of the Peace Corps without the consent of the subject individual, if the disclosure is compatible with the purpose for which the record was collected, as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. Disclosure for Law Enforcement Purposes. Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

B. Disclosure Incident to Requesting Information. Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, or to identify the type of information requested); when necessary to obtain information relevant to a Peace Corps decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit.

C. Disclosure to Requesting Agency. Information may be disclosed to a Federal, State, local, or other public authority of the fact that this system of records contains information relevant to the requesting agency's retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for part or all of the record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget. Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

E. Disclosure to Congressional Offices. Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

F. Disclosure for Litigation. Information may be disclosed for litigation purposes. Disclosure for these purposes may be made to the Department of Justice, or in a legal proceeding before a court, adjudicative body, or other administrative body before which the Peace Corps is authorized to appear. This disclosure may be made when: (1). In any legal proceeding, where pertinent, to which Peace Corps or the United States is a party before a court, tribunal or administrative body; (2). any employee of the Peace Corps in his or her official capacity with a need to know; (3). any employee of the Peace Corps in his or her individual capacity where the Department of Justice or the Peace Corps has agreed to represent the employee; or (4). when the Peace Corps determines that litigation is likely to affect the Peace Corps or any of its components and has an interest in such litigation, and the use of such records by the Department of Justice or the Peace Corps is deemed by the Peace Corps to be relevant and necessary to the litigation.

G. Disclosure to the National Archives. Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others. Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working under a contract, service agreement, grant, cooperative agreement, job, or other activity for the Peace Corps and who have a need to have access to the information in the performance of their duties or activities for the Peace Corps. Recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints, and Appeals. Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, intake officer, equal employment opportunity specialist, investigator, arbitrator, or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an applicant, employee, or volunteer applicant, invitees, trainee or volunteer, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain

information under this routine use include, but are not limited to: the Office of Personnel Management, Office of Special Counsel, Federal Labor Relations Authority, U.S. Equal Employment Commission, the Foreign Service Grievance Board and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management. Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Settlement. Information may be disclosed in connection with settlement discussions regarding claims by or against the Peace Corps, including public filings with a court, to the extent that disclosure of the information is relevant and necessary to potential litigation or settlement discussions and except where court orders are otherwise required under Section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

L. Disclosure to U.S. Ambassadors. Information from this system of records may be shared with a U.S. Ambassador or their designated representative in any country where the Peace Corps operates, when such disclosure is necessary for the Ambassador to fulfill official duties, respond to formal inquiries, or address in-country matters within their area of responsibility.

M. To appropriate agencies, entities, and persons when (1) the Peace Corps suspects or has confirmed that there has been a breach of the system of records; (2) the Peace Corps has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, the Peace Corps (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 the Peace Corps' efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

N. Disclosure to another Federal agency or Federal entity, when the Peace Corps 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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records are stored electronically in a Federal Risk and Authorization Management Program (FedRAMP) Certified Class D (High) Software as a Service (SaaS) data backup and recovery solution cloud service offering. As a FedRAMP Class D (High) certified solution all records are protected according to federal guidelines. All electronically stored records are encrypted both at rest and in transit using FIPS 140–3 authorized encryption standards. The SaaS cloud service offering leverages a FedRAMP Certified Infrastructure as a Service (IaaS) as its primary hosting environment, a dedicated cloud IaaS for U.S Government workloads. Physical security controls to the system includes high security locks, reinforced doors, 24 hours security guard management, and PIV cards to access the room.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name, Client ID, email address, or other personal or unique identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in the Volunteer Information Database Application (VIDA) Records (will be cut off at the end of the fiscal year in which the Volunteer is separated or resigns. These records will be destroyed 6 years after cutoff.

Records in the Security Incident Management System (SIMS) Will be cut off when the final action is taken on a case or when the system is decommissioned. These records will be destroyed no sooner than 10 years after cutoff but a longer retention is authorized. Recruitment Records will be cut off at the end of the fiscal year. These records will be destroyed 6 years after cutoff.

The Returned Peace Corps Volunteers Career Link Database Master File will be cut off at the end of each calendar year. These records will be destroyed 6 years after cutoff.

The Executive Correspondence Log will be cut off at the end of each presidential administrative term. The records will be transferred to the National Archives 20 years after the end of the presidential administration.

The Database of Volunteer Experience (DOVE) will be cutoff at the end of the fiscal year in which the final action is taken on the application. These records will be destroyed 6 years after cutoff.

The records in MAXx will be cutoff upon the Close of Service (COS) or termination of the Peace Corps Volunteer. These records will be destroyed 50 years after cutoff.

The Applicant Medical Case Files will be destroyed 7 years after either a final decision is rendered for a rejected applicant or Close of Service for a successful applicant.

Records in the Volunteer Reporting and Grants (VRG) will be destroyed 10 years after the final action is taken if the Applicant is successful. The records will be destroyed 3 years after the final action is taken if the Applicant is unsuccessful.

Records in the Peace Corps Volunteer Database Management System (PCVDBMS) will be transferred to the National Archives on an annual basis.

Peace Corps Customer Relationship Management System of Records is currently unscheduled and no data is authorized for destruction until the National Archives and Records Administration approves a disposition schedule.

Google Analytics retains Client IDs and associated data for a maximum of 26 months before deletion.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The Peace Corps safeguards records in this system in accordance with applicable laws, rules, and policies to protect personally identifiable information against unauthorized access or disclosure. Specifically, the agency's security and privacy controls comply with NIST 800–53, rev. 5—Security and Privacy Controls for Federal Information Systems and Organizations. The Peace Corps has imposed strict controls to minimize such risks. Administrative safeguards include but are not limited to: access to the information in this system is limited to authorized personnel with official duties requiring access, and whose roles have been authorized with such access permissions. All such individuals receive the appropriate privacy and cybersecurity training on an annual basis.

The physical controls in place include the servers storing electronic data are located offsite in a locked facility with access limited to authorized personnel. The servers are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and policies on protecting individual privacy. Computerized records are safeguarded in a secured environment. Security protocols meet the promulgating guidance as established by the National Institute of

Standards and Technology (NIST) Security Standards from Access Control to Data Encryption and Security Assessment and Authorization and Peace Corps' privacy and security policies.

The technical controls in place include multiple firewalls, system access, encrypted data at rest, encrypted data in motion, periodic vulnerability scans to ensure security compliance, and security access logs. Access is restricted to specific authorized Peace Corps individuals who have internet access through work on computers using Personal Identity Verification (PIV). Individual users can only access records with the proper pre-approved accreditation. Physical security measures include but are not limited to the use of data centers which meet government requirements for storage of sensitive data.

RECORD ACCESS PROCEDURES:

Any individual who wants access to his or her record should make a written request to the System Manager. Requesters will be required to provide appropriate identification, such as a driver's license, employee identification card, or other authorized identifying documentation. Additional identification may be required in some instances. Complete Peace Corps Privacy Act procedures are set out in 22 CFR part 308.

CONTESTING RECORD PROCEDURES:

Individuals seeking to challenge the contents of a record after its submission to the system must submit a written request to the system manager. The request should include sufficient identification, such as a driver's license, employee identification card, or other official documentation; in certain cases, additional identification may be required. Requests for correction or amendment must clearly specify the record in question and the desired corrective action. For comprehensive guidance, refer to the Peace Corps Privacy Act procedures outlined in 22 CFR part 308.

NOTIFICATION PROCEDURES:

See "Record Access Procedures."

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: September 23, 2026.

James Olin,

Government Information Specialist.

[FR Doc. 2026–19684 Filed 9–24–26; 8:45 am]

BILLING CODE 6051–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2026–396 and K2026–385; MC2026–397 and K2026–386]

New Postal Products

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 30, 2026.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:**Table of Contents**

- I. Introduction
- II. Public Proceeding(s)
- III. Summary Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited

by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041. Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests.

II. Public Proceeding(s)

1. *Docket No(s):* MC2026–396 and K2026–385; *Filing Title:* USPS Request to Add Priority Mail, USPS Ground Advantage & Parcel Select Contract 10 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 22, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* September 30, 2026.

2. *Docket No(s):* MC2026–397 and K2026–386; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1512 to the Competitive Product List and Notice of Filing

Materials Under Seal; *Filing Acceptance Date:* September 22, 2026; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher Mohr; *Comments Due:* September 30, 2026.

III. Summary Proceeding(s)

None. *See* Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–19686 Filed 9–24–26; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106466; File No. SR–NYSE–2026–45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7.18

September 22, 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 September 11, 2026, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items 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

The Exchange proposes to amend Rule 7.18 (“Trading Halts”) regarding Initial Listing Regulatory Halts. The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

¹ *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

New York Stock Exchange LLC ("NYSE" or the "Exchange") proposes to amend Rule 7.18 ("Trading Halts") regarding Initial Listing Regulatory Halts.

Background

Rule 7.18(b)(1)(B) lists the types of discretionary regulatory halts the Exchange may declare, including, at subparagraph (i), an "Initial Listing Regulatory Halt."

The Initial Listing Regulatory Halt was first adopted in 2018 as Rule 123D(d).⁴ The text of that rule stated, in pertinent part, that the Exchange "may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange . . . immediately prior to the initial pricing."⁵ The Exchange's Rule 19b-4 filing in support of the rule specified that the purpose of the rule change was to "provide authority to declare a regulatory halt for a new listing that is not the subject of an IPO."⁶ In its order granting approval of the rule, the Commission noted that the rule "should facilitate the initial opening . . . of certain securities not listed in connection with an underwritten IPO"⁷

In August 2026, the Exchange's Rule 7.18 ("Trading Halts") was reorganized and the Initial Listing Regulatory Halt was moved from Rule 123D(d) to Rule

7.18(b)(1)(B)(i), which currently defines it as "of a security that is the subject of an initial pricing on the Exchange that has not been listed on a national securities exchange immediately prior to initial pricing."⁸

Proposed Change to Rule 7.18(b)(1)(B)(i)

The Exchange proposes to amend the text of Rule 7.18(b)(1)(B)(i) to explicitly specify that the Initial Listing Regulatory Halt does not apply to securities that are subject to an IPO. The Exchange believes that the transparency and clarity of the rule would be enhanced by specifying that the Exchange may declare an Initial Listing Regulatory Halt if a security is the subject of an initial pricing on the Exchange, "except for (a) IPOs in equity securities that are not derivative security products, or (b) securities that are listed on a national securities exchange immediately prior to initial pricing." Because both these exceptions are covered by the existing rule text, the proposed change is not substantive, but rather clarifying in nature.

Proposed Change to Rule 7.18(b)(5)(B)(v)

Rule 7.18(b)(5)(B)(v) describes how the Exchange will resume trading after an Initial Listing Regulatory Halt. The current rule text provides that the Exchange "will resume trading after an Initial Listing Regulatory Halt when the DMM opens the security." While that language is correct, it does not specify the mechanism by which the security will reopen. In fact, after an Initial Listing Regulatory Halt, the DMM reopens trading in the security with a Trading Halt Auction,⁹ which is the default described in Rule 7.18(b)(5)(B).¹⁰ The Exchange proposes to amend the rule text to specify explicitly that the Exchange will resume trading in a security after an Initial Listing Regulatory Halt when the DMM opens the security "with a Trading Halt Auction."

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.¹¹ Specifically, the proposal is consistent with Section 6(b)(5) of the Act¹² 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.

The Exchange believes the proposed rule change would protect investors and the public interest and perfect the mechanism of a free and open market and a national market system by adding transparency and specificity to the rule. The existing text and history of the rule are clear that an Initial Listing Regulatory Halt will not be used in the case of an IPO of a corporate security, but the Exchange believes that stating that exception explicitly in the rule text will enhance the transparency of the rule and benefit the public interest. Similarly, the current rule text does not specify the mechanism that the DMM will use for reopening trading after an Initial Listing Regulatory Halt, and the Exchange believes that explicitly stating that trading will resume with a Trading Halt Auction will enhance the transparency of the rule. The proposed changes are not substantive in nature, but rather add further specificity and transparency to the existing rule text.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act¹³ in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below. Rather than impacting competition, the proposed changes are non-substantive and would enhance the specificity and transparency of the rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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

⁴ See Securities Exchange Act Release No. 82627 (February 2, 2028), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 3).

⁵ See NYSE Rule 123D(d) (SR-NYSE-2017-30 version).

⁶ See NYSE Form 19b-4 in support of SR-NYSE-2017-30, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2017/NYSE-2017-30,%20Am.%203.pdf> ("Proposed Rule 123D(d) would provide authority for the Exchange to declare a regulatory halt for a security that is having its initial listing on the Exchange, is not an IPO, and has not been listed on a national securities exchange . . . prior to the initial pricing.").

⁷ See *supra* note 4, 83 FR at 5655.

⁸ See Securities Exchange Act Release No. 103356 (June 30, 2025), 90 FR 29600 (July 3, 2025) (SR-NYSE-2025-21).

⁹ The term "Trading Halt Auction" is defined in Rule 7.35(e).

¹⁰ Rule 7.18(b)(5)(B) provides: "The Exchange will resume trading after a Regulatory Halt other than a SIP Halt with a Trading Halt Auction pursuant to Rule 7.35, except as provided below"

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(8).

operative for 30 days after the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2026-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to file number SR-NYSE-2026-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2026-45 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-19630 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0500]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 608

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 608 (17 CFR 242.608) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 608 specifies procedures for filing or amending national market system plans ("NMS Plans"). Self-regulatory organizations ("SROs") filing a new NMS Plan must submit the text of the NMS Plan to the Commission, along with a statement of purpose, and, if applicable, specified supporting materials that may include: (1) a copy of all governing or constituent documents, (2) a description of the manner in which the NMS Plan, and any facility or procedure contemplated by the NMS Plan, will be implemented, (3) a listing of all significant phases of development and implementation contemplated by the NMS Plan, including a projected completion date for each phase, (4) an analysis of the competitive impact of implementing the NMS Plan, (5) a description of any written agreements or understandings between or among plan

participants or sponsors relating to interpretations of the NMS Plan or conditions for becoming a plan participant or sponsor, and (6) a description of the manner in which any facility contemplated by the NMS Plan shall be operated. Participants or sponsors to the NMS Plan must ensure that a current and complete version of the NMS Plan is posted on a designated website or a plan website after being notified by the Commission that the NMS Plan is effective. Each plan participant or sponsor must also provide a link on its own website to the current website to the current version of the NMS Plan.

The Commission estimates that the creation and submission of a new NMS Plan and any related materials would result in an average aggregate burden of approximately 1,020 hours per year (30 SROs × 34 hours = 1,020 hours). The Commission further estimates an average aggregate burden of approximately 150 hours per year (30 SROs × 5 hours = 150 hours), for each of the SROs to keep a current and complete version of the NMS Plan posted on a designated website or a plan website, and to provide a link to the current version of the NMS Plan on its own website. In addition, the Commission estimates that the creation of a new NMS Plan and any related materials would result in an average aggregate cost of approximately \$226,914 per year (30 SROs × \$7,563.80 = \$226,914).

SROs proposing to amend an existing NMS Plan must submit the text of the amendment to the Commission, along with a statement of purpose, and, if applicable, the supporting materials described above, as well as a statement that the amendment has been approved by the plan participants or sponsors in accordance with the terms of the NMS Plan. Participants or sponsors to the NMS Plan must ensure that any proposed amendments are posted to a designated website or a plan website after filing the amendments with the Commission and that those websites are updated to reflect the current status of the amendment and the NMS Plan. Each plan participant or sponsor must also provide a link on its own website to the current version of the NMS Plan. The Commission estimates that the creation and submission of NMS Plan amendments and any related materials would result in an average aggregate burden of approximately 13,260 hours per year (30 SROs × 442 hours = 13,260 hours). The Commission further estimates an average aggregate burden of approximately 148 hours per year (30 SROs × 4.94 hours = 148.2 hours,

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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.

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

rounded down to 148) for SROs to post any pending NMS Plan amendments to a designated website or a plan website and to update such websites to reflect the current status of the amendment and the NMS Plan. In addition, the Commission estimates that the creation of an NMS Plan amendment and any related materials would result in an average aggregate cost of approximately \$491,790 per year (30 SROs $\times$ \$16,393 = \$491,790).

Finally, to the extent that a plan processor is required for any facility contemplated by a NMS Plan, the plan participants or sponsors must file with the Commission a statement identifying the plan processor selected, describing the material terms under which the plan processor is to serve, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered, and the reasons for the selection of the plan processor. The Commission estimates that the preparation and materials related to the selection of a plan processor would result in an average aggregate burden of approximately 340 hours per year (30 SROs $\times$ 11.33 hours = 339.9, rounded up to 340). In addition, the Commission estimates that the preparation and submission of materials related to the selection of a plan processor would result in an average aggregate cost of approximately \$12,610 per year (30 SROs $\times$ \$420.33 = \$12,609.90, rounded up to \$12,610).

The above estimates result in a total annual industry burden of approximately 14,918 hours (1,020 + 150 + 13,260 + 148 + 340) and a total annual industry cost of approximately \$731,314 (\$226,914 + \$491,790 + \$12,610).

Compliance with Rule 608 is mandatory. The text of the NMS Plans and any amendments will not be confidential, but published on a designated website or a plan website. To the extent that Rule 608 requires the SROs to submit confidential information to the Commission, that information will be kept confidential subject to the provisions of applicable law.¹ The SROs are required by law to retain the records and information that are collected pursuant to Rule 608 for a period of not less than 5 years, the first 2 years in an easily accessible place.² Rule 608 does not affect this existing requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

under the PRA unless it displays a currently valid OMB control number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-012 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19619 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0078]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 15c3-3

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or "Commission") is submitting to the Office of Management and Budget (OMB) this request for approval of extension of the previously approved collection of information provided for in Rule 15c3-3 (17 CFR 240.15c3-3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15c3-3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully-paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. In addition, it requires broker-dealers that sell securities futures products to customers

to provide certain notifications to customers and make a record of any changes of account type. Finally, it includes segregation and notice requirements for broker-dealers with respect to their security-based swap activity.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3-3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account.

In 2024, the Commission adopted amendments to require carrying broker-dealers to compute the reserve computation on a daily instead of weekly basis, provided that such broker-dealers have average total credits above a minimum threshold.

The Commission staff estimates that the aggregate annual information collection burden associated with Rule 15c3-3 is approximately 1,459,681 hours and \$5,076,465.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202608-3235-006 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19618 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

¹ See, e.g., 5 U.S.C. 552 *et seq.*; 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

² See 17 CFR 240.17a-1(b).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106460; File No. SR–NYSE–2026–44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Rule 1210

September 22, 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 September 10, 2026, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 1210 (Registration Requirements) applicable to member organizations ⁴ to align with a recent amendment by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included

statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 1210 (Registration Requirements). More specifically, the Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations as provided in Commentary .05 to NYSE Rule 1210 (Waiting Periods for Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210, Supplementary Material .06.⁵

NYSE Rule 1210 requires each person engaged in the investment banking or securities business of a member organization to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 1220 (Registration Categories), unless exempt from registration pursuant to Rule 1230 (Associated Persons Exempt from Registration). Pursuant to Commentary .02 to NYSE Rule 1210 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Commentary .05 to NYSE Rule 1210 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials (“SIE”) examination and the representative and principal

examinations specified under NYSE Rule 1220.

FINRA amended its Rule 1210, Supplementary Material .06, to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁶ As described in the FINRA Rule Change, since the current waiting periods were adopted in 1989, FINRA’s qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in the FINRA Rule Change that today’s high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in the FINRA Rule Change that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA’s ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁷ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on individuals seeking to enter the securities industry.⁸ Similar feedback regarding these challenges was received by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the organization and operation of member workplaces.⁹ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, NYSE proposes to amend Rule 1210, Commentary .05, to conform to FINRA Rule 1210, Supplementary

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ In general, the term “member organization” means a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934), including sole proprietors, partnerships, limited liability partnerships, corporations, and limited liability corporations, approved by the Exchange pursuant to NYSE Rule 311. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. See Rule 2(b)(i). The term “member organization” also includes any registered broker or dealer which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate, including Limited Underwriting Members as defined herein. See Rule 2(b)(ii). For a complete definition of the term “member organization,” see Rules 2(b)(i), 2(b)(ii) and 2(b)(iii).

⁵ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR–FINRA–2026–014) (“FINRA Rule Change”).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See FINRA Regulatory Notice 25–07 (April 2025).

Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA's amended requirements will promote consistency and reduce potential confusion for member organizations and their associated persons. Because member organizations and their associated persons are also subject to FINRA's registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

In the FINRA Rule Change, FINRA noted it would announce the implementation date of its rule change in a Regulatory Notice. The Exchange will likewise announce the implementation date of this proposed rule change via a Regulatory Memo on or around the same time as the Regulatory Notice published by FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by reducing the waiting periods for retaking FINRA qualification examinations to align with FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange's qualification examination waiting periods to FINRA's amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for member organizations and their associated persons. As described in detail in the FINRA Rule Change, changes to the FINRA qualification program have reduced the risks that originally

informed the current waiting periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange's qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

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 does not impose any undue burden on competition; rather, it conforms the Exchange's qualification examination waiting periods to FINRA's amended requirements and does not impose any new obligations or restrictions on member organizations. The proposed rule change may benefit all member organizations by allowing them to more quickly make personnel decisions regarding their associated persons' qualification examination retake timing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become

effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2026-44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2026-44. 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2026-44 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-19634 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0031]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17f-2(e)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("SEC" or "Commission") is submitting to the Office of Management and Budget ("OMB") this request for extension of the proposed collection of information provided for in Rule 17f-2(e) (17 CFR 240.17f-2(e)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Section 17(f)(2) requires, in pertinent part, that every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency (collectively, "covered entities") require that each of their partners, directors, officers, and employees be fingerprinted and submit (or cause to be submitted) such fingerprints to the U.S. Attorney General for identification and appropriate processing.¹ Section 17(f)(2) also authorizes the Commission, by rule, to exempt from the fingerprinting requirements of Section 17(f)(2) upon specified terms, conditions, and periods, any class of partners, directors, officers, and employees of a covered entity, if the Commission finds that such action is not inconsistent with the public interest or the protection of

investors. Rule 17f-2 promulgated under Section 17(f)(2) provides for certain exemptions from the fingerprinting requirement of Section 17(f)(2).² Under Rule 17f-2, a covered entity may claim an exemption from the fingerprint requirements of Rule 17f-2 provided they make and keep current a statement entitled "Notice Pursuant to Rule 17f-2" containing the information specified in Rule 17f-2(e)(1) to support their claim of exemption ("Notice").³ Rule 17f-2(e)(2) requires covered entities to keep a copy of the Notice in an easily accessible place at the organization's principal office and at the office employing the persons for whom exemptions are claimed, and to make the Notice available for inspection upon request by the Commission, appropriate regulatory agency (if not the Commission), or other designated examining authority. Notices prepared pursuant to Rule 17f-2(e) must be maintained for different lengths of time depending on the type of entity maintaining the Notice. Under Rule 240.17a-1, every registered clearing agency must keep and preserve at least one copy of all documents made or received by it in the course of its business for a period of not less than five years. Under Rule 240.17a-4 certain members of national securities exchanges, brokers, and dealers must maintain the Notice during the life of their enterprise. Under Rule 240.17Ad-7, registered transfer agents must maintain the Notice in an easily accessible place. The recordkeeping requirement under Rule 17f-2(e) assists the Commission and other regulatory agencies with helping ensure compliance with Rule 17f-2.

Based on the Commission's experience with Rule 17f-2(e), we estimate that approximately 75 respondents will incur an average burden of 30 minutes per year to comply with this rule, which represents the time it takes for a staff person at a covered entity to properly document a claimed exemption from the fingerprinting requirements of Rule 17f-2 in the required Notice (0.4 hours, constituting a reporting type of burden) and to properly retain the Notice according to the entity's record retention policies and procedures (0.1 hours, constituting a recordkeeping type of burden). The estimated aggregate annual burden for all covered entities is approximately 38 hours (75 entities × 0.5 hours, rounded up).

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-008 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-19614 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106464; File No. SR-NYSETEX-2026-35]

Self-Regulatory Organizations; NYSE Texas, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Texas Article 6, Rule 13

September 22, 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 September 10, 2026, the NYSE Texas, Inc. ("NYSE Texas" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Texas Article 6, Rule 13 (Registration Requirements) applicable to Participants ⁴ to align with a recent amendment by the Financial Industry Regulatory Authority, Inc. ("FINRA").

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In general, the term "Participant" means any Participant Firm that holds a valid Trading Permit and any person associated with a Participant Firm who is registered with the Exchange under Articles 16 and 17 as a Market Maker Authorized Trader or Institutional Broker Representative, respectively. A Participant shall be considered a "member" of the Exchange for purposes of the Exchange Act. See Article 1, Rule 1(s). For a complete definition of the term "Participant," see Article 1, Rule 1(s).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78q(f)(2).

² 17 CFR 240.17f-2.

³ 17 CFR 240.17f-2(e).

The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Texas Article 6, Rule 13 (Registration Requirements). More specifically, the Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations as provided in Interpretations and Policies .05 to NYSE Texas Article 6, Rule 13 (Waiting Periods for Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210, Supplementary Material .06.⁵

NYSE Texas Article 6, Rule 13 requires each person engaged in the investment banking or securities business of a Participant to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Article 6, Rule 14 (Registration Categories), unless exempt from registration pursuant to Article 6, Rule 15 (Associated Persons Exempt from Registration). Pursuant to Interpretations and Policies .02 to NYSE Texas Article 6, Rule 13 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Interpretations and Policies .05 to NYSE Texas Article 6, Rule 13 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she

can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials ("SIE") examination and the representative and principal examinations specified under NYSE Texas Article 6, Rule 14.

FINRA amended its Rule 1210, Supplementary Material .06, to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁶ As described in the FINRA Rule Change, since the current waiting periods were adopted in 1989, FINRA's qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in the FINRA Rule Change that today's high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in the FINRA Rule Change that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA's ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁷ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on individuals seeking to enter the securities industry.⁸ Similar feedback regarding these challenges was received by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the

organization and operation of member workplaces.⁹ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, NYSE Texas proposes to amend Article 6, Rule 13, Interpretations and Policies .05, to conform to FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA's amended requirements will promote consistency and reduce potential confusion for Participants and their associated persons. Because Participants and their associated persons are also subject to FINRA's registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

In the FINRA Rule Change, FINRA noted it would announce the implementation date of its rule change in a Regulatory Notice. The Exchange will likewise announce the implementation date of this proposed rule change via a Regulatory Memo on or around the same time as the Regulatory Notice published by FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by reducing the waiting periods for retaking FINRA qualification examinations to align with FINRA Rule

⁵ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR-FINRA-2026-014) ("FINRA Rule Change").

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See FINRA Regulatory Notice 25-07 (April 2025).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange's qualification examination waiting periods to FINRA's amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for Participants and their associated persons. As described in detail in the FINRA Rule Change, changes to the FINRA qualification program have reduced the risks that originally informed the current waiting periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange's qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

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 does not impose any undue burden on competition; rather, it conforms the Exchange's qualification examination waiting periods to FINRA's amended requirements and does not impose any new obligations or restrictions on Participants. The proposed rule change may benefit all Participants by allowing them to more quickly make personnel decisions regarding their associated persons' qualification examination retake timing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSETEX-2026-35 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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to file number SR-NYSETEX-2026-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSETEX-2026-35 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19632 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0671]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 613 of Regulation NMS

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in connection in connection with a National Market System (NMS) Plan filed with the Commission under Rule 613 (17 CFR 242.613), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 613 of Regulation NMS (17 CFR part 242) required national securities exchanges and national securities associations (collectively, the "Participants") to jointly submit to the

¹⁷ 17 CFR 200.30-3(a)(12).

Commission a national market system (“NMS”) plan to govern the creation, implementation, and maintenance of a consolidated audit trail (“CAT”) and Central Repository for the collection of information for NMS securities. On February 27, 2015, the Participants submitted the CAT NMS Plan to the Commission.¹ On April 27, 2016, the Commission published a notice soliciting comments from the public (“CAT NMS Plan Notice”).² On November 15, 2016, the Commission approved the CAT NMS Plan (“CAT NMS Plan Order”), including the information collections proposed in the CAT NMS Plan Notice, and certain additional information collections.³

Since 2017 the Commission has approved several amendments to the CAT NMS Plan and issued exemptive relief from its requirements. Some of these amendments and/or exemptive relief orders have resulted in data being removed from the CAT. For instance, the Commission has issued exemptive relief from and approved amendments to the CAT NMS Plan to enable the SROs to remove customer and account-level information from the CAT.⁴ The

Commission has also issued exemptive relief from and approved amendments to the CAT NMS Plan to enable the SROs to shorten the retention period for the data collected by the CAT.⁵

This Notice addresses both the ongoing information collection requirements noted above, the remaining information collection requirements contained in the CAT NMS Plan Notice, and certain additional information collections of the CAT NMS Plan Order, which includes an assessment of the projected impact of any Material Systems Change on the Maximum Error Rate, prior to the implementation of such Material Systems Change from the Participants.⁶

The CAT NMS Plan, which governs the CAT, improves the quality of the data available to regulators in four areas that affect the ultimate effectiveness of core regulatory efforts—completeness, accuracy, accessibility and timeliness.⁷ The improvements in these data qualities substantially improve regulators’ ability to perform analysis and reconstruction of market events, and market analysis and research to inform policy decisions, as well as perform regulatory activities, in particular market surveillance, examinations, investigations, and other enforcement functions.

The Commission estimates that 1,199 respondents⁸ will require an aggregate

total of approximately 4,122,488 hours per year to comply with the collection of information. The Commission further estimates that the aggregate cost to comply with the collection of information will be approximately \$384,727,051 per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-010 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–19620 Filed 9–24–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0151]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17Ac3–1 and Form TA–W

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“SEC” or “Commission”) is submitting to the Office of Management and Budget (“OMB”) this request for Extension of the proposed collection of information provided for in Rule 17Ac3–1(a) (17 CFR 240.17Ac3–1(a)) and Form TA–W (17 CFR 249b.101), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Section 17A of the Exchange Act¹ generally requires transfer agents performing any transfer agent function with respect to any security registered under Section 12 of the Exchange Act² or issued by certain insurance or investment companies to register with an appropriate regulatory agency

(securities association) and 1,172 broker-dealers are subject to information collection requirements pursuant to Rule 613 and the CAT NMS Plan.

¹ 15 U.S.C. 78q–1.

² 15 U.S.C. 78l.

¹ See Letter from Participants to Brent J. Fields, Secretary, Commission, dated February 27, 2015. The Participants filed the CAT NMS Plan on September 30, 2014. See Letter from the Participants to Brent J. Fields, Secretary, Commission, dated September 30, 2014. The CAT NMS Plan filed on February 27, 2015, was an amendment to and replacement of the Initial CAT NMS Plan (the “Amended and Restated CAT NMS Plan”). On December 24, 2015, the Participants submitted an Amendment to the Amended and Restated CAT NMS Plan. See Letter from Participants to Brent J. Fields, Secretary, Commission, dated December 23, 2015 (the “Amendment”). On February 9, 2016, the Participants filed with the Commission an identical, but unmarked, version of the Amended and Restated CAT NMS Plan, dated February 27, 2015, as modified by the Amendment, as well as a copy of the request for proposal issued by the Participants to solicit Bids from parties interested in serving as the Plan Processor for the consolidated audit trail. Unless the context otherwise requires, the “CAT NMS Plan” shall refer to the Amended and Restated CAT NMS Plan, as modified by the Amendment.

² See Securities Exchange Act Release No. 77724 (April 27, 2016), 81 FR 30613 (May 17, 2016). The burdens associated with the CAT NMS Plan Notice were submitted under OMB number 3235–0671 which relates to the NMS Plan required to be filed under Rule 613.

³ See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016), available at <https://www.sec.gov/rules/sro/nms/2016/34-79318.pdf> (“CAT NMS Plan Order”).

⁴ See, e.g., Securities Exchange Act Release No. 88393 (Mar. 17, 2020), 85 FR 16152 (Mar. 20, 2020) (the “2020 PII Exemptive Relief Order”) (providing conditional exemptive relief from CAT NMS Plan requirements obligating the SROs to collect social security numbers (“SSNs”) and/or individual tax payer identification numbers (“ITINs”), dates of birth, and account numbers associated with natural persons); Securities Exchange Act Release No. 102386 (Feb. 10, 2025), 90 FR 9642, 9643 (Feb. 14,

2025) (the “2025 PII Exemptive Relief Order”) (providing conditional exemptive relief from CAT NMS Plan requirements obligating the SROs to collect names, addresses, and years of birth for U.S. natural persons); Securities Exchange Act Release No. 104586 (Jan. 13, 2026), 91 FR 2164 (Jan. 16, 2026) (the “CAIS Order”) (codifying the 2020 PII Exemptive Relief Order and the 2025 PII Exemptive Relief Order and, among other things, enabling the SROs to eliminate: (1) historical customer and account-level data, including, among other things, names, addresses, and years of birth, (2) names, addresses, and years of birth (where applicable) for foreign natural persons, for legal entities, and for authorized traders, and (3) employer identification numbers).

⁵ See, e.g., Securities Exchange Act Release No. 104144 (Sept. 30, 2025), FR 90 47853, 47854–55 (Oct. 2, 2025) (providing exemptive relief from certain requirements related to data storage and retention); Securities Exchange Act Release No. 105107 (Mar. 27, 2026), 91 FR 16284, 16307 (Apr. 1, 2026) (approving amendments to the CAT NMS Plan that permit the SROs to: (1) delete all CAT Data older than three years; (2) delete options market maker quotes on Listed Options older than six months; (3) delete Interim Operational Data older than 15 days; and (4) delete Options SIP Data older than six months).

⁶ *Id.* at 84942. The Commission believes that one assessment would be filed annually.

⁷ See CAT NMS Plan Order, *supra* note 3, at 45727 (discussing four “qualities” of trade and order data that impact the effectiveness of core Participant and Commission regulatory efforts: accuracy, completeness, accessibility, and timeliness).

⁸ The Commission notes that 27 Participants (the 26 national securities exchanges and one national

(“ARA”) as defined in Section 3(a)(34)(B) of the Exchange Act.³ Section 17A(c)(4)(B) of the Exchange Act⁴ authorizes transfer agents registered with an ARA to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions as the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(4)(B), the Commission promulgated Rule 17Ac3-1(a) and accompanying Form TA-W (“the form”).⁵ Rule 17Ac3-1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA-W. The Commission later amended Rule 17Ac3-1(a) and accompanying Form TA-W to require that the form be filed in electronic format on EDGAR.⁶ Form TA-W requires the withdrawing transfer agent to provide the Commission with certain information, including: (1) the locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

From 2023 through 2025, respondents annually filed approximately 12 Forms TA-W with the Commission. The Commission therefore estimates that 12 transfer agents are expected to rely on Rule 17Ac3-1 and Form TA-W annually over the subsequent 3 years. The Commission estimates that it takes approximately 30 minutes per transfer agent to complete a Form TA-W. The estimated aggregate annual time burden is thus approximately 6 hours (12 filings × 0.5 hours), which comprises a one-time reporting burden. The estimated internal labor cost of compliance per filing is approximately \$72 (0.5 hours × \$144 average hourly rate for a general office clerk).⁷ The estimated aggregate

internal compliance cost per year is thus approximately \$864 (12 filings × \$72 per filing).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-007 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19615 Filed 9-24-26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106465; File No. SR-NYSEARCA-2026-98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Modify the Broker QCC Credit and Manual Billable Rebate Program

September 22, 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 September 14, 2026, NYSE Arca, Inc. (“NYSE Arca” 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

Industrial Classification System (2022), available at https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf (describing the industry adjusted for changes in the seasonally adjusted employment cost index for private wages and salaries between the data reference period and when the data are released by BLS. See *Employment Cost Index*, U.S. Bureau of Labor Statistics, <https://www.bls.gov/eci/>. The adjusted mean hourly wage is then multiplied by a factor that accounts for nonwage costs borne by employers, such as bonuses, benefits, and overhead. This factor is calculated as an average over the 10 most recently available years of data of the ratio of the Bureau of Economic Analysis’s annual gross output data for the North American Industry Classification System (“NAICS”) number to total annual wages across all occupations for the NAICS number in the OEWS data.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) by modifying the credit available to brokers submitting Qualified Contingent Cross (“QCC”) transactions and the Manual Billable Rebate Program that is part of the Floor Broker Fixed Cost Prepayment Incentive Program (the “FB Prepay Program”). The Exchange proposes to implement the fee changes effective September 14, 2026. The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (“Fee Schedule”) by modifying the credit available to brokers submitting QCC transactions and the Manual Billable Rebate Program that is part of the FB Prepay Program. The Exchange proposes to implement the fee changes effective September 14, 2026.⁴

Submitting Broker QCC Credits

The Exchange offers submitting brokers a per contract credit of \$0.16 for customer vs. non-customer electronic QCC transactions, and a per contract credit of \$0.22 for non-customer vs. non-customer electronic QCC

⁴ The Exchange originally filed to amend the Fee Schedule on September 1, 2026 (SR-NYSEARCA-2026-90). SR-NYSEARCA-2026-90 was withdrawn on September 14, 2026, and replaced by this filing.

³ 15 U.S.C. 78c(a)(34)(B).

⁴ 15 U.S.C. 78q-1(c)(4)(B).

⁵ Exchange Act Release No. 13914 (Sep. 1, 1977), 42 FR 44983 (Sep. 8, 1977); 17 CFR 240.17Ac3-1 and 17 CFR 249b.101-Form TA-W.

⁶ Exchange Act Release No. 54864 (Dec. 4, 2007), 71 FR 74698 (Dec. 12, 2006).

⁷ For purposes of calculating the dollar cost burdens associated with respondents using Form TA-W, the Commission relies on the Occupational Employment and Wage Statistics (“OEWS”) from the U.S. Bureau of Labor Statistics (“BLS”). See *Occupational Employment and Wage Classification*, U.S. Bureau of Labor Statistics, <https://www.bls.gov/oes/>; see also *Standard Occupational Classification*, U.S. Bureau of Labor Statistics, <https://www.bls.gov/soc/> (describing occupational classification system used by BLS); Exec. Off. Of the President, Off. Of Mgmt. & Budget, North American

transactions.⁵ In addition, the Exchange offers additional, per contract, submitting broker credits based upon

volume as set forth in the following chart:⁶

Tier	Qualifying volume	Customer vs. non-customer QCC transaction	Non-customer vs. non-customer QCC transaction
QCC Tier 1	Achieve 1.5 million QCC contracts per month	(\$0.01)	(\$0.03)
QCC Tier 2	Achieve 3.5 million QCC contracts per month	(0.02)	(0.08)

The Exchange proposes to amend the additional submitting broker QCC credit for both customer vs. non-customer QCC transactions and non-customer vs. non-customer QCC transactions by lowering the qualifying volumes: (i) 1.5 million QCC contracts for Tier 1; and (ii) 3.5 million QCC contracts to 3 million for Tier 2. The Exchange also proposes to lower the available Tier 1 credit for non-customer vs. non-customer QCC contracts from \$0.03 per contract to \$0.01 per contract.

While the overall credit available to submitting brokers for non-customer vs. non-customer QCC transactions who achieve more than 1 million contracts per month will be lowered from \$0.25 to \$0.23, such brokers will be entitled to the Tier 2 credit of (\$0.08) earlier (*i.e.*, upon achieving 3 million contracts per month, rather than 3.5 million). Also, for customer vs. non-customer QCC transactions, submitting brokers will be entitled to both the existing Tier 1 credit of (\$0.01) and the Tier 2 credit of (\$0.02) earlier (*i.e.*, upon achieving 1 million contracts and 3 million contracts per month, rather than 1.5 million and 3.5 million, respectively). Thus, the Exchange believes that the credit structure for QCC transactions will continue to incentivize market participants in directing QCC transactions to the Exchange and, perhaps, increase such activity by making both a slightly modified Tier 1 and the existing Tier 2 credits more easily accessible.

The Exchange further believes that such increased activity will benefit all market participants, as the enhanced credit structure could promote market depth, price discovery and improvement, and enhanced order execution opportunities.

Manual Billable Rebate Program

Floor Brokers that participate in the FB Prepay Program are eligible for rebates under the Manual Billable Rebate Program, payable monthly on transactions where at least one side is subject to manual transaction fees.⁷

The Manual Billable Rebate Program provides a base rebate of \$0.08 per billable side on manual billable volume. Floor Brokers that achieve more than 500,000 manual billable sides in a month are eligible for an additional \$0.02 per billable side, payable retroactively to the first billable side.

Additional rebates are also available under the Manual Billable Rebate Program. Floor Brokers that achieve the aforementioned QCC Tier 2 may also earn the greater of: (i) \$0.01 per billable side if the Floor Broker executes at least 10% of the QCC Tier 2 volume requirement in manual billable sides; or (ii) \$0.02 per billable side if the Floor Broker executes at least 20% of the QCC Tier 2 volume requirement in manual billable sides. To maintain the same thresholds given the proposed changes to the requirements of QCC Tier 1 and QCC Tier 2, the Exchange proposes non-substantive changes to this section of the program. Specifically, Floor Brokers that exceed the new QCC Tier 2 by 500,000 QCC contracts would earn the greater of: (i) \$0.01 per billable side if the Floor Broker executes at least 35% of the new QCC Tier 1 volume requirement in manual billable sides; or (ii) \$0.02 per billable side if the Floor Broker executes at least 70% of the new QCC Tier 1 volume requirement in manual billable sides. This is a non-substantive change in that it does not change eligibility standards or the amount of the rebate available to participants.

The Exchange proposes similar non-substantive changes to the requirements for an additional rebate of \$0.01 per

manual billable side and an additional rebate of \$0.01 per non-customer vs. non-customer QCC contract. Currently, these rebates are earned when FB Prepay Program participants exceed the aggregate of the QCC Tier 1 and QCC Tier 2 qualifications in combined manual billable and QCC billable contracts. Under the proposal, Floor Brokers that exceed the aggregate QCC Tier 1 and QCC Tier 2 qualifications by an additional 1 million combined manual billable and QCC billable contracts would receive these additional rebates. This is a non-substantive change in that it does not change eligibility standards or the amount of the rebate available to participants.

These proposed changes are not substantive, as they do not alter the eligibility standards for the relevant additional rebates under the FB Prepay Program or, more specifically, the Manual Billable Rebate Program. The rebates, which were established to incentivize Floor Brokers to direct their order flow to the Exchange, including in QCC contracts, will continue to function as intended by increasing liquidity to the benefit of all market participants. Such increased liquidity could promote market depth, price discovery and improvement, and enhance order execution opportunities for all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,⁹ in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

⁵ See Fee Schedule NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, QUALIFIED CONTINGENT CROSS ("QCC") TRANSACTION FEES AND CREDITS.

⁶ See Fee Schedule NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD

OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT.

⁷ See Fee Schedule NYSE Arca OPTIONS: TRADE-RELATED CHARGES FOR STANDARD OPTIONS, FLOOR BROKER FIXED COST

PREPAYMENT INCENTIVE PROGRAM (the "FB PREPAY PROGRAM").

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(4) and (5).

As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁰

There are currently 18 [sic] registered options exchanges competing for order flow. Based on publicly available information and, excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.¹¹ Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in July 2026, the Exchange had 10.01% market share of executed volume of multiply-listed equity and ETF options order flow. In such a low concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. In response to this competitive marketplace, the Exchange proposes to adjust its submitting broker QCC credit structure and make corresponding changes to its Manual Billable Rebate Program to create more trading opportunities on the Exchange for all market participants. Greater liquidity benefits all market participants on the Exchange and increased order flow would increase opportunities for execution of other trading interest.

The Exchange also believes the adjustments are an equitable allocation of its fees and credits because it is based on the amount and type of business transacted on the Exchange. The Exchange further believes that the changes do not unfairly discriminate against market participants. All brokers can try to earn the proposed credit for submitting QCC order and Floor Brokers can avail themselves to manual rebates, if they want. The credit and the rebate are intended to attract more activity to the Exchange. This increased order flow would continue to make the Exchange a more competitive venue. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, accordingly, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The credit adjustment and corresponding changes to its Manual Billable Rebate Program are designed to attract order flow to the Exchange and would apply equally to all similarly situated market participants and encourage robust liquidity to the benefit of all market participants. All brokers can try to earn the proposed credit for submitting QCC orders and Floor Brokers can avail themselves to manual rebates, if they want.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the other 17 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply listed equity and ETF options trades. Therefore, currently no exchange possesses significant pricing power in the execution of multiply listed equity and ETF options order flow. More specifically, in July 2026, the Exchange had 10.01% market share of executed volume of multiply listed equity and ETF options order flow.

The aim of the proposed changes is to attract more QCC orders to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, improve market-wide quality and price discovery.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)¹² of the Act and subparagraph (f)(2) of Rule 19b-4¹³ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)¹⁴ 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-NYSEARCA-2026-98 on the subject line.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(2).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7-10-04) (“Reg NMS Adopting Release”).

¹¹ The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available at: <https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Volume-Statistics>.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2026–98. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2026–98 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–19638 Filed 9–24–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106461; File No. SR–NYSEAMER–2026–85]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend NYSE American Rule 2.1210

September 22, 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 September 10, 2026, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE American Rule 2.1210 (Registration Requirements) applicable to member organizations, Equity Trading Permit (“ETP”) Holders and American Trading Permit (“ATP”) Holders (collectively, “Members”) ⁴ to align with a recent amendment by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change is available on the Exchange's website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

⁴ In general, Rule 24 (General and Floor Rules) defines the term “member organization” in pertinent part as “a partnership, corporation or such other entity as the Exchange may, by Rule, permit to become a member organization, and which meets the qualifications specified in the Rules.” The term “member organization” is defined, in general, in Rule 2(b)(i) (General Rules) as a registered broker or dealer (unless exempt pursuant to the Securities Exchange Act of 1934) that is a member of the Financial Industry Regulatory Authority, Inc. (“FINRA”) or another registered securities exchange. Member organizations that transact business with public customers or conduct business on the Floor of the Exchange shall at all times be members of FINRA. A registered broker or dealer must also be approved by the Exchange and authorized to designate an associated natural person to effect transactions on the floor of the Exchange or any facility thereof. This term shall include a natural person so registered, approved and licensed who directly effects transactions on the floor of the Exchange or any facility thereof. The term “member organization” also includes any registered broker or dealer that is a member of FINRA or a registered securities exchange, consistent with the requirements of section 2(b)(i) of this Rule, which does not own a trading license and agrees to be regulated by the Exchange as a member organization and which the Exchange has agreed to regulate, including Limited Underwriting Members as defined herein. See Rule 2(b)(ii) (General Rules). For a complete definition of the term “member organization,” see Rule 24 (General and Floor Rules) and Rules 2(b)(i) and (ii) (General Rules). The term “ETP Holder” means a member organization that has been issued an ETP. An ETP Holder will agree to be bound by the Rules of the Exchange, and by all applicable rules and regulations of the Securities and Exchange Commission. See Rule 1.1E(n). References to “member organization” as used in Exchange rules include ATP Holders, which are registered brokers or dealers approved to effect transactions on the Exchange's options marketplace. Under the Exchange's rules, an ATP Holder has the status as a “member” of the Exchange as that term is defined in Section 3 of the Act. See Rule 900.2NY.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE American Rule 2.1210 (Registration Requirements). More specifically, the Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations as provided in Commentary .05 to NYSE American Rule 2.1210 (Waiting Periods for Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210, Supplementary Material .06.⁵

NYSE American Rule 2.1210 requires each person engaged in the investment banking or securities business of a Member to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220 (Registration Categories), unless exempt from registration pursuant to Rule 2.1230 (Associated Persons Exempt from Registration). Pursuant to Commentary .02 to NYSE American Rule 2.1210 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Commentary .05 to NYSE American Rule 2.1210 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials (“SIE”) examination and the representative and principal

⁵ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR–FINRA–2026–014) (“FINRA Rule Change”).

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

examinations specified under NYSE Rule 2.1220.

FINRA amended its Rule 1210, Supplementary Material .06, to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁶ As described in the FINRA Rule Change, since the current waiting periods were adopted in 1989, FINRA's qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in the FINRA Rule Change that today's high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in the FINRA Rule Change that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA's ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁷ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on individuals seeking to enter the securities industry.⁸ Similar feedback regarding these challenges was received by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the organization and operation of member workplaces.⁹ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, NYSE American proposes to amend Rule 2.1210, Commentary .05, to conform to FINRA

Rule 1210, Supplementary Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA's amended requirements will promote consistency and reduce potential confusion for Members and their associated persons. Because Members and their associated persons are also subject to FINRA's registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

In the FINRA Rule Change, FINRA noted it would announce the implementation date of its rule change in a Regulatory Notice. The Exchange will likewise announce the implementation date of this proposed rule change via a Regulatory Memo on or around the same time as the Regulatory Notice published by FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by reducing the waiting periods for retaking FINRA qualification examinations to align with FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange's qualification examination waiting periods to FINRA's amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for Members and their associated persons. As described in detail in the FINRA Rule Change, changes to the FINRA qualification program have reduced the risks that originally informed the current waiting

periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange's qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

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 does not impose any undue burden on competition; rather, it conforms the Exchange's qualification examination waiting periods to FINRA's amended requirements and does not impose any new obligations or restrictions on Members. The proposed rule change may benefit all Members by allowing them to more quickly make personnel decisions regarding their associated persons' qualification examination retake timing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See FINRA Regulatory Notice 25-07 (April 2025).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2026-85 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-NYSEAMER-2026-85. 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-NYSEAMER-2026-85 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19635 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0810]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 15c6-2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information provided for 17 CFR 240.15c6-2 ("Rule 15c6-2") under the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78a *et seq.*). The Commission has submitted this collection of information to the Office of Management and Budget ("OMB") for approval. The title of the information collection is "Rule 15c6-2." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Rule 15c6-2 was adopted as part of the final rules to shorten the standard settlement cycle for securities transactions from two business days after the transaction date to one business day following the transaction date. Certain provisions of Rule 15c6-2 contain "collection of information" requirements within the meaning of the PRA.¹ The requirements for this collection of information is mandatory for any broker or dealer ("broker-dealer") engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve

settlement of a securities transaction that is subject to the requirements of § 240.15c6-1(a) to either enter into written agreements as specified in the rule or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.²

Specifically, for a broker-dealer that determines to establish, maintain, and enforce written policies and procedures pursuant to Rule 15c6-2(a), Rule 15c6-2(b) requires that such policies and procedures must be reasonably designed to (1) identify and describe any technology systems, operations, and processes that the broker-dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction; (2) set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction; (3) describe the procedures that the broker-dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date; (4) describe how the broker-dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the broker-dealer experiences delays in promptly completing the confirmation; and (5) measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

The purpose of the collection under Rule 15c6-2 is to ensure that parties to institutional transactions—that is, transactions where a broker-dealer or its customer must engage with agents of the customer, including the customer's investment adviser or its securities custodian, to prepare a transaction for settlement—can ensure the completion of the allocation, confirmation, and affirmation process as soon as

² See 17 CFR 240.15c6-2; Exchange Act Release No. 96930 (Feb. 15, 2023) 88 FR 13872 (Mar. 6, 2023) ("Rule 15c6-2 Adopting Release"); see also Exchange Act Release No. 94196 (Feb. 9, 2022), 87 FR 10436 (Feb. 24, 2022) ("Rule 15c6-2 Proposing Release").

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ See 44 U.S.C. 3501 *et seq.*

technologically practicable and no later than the end of the day on trade date.

The respondents to the collection of information are broker-dealers that are parties to institutional trades. As of June 2026, 3,253 broker-dealers were registered with the Commission.³ Of those, approximately 145 broker-dealers are participants of the Depository Trust Company (“DTC”),⁴ a clearing agency registered with the Commission that provides central securities depository services for transactions in U.S. equity securities. Participants in DTC can facilitate the settlement of securities transactions on behalf of their customers. For example, broker-dealers that participate in DTC are often referred to as “clearing brokers” within the securities industry. In addition to broker-dealers, DTC participants include bank custodians that may also hold securities on behalf of institutional customers. Among other things, DTC facilitates the settlement of securities transactions using the delivery-versus-payment (“DVP”) and receipt-versus-payment (“RVP”) methods, both of which are commonly used by buyers and sellers to settle an institutional transaction once the parties have completed the allocation, confirmation, and affirmation process. Because DTC is a clearing agency that provides central securities depository services for U.S. equities, the Commission believes that the set of participants at DTC that are broker-dealers are a useful, if partial, estimate of broker-dealers that participate in the allocation, confirmation, and affirmation process and therefore of broker-dealers that would be subject to the requirements of Rule 15c6–2.

In addition, other broker-dealers may participate in the allocation, confirmation, and affirmation process but, because they do not maintain status as a participant in DTC, rely on commercial relationships with DTC participants (*i.e.*, clearing brokers) to facilitate final settlement of their institutional transactions. Using annual statistics compiled by the Financial Industry Regulatory Authority (“FINRA”), the Commission estimates that approximately 251 additional broker-dealers may serve institutional customers.⁵ Accordingly, the

Commission estimates that approximately 396 broker-dealers would be subject to the requirements of Rule 15c6–2.

Rule 15c6–2 will impose both initial and ongoing burdens. A respondent broker-dealer who has not already incurred the initial burden when Rule 15c6–2 was adopted will incur a burden to comply with the collection of information under Rule 15c6–2 depending on the extent to which the broker-dealer determines that its policies and procedures, as opposed to its written agreements, will be used to comply with the rule and how any existing policies and procedures for ensuring timely settlement would need to be modified to address same-day affirmation. As a general matter, most broker-dealers maintain policies and procedures to ensure the timely settlement of their transactions, and the securities industry considers achieving “same-day affirmation” an industry best practice. Nonetheless, the Commission believes that these respondent broker-dealers will need to evaluate existing policies and procedures, identify any gaps, and then update their policies and procedures to address any gaps identified. Accordingly, the Commission estimates that these respondent broker-dealers would incur an aggregate one-time burden of approximately 240 hours⁶ to create policies and procedures required under the rule.

Rule 15c6–2 also imposes ongoing burdens on all respondent broker-dealer as follows: (i) ongoing monitoring and compliance activities with respect to the written policies and procedures required by the proposed rule; and (ii) ongoing documentation activities with respect to its obligations to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date. The Commission estimates that the ongoing activities required by Rule 15c6–2 would impose an aggregate annual burden on a respondent broker-dealer of 480 hours.⁷

The Commission estimates that of the 396 broker-dealer respondents, 36 broker-dealers would incur the initial

burden,⁸ and 396 broker-dealer respondents would incur the ongoing burden. This results in industry estimated burdens of 20,160 hours for respondents who will incur both the initial and ongoing burden and 172,800 hours for respondents who will incur only the ongoing burden, for a total estimated burden of 192,960.

Rule 15c6–2 imposes a recordkeeping requirement on broker-dealers to maintain policies and procedures consistent with the rule. Where the Commission requests that a broker-dealer produce records retained pursuant to the requirements of Rule 15c6–2, a broker-dealer can request confidential treatment of the information. If such confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.

Pursuant to Exchange Act Rule 17a–4(b)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must preserve for a period of not less than three years, the first two years in an easily accessible place, all written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.⁹

Pursuant to 17 CFR 240.17a–4(e)(7), a broker or dealer registered pursuant to section 15 of the Exchange Act must maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.¹⁰

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-003 or email comment to

³ This estimate is derived from FOCUS Report data as of June 2026.

⁴ See DTCC, DTC Member Directories, <https://www.dtcc.com/client-center/dtc-directories> (last updated May 29, 2026).

⁵ Specifically, statistics compiled by FINRA suggest that approximately 239 small firms and 12 medium-sized firms in the “Trading and Execution” category perform “Institutional Brokerage.” FINRA, 2026 FINRA Industry Snapshot

at 49, 57 (2026), <https://www.finra.org/sites/default/files/2026-05/2026-Industry-Snapshot.pdf> (“2026 FINRA Industry Snapshot”).

⁶ This figure was calculated as follows: (Lawyers for 140 hours + Risk Management Specialists for 100 hours) = 240 hours.

⁷ This figure was calculated as follows: (Lawyers for 240 hours + Risk Management Specialists for 240 hours) = 480 hours.

⁸ This estimate is based on the average of 3% rate per year of firm entrance of FINRA-registered firms. See 2026 FINRA Industry Snapshot, *supra* note 5, at 31.

⁹ 17 CFR 240.17a–4(b)(7). The title of the information collection for 17 CFR 240.17a–4 is “Records to be Preserved by Broker-Dealers” (OMB Control No. 3235–0279).

¹⁰ 17 CFR 240.17a–4(e)(7).

MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–19621 Filed 9–24–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0122]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 17a–10

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (“PRA”), the Securities and Exchange Commission (“Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempt from the filing requirements of paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5¹ (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to paragraph (a) of Rule 17a–5 to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission

copies of the records pursuant to a plan, the policies and procedures of which have been declared effective by the Commission.

The Commission staff estimates that the total hour burden under Rule 17a–10 is approximately 38,688 hours per year and the current cost burden is \$0.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-011 or email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026–19617 Filed 9–24–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106463; File No. SR–NYSENAT–2026–26]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE National Rule 2.1210

September 22, 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 September 10, 2026, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE National Rule 2.1210 (Registration Requirements) applicable to Equity Trading Permit (“ETP”)

Holders⁴ to align with a recent amendment by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE National Rule 2.1210 (Registration Requirements). More specifically, the Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations as provided in Commentary .05 to NYSE National Rule 2.1210 (Waiting Periods for Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210, Supplementary Material .06.⁵

NYSE National Rule 2.1210 requires each person engaged in the investment banking or securities business of an ETP Holder to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220 (Registration Categories), unless exempt from registration pursuant to Rule 2.1230 (Associated Persons Exempt from Registration). Pursuant to Commentary .02 to NYSE National Rule 2.1210 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations

⁴ The term “ETP Holder” means the Exchange-approved holder of an ETP. See Rule 1.1(i). The term “ETP” refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange. See Rule 1.1(h).

⁵ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR–FINRA–2026–014) (“FINRA Rule Change”).

¹ Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (“FOCUS Report”), which is used by broker-dealers to provide certain required information to the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Commentary .05 to NYSE National Rule 2.1210 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials (“SIE”) examination and the representative and principal examinations specified under NYSE National Rule 2.1220.

FINRA amended its Rule 1210, Supplementary Material .06, to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁶ As described in the FINRA Rule Change, since the current waiting periods were adopted in 1989, FINRA’s qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in the FINRA Rule Change that today’s high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in the FINRA Rule Change that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA’s ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁷ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on

individuals seeking to enter the securities industry.⁸ Similar feedback regarding these challenges was received by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the organization and operation of member workplaces.⁹ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, NYSE National proposes to amend Rule 2.1210, Commentary .05, to conform to FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA’s amended requirements will promote consistency and reduce potential confusion for ETP Holders and their associated persons. Because ETP Holders and their associated persons are also subject to FINRA’s registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

In the FINRA Rule Change, FINRA noted it would announce the implementation date of its rule change in a Regulatory Notice. The Exchange will likewise announce the implementation date of this proposed rule change via a Regulatory Memo on or around the same time as the Regulatory Notice published by FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by reducing the waiting periods for retaking FINRA qualification examinations to align with FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange’s qualification examination waiting periods to FINRA’s amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for ETP Holders and their associated persons. As described in detail in the FINRA Rule Change, changes to the FINRA qualification program have reduced the risks that originally informed the current waiting periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange’s qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

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 does not impose any undue burden on competition; rather, it conforms the Exchange’s qualification examination waiting periods to FINRA’s amended requirements and does not impose any new obligations or restrictions on ETP Holders. The proposed rule change may benefit all ETP Holders by allowing them to more quickly make personnel decisions regarding their associated persons’ qualification examination retake timing.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See FINRA Regulatory Notice 25–07 (April 2025).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSENAT-2026-26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSENAT-2026-26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSENAT-2026-26 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-19633 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235-0179]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 31a-2

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (SEC or "Commission") is submitting to the Office of Management and Budget (OMB) this request for extension of the proposed collection of information described below.

Section 31(a)(1) of the Investment Company Act of 1940 (the "Act")¹ requires registered investment companies ("funds") and certain underwriters, broker-dealers,

investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules.² Rule 31a-1 under the Act specifies the books and records that each of these entities must maintain.³ Rule 31a-2 under the Act specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.⁴

Retention of records, as required by the rule, is necessary to ensure access to material business and financial information about funds and certain related entities. Commission staff periodically inspect the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on the Commission's resources, however, each fund may only be inspected at intervals of several years. In addition, the prosecution of persons who have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, Commission staff often need information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records, and other documents, Commission staff would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid, and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities.

Rule 31a-2 requires every fund to preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)-(4).⁵ Every fund must preserve for at least six years, and in an easily accessible place for the first two years: all books and records required under rule 31a-1(b)(5)-(12);⁶ all

² 15 U.S.C. 80a30(a)(1).

³ 17 CFR 270.31a1.

⁴ 17 CFR 270.31a2.

⁵ 17 CFR 270.31a2(a)(1). These include, among other records, journals detailing daily purchases and sales of securities; general and auxiliary ledgers reflecting all assets, liability, reserve, capital, income, and expense accounts; separate ledgers reflecting for each portfolio security as of the trade date all "long" and "short" positions carried by the fund for its own account; and corporate charters, certificates of incorporation, by-laws, and minute books. 17 CFR 270.31a-1(b)(1)-(4).

⁶ 17 CFR 270.31a2(a)(2). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund; records of all other portfolio purchases or sales; records of all puts, calls, spreads, straddles,

Continued

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 80a1 *et seq.*

vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, including schedules evidencing and supporting each computation of an adjustment to net asset value based on swing pricing policies and procedures; all schedules evidencing and supporting each computation of a liquidity fee by a money market fund pursuant to rule 2a-7(c)(2);⁷ other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b); any advertisement, pamphlet, circular, form letter, or other sales literature addressed or intended for distribution to prospective investors;⁸ any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund;⁹ any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel;¹⁰ and any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.¹¹ Every underwriter, broker, or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 (the "Exchange Act")¹² for the periods established in those rules.¹³ Every depositor of a fund and every principal underwriter of a fund (other than a closed-end fund) must preserve for at least six years records required to be maintained by brokers and dealers

and other options in which the fund has an interest, which it has granted, or which it has guaranteed; records of proof of money balances in all ledger accounts; files of all advisory material received from the investment adviser; and memoranda identifying persons, committees, or groups authorizing the purchase or sale of securities for the fund. 17 CFR 270.31a1(b)(5)–(12).

⁷ *Id.* See also 17 CFR 270.2a-7(c)(2).

⁸ 17 CFR 270.31a2(a)(3).

⁹ 17 CFR 270.31a2(a)(4).

¹⁰ 17 CFR 270.31a2(a)(5).

¹¹ 17 CFR 270.31a2(a)(6). Section 15 of the Act requires that fund directors, including a majority of independent directors, annually approve the fund's advisory contract and that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract. The information request requirement in section 15 provides fund directors, including independent directors, a tool for obtaining the information they need to represent shareholder interests. 15 U.S.C. 80a-15(c).

¹² 15 U.S.C. 78q.

¹³ 17 CFR 270.31a2(b).

under rules adopted under section 17 of the Exchange Act to the extent the records are necessary or appropriate to record the entity's transactions with the fund.¹⁴ Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be preserved by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (the "Investment Advisers Act")¹⁵ for the periods specified in those rules.¹⁶ Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 of the Investment Advisers Act to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.¹⁷ Compliance with rule 31a-2 is mandatory.

We estimate that approximately 2,741 funds are required to comply with rule 31a-2 annually. Each fund is estimated to spend 221 hours per year preserving the required books and records, at a monetized cost burden of \$49,283 per fund. The total annual burden is approximately 605,761 burden hours and total annual time costs of approximately \$135,084,703. The Commission estimates that funds incur about \$40,602 in external cost burden each year, resulting in an aggregate external cost burden of approximately \$111,290,082.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202607-3235-005 or email comment to MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov within 30 days of the day after publication of this notice, by October 26, 2026.

Dated: September 22, 2026.

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2026-19616 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

¹⁴ 17 CFR 270.31a2(c).

¹⁵ 15 U.S.C. 80b4.

¹⁶ 17 CFR 270.31a2(d).

¹⁷ 17 CFR 270.31a2(e).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106462; File No. SR-NYSEARCA-2026-96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NYSE Arca Rule 2.1210

September 22, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 10, 2026, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 2.1210 (Registration Requirements) applicable to Equity Trading Permit ("ETP") Holders, Options Trading Permit ("OTP") Holders and OTP Firms (collectively, "Members")⁴ to align with a recent

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ Pursuant to Rule 1.1, in general, the term "ETP Holder" refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. Pursuant to Rule 1.1, in general, the term "ETP" refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. Pursuant to Rule 1.1, in general, the term "OTP Holder" refers to a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Act, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. Under the Exchange's rules, an OTP Holder has the status as a "member" of the Exchange as that term is defined in Section 3 of the Act, as amended. Pursuant to Rule 1.1, in general, the term "OTP" refers to an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. Pursuant to Rule 1.1, in general, the term "OTP Firm" refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities pursuant to and in compliance with Exchange rules. An OTP Firm must be a

amendment by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change is available on the Exchange’s website at www.nyse.com and at the principal office of the Exchange.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Rule 2.1210 (Registration Requirements). More specifically, the Exchange proposes to reduce the waiting periods for retaking FINRA qualification examinations as provided in Commentary .05 to NYSE Arca Rule 2.1210 (Waiting Periods for Retaking a Failed Examination) to align with a recent amendment to FINRA Rule 1210, Supplementary Material .06.⁵

NYSE Arca Rule 2.1210 requires each person engaged in the investment banking or securities business of a Member to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220 (Registration Categories), unless exempt from registration pursuant to Rule 2.1230 (Associated Persons Exempt from Registration). Pursuant to Commentary .02 to NYSE Arca Rule 2.1210 (Qualification Examinations and Waivers of Examinations), before a person can be registered with the Exchange, he or she must pass the appropriate qualification examinations or obtain a waiver of the qualification examination requirement. If a person fails a qualification examination, Commentary .05 to NYSE Arca Rule

2.1210 (Waiting Periods for Retaking a Failed Examination) sets forth the time the person must wait before he or she can retake that qualification examination.

For the first and second failed attempts, the person must currently wait 30 calendar days to retake the qualification examination. A person who fails a qualification examination three or more times in succession within a two-year period must currently wait 180 calendar days before he or she can retake that examination. These waiting periods apply to the Securities Industry Essentials (“SIE”) examination and the representative and principal examinations specified under NYSE Arca Rule 2.1220.

FINRA amended its Rule 1210, Supplementary Material .06, to shorten the required qualification examination retake waiting periods to 15 calendar days after the first and second failed attempts, and 60 calendar days after the third and all subsequent failed attempts that occur within a two-year period.⁶ As described in the FINRA Rule Change, since the current waiting periods were adopted in 1989, FINRA’s qualification program has undergone significant changes that have shifted the principal risks that originally informed the rule. FINRA noted in the FINRA Rule Change that today’s high-volume FINRA qualification examinations use extensive question banks that contain thousands of questions, with each test taker receiving only a small subset of questions per attempt, which reduces both the likelihood that repeat test takers will depend on memorized questions from prior attempts and the risk of content being disseminated to others. Additionally, FINRA noted in the FINRA Rule Change that it employs data forensics and advanced technology to identify misconduct and compromised examination content, taking appropriate corrective action when such incidents occur. Moreover, these enhanced detection capabilities help to ensure that the shortened waiting periods would not compromise FINRA’s ability to conduct timely investigations into possible cheating or other violations of examination rules of conduct.⁷ Over the past several years, FINRA noted it has received input from various industry channels about the burden that the current qualification examination waiting periods place on individuals seeking to enter the securities industry.⁸ Similar feedback regarding these challenges was received

by FINRA in response to its request for comment on modernizing FINRA rules, guidance, and processes for the organization and operation of member workplaces.⁹ Given this consistent input and the changes to the qualification program described above, FINRA determined that shortening the waiting periods would lessen the burden on individuals while continuing to protect investors by maintaining appropriate program integrity.

At this time, NYSE Arca proposes to amend Rule 2.1210, Commentary .05, to conform to FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange proposes to reduce the waiting period after the first and second failed attempts from 30 to 15 calendar days, and to reduce the waiting period after the third and all subsequent failed attempts within a two-year period from 180 to 60 calendar days. The Exchange believes that conforming its rules to FINRA’s amended requirements will promote consistency and reduce potential confusion for Members and their associated persons. Because Members and their associated persons are also subject to FINRA’s registration and qualification requirements, maintaining uniform waiting periods across both rule sets ensures that individuals experience a coherent and predictable regulatory framework.

In the FINRA Rule Change, FINRA noted it would announce the implementation date of its rule change in a Regulatory Notice. The Exchange will likewise announce the implementation date of this proposed rule change via a Regulatory Memo on or around the same time as the Regulatory Notice published by FINRA.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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, by reducing the waiting

registered broker or dealer pursuant to Section 15 of the Act. For complete definitions of each of the terms above, see Rule 1.1.

⁵ See Securities Exchange Act Release No. 105885 (July 13, 2026), 91 FR 43678 (July 16, 2026) (SR-FINRA-2026-014) (“FINRA Rule Change”).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See FINRA Regulatory Notice 25-07 (April 2025).

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

periods for retaking FINRA qualification examinations to align with FINRA Rule 1210, Supplementary Material .06. Specifically, the Exchange believes that the proposed rule change protects investors and the public interest by conforming the Exchange's qualification examination waiting periods to FINRA's amended requirements, thereby promoting consistency across the regulatory framework and reducing potential confusion for Members and their associated persons. As described in detail in the FINRA Rule Change, changes to the FINRA qualification program have reduced the risks that originally informed the current waiting periods, and the shortened periods continue to provide sufficient time for the maintenance of examination integrity and the investigation of potential misconduct. The proposed rule change also fosters cooperation and coordination with persons engaged in regulating transactions in securities by aligning the Exchange's qualification examination requirements with those of FINRA. Further, the proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing unnecessary barriers to entry for individuals seeking to register to work in the securities industry.

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 does not impose any undue burden on competition; rather, it conforms the Exchange's qualification examination waiting periods to FINRA's amended requirements and does not impose any new obligations or restrictions on Members. The proposed rule change may benefit all Members by allowing them to more quickly make personnel decisions regarding their associated persons' qualification examination retake timing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section

19(b)(3)(A)(iii) of the Act¹² and Rule 19-4(f)(6) thereunder.¹³ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2026-96 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.

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19-4(f)(6).

¹⁴ 17 CFR 240.19-4(f)(6).

¹⁵ 17 CFR 240.19-4(f)(6)(iii).

¹⁶ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to file number SR-NYSEARCA-2026-96. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2026-96 and should be submitted on or before October 16, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026-19639 Filed 9-24-26; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21906 and #21907; WASHINGTON Disaster Number WA-20036]

Administrative Declaration of a Disaster for the State of Washington

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the state of Washington dated September 22, 2026.

Incident: Chelan Hills Wildfire.

DATES: Issued on September 22, 2026.

Incident Period: July 4, 2026 through July 10, 2026.

Physical Loan Application Deadline Date: November 23, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: June 22, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Milton Murphy, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

¹⁷ 17 CFR 200.30-3(a)(12).

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary County: Douglas.

Contiguous Counties:

Washington: Chelan, Grant, Kittitas, Okanogan.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.7502
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 219065 and for economic injury is 219070.

The states which received an SBA Administrative declaration are Washington.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026-19670 Filed 9-24-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21904 and #21905; PENNSYLVANIA Disaster Number PA-20044]

Administrative Declaration of a Disaster for the Commonwealth of PENNSYLVANIA

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated September 22, 2026. Incident: Severe Storms and Flash Flooding.

DATES: Issued on September 22, 2026.

Incident Period: September 2, 2026 through September 3, 2026.

Physical Loan Application Deadline Date: November 23, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: June 22, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or in person at other locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-866-SBA-HELP. 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:

Clinton, Erie.

Contiguous Counties:

Pennsylvania: Cameron, Centre, Clearfield, Crawford, Lycoming, Potter, Union, Warren.

New York: Chautauqua.

Ohio: Ashtabula.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	6.000

	Percent
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 219046 and for economic injury is 219050.

The states which received an SBA Administrative declaration are New York, Ohio, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026-19622 Filed 9-24-26; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21849 and #21850; SOUTH DAKOTA Disaster Number SD-20019]

Presidential Declaration of a Major Disaster for the Oglala Sioux Tribe

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of the Presidential declaration of a major disaster for the Oglala Sioux Tribe (FEMA-4941-DR), dated September 1, 2026.

Incident: Severe Storms, Straight-line Winds, and Flooding.

DATES: Issued on September 1, 2026.

Incident Period: June 2, 2026 through June 4, 2026.

Physical Loan Application Deadline Date: November 27, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: June 1, 2027.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster

Recovery, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the President’s major disaster declaration on September 1, 2026, 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 Area (Physical Damage and Economic Injury Loans):* Oglala Sioux Tribe.
- Contiguous Counties (Economic Injury Loans Only):*
- South Dakota: Bennett, Custer, Fall River, Jackson, Mellette, Oglala Lakota, Pennington, Todd.
- Nebraska: Cherry, Dawes, Sheridan.
- The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 21849B and for economic injury is 218500.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 123.3(b).)

James Stallings,
Associate Administrator, Office of Disaster Recovery.

[FR Doc. 2026-19669 Filed 9-24-26; 8:45 am]
BILLING CODE 8026-09-P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36955]

5E SVM Railway Company, LLC—Acquisition and Operation Exemption—Assets of Trona Railway Company LLC

5E SVM Railway Company, LLC (SVMR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a rail line owned by Trona Railway Company LLC, Debtor (TRC), extending from milepost 0.0 at Searles Junction, Cal., to the end of the line at milepost 30.6 in Trona, Cal., a distance of approximately 30.6 miles (the Line).

According to the verified notice, SVMR’s parent, 5E SVM, LLC (5E SVM), entered into an Asset Purchase Agreement with TRC and TRC’s parent company, Searles Valley Minerals Inc. (SVM), to acquire the assets of TRC. The verified notice indicates that SVMR will operate and provide rail common carrier service on the Line. SVMR has concurrently filed a petition for waiver of the 30-day effectiveness period specified under 49 CFR 1150.32(b) to allow the exemption to become effective immediately.¹

SVMR certifies that the proposed acquisition of the Line does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier. SVMR further certifies that its projected annual revenues as a result of this transaction are not expected to exceed \$5 million and will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.

All pleadings, referring to Docket No. FD 36955, must be filed with the Surface Transportation Board either via e-filing on the Board’s website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on SVMR’s representative, Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606-3208.

According to SVMR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation

¹ The petition for waiver will be addressed in a separate decision.

reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: September 22, 2026.
By the Board, Anika S. Cooper, Chief Counsel, Office of Chief Counsel.

Jeffrey Herzig,
Clearance Clerk.
[FR Doc. 2026-19627 Filed 9-24-26; 8:45 am]
BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2026-2080]

Denial of Motor Vehicle Defect Petition, DP26-003

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of a Petition to open a defect investigation.

SUMMARY: This notice sets forth the reasons for denying a Petition DP26-003 submitted on February 5, 2026 by Mr. James A. Palmer to NHTSA’s Office of Defects Investigation (ODI), under 49 U.S.C. 30162 and 49 CFR part 552. The Petitioner requested that the Agency initiate a safety defect investigation into model year (MY) 2006 Nissan Frontier vehicles for alleged fuel system leaks and engine stalling. ODI has determined that the issues raised in the Petition are not likely to result in a finding that a defect related to motor vehicle safety exists. This determination is based on a technical review by ODI of available information, which included: consumer complaints submitted by the petitioner; consumer complaint information in the Agency’s databases; and other relevant information in possession of the Agency. As a result, further investigation of the issues raised by the Petition is not warranted and the Agency, accordingly, has denied the Petition.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Miller, Vehicle Defect Division B, Office of Defects Investigation, NHTSA 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202-873-5019. Email: kevin.miller1@dot.gov.

SUPPLEMENTARY INFORMATION:

1. Introduction

Any interested person may petition NHTSA to request that the Agency initiate an investigation to determine

whether a motor vehicle or item of replacement equipment complies with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.3. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency or it may include the collection of information from the motor vehicle manufacturer and/or other sources. *Id.* After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect, and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

2. Defect Petition Summary

In a letter dated February 5, 2026, Mr. James A. Palmer submitted a Petition concerning his MY 2006 Nissan Frontier. The Petition alleged two main hazardous conditions: an odor of raw gasoline indicating a potential fuel leak, and engine stalling during startup and vehicle operation. The Petition cited prior NHTSA safety recalls, specifically Recalls 10V517 (ECM Relay), 07V435 (Fuel Filler Tube), and 10V075 (Fuel Tank/Sender), arguing that his vehicle's symptoms resemble the defects associated with these actions and asserting that a safety defect is not subject to expiration.

3. Office of Defects Investigation Analysis

In evaluating a defect, ODI considers a range of factors, including the age and mileage of the subject vehicle fleet, failure frequency, defect trends, and whether component degradation is attributable to an inherent design or manufacturing flaw versus expected end-of-life wear and tear.

The subject vehicle is a model year 2006 vehicle that has been in service for approximately 20 years. Standard automotive components including fuel hoses, rubber seals, gaskets, electrical relays, and engine sensors have a finite useful lifecycle and are subject to environmental exposure, operational stress, and natural degradation over extended timeframes.

ODI routinely distinguishes between an inherent manufacturing or design defect and normal lifecycle wear-out (*see, e.g.,* Denial of DP18-002, 87 FR 16823, finding underbody component issues late in vehicle life to be “indicative of normal, wear and tear failures”). As vehicles reach advanced age, individual component degradation and maintenance requirements are a standard expectation of vehicle ownership. Isolated component failures on high-age vehicles do not, in themselves, establish the presence of an actionable safety defect across a vehicle fleet.

The Petition references three historic NHTSA safety recall campaigns, Recalls 07V435, 10V075, and 10V517, arguing that because the subject vehicle exhibits fuel odors and engine stalling, these conditions demonstrate an unaddressed or persistent safety defect. However, a technical review of these cited recall campaigns demonstrates that they do not provide compelling support for the petitioner's allegations.

Regarding Recall 07V435, the action pertained exclusively to MY 1997–2001 Nissan Pathfinder and Infiniti QX4 vehicles to address corrosion of the lower fuel filler tube bracket in specific salt-belt states. At the time Recall 07V435 was initiated, the subject vehicles were 6 to 10 years old, and the consequence of the defect was a potential vehicle fire. This campaign did not involve the MY 2006 Nissan Frontier platform. Merely experiencing a general symptom such as a fuel odor on a 20-year-old vehicle does not establish a link to a localized corrosion issue on an entirely different vehicle generation produced years prior. In the case of MY 2006 Frontiers, the Agency is not aware of a trend of fire complaints on a product with over 20 years of exposure.

Recall 10V075 addressed a fuel sender float arm contacting an internal tank embossment, which caused the fuel gauge on certain MY 2006 and 2008 Frontier vehicles to inaccurately display a one-quarter tank level when the fuel tank was empty. That campaign was directed strictly at instrument gauge accuracy and engine stalling from fuel exhaustion, not a physical fuel leak or a breach of fuel system integrity. The petitioner's allegation of raw fuel odors reflects a potential physical leak or vapor loss, which is completely distinct from the fuel-gauge indication flaw remediated under Recall 10V075.

Recall 10V517 addressed silicon oxide accumulation on Engine Control Module (ECM) relay contacts within the Intelligent Power Distribution Module on select MY 2005–2006 vehicles. After

approximately 20 years of operational service and environmental exposure, engine stalling can be caused by a wide range of normal, age-related maintenance conditions. The presence of engine stalling on a 20-year-old vehicle does not, by itself, indicate the presence of the original manufacturing defect addressed in Recall 10V517.

The Petition must present specific data establishing a defect trend that poses an unreasonable risk to safety. Broadly associating general, late-life vehicle symptoms with historic, non-applicable, or previously remediated recall campaigns on multi-decade-old vehicles does not satisfy this requirement. Furthermore, NHTSA's oversight of recall execution ensures that campaign parameters (such as affected VIN ranges and build dates) are chosen based on specific defect determinations; therefore, individual component degradation on high-age vehicles outside these parameters likely represents routine wear and tear rather than an unaddressed defect trend.

The Agency has thoroughly assessed the material submitted by the Petitioner, consumer complaint information in NHTSA's databases, and other relevant information already in possession of the Agency. NHTSA does not believe that the issues presented by the Petitioner indicate the likely existence of a safety-related defect that would warrant a formal investigation. After full consideration of the available information, and in view of NHTSA's enforcement priorities, the Petition is denied.

Authority: 49 U.S.C. 30162(d) and 49 CFR part 552; delegation of authority at 49 CFR 1.95(a).¹

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2026–19685 Filed 9–24–26; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. DOT–OST–2026–1882]

Notice of Request for Clearance of a Revision of a Currently Approved Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

¹ The authority to determine whether to approve or deny defect Petitions under 49 U.S.C. 30162(d) and 49 CFR part 552 has been further delegated to the Associate Administrator for Enforcement.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval for new iterations of an on-going biennial information collection related to the nation's ferry operations. The information collected from each census will be used to produce a descriptive database of existing ferry operations. A summary report of census findings will also be published by BTS on the BTS web page: www.bts.gov/ncfo.

DATES: Comments must be submitted on or before October 26, 2026.

FOR FURTHER INFORMATION CONTACT:

Kenneth Steve, (202) 579-0672, NCFO Program Manager, BTS, OST-R, Department of Transportation, 1200 New Jersey Ave. SE, Room E36-308, Washington, DC 20590. Office hours are from 8:00 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: National Census of Ferry Operators (NCFO).

Type of Request: Approval modifications to an existing information collection.

Affected Public: There are approximately 260 ferry operators nationwide.

Abstract: In 1998, the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a census of approximately 260 ferry operators to identify: (1) existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. In 2005, the Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA-LU) Public Law 109-59, Section 1801(e)) required that the Secretary, acting through the BTS, shall establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources

and such other information as the Secretary considers useful. In 2012, MAP-21 legislation [Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141)] continued the BTS mandate to conduct the NCFO and also required that the FHWA use the NCFO data to set the specific formula for allocating federal ferry funds. The funding allocations were based on a percentage of the number of passenger boardings, vehicle boardings, and route miles served. In 2015, the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, sec. 1112) continues the BTS mandate to conduct the NCFO on a biennial basis and extended the requirement that the FHWA use the NCFO data to set the specific formula for allocating federal ferry funds as required in MAP-21.

BTS conducted the first NCFO in 2006. The census was conducted again in 2008, 2010, 2014, 2016, 2018, 2020, 2022, and 2024. Preparations are already underway for the 2026 NCFO in 2027. The overall length of the revised questionnaire for the 2026 NCFO will remain consistent with that of previous years. The 2028 questionnaire will be updated based on research performed between the 2026 and 2028 NCFO cycles with the goal to reduce burden and promote operators to respond. These information collections were originally approved by OMB under Control Number 2139-0009.

The census will be administered to the entire population of ferry operators (estimated 260). The census will request the respondents to provide information such as: the terminals served; the type of ownership; the number of passengers and vehicles carried in the past 12 months; vessel descriptions (including type of fuel), federal, state and local funding sources, and intermodal connectivity. All data collected for 2026 and 2028 NCFOs will be added to the existing database.

Data Confidentiality Provisions: The NCFO may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.29. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide. Business sensitive information may be shared with FHWA to support FAST Act funding allocations.

Frequency: This census will be performed every other year.

Estimated Average Burden per Response: The burden per respondent in

2026 is estimated to be an average of 30 minutes. This average is based on an estimate of 20 minutes to answer questions that require answers specific to that year and an additional 10 minutes to review (and revise as needed) previously submitted data that will be pre-populated for each ferry operation. The burden for conducting research into the questionnaire instrument will include no more than 9 cognitive interviews of operators as they interact with and answer different versions of the instrument. These changes will be implemented in the 2028 NCFO and should decrease burden.

Estimated Total Annual Burden: The annual burden for the 2026 NCFO (in the year that the census is conducted) is estimated to be 130 hours (that is 30 minutes per respondent for 260 respondents equals 7,800 minutes).

Response to Comments: A 60-day notice requesting public comment was issued in the **Federal Register** on July 9, 2026. One comment was received by Texas DOT. Texas DOT stated appreciation for the NCFO and suggested several changes or improvements. These improvements included streamlining the questionnaire by making previous submissions available and providing follow-up logic following entry of route origin and destination, providing alternate ways of submitting responses, increasing the type of data collected, and information about operators' fleets and plans for vessels and infrastructure. Texas DOT also expressed concern with the statement that the questionnaire takes on average 30 minutes, as it takes them closer to 60 minutes.

We appreciate Texas DOT's comments and their use of the NCFO data. Responses from previous years are available to download for operators that provided responses in the previous questionnaires, for their convenience. These responses can be downloaded and used to fill in the instrument questions. We prefill some data fields that are generally consistent among censuses and includes certain information on operators, vessels, segments, and terminals, totaling 40 pre-filled data fields. We appreciate Texas DOT's interest in expanding our data coverage to include more elements on vessels and current and planned infrastructure work. However, some of the requested types of data may increase burden on respondents and be interpreted as Business Sensitive by many operators, preventing their inclusion or utility. Other questions we might be able to include in future NCFO cycles, and we will investigate other

data sources, such as administrative data, for some of the additional data types requested. We are currently working to streamline the questionnaire and make it more user friendly. We recognize that the time it takes operators to fill out the questionnaire varies depending on the complexity of the operator. While it takes some longer than the average 30 minutes, there are many operators for whom it only takes approximately 10 minutes to complete the questionnaire. Texas DOT also suggested an Excel format for the questionnaire, where the responses can be directly loaded from the sheet to the instrument, and we will discuss this option with our IT team. We greatly appreciate the suggestions and comments provided by Texas DOT and taking the time to help improve the NCFO.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) the necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, clarity and content of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW,

Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2026–19636 Filed 9–24–26; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions to improve customer service at the Internal Revenue Service. This meeting will be held as a virtual video conference via the Microsoft Teams platform.

DATES: The meeting will be held on Wednesday, October 21, 2026, at 2:00 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Fred N. Smith, Jr. by email at taxpayer.advocacy.panel@irs.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that an open meeting of the Taxpayer Advocacy Panel's Joint Committee will be held on Wednesday, October 21, 2026, at 2:00 p.m. Eastern Time.

The public is invited to attend the meeting virtually, or by phone, and may provide oral comments or submit written statements for consideration. Due to meeting structure and time limitations, advance registration is required to attend or make public comments during the meeting. To register and receive meeting access information, please contact Fred N. Smith, Jr. at the contact information above no later than Friday, October 16, 2026.

Meeting materials, including the agenda and any handouts, will be made available prior to the meeting at www.improveirs.org.

The agenda will include a committee discussion of new and continuing issues and other activities related to the new TAP year.

Dated: September 23, 2026.

Saul M. Hernandez,

Designated Federal Official, Taxpayer Advocacy Panel.

[FR Doc. 2026–19690 Filed 9–24–26; 8:45 am]

BILLING CODE 4830–01–P



FEDERAL REGISTER

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Friday,

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September 25, 2026

Part II

Environmental Protection Agency

40 CFR Parts 70 and 71

Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 70 and 71

[EPA-HQ-OAR-2023-0401; FRL-9118.1-02-OAR]

RIN 2060-AW77

Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is updating the title V operating permit program regulations to codify the Agency’s existing interpretations and policies concerning when and whether “applicable requirements” established in other Clean Air Act (CAA) programs may be reviewed, modified, and/or implemented through the title V operating permit program. Specifically, this final rule clarifies the limited situations in which requirements under the New Source Review (NSR) preconstruction permitting program would be reviewed using the EPA’s title V oversight authorities. Additionally, this final rule clarifies that requirements related to an owner or operator’s general duty to prevent accidental releases of hazardous substances are not “applicable requirements” for title V purposes and are, therefore, not implemented through title V.

DATES: This final rule is effective on October 26, 2026.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2023-0401. All documents in the docket are listed on the <http://www.regulations.gov> website. Docket materials are available electronically through <http://www.regulations.gov>.

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SUPPLEMENTARY INFORMATION: *Preamble acronyms and abbreviations.*

Throughout this preamble the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the

reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

BACT Best Available Control Technology
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EAB Environmental Appeals Board
E.O. Executive Order
FIP Federal Implementation Plan
FR Federal Register
GDC General Duty Clause
HAP Hazardous Air Pollutant
LAER Lowest Achievable Emissions Rate
MACT Maximum Achievable Control Technology
NAAQS National Ambient Air Quality Standards
NESHAP National Emission Standards for Hazardous Air Pollutants
NNSR Nonattainment New Source Review
NSPS New Source Performance Standards
NSR New Source Review
OSH Occupational Safety and Health
PAL Plantwide Applicability Limit
PSD Prevention of Significant Deterioration
RTC Response to Comments
SIP State Implementation Plan
SSM Startup, Shutdown, and Malfunction
U.S.C. United States Code

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I. General Information and Executive Summary

Title V of the Clean Air Act requires the establishment of a permitting program for covered stationary sources that incorporates various stationary source limitations set out elsewhere in the statute. Covered sources generally may not operate without a title V permit, and title V permits must “include enforceable emissions limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.”¹ The EPA maintains regulations that address the relationship between title V and other CAA programs and define the term “applicable requirements,” which the statute itself does not further define.²

On January 9, 2024, the EPA published a proposed rule addressing the relationship between the CAA’s title V operating permit program and certain types of “applicable requirements” established under different sections of the CAA (the “January 2024 Proposed Rule”).³ The January 2024 Proposed Rule was designed to update the EPA’s regulations to better express the EPA’s existing approaches to topics that have been the source of public interest and, at times, misunderstanding. The preamble discussion and regulatory changes accompanying this final rule are similarly intended to provide clarity

¹ 42 U.S.C. 7661c(a). “[A]pplicable implementation plan” refers to the relevant EPA-approved State implementation plan (SIP) or Federal implementation plan (FIP), which may include more granular requirements applicable to the source based on its location.

² 40 CFR 70.2 and 71.2.

³ Clarifying the Scope of “Applicable Requirements” Under State Operating Permit Programs and the Federal Operating Permit Program, 89 FR 1190 (January 9, 2024).

about the EPA's approaches. The EPA received public comment on many of the topics discussed in the January 2024 Proposed Rule. The EPA's responses to the most significant comments are included within this preamble, which is organized similarly to the January 2024 Proposed Rule preamble. A complete response to comments (RTC) document is included in the docket for this final rule.

This preamble addresses three substantive topics. Section II of this preamble includes background on the EPA's longstanding position regarding a number of general topics involving "applicable requirements." This discussion is similar to the background discussion in the January 2024 Proposed Rule and has been updated in response to public comments. In summary, the title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and provides conditions necessary to assure compliance with such requirements, but it is not a vehicle for creating or changing applicable requirements from those other programs. The EPA has a regulatory definition of the term "applicable requirement" that guides the interaction between title V and other CAA programs.⁴ Some programs establish "self-implementing" requirements that can be incorporated into title V permits without further review. Other programs contain only general requirements that can, in certain circumstances, be further defined through title V permits. This section concludes by summarizing the EPA's positions on how these concepts affect requirements related to the National Ambient Air Quality Standards (NAAQS) and State Implementation Plans (SIPs).

Section III of this preamble addresses the intersection between title V operating permits and NSR preconstruction permits issued under title I of the CAA; in short, the EPA's title V oversight authorities generally may not be used to review NSR requirements. Section III.A of this preamble discusses the EPA's historical and current approaches to the intersection between permits issued under title I and title V. Although the existing regulations may be properly read to support the EPA's existing approach, the regulatory amendments finalized in this action make this approach more explicit. Updating the EPA's regulations allows the Agency to apply our approach nationwide and resolves issues stemming from conflicting court decisions from the U.S.

Court of Appeals for the Tenth Circuit and the Fifth Circuit.

Section III.B of this preamble summarizes the regulatory amendments finalized in this action to reflect the approach the EPA has taken since 2017. In summary, provided a source obtains an NSR permit under EPA-approved (or EPA-promulgated) title I regulations, with public notice and the opportunity for comment and judicial review, that NSR permit establishes the NSR-related "applicable requirements" of the SIP (or Federal Implementation Plan (FIP)) for purposes of incorporation into a title V permit. As with "applicable requirements" established under other CAA authorities, the EPA will not reevaluate those NSR permitting decisions through the title V process.

Section III.C of this preamble details the EPA's legal and policy rationale for the Agency's approach, which reflects the best reading of the relevant statutory provisions. The EPA's interpretation is supported by the text, structure, and purpose of title V and the structure of the CAA as a whole. It also best effectuates the intent of Congress. This rule ensures that applicable requirements established in different CAA programs are treated consistently in title V permitting, accounts for the limitations associated with title V oversight tools, emphasizes title I avenues of review, and respects the finality of, and fosters certainty in, title I permitting decisions.

Section III.D of this preamble details how the updated regulatory provisions in this final rule apply in different circumstances. In general, the EPA will not use the title V process to address NSR issues, regardless of: (i) the stage of the title V permitting or oversight process at issue; (ii) the NSR permit's origin (*i.e.*, from a SIP or a FIP); (iii) the type of substantive NSR requirement at issue (*e.g.*, NSR permit terms or major NSR applicability); and (iv) the procedures by which the NSR permit is incorporated into the title V permit (*e.g.*, sequentially or concurrently issued permits).⁵ However, there are limited situations in which the title V permitting process is the appropriate venue for ensuring that the title V permit includes and assures compliance with all NSR-related requirements of the SIP, including relatively rare situations in which the applicable SIP

requirements governing a construction project have not been conclusively established outside of the title V permitting process, or limited examples in which NSR issues and title V issues involve substantive overlap.

Section III.E of this preamble further discusses the impacts of this final rule. Entities potentially affected by this final rule include State, local, and Tribal air pollution control agencies that administer title V operating permit programs ("permitting authorities"), owners and operators of emissions sources in all industry groups who hold or apply for title V operating permits, and any person or group that participates in the title V permitting process. Overall, this rule provides additional clarity about the appropriate role of title V oversight authorities and the appropriate mechanisms to address concerns with NSR permits.

Section IV of this preamble addresses a distinct and severable topic related to the "General Duty Clause" of CAA section 112(r)(1), which concerns the prevention of accidental releases of hazardous substances. This rule codifies the EPA's well-established position that this General Duty Clause is not an "applicable requirement" and is not implemented through title V.

II. Background on Title V Operating Permits and CAA "Applicable Requirements"

This section of the preamble contains background information on the title V program and explains how different types of "applicable requirements" of the CAA are treated in title V permits. This discussion is intended for informational purposes only to clarify multiple related topics that may have been a source of confusion to the public, regulated entities, and permitting authorities over the years. As explained in the January 2024 Proposed Rule, the EPA does not intend to and is not changing the Agency's longstanding interpretations or policies discussed in this section. The interpretations recounted in this section are consistent with, and accurately reflected in, the EPA's existing regulations in 40 CFR parts 70 and 71.

A. The Title V Permitting Process, Public Participation, and the EPA's Oversight Role

Congress amended the CAA in 1990 to add, among other provisions, title V.⁶ Title V established an operating permit

⁵ This final rule does not include any regulatory changes associated with one particular mechanism used to incorporate NSR permits into title V permits, known as "enhanced NSR." That aspect of the January 2024 Proposed Rule—which is not closely related to the core issues associated with this rulemaking—is severed from and not addressed by this final rule.

⁶ CAA Amendments of 1990, Public Law 101–549, sections 501–507, 104 Stat. 2399, 2635–48 (1990) (codified at 42 U.S.C. 7661–7661f).

⁴ 40 CFR 70.2 and 71.2.

program for major sources of air pollution and certain other sources.

The title V program, like other provisions of the CAA, involves cooperative federalism, meaning that responsibility for the program is divided between States and the EPA. Under title V, States were required to develop and submit to the EPA for approval title V permitting programs consistent with requirements promulgated by the Agency in 40 CFR part 70.⁷ Most States, certain local agencies, and one Tribe now have approved part 70 programs.⁸ Under these EPA-approved State programs, permitting authorities issue the vast majority of title V permits (this preamble refers to such permits as “State-issued” permits). The EPA directly issues title V permits only in limited circumstances.⁹

Most title V permit actions (including initial permits, renewal permits, and significant permit modifications) involve public notice, an opportunity for comment, and a hearing on draft permits and revisions.¹⁰ The CAA also provides for judicial review of final title V permit actions through State courts.¹¹ These provisions are similar to those provided in other CAA programs.

Additionally, Congress provided the EPA and the public with unique oversight tools for State-issued title V permits. The CAA requires permitting authorities to submit a proposed title V permit to the EPA Administrator for review before issuing a final permit.¹² The Administrator shall object to issuance of a proposed permit within 45 days if the Administrator determines that the permit does not satisfy the applicable requirements of the CAA or the requirements of 40 CFR part 70.¹³ If the Administrator does not object to a permit during the 45-day review period, any person may petition the Administrator within 60 days after the expiration of the 45-day review period

to take such action (“title V petition”).¹⁴ Many of the issues concerning “applicable requirements” that are addressed in this final rule have been raised and addressed in title V petitions and the EPA’s orders responding to such petitions.¹⁵ Generally, the Administrator’s denial of a title V petition is a locally or regionally applicable action subject to judicial review in the U.S. Court of Appeals for the appropriate circuit under CAA section 307(b).¹⁶

The CAA also provides the EPA with the authority, at the Agency’s discretion, to determine that cause exists to “terminate, modify, or revoke and reissue” a State-issued title V permit.¹⁷ This process is often called “reopening for cause” and is described in 40 CFR 70.7(f) and (g). Among other criteria, a permit may be reopened for cause when necessary to assure compliance with applicable requirements.¹⁸

Although this rule is primarily focused on the EPA’s oversight of State-issued title V permits, the concepts discussed in this preamble related to “applicable requirements” are relevant to nearly all aspects of the title V permitting process in some regard. For example, these concepts guide the information that permittees must include in title V permit applications, the required content of title V permits drafted and issued by permitting authorities (including the EPA), the scope of issues properly subject to the public’s input during the title V permitting process, and the scope of issues considered by the EPA in exercising the Agency’s oversight authorities (including the EPA’s review of title V permits issued by States and consideration of title V petitions on those permits).

B. Purpose and Function of Title V Permits

The title V permitting program was created to assist with compliance and enforcement of air pollution controls established under other CAA programs. Before this program existed, the CAA pollution control requirements that might apply to a source could be found

in many different provisions of the CAA along with various Federal and State regulations and permits. One court opinion summarized the relationship between title V and other CAA programs as follows:

Under the regulatory regime established by the [CAA], emission limits for pollutants and monitoring requirements that measure compliance applicable to any given stationary source of air pollution are scattered throughout rules promulgated by states or EPA, such as [SIPs], new source performance standards [NSPS], and national emission standards for hazardous air pollutants [NESHAP]. Before 1990, regulators and industry were left to wander through this regulatory maze in search of the emission limits and monitoring requirements that might apply to a particular source. Congress addressed this confusion in the 1990 Amendments by adding title V of the Act, which created a national permit program that requires many stationary sources of air pollution to obtain permits that include relevant emission limits and monitoring requirements.¹⁹

Thus, one key function of title V is to consolidate the applicable requirements established under other CAA programs. This consolidation function is embodied in CAA section 504(a), which states, in part: “Each permit issued under this subchapter shall include enforceable emission limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.”²⁰ The EPA’s regulations implementing title V contain language similar to the statute.²¹ The EPA’s regulations also require: “The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.”²²

In addition to consolidating applicable requirements, CAA section 504 provides the EPA with the authority to use title V permits to establish additional requirements necessary to assure compliance with those applicable requirements. For example, title V permits may be used to create or supplement monitoring requirements, when necessary, to assure compliance with underlying applicable

⁷ 42 U.S.C. 7661a(b), (d). For information about EPA oversight of the content and implementation of EPA-approved State part 70 programs, see 42 U.S.C. 7661a(i) and 40 CFR 70.10.

⁸ See 40 CFR part 70, appendix A (Approval Status of State and Local Operating Permits Programs).

⁹ Under 40 CFR part 71, the EPA (or an agency delegated to issue permits on the EPA’s behalf) issues title V permits to sources in most areas of Indian country, on the Outer Continental Shelf, in jurisdictions where the EPA has determined that a State has not adequately implemented its part 70 program, and in situations in which a State has not satisfied an EPA objection to, or reopening of, a State-issued permit. See 40 CFR 71.4.

¹⁰ 42 U.S.C. 7661a(b)(6); 40 CFR 70.4(d)(3)(iv), 70.7(h).

¹¹ 42 U.S.C. 7661a(b)(6); 40 CFR 70.4(b)(3)(x) through (xii).

¹² 42 U.S.C. 7661d(a)(1); 40 CFR 70.8(a).

¹³ 42 U.S.C. 7661d(b)(1); 40 CFR 70.8(c).

¹⁴ 42 U.S.C. 7661d(b)(2), 40 CFR 70.8(d), 70.12, 70.13, 70.14.

¹⁵ For more information about title V petitions, see the preambles of the proposed and final rule “Revisions to the Petition Provisions of the Title V Permitting Program,” 81 FR 57822 (August 24, 2016) and 85 FR 6431 (February 5, 2020). Copies of petitions and the EPA’s petition orders are available on the EPA’s public title V petition database, <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>.

¹⁶ 42 U.S.C. 7661d(b)(2), 7607(b)(1).

¹⁷ 42 U.S.C. 7661d(e).

¹⁸ 40 CFR 70.7(f)(1)(iv).

¹⁹ *Sierra Club v. EPA*, 536 F.3d 673, 674 (D.C. Cir. 2008) (citations omitted).

²⁰ 42 U.S.C. 7661c(a).

²¹ See 40 CFR 70.6(a)(1), 71.6(a)(1). The EPA’s regulations also define the specific “applicable requirements” with which each title V permit must assure compliance. 40 CFR 70.2 and 71.2. The definition and concept of “applicable requirements” are discussed in more detail later in this preamble.

²² 40 CFR 70.6(a)(1)(i), 71.6(a)(1)(i).

requirements that do not themselves contain sufficient monitoring provisions.²³ Various compliance assurance requirements are included within title V and the EPA's implementing regulations; not all are restricted to monitoring.²⁴

Beyond title V's consolidation and compliance assurance functions, title V generally does not impose new pollution control requirements on sources or provide a vehicle to modify such requirements established under other CAA programs. Thus, the EPA's regulations expressly provide: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While *title V does not impose substantive new requirements*, it does require that . . . certain procedural measures be adopted especially with respect to compliance."²⁵ For additional information about the purpose and function of title V, see section III.C.2 of this preamble.

In summary, the title V operating permit program is a vehicle for compiling air quality control requirements from other CAA programs and for providing requirements necessary to assure compliance with such requirements, but not for creating or changing applicable requirements. Put simply, title V is a catch-all, not a cure-all. The discussion throughout the remainder of this preamble builds upon these longstanding general principles, which the EPA is not changing with this rulemaking.

C. Regulatory Definition of "Applicable Requirements"

As previously explained, CAA section 504(a) requires that title V permits "include enforceable emissions limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable

implementation plan."²⁶ However, the term "applicable requirements" is not defined in the CAA and the statute does not otherwise specify how to determine the "applicable requirements of this chapter" for a particular source. When the EPA developed regulations to implement the title V program, the Agency defined the term "applicable requirement" as it relates to title V permitting. This subsection of the preamble addresses general topics associated with this regulatory definition. The subsections that follow elaborate on these general concepts with examples of how these concepts impact different types of requirements.

Initially, it is important to recognize that "applicable requirement" is a legal term of art with a precise meaning that is unique to title V. The meaning of "applicable requirement" is closely aligned with the primary function of title V permits: to consolidate and assure compliance with the substantive requirements established under other CAA programs. Thus, the EPA's definition of "applicable requirement" focuses on those substantive requirements of other CAA programs that must be incorporated into a source's title V permit and with which the title V permit must assure compliance. This means that not all CAA requirements are considered "applicable requirements" for title V purposes. However, the fact that some CAA requirements are not considered "applicable requirements" for title V purposes does not diminish the independent enforceability or importance of those requirements. It simply means that those requirements are not primarily implemented or enforced through title V permits.

The EPA's regulations define "applicable requirement" to mean "all of the following as they apply to emissions units in a part 70 source,"²⁷ followed by a list of 13 types of CAA-based standards or conditions.²⁸

Perhaps the most straightforward aspect of this definition is that, to qualify as an "applicable requirement" for title V purposes, the requirement must be based on (*i.e.*, derived from) the CAA and, more specifically, one of the CAA sections identified in this definition. Requirements that are not based on (*i.e.*, derived from) the CAA are not "applicable requirements" of the CAA with which a title V permit must assure compliance. Further, not all CAA requirements qualify as "applicable requirements" for title V purposes. Some sections of the CAA were intentionally omitted from the list of 13 types of "applicable requirements" because these sections either do not apply to stationary sources that must obtain title V permits or are not implemented through title V for other reasons. For more information on requirements that are not "applicable requirements," see section II.D.2 of this preamble.

A similarly important definitional element is that "applicable requirements" only include the listed types of CAA requirements "as they apply to emission units in a part 70 source."²⁹ Requirements of the CAA that do not directly apply to a source's emission units are not "applicable requirements" for title V purposes, as discussed further in section II.D.3 of this preamble.

Additionally, the requirements of title V itself (and the EPA's 40 CFR parts 70 and 71 implementing regulations) are

²⁷ This definition also indicates that requirements that have been promulgated or approved at the time of permit issuance, but with which the source is not yet required to comply, are applicable requirements that must be included in a title V permit. See 40 CFR 70.2 and 71.2. In such cases, the title V permit should indicate the relevant future compliance date. The EPA is not aware of any issues or confusion concerning this element of the definition, which is not discussed further in this preamble.

²⁸ 40 CFR 70.2; see 40 CFR 71.2 (similar definition). The list includes, in summary, requirements from: (1) SIPs and FIPs under CAA title I; (2) preconstruction permits under CAA title I; (3) CAA section 111 (NSPS and existing source rules); (4) CAA section 112 (NESHAP); (5) title IV (acid rain); (6) CAA sections 504(b) or 114(a)(3) (certain types of enhanced monitoring); (7) CAA section 126(a)(1) and (c) (interstate pollution); (8) CAA section 129 (solid waste incineration); (9) CAA section 183(e) (consumer and commercial products); (10) CAA section 193(f) (tank vessels); (11) CAA section 328 (outer continental shelf permits); (12) CAA title VI (stratospheric ozone); and (13) any NAAQS, but only as it would apply to temporary sources under CAA section 504(e).

²⁹ 40 CFR 70.2; see 40 CFR 71.2 (similar definition).

²³ See 42 U.S.C. 7661c(c); 40 CFR 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d 673, 674–45, 680 (D.C. Cir. 2008) ("Title V did more than require the compilation in a single document of existing applicable emission limits and monitoring requirements. It also mandated that '[e]ach permit issued under [Title V] shall set forth . . . requirements . . . requirements to assure compliance with the permit terms and conditions.' . . . [T]he Act requires: a permitting authority may supplement an inadequate monitoring requirement so that the requirement will 'assure compliance with the permit terms and conditions.'" (citations omitted)); see also, *e.g.*, *In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant*, Order on Petition No. VI–2007–01 at 6–8 (May 28, 2009).

²⁴ 42 U.S.C. 7661c(a), (b), and (c); 40 CFR 70.6(a)(1) and (3), (c), 71.6(a)(1) and (3), and (c).

²⁵ 40 CFR 70.1(b) (emphasis added).

²⁶ 42 U.S.C. 7661c(a). Similar requirements appear in other parts of title V. "Schedule of compliance. The term 'schedule of compliance' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition." 42 U.S.C. 7661(3). "Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification." 42 U.S.C. 7661a(a). Permitting authorities "have adequate authority to . . . issue permits and assure compliance . . . with each applicable standard, regulation, or requirement under this chapter." 42 U.S.C. 7661a(b)(5). The regulations to implement the program shall include a "requirement that the applicant submit with the application a compliance plan describing how the source will comply with all applicable requirements under this chapter." 42 U.S.C. 7661b(b). However, like CAA section 504, these sections do not specify the scope of the term "applicable requirements" or how the permitting authority or the EPA is to determine what the applicable requirements are for a source as part of its title V permit.

not technically considered “applicable requirements” but are nonetheless centrally important to title V permitting. For more information, see section II.D.4 of this preamble.

Not all “applicable requirements” are treated the same in title V permits. Some applicable requirements can be described as “self-implementing.” Once established, those requirements should entail little to no review through the title V permitting process. Other applicable requirements may require further evaluation to define the precise requirements that apply to individual emission units. In certain circumstances, the latter type of applicable requirements may be further defined using the title V permitting process. These topics are discussed in more detail in sections II.E. and II.F of this preamble.

D. Requirements That Are Not “Applicable Requirements” for Purposes of Title V Permitting

Sources subject to title V may be subject to a variety of other requirements both within and beyond the CAA. Not all of these requirements are “applicable requirements” that must be included in a title V permit. Requirements that are not applicable requirements fall into several categories, discussed in the following subsections.

1. Requirements Not Derived From the CAA

Many sources subject to title V are also subject to Federal laws beyond the CAA, including environmental laws administered by the EPA or other Federal agencies (e.g., Clean Water Act (CWA); Safe Drinking Water Act; Resource Conservation and Recovery Act (RCRA); Comprehensive Environmental Response, Compensation, and Liability Act; National Environmental Policy Act, Emergency Planning and Community Right-to-Know Act, Endangered Species Act, and other statutes). These other Federal laws, including the statutes and any implementing regulations, are not “applicable requirements” for title V purposes. Such requirements should not be included in title V permits, and title V permits should not assure compliance with these requirements. Further, whether a permittee or permitting authority has satisfied those requirements is beyond the scope of issues that the EPA can address through the Agency’s title V-based oversight authorities, including our objection authority and public petition

opportunity.³⁰ This is self-evident from the plain language of the CAA and the EPA’s regulations, which limit the Agency’s objection authority to permits that “are not in compliance with the applicable requirements of [the CAA].”³¹ Nonetheless, the EPA sometimes receives title V petitions requesting the Agency’s objection to the issuance of operating permits on the basis of alleged violations of laws other than the CAA. The EPA has denied all of those petition claims.³²

Other Federal authorities are sometimes invoked in the context of title V permitting (and, in particular, title V petitions), including Presidential Executive Orders (E.O.s). Because E.O.s are not legally binding for State permitting authorities and are generally not based on the CAA, they do not establish “applicable requirements” that States must implement through title V permitting. Accordingly, the EPA has denied title V petition claims alleging that State permitting authorities failed to satisfy E.O.s.³³

Many State permitting authorities have air quality laws that are not derived from the CAA and/or are not included as part of an EPA-approved State program.³⁴ These “State-only” requirements are not enforceable by the EPA and are not applicable requirements for title V purposes. Thus, these requirements do not need to be included in title V permits, title V permits do not need to assure compliance with these requirements, and these requirements are beyond the scope of the EPA’s title V oversight tools. For these reasons, the EPA has denied numerous title V petition claims

alleging that title V permits fail to satisfy State-only requirements.³⁵

State permitting authorities may, at their discretion, include State-only requirements within title V permits, but they are required to designate such permit terms as “State-only” or “not federally enforceable.”³⁶ Again, these requirements are not “applicable requirements” for purposes of title V permitting. Thus, from the EPA’s perspective, properly labeled State-only permit terms are not considered part of the title V permit; they may be present in the title V permit, but they are not legally federally enforceable. As such, these permit terms are not subject to the EPA’s objection authority or the title V petition process.³⁷ The EPA has denied many title V petition claims challenging the content of State-only permit terms.³⁸ Note that the CAA requires States to provide the public with an opportunity to raise concerns with any conditions of a title V permit, including State-only requirements, through judicial review in State court systems.³⁹ This opportunity exists in parallel to the unique oversight authorities (e.g., the EPA’s objection authority and public petition opportunity) that extend only to federally enforceable requirements of title V permits.

2. CAA Requirements That Are Not Specifically Identified in 40 CFR 70.2

The CAA is a large and complex statute composed of many different programs. Not all of these programs are implemented in the same manner through title V or establish “applicable requirements” for title V purposes.

One notable example is title II of the CAA, which concerns emission standards for internal combustion engines in mobile sources and nonroad engines. Even if emission units subject to title II are located at a stationary source, they are not regulated as a stationary source because they are excluded from the definition of “stationary source.”⁴⁰ Thus, title II

³⁰ The EPA’s regulations provide that title V permit issuance may be coordinated with the issuance of permits under the CWA and RCRA, but that does not mean those other requirements are subject to review through title V. See 40 CFR 70.1(e) and 71.1(d).

³¹ 42 U.S.C. 7661d(b)(1), (2); see 40 CFR 70.8(c)(1) and 70.12(a)(2).

³² See, e.g., *In the Matter of Gateway Generating Station*, Order on Petition No. IX–2013–1 at 12–14 (October 15, 2014); *In the Matter of Monroe Electric Generating Plant*, Order on Petition No. 6–99–2 at 27 (June 11, 1999).

³³ See, e.g., *In the Matter of AK Steel Dearborn Works*, Order on Petition No. V–2016–16 at 17–19 (January 15, 2021) (AK Steel Order); *In the Matter of Orange Recycling and Ethanol Production Facility, Pencor-Masada Oxynol, LLC*, Order on Petition No. II–2000–07 at 32–33 (May 2, 2001) (Pencor-Masada I Order). Note that Federal executive orders may be more directly relevant to EPA-issued title V permits under 40 CFR part 71 (as well as other types of EPA-issued permits).

³⁴ This includes requirements that may be designed to implement a CAA requirement but which the EPA has not yet approved (including SIPs, State plans under CAA section 111(d), and State programs under CAA section 112(l), and Part 70 programs).

³⁵ See, e.g., *In the Matter of Salt River Project Agricultural Improvement & Power District, Agua Fria Generating Station*, Order on Petition No. IX–2022–4 at 14 (July 28, 2022) (SRP Agua Fria I Order); *In the Matter of Shintech, Inc.*, Order on Petition at 14 (September 10, 1997) (Shintech I Order).

³⁶ 40 CFR 70.6(b)(2).

³⁷ *Id.*

³⁸ See, e.g., *In the Matter of Harquahala Generating Station Project*, Order on Petition at 5 (July 2, 2003) (Harquahala Order).

³⁹ 42 U.S.C. 7661a(b)(6); 40 CFR 70.4(b)(3)(x) through (xii).

⁴⁰ See 42 U.S.C. 7602(z). Questions sometimes arise regarding whether an internal combustion engine located at a stationary source should be considered a nonroad engine (subject to title II) or a part of the stationary source. See, e.g., 42 U.S.C.

requirements are not included within the EPA's regulatory definition of "applicable requirement."

Other substantive CAA programs relevant to stationary sources are similarly not identified in the EPA's regulatory definition of "applicable requirement" for title V purposes because Congress did not intend for them to be implemented through the title V program. For further information about one example, the "General Duty Clause" concerning the prevention of accidental releases of hazardous substances under CAA section 112(r)(1), see section IV of this preamble.

Some CAA provisions are more general and do not impose substantive requirements that are incorporated into title V permits. For example, title III of the CAA includes general provisions related to a number of cross-cutting topics.⁴¹ Although some of these requirements may directly or indirectly impact title V permitting, most provisions within title III are not "applicable requirements" for title V purposes.⁴²

3. Requirements That Do Not Apply to Emission Units

Not all requirements from CAA programs identified in the EPA's regulatory definition of "applicable requirement" are considered applicable requirements for title V purposes. This is because the definition only includes such requirements "as they apply to emission units in a part 70 source."⁴³ Applicable requirements generally include the substantive requirements from other CAA provisions that dictate the ongoing operations of emission units at the source. As the name of this program suggests, title V operating permits are fundamentally designed to specify the conditions under which a source's emission units must operate. Further, a key purpose of the title V program is to assure that the source complies with the requirements to which it is subject.⁴⁴

Therefore, requirements of the CAA that do not directly apply to individual emission units at a part 70 source are not "applicable requirements" for title V purposes. Many of the CAA provisions that do not apply to emission units at a title V source can be described as

programmatic or procedural. For example, CAA requirements that specify actions that the EPA must take to establish or oversee different CAA programs (such as promulgating rules, taking action on State rules, and other programmatic oversight activities) are not applicable requirements that need to be reflected in a source's title V permit.⁴⁵ Similarly, the CAA requires State air agencies to undertake various activities related to the establishment and implementation of different CAA programs, including attainment planning requirements (e.g., in developing SIPs).⁴⁶ State permitting authorities are also subject to various requirements related to the issuance of non-title V permits (e.g., NSR permits).⁴⁷ In general, Congress did not intend for the title V program to serve as a vehicle to catch or correct programmatic or procedural problems associated with the establishment of applicable requirements in other CAA programs.⁴⁸ Instead, the title V program was designed to ensure that regulated sources comply with all the substantive emission control requirements to which they are subject. Thus, to the extent these requirements only directly regulate EPA or State actions, and do not result in requirements directly applicable to emission units at a title V source, they are not applicable requirements for title V purposes.

The CAA contains many cross-cutting general provisions (e.g., in title III) that are not considered applicable requirements because they do not directly apply to emission units at part 70 sources.⁴⁹ The same is true for various cross-cutting regulatory

provisions. To the extent these provisions are relevant to the implementation or enforcement of the title V program, they are independently enforceable and do not need to be specified in a title V permit. One example that often arises in the context of title V petitions is that of "credible evidence." The EPA, States, and citizens can use any credible evidence to prove compliance and non-compliance with the CAA, including compliance and non-compliance with title V permits.⁵⁰ The EPA has repeatedly determined that title V permits need not include language affirmatively restating the existence of this principle.⁵¹

4. "Part 70 Requirements"

The EPA uses different terminology to refer to different types of CAA requirements. As previously stated, the term "applicable requirement" refers to substantive CAA requirements arising from other CAA programs beyond title V, which are generally not subject to further review during the title V permitting process.

By contrast, the requirements within title V and the EPA's parts 70 and 71 regulations governing the content of title V permits and the process used to issue them are not technically considered "applicable requirements."⁵² Instead, the EPA generally refers to these as "part 70 requirements."⁵³ Unlike most applicable requirements, part 70 requirements are established or satisfied

⁵⁰ 42 U.S.C. 7413(a), 7604(a)(1), 7604(f)(4); 62 FR 8314 (February 24, 1997).

⁵¹ See, e.g., *In the Matter of Plains Marketing LP and Four Other Facilities*, Order on Petition Nos. IV-2023-1 & IV-2023-3 at 50 (September 18, 2023). Note that the EPA has also indicated that title V permits cannot be drafted in such a way that would preclude the use of all credible evidence in enforcement proceedings. See, e.g., *In the Matter of Valero Refining-Texas, L.P., Valero Houston Refinery*, Order on Petition No. VI-2021-8 at 70 (June 30, 2022) (*Valero Houston Order*).

⁵² Part 70 requirements do not meet the regulatory definition of "applicable requirement" because they are not included within the definition's list of 13 types of CAA requirements. Moreover, some part 70 requirements (e.g., procedural requirements) do not directly apply to emission units.

⁵³ The phrase "part 70 requirements" is based on various portions of the part 70 regulations that refer to the "requirements of this part" as a distinct, and additional, source of requirements for title V permits from "applicable requirements" based on other CAA programs. See 40 CFR 70.4(b)(3)(v), 70.6(a)(9)(iii), 70.6(a)(10)(iii), 70.7(a)(1)(iv), 70.8(b)(2), 70.8(c)(1), and 70.12(a)(2). This concept is also relevant with respect to EPA-issued permits under 40 CFR part 71, in which a similar distinction exists between "applicable requirements" derived from other CAA programs and the requirements of part 71 that are derived from title V of the CAA. See, e.g., 40 CFR 71.10(g)(1). However, given that this issue most often arises in the context of State-issued part 70 permits, this preamble uses the term "part 70 requirements" to refer to requirements derived from title V.

7550(10); 7602(z); 40 CFR 1068.30. This topic is beyond the scope of this rulemaking.

⁴¹ See 42 U.S.C. 7601-28.

⁴² One notable exception is the Outer Continental Shelf permitting requirements under CAA section 328, which are considered applicable requirements for title V purposes. 42 U.S.C. 7627; 40 CFR 70.2 and 71.2.

⁴³ 40 CFR 70.2 and 71.2.

⁴⁴ 42 U.S.C. 7661a(a).

⁴⁵ See, e.g., *In the Matter of Hu Honua Bioenergy Facility*, Order on Petition No. IX-2011-1 at 6-7 (February 7, 2014) (*Hu Honua I Order*).

⁴⁶ See, e.g., *In the Matter of Exxon Chemical Americas, Baton Rouge Polyolefins Plant*, Order on Petition No. 6-00-1 at 10-11 (April 12, 2000).

⁴⁷ See, e.g., *In the Matter of Century Aluminum of South Carolina, Inc.*, Order on Petition No. IV-2023-09 at 19-20 (November 2, 2023) (*Century Aluminum Order*). However, note that there are limited circumstances under which procedural issues associated with other CAA programs (namely, the issuance of NSR permits) may be implicated in title V. See section III.D.5.b of this preamble for further discussion.

⁴⁸ By contrast, issues related to the procedures used to issue a title V permit are of central relevance to the title V program, and the unique title V oversight tools available to the EPA and the public generally may be used to address those deficiencies. See section II.D.4 of this preamble for more information on such 40 CFR part 70 requirements.

⁴⁹ These general provisions are not considered applicable requirements for two reasons: (i) they are not specified within the regulatory definition's list of 13 types of CAA requirements (as discussed in the preceding subsection of the preamble), and (ii) they do not apply to emission units at a source (as discussed in this subsection).

in the first instance through title V and are, therefore, subject to review using the unique title V oversight tools.

For example, the requirements that dictate the content of title V permits are part 70 requirements (not applicable requirements). These include, for example, the requirement that title V permits include and assure compliance with “applicable requirements” established elsewhere and the authority to impose, as necessary, additional monitoring and other compliance assurance provisions.⁵⁴ Further, the requirements related to public participation in title V permits, the availability of information, and related procedural requirements are all part 70 requirements (not applicable requirements).⁵⁵ Title V and the part 70 regulations contain other unique title V authorities, such as the “permit shield” under CAA section 504(f) and 40 CFR 70.6(f).⁵⁶ These part 70 requirements are subject to the additional oversight mechanisms unique to title V.

E. Self-Implementing Applicable Requirements (e.g., NSPS, NESHAP)

This subsection addresses applicable requirements with the most straightforward title V implementation, often referred to as “self-implementing” or “self-executing” requirements. The hallmark of a self-implementing requirement is that the underlying statutory or regulatory provision defines it with enough specificity for the requirement to be independently and immediately enforceable, even before a source goes through the permitting process. These applicable requirements require no further case-specific decision making (e.g., through a permitting process) to define the precise requirements to which a source is subject. Such requirements consist of prescribed emission standards, operational limitations, testing, monitoring, recordkeeping, reporting, and other compliance assurance requirements. These requirements are explicitly identified within EPA regulations (e.g., NSPS under CAA section 111, NESHAP under CAA section 112, Federal Plans under CAA section 111(d), similar rules under CAA section 129, or FIPs under CAA section 110(c)) or EPA-approved State regulations (e.g., SIPs under CAA section 110(a) or State Plans under CAA sections 111(d) or 129).

Such self-implementing applicable requirements should be included in, or incorporated into, a title V permit without further review.⁵⁷ It would not be appropriate, for example, to use the title V permitting process to reevaluate the stringency of a Maximum Achievable Control Technology (MACT) standard promulgated by the EPA through rulemaking under CAA section 112.⁵⁸ The same is true with respect to the content of self-implementing standards contained in SIPs, as discussed further in section II.G of this preamble.

Central to the concept of “applicable requirements” is that each applicable requirement is established through its own statutorily proscribed process, which includes the ability for the public to participate in the development of the requirement and for interested parties to challenge its content. For example, the EPA regulations referenced in the preceding paragraphs undergo administrative proceedings under CAA section 307, which establishes various procedural and public participation-related requirements, as well as the opportunity for judicial review of final regulations.⁵⁹ The promulgation and approval of SIPs often involves two such rulemakings—one at the State level and one at the Federal level. Thus, the fact that self-implementing applicable requirements are not substantively reevaluated through title V does not mean that interested parties are without recourse. Rather, it means that the title V permitting process was not designed to review and does not authorize review of these previously finalized applicable requirements.

Given title V’s key role in consolidating applicable requirements, questions often arise during the permitting process as to which CAA requirements are applicable to a given source or emission unit. To the extent that applicability is clearly established within the applicable requirement itself (e.g., a source-specific SIP provision), applicability would not be subject to further scrutiny through title V. In situations where the applicability of a

“self-implementing” requirement to a particular source has not been conclusively established prior to title V permit issuance, the title V permitting process can and should be used to determine which requirements apply to the source so that the title V permit can include and assure compliance with those requirements. For example, determining which NSPS or NESHAP subpart is applicable to a source may require further site-specific factual analysis through the title V permitting process. Additionally, within a given NSPS or NESHAP rule, there may be multiple different sets of requirements (e.g., subcategories) that apply differently to emission units with different characteristics. In these situations, it may be necessary to use the title V permitting process to identify which specific requirements within a NSPS or NESHAP rule apply.

Finally, although substantive requirements that are self-implementing may not be second-guessed, the title V permitting process may be used to determine whether additional compliance assurance provisions (e.g., monitoring) are necessary.⁶⁰ Further guidance on determining the sufficiency of monitoring and other compliance assurance provisions is beyond the scope of this final rule.

F. Requirements Defined Through Title V Permitting

Although title V generally does not impose or establish substantive new requirements, title V permits sometimes serve as the vehicle to further define applicable requirements from other CAA programs that are general in nature. This may occur when the underlying applicable requirement provides general direction and requires further source-specific analysis to define the precise requirements that apply to a given source or emission unit. Some underlying applicable requirements expressly identify title V permits as the vehicle for this analysis; others may be more open-ended about the vehicle used to define the applicable requirement; and still others may specify a different vehicle for establishing these requirements (e.g., NSR permits, discussed further in section III of this preamble).

Unlike applicable requirements that are established fully elsewhere, if the details of an applicable requirement are defined for the first time through the title V permitting process, questions about the content of such an applicable requirement are subject to title V’s

⁵⁴ See, e.g., 40 CFR 70.6(a) and (c).

⁵⁵ See 40 CFR 70.7(h).

⁵⁶ The permit shield is discussed in more detail in section III.E.2.a of this preamble, to the extent it impacts NSR permitting decisions.

⁵⁷ The manner in which such requirements may be included in, or incorporated by reference into, a title V permit is beyond the scope of this rulemaking. For more information about incorporation by reference, see, for example, *In the Matter of ExxonMobil Corp., Baytown Chemical Plant*, Order on Petition No. VI-2020-9 at 16–19 (March 18, 2022) (*ExxonMobil Baytown Chemical Order*) and *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, 36–41 (March 5, 1996).

⁵⁸ See, e.g., *In the Matter of Borden Chemical, Inc. Formaldehyde Plant*, Order on Petition No. 6–01–1 at 48–49 (December 22, 2000).

⁵⁹ 42 U.S.C. 7607(b)–(d).

⁶⁰ See 42 U.S.C. 7661c(c); 40 CFR 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d at 680.

unique oversight tools, including the EPA's objection authority and the public petition opportunity.

For example, CAA section 112(g) requires the development of case-by-case MACT limits prior to certain construction activities at a major source of hazardous air pollutants (HAPs) for which there is no NESHAP under CAA section 112(d).⁶¹ These limits can—and in some cases, must—be established through the title V process. If a title V permit is used to establish a case-by-case MACT limit, questions about both the applicability and the content of such a limit (*i.e.*, whether the limit properly reflects MACT) are subject to the unique oversight tools of title V.⁶²

Other requirements of CAA section 112 NESHAP and section 111 NSPS regulations may require further definition through, for example, various types of site-specific operational plans. These plans are developed outside of the title V permitting process, but to the extent they are necessary to impose or assure compliance with an applicable requirement of the NSPS or NESHAP, they must be included or incorporated into title V permits.⁶³ The title V permitting process may also be used for similar case-by-case decisions based on underlying SIP provisions, as discussed further in the following subsection of this preamble.

In these situations, it is not the title V permit that establishes the applicable requirement. The applicable requirement is still based on the underlying statutory or regulatory provision, but the title V permit defines

the precise details of the applicable requirement. Essentially, the title V permitting process is used to identify the specific “enforceable emission limitations and standards” and to develop “such other conditions as are necessary to assure compliance with the [more general underlying] applicable requirements”⁶⁴ Absent an underlying CAA-based authority, title V permits should not be used to impose new substantive requirements.⁶⁵

G. Applicable Requirements Related to the NAAQS and SIPs

The NAAQS promulgated or revised under CAA section 109 are not themselves applicable requirements because they do not apply directly to sources.⁶⁶ That is, the promulgation or revision of a NAAQS does not, in and of itself, automatically result in emission limits or other control measures applicable to a source. Instead, the NAAQS may create, subject to the area designation process and various additional statutory considerations and processes, an obligation on States to develop SIPs (and on the EPA to promulgate FIPs, as necessary) that contain requirements necessary to achieve and maintain the NAAQS.⁶⁷ The specific measures contained in each State's EPA-approved SIP to achieve the NAAQS are the applicable requirements with which sources must comply.⁶⁸ For purposes of title V permitting, this means that absent a specific directive in an EPA-approved SIP, a State does not have any general obligation to establish emission limitations or other standards within a title V permit to protect the NAAQS. Whether it may be necessary to establish such NAAQS-focused limitations in a title V permit depends on the relevant terms of the approved SIP.

Some applicable requirements in SIPs could be described as “self-implementing” in a manner similar to the EPA's NSPS and NESHAP requirements discussed in section II.E of this preamble. For example, a SIP

provision may impose a numerical emission limit or operational limit on a specifically identified source. Or, a SIP provision, “permit by rule,” or “general permit” within the SIP may impose similar requirements on a category of sources or emission units. Such requirements should be included in the source's title V permit without further review (except, of course, to ensure that the permit contains sufficient monitoring and other compliance assurance conditions). Nonetheless, the EPA has received many title V petitions challenging such requirements contained in an EPA-approved SIP. Some petitions have directly challenged the SIP provision itself, asserting that the SIP requirement was incorrectly established or failed to satisfy certain legal requirements governing SIPs. More often, petitions have challenged permit terms that repeat verbatim an approved SIP provision; such claims effectively challenge the SIP itself. As the EPA has explained in those circumstances, if an alleged problem lies with the content of the SIP, the proper remedy would be petitioning the EPA to make a “SIP Call” under CAA section 110(k), not a title V petition. Until the EPA approves a corrective SIP revision or issues a FIP, the SIP provision remains an “applicable requirement” that should be incorporated unchanged into the title V permit. The EPA has consistently denied title V petition claims on this basis.⁶⁹

Other SIP requirements are less specific and must be further defined in subsequent proceedings (generally before the State) that involve a fact-specific analysis of the relevant affected sources and emission units.⁷⁰ Depending on the nature of the SIP provisions at issue, this analysis may involve, for example, various methods of qualitatively or quantitatively assessing a source's impact on the NAAQS (including, but not limited to, ambient air dispersion modeling). This analysis may also result in case-by-case emission limits designed to protect the NAAQS. Determining the proper venue for satisfying or defining these general

⁶¹ Under CAA section 112(g)(2), if the EPA has not established a MACT standard for a source category, the Agency or the State must establish a case-by-case MACT emission limit prior to certain construction activities at a major source of HAPs. 42 U.S.C. 7412(g)(2). Similarly, under CAA section 112(j)(2), if the EPA has not established a MACT standard for a source category, a new or existing major source's title V operating permit must include a case-by-case MACT limit. 42 U.S.C. 7412(j)(2); see also 40 CFR 63.40 through 63.44 (implementing regulations for CAA section 112(g)), and 63.50 through 63.56 (implementing regulations for CAA section 112(j)).

⁶² See 61 FR 68384, 68393, 68395 (December 27, 1996) (“Where EPA determines that the MACT determination made by the permitting authority fails to meet any of the requirements of § 63.43 [and] where the MACT determination is made part of a source's Part 70 permit, EPA may veto issuance of the permit in accordance with the provisions of 40 CFR 70.8(c).”); *id.* at 68395 (“If, during the EPA's review of the section 112(g) determination, it becomes apparent that the determination is not in compliance with the Act, then EPA must object to the issuance or revision of that permit.”); *In the Matter of American Electric Power Service Corp., Southwest Electric Power Co., John W. Turk Plant*, Order on Petition No. VI–2008–01 at 15–16 (December 15, 2009); *In the Matter of Shintech Inc., PVC Plant*, Order on Petition No. 6–03–1 at 16–21 (July 3, 2003).

⁶³ See, e.g., *Valero Houston Order* at 25–26.

⁶⁴ 42 U.S.C. 7661c(a).

⁶⁵ 40 CFR 70.1(b).

⁶⁶ 42 U.S.C. 7409; see 40 CFR 70.2 (defining “applicable requirement” to include the NAAQS “but only as it would apply to temporary sources”); 57 FR at 32276 (July 21, 1992) (“Under the Act, NAAQS implementation is a requirement imposed on States in the SIP; it is not imposed directly on a source. In its final rule, EPA clarifies that the NAAQS and the increment and visibility requirements under part C of title I of the Act are applicable requirements for temporary sources only.”); 56 FR at 21732–33 (May 10, 1991) (“The EPA does not interpret compliance with the NAAQS to be an ‘applicable requirement’ of the Act.”).

⁶⁷ 42 U.S.C. 7410(a)(1), (c)(1).

⁶⁸ 40 CFR 70.2.

⁶⁹ See, e.g., *In the Matter of Piedmont Green Power*, Order on Petition No. IV–2015–2 at 28–29 (December 13, 2016) (*Piedmont Green Power Order*); *In the Matter of PacifiCorp's Jim Bridger and Naughton Electric Utility Steam Generating Plants*, Order on Petition No. VIII–00–1 at 23–24 (November 16, 2000).

⁷⁰ See, e.g., 56 FR at 21757 (May 10, 1991) (“Where SIP requirements are clear, the Part 70 permit must adopt these limitations and reestablish them as permit conditions that implement the SIP. Where the SIP requirements are ambiguous or absent, the permit could provide a way of resolving questions as to how the SIP applies and is enforced.”).

SIP requirements depends on the specific language contained in the SIP, as discussed in the following paragraphs.

In general, most SIP provisions provide that case-by-case decisions necessary to fulfill general SIP requirements will proceed either through subsequent rulemaking actions or through the NSR permitting process (as discussed in section III of this preamble).⁷¹ Once established, the more specific requirements of the SIP, as defined through those processes, are generally not subject to further review during the title V permitting process.

However, some SIP requirements may be defined for the first time in a title V permit, in which case the contents of these requirements are reviewable using the unique title V oversight tools. Again, whether a SIP-based requirement is reviewable through the title V process depends on the specific SIP provision at issue. For example, the EPA has reviewed (and granted) title V petitions requesting analysis of a source's impacts on the NAAQS or case-specific emission limits designed to protect the NAAQS in situations in which the SIP provisions at issue specifically suggested that such requirements would be implemented through title V.⁷² In such cases, the EPA has generally provided the permitting authority the opportunity to interpret the relevant SIP provisions and to explain the scope, timing, and applicability of these provisions as they relate to the source in question.

The EPA has also addressed other, more general SIP provisions that do not explicitly require any specific action

during the title V process. These provisions often take the form of broad, general prohibitions on air pollution, and these SIP provisions are not always directly tied to the NAAQS or any specific Federal requirements. The EPA has explained that States have discretion under these general SIP provisions to determine that it is not necessary to impose source-specific limits through title V permits.⁷³ However, this does not prevent States from using title V to address such general requirements.⁷⁴

Although uncommon, some SIP provisions expressly identify title V permits as a vehicle for establishing or modifying SIP-based limits. For example, some SIP provisions based on the EPA's Plantwide Applicability Limit (PAL) rules expressly identify title V renewal permits as a potential vehicle for adjusting a PAL.⁷⁵ If the title V process is specifically identified in an approved SIP as a means of establishing or defining an applicable requirement of the SIP, questions related to these requirements may be properly raised during the title V permitting process.

III. Interface Between NSR and Title V Permitting

Since the title V program was established in the early 1990s, the EPA, State permitting authorities, and other interested stakeholders have raised questions related to the intersection of the title I (NSR) preconstruction permitting programs and the title V operating permit program.⁷⁶ One question has persisted related to the situations in which, and the extent to which, the unique title V oversight tools should be used to address alleged

deficiencies related to title I permitting decisions. This issue implicates various questions about the relationship between title V permits and applicable requirements established in other CAA programs, such as how to determine whether an applicable requirement is conclusively established, such that it should be incorporated into a title V permit without further substantive review, and whether applicable requirements established under NSR permitting programs should be treated the same as applicable requirements established under other CAA programs. The EPA's answer to these questions has changed over time, and two Federal circuit courts of appeals have reached differing conclusions as well, as discussed in section III.A of this preamble.

This final rule codifies the reasonable approach that the EPA has implemented on a case-by-case basis since 2017, as further described and justified in sections III.B., III.C, and III.D of this preamble. In short, provided that a source obtains an NSR permit under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, that NSR permit establishes and defines the relevant NSR-related applicable requirements of the SIP (or FIP) for purposes of title V. As with applicable requirements established under other CAA authorities (e.g., NSPS, NESHAP), the EPA will not reevaluate those NSR decisions through the title V process, which is not designed to authorize or require permitting authorities to second-guess prior NSR decisions when implementing title V.

A. Background: Historical and Current EPA Approaches

1. NSR Programs (1977–Present)

The title I (NSR) preconstruction permitting program was established before the title V operating permit program. The NSR program is based on the 1977 Amendments to the CAA. The overall NSR program is comprised of three sub-programs, as discussed later in this section of this preamble.

The NSR program was designed to protect public health and welfare from the effects of air pollution and to preserve and improve air quality throughout the Nation.⁷⁷ The NSR program requires certain stationary sources to obtain air permits prior to beginning construction. Construction of new sources and the modification of certain sources with emissions above

⁷¹ See, e.g., *In the Matter of TransAlta Centralia Generation, LLC*, Order on Petition at 11–12 (April 28, 2011).

⁷² See *In the Matter of In the Matter of Alabama Power Co., Barry Generating Plant*, Order on Petition No. IV–2021–5 at 11–14 (June 14, 2022) (granting a claim related to a SIP provision that required owner/operators of a certain type of source to “[d]emonstrate, to the satisfaction of the [State], that sulfur oxides emitted, either alone or in contribution to other sources, will not interfere with attainment and maintenance of any primary or secondary [NAAQS]”); *In the Matter of Duke Energy, LLC, Asheville Steam Electric Plant*, Order on Petition No. IV–2016–06 at 11–17 (June 30, 2017) (granting claim related to a SIP requirement that “the permit shall contain a condition requiring” controls more stringent than the applicable emission standards when necessary to prevent a violation of the NAAQS—a provision the State had previously relied upon to establish limits in individual permits); *In the Matter of Duke Energy, LLC, Roxboro Steam Electric Plant*, Order on Petition No. IV–2016–07 at 10–15 (June 30, 2017) (same as *Duke Asheville*); *In the Matter of Public Service of New Hampshire, Schiller Station*, Order on Petition No. VI2014–04 at 8–13 (July 28, 2015) (granting claim related to a SIP requirement to “apply special emission limits to the stationary sources on a case-by-case basis to insure [sic] that their air quality impacts” do not interfere with NAAQS attainment in adjacent States).

⁷³ See *In the Matter of EME Homer City Generation LP and First Energy Generation Corp.*, Order on Petition Nos. III2012–06, III–2012–07, and III–2013–02 at 15–16 (July 30, 2014) (SIP provision stated “No person may permit air pollution as that term is defined in the act”); *In the Matter of TransAlta Centralia Generation, LLC*, Order on Petition at 7 (April 28, 2011) (SIP provision prohibited “emissions detrimental to persons or property”); *In the Matter of Hercules, Inc.*, Order on Petition at 8 (November 10, 2004) (SIP provision prohibited emissions that would cause injury or unreasonably interfere with enjoyment of life or use of property).

⁷⁴ See, e.g., *In the Matter of Oxbow Calcining LLC*, Order on Petition No. VI–2020–11 at 10–12 (June 14, 2022) (addressing a situation in which a State permitting authority took enforcement action against a source that allegedly caused a violation of a NAAQS on the basis that this alleged violation also violated permit terms reflecting a general SIP provision prohibiting air pollution).

⁷⁵ See, e.g., 40 CFR 51.166(w)(10)(v); *ExxonMobil Baytown Chemical Order* 9 at 13–14.

⁷⁶ For purposes of this preamble, the terms “title I permit” and “NSR permit” are used interchangeably to describe a preconstruction permit issued to satisfy the NSR-related requirements of title I of the CAA.

⁷⁷ 42 U.S.C. 7470(1), (2), (4).

statutory or regulatory thresholds are subject to “major source” NSR requirements. New sources and modifications below the relevant emissions thresholds may be subject to minor NSR requirements or excluded from NSR altogether.

The major NSR program includes two distinct programs that each has unique requirements for new or modified sources. The applicability of these two programs depends on whether the area in which the source is located exceeds the NAAQS for one or more pollutants. The Prevention of Significant Deterioration (PSD) program, based on requirements in part C of title I of the CAA, applies to pollutants for which the area is not exceeding the NAAQS (*i.e.*, areas designated as attainment or unclassifiable) and to regulated NSR pollutants for which there are no NAAQS.⁷⁸ The Nonattainment NSR (NNSR) program, based on part D of title I of the CAA, applies to pollutants for which the area is not meeting the NAAQS (*i.e.*, areas designated as nonattainment).⁷⁹

To implement the CAA requirements for these programs, most States have EPA-approved SIPs containing PSD and NNSR preconstruction permitting programs that meet the minimum requirements reflected in the EPA’s major NSR program regulations at 40 CFR 51.165 and 51.166. Upon EPA approval of a SIP, the State or local air agency becomes the permitting authority for major NSR permits for sources within its boundaries and issues permits under State law. Currently, State and local air agencies issue the vast majority of major NSR permits. If a State or local air agency does not have an approved NSR program, Federal regulations (40 CFR 52.21, through incorporation into a FIP) apply, and either the EPA issues the major NSR permits or a State or local air agency issues the major NSR permits on behalf of the EPA by way of a delegation agreement. For sources located in Indian Country, the EPA is the permitting authority for major NSR.⁸⁰

The permitting program for construction of new and modified non-major sources and minor modifications to major sources is known as the minor NSR program. In addition to the specific major NSR requirements in CAA sections 165 and 173, CAA section 110(a)(2)(C) requires States to develop a program to regulate the construction and modification of any stationary source “as necessary to assure that

[NAAQS] are achieved.”⁸¹ The CAA and the EPA’s regulations are less prescriptive regarding minimum requirements for minor NSR, so air agencies generally have more flexibility in designing minor NSR programs in their EPA-approved SIPs.⁸² Minor NSR permits are almost exclusively issued by State and local air agencies, although the EPA issues minor NSR permits in many areas of Indian Country.⁸³

The applicability of the PSD, NNSR, and minor NSR programs to a stationary source must be determined in advance of construction and is a pollutant-specific determination. Thus, a stationary source may be subject to the PSD program for certain pollutants, NNSR for some pollutants, and minor NSR for others.

2. Original Approach to the Title V–NSR Interface (1990–1997)

As noted previously, Congress enacted title V in the 1990 CAA Amendments. The legislative history indicates key committees and legislators intended that, notwithstanding the enactment of title V, NSR permits would continue to be issued as they had for over a decade, and that title V permits would be used to incorporate those requirements but not to alter or impose additional NSR-related requirements.⁸⁴ The text and structure of the CAA implicitly reflects this paradigm. However, the statute does not expressly prescribe the details of how the EPA should approach the intersection of the NSR and title V permitting programs.

Thus, when the EPA promulgated the original title V implementing regulations in 1991 and 1992, the Agency sought to provide clarity through multiple regulatory provisions. As noted earlier in this preamble, 40 CFR 70.1(b) states: “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While title V does not impose substantive new requirements, it does require that . . . certain procedural measures be adopted especially with respect to compliance.” Additionally, the EPA created a definition of “applicable requirement” in 40 CFR 70.2 (and later, 40 CFR 71.2) that includes, in relevant part: “all of the following as they apply to emissions units in a part 70 source . . . (1) Any standard or other requirement provided for in the applicable implementation

plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter; (2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D, of the Act.”

In the preamble of this initial part 70 rulemaking effort, the EPA spoke directly to the intersection of title V and title I permitting. The EPA did not express an intention to use the title V permitting process to review the substance of applicable requirements established in preconstruction permitting programs under title I of the CAA. To the contrary, the EPA stated that “[a]ny requirements established during the preconstruction review process also apply to the source for purposes of implementing title V. If the source meets the limits in its NSR permit, the title V operating permit would incorporate these limits *without further review*.”⁸⁵ The EPA stated clearly that “[t]he intent of title V is *not to second-guess* the results of any State NSR program.”⁸⁶ The EPA stated that “[d]ecisions made under the NSR and/or PSD programs (*e.g.*, Best Available Control Technology [BACT]) *define applicable SIP requirements* for the title V source and, if they are not otherwise changed, can be incorporated without further review into the operating permit for the source.”⁸⁷ The preamble to the final rule further confirms that “[d]ecisions made under the NSR and/or PSD programs *define certain applicable SIP requirements* for the title V source.”⁸⁸

3. Revised Approach to the Title V–NSR Interface (1997–2017)

After State permitting authorities began issuing title V permits in the mid-to-late-1990s, the EPA began receiving public petitions challenging those permits. Some of the earliest title V petitions included challenges to various types of NSR permitting decisions, thereby testing the statements the EPA made when promulgating its part 70 rules. The EPA’s approach ultimately differed depending on whether the underlying NSR permit was issued under the EPA’s Federal PSD rules (40 CFR 52.21, administration of which was

⁸¹ 42 U.S.C. 7410(a)(2)(C).

⁸² See 40 CFR 51.160 through 51.164.

⁸³ See 40 CFR 49.151 through 49.165.

⁸⁴ See sections III.C.2 and III.C.3 of this preamble for further discussion of legislative intent.

⁸⁵ 56 FR 21712, 21738–39 (May 10, 1991) (emphasis added).

⁸⁶ *Id.* at 21739 (emphasis added).

⁸⁷ *Id.* at 21721 (emphasis added).

⁸⁸ 57 FR 32250, 32259 (July 21, 1992) (emphasis added).

⁷⁸ 42 U.S.C. 7470–79.

⁷⁹ 42 U.S.C. 7501–15.

⁸⁰ See 18 U.S.C. 1151 (defining “Indian country”).

delegated to many States at the time) or under EPA-approved SIP rules.

For NSR permits issued under the Federal rules, the EPA's petition responses from 1997 onward followed the Agency's interpretations and statements of intent from the early 1990s. The EPA declined to use the title V petition process to review the merits of NSR permits issued by the EPA or a delegated agency under a FIP. The EPA's reasoning at the time was that appeals of such NSR permits are governed by 40 CFR 124.19 and are heard exclusively through the EPA Environmental Appeals Board (EAB) appeals process. Thus, the EPA concluded that the Agency need not entertain claims that such permits are deficient when raised in a petition to object to a title V permit.⁸⁹ The EPA consistently reiterated the same or similar statements in the decades that followed.⁹⁰

However, starting in 1997, the EPA adopted a different approach to title V permitting with respect to NSR permits issued by State permitting authorities under EPA-approved SIP rules.⁹¹ The EPA began to interpret section (1) of the definition of "applicable requirement" to allow the EPA, States, and the interested parties to use the title V permitting process to examine the propriety of prior title I permitting decisions. For instance, in the 1997 *Shintech I Order*, the EPA stated:

Where a state or local government has a SIP-approved PSD program, the merits of PSD issues can be ripe for consideration in a timely petition to object under Title V. Under 40 CFR 70.1(b), "all sources subject to Title V must have a permit to operate that assures compliance by the source with all applicable requirements." Applicable requirements are defined in section 70.2 to include "(1) any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking

under Title I of the [Clean Air] Act" The [State] defines "federal applicable requirement," in relevant part, to include "any standard or other requirement provided for in the Louisiana [SIP] approved or promulgated by EPA through rulemaking under title I of the Clean Air Act that implements the relevant requirements of the Clean Air Act, including any revisions to that plan promulgated in 40 CFR part 52, subpart T." Thus, the applicable requirements of the Shintech Permits include the requirement to obtain a PSD permit *that in turn complies with the applicable PSD requirements under the Act*, EPA regulations, and the Louisiana SIP.⁹²

In a 1999 letter responding to requests from permitting authorities, the EPA articulated the Agency's then-current understanding of the interaction of title I and title V.⁹³ The letter stated that "applicable requirements include the requirement to obtain preconstruction permits that comply with applicable preconstruction review requirements under the Act, EPA regulations, and SIP's [sic]." The letter expressed the view that CAA section 505(b) provides a form of corrective action in addition to all other enforcement authorities the EPA has under the CAA. The letter stated that the Agency generally will not object to a title V permit for NSR determinations "made long ago during a prior preconstruction permitting process." However, regarding recently issued NSR permits, the EPA indicated it may object to improper NSR determinations. Additionally, the letter said that the EPA could object to a title V permit if the "EPA believes that an emission unit has not gone through the proper preconstruction permitting process."

The EPA has also used this reading of the Agency's oversight authority under title V as part of the justification for approving State PSD programs.⁹⁴ In these approvals, the EPA pointed to the Agency's authority under title I, sections 113 and 167, but additionally stated that title V "has added new tools" for addressing concerns with implementation of PSD requirements by allowing for objection to title V permits under CAA section 505(b). However, the authority to reevaluate an issued

preconstruction permit does not appear to have been dispositive to the approval of these PSD programs, as the EPA could still conduct oversight using its title I-based authorities.

The EPA followed this approach in responding to title V petitions between 1997 and 2017. In general, the petition claims at issue alleged two types of defects related to NSR. First, some claims alleged flaws with the terms of major NSR permits issued by a State permitting authority—for example, that BACT limits in a PSD permit were not stringent enough. The EPA refers to these claims as addressing "NSR permit content." Second, other claims alleged that a facility should have received a major NSR permit, instead of a minor NSR permit, to authorize the construction of a new source or modification. The EPA refers to these claims as addressing "NSR applicability." For both types of issues, the EPA indicated that the Agency could review whether preconstruction permitting decisions complied with the requirements of the SIP.

During this time period, the EPA often limited or qualified the Agency's use of title V authorities to address substantive NSR permitting issues. For example, in 1999, the EPA stated:

In determining BACT under a minor NSR program, as in implementing other aspects of SIP preconstruction review programs, a State exercises considerable discretion. Thus, EPA lacks authority to take corrective action merely because the Agency disagrees with a State's lawful exercise of discretion in making BACT-related determinations. State discretion is bounded, however, by the fundamental requirements of administrative law that agency decisions not be arbitrary or capricious, be beyond statutory authority, or fail to comply with applicable procedures.⁹⁵

Applying this framework, the EPA also drew an analogy between this approach and the standard used by the EAB in reviewing EPA-issued PSD permits, described as a "clearly erroneous" standard.⁹⁶ More recently,

⁸⁹ See *In the Matter of Maui Electric Co., Ltd.*, Order on Petition (June 16, 1999); *In the Matter of Hawaii Electric Light Co. Ltd.*, Order on Petition (April 3, 1998); *In the Matter of Kawaihae Cogeneration*, Order on Petition (March 10, 1997) (*Kawaihae Order*).

⁹⁰ See, e.g., *In the Matter of East Kentucky Power Cooperative, Inc.*, *Hugh L. Spurlock Generating Station*, Order on Petition at 5 n.2 (August 30, 2007) (*Spurlock I Order*); *In the Matter of Carmeuse Lime and Stone*, Order on Petition No. V-2010-1 at 7 n.1 (November 4, 2011); see also *Hu Honua I Order* at 3 n.4.

⁹¹ For example, within the 1997 *Kawaihae Order*, in which the EPA declined to review the merits of a PSD permit issued under delegated Federal authority, the Agency also announced the following (without further explanation): "In contrast, where a state or local government has a SIP-approved PSD program and the [EAB] lacks jurisdiction to entertain PSD permit appeals, the merits of PSD issues are ripe for consideration in a timely veto petition under Title V." *Kawaihae Order* at 3.

⁹² *Shintech I Order* at 3 n.2 (emphasis added) (citation omitted).

⁹³ U.S. Environmental Protection Agency. (1999). Letter from John S. Seitz, Director of the EPA Office of Air Quality Planning and Standards, to Robert Hodanbosi, STAPPA/ALAPCO, available at <https://www.epa.gov/sites/production/files/2015-08/documents/hodan7.pdf>.

⁹⁴ See, e.g., Approval and Promulgation of Implementation Plans; Oregon, 68 FR 2891, 2899 (January 22, 2003); see also Approval and Promulgation of Implementation Plans; Idaho; Designation of Areas for Air Quality Planning Purposes; Idaho, 68 FR 2217, 2221 (January 16, 2003).

⁹⁵ *In the Matter of Roosevelt Regional Landfill*, Order on Petition at 9 (May 4, 1999).

⁹⁶ See, e.g., *Spurlock I Order* at 4–5 (August 30, 2007) ("The standard of review applied by the EAB in its review of federal PSD permits has been explained in numerous orders of the EAB. In short, in such appeals, the burden is on a petitioner to demonstrate that review is warranted. Ordinarily, a PSD permit will not be reviewed by the EAB unless the decision of the permitting authority was based on either a clearly erroneous finding of fact or conclusion of law or involves an important matter of policy or exercise of discretion that warrants review. Thus, when a response to a petition to object to a title V permit requires the Administrator to determine whether an approved state's PSD

the EPA summarized this framework as follows:

Where a petitioner's request that the Administrator object to the issuance of a title V permit is based in whole, or in part, on a permitting authority's alleged failure to comply with the requirements of its approved PSD program (as with other allegations of inconsistency with the Act), the burden is on the petitioner to demonstrate to the Administrator that the permitting decision was not in compliance with the requirements of the Act, including the requirements of the SIP. As the EPA has explained in describing its authority to oversee the implementation of the PSD program in states with approved programs, such requirements include that the permitting authority: (1) follow the required procedures in the SIP; (2) make PSD determinations on reasonable grounds properly supported on the record; and (3) describe the determinations in enforceable terms. As the permitting authority for [the State's] SIP-approved PSD program, [the State permitting authority] has substantial discretion in issuing PSD permits. Given this discretion, in reviewing a PSD permitting decision in the title V petition context, the EPA generally will not substitute its own judgment for that of [the State]. Rather, consistent with the decision in *Alaska Dep't of Env't'l Conservation v. EPA*, 540 U.S. 461 (2004), in reviewing a petition to object to a title V permit raising concerns regarding a state's PSD permitting decision, the EPA generally will look to see whether the petitioner has shown that the state did not comply with its SIP-approved regulations governing PSD permitting, or whether the state's exercise of discretion under such regulations was unreasonable or arbitrary.⁹⁷

Between 1997 and 2017, the EPA occasionally articulated further restrictions on the use of title V oversight tools to address title I permitting issues. For example, on at least three occasions, the EPA indicated that "the Agency generally does not object to the issuance of a title V permit due to concerns over BACT or related determinations made long ago during a prior preconstruction permitting process."⁹⁸

permitting decision was adequately explained and meets the requirements of its SIP, EPA believes it is appropriate to apply a similar standard of review to that employed by the EAB in its review of federal PSD permits. When EPA promulgated the regulations governing the EAB's exercise of its review authority, the Agency noted that the power of review "should be only sparingly exercised." Similar deference to the permitting authority is also justified in the case of a PSD permit issued by a state with an approved PSD program, as is the case here." (quoting 45 FR 33290, 33412 (May 19, 1980); citing *In re Prairie State Generating Company*, 13 E.A.D. 1 (EAB 2006); *In re Kawaihae Cogeneration*, 7 E.A.D. 107 (EAB 1997)).

⁹⁷ *In the Matter of Appleton Coated, LLC*, Order on Petition Nos. V–2013–12 & V–2013–15 at 5 (October 14, 2016) (*Appleton Order*) (citations omitted).

⁹⁸ *In the Matter of Georgia Pacific Consumer Products LP Plant*, Order on Petition No. V–2011–

Additionally, on at least one occasion, the EPA suggested that the title V petition demonstration burden may require a final determination that NSR applies before the Agency can use the title V process to overturn an NSR applicability decision made by the permitting authority.⁹⁹ The EPA found "that [the State] has not reached a final determination in this permitting context that PSD is an applicable requirement for these sources, that the USEPA has not determined otherwise, and that a court has not issued a determination in the litigation context. Accordingly, there is no requirement under the facts of this case for the permits to include either PSD limits or a compliance schedule for the source to come into compliance with such limits at this time." The EPA concluded that "even if [the State] were to recognize that the potential for noncompliance [with title I preconstruction permitting requirements] exists, it is not required to pursue inquiries further in the title V context," but instead could pursue the matter through title I enforcement mechanisms.

4. Current Approach to the Title V–NSR Interface (2017–Present)

Beginning in 2017, the EPA adopted a more nuanced view that better reflects not only the statute and Congress's intent, but also the EPA's regulatory definition of "applicable requirement" and the manner in which the title V permitting program interacts with other types of CAA requirements. As with many of the EPA's views on this topic, the Agency's updated view was articulated within Administrator-signed orders responding to title V petitions on individual title V permits.

The first such order was the 2017 *PacifiCorp-Hunter I Order*.¹⁰⁰ There, the EPA interpreted the CAA and the EPA's title V regulations not to require permitting authorities (including the EPA) to examine the merits of certain title I permitting decisions in the title V permitting context. Specifically, in response to a petition claiming that a PSD permit (instead of a minor NSR permit) was required for certain changes

1 at 17 (July 23, 2012); *Spurlock I Order* at 19; see *In the Matter of Chevron Products Company, Richmond, California Facility*, Order on Petition No. IX–2004–08 at 9 (March 15, 2005). Note that this statement is based on the EPA policy articulated in the 1999 letter discussed in footnote 93.

⁹⁹ *In the Matter of Midwest Generation-Joliet Generating Station and Will County Generating Stations*, Order on Petition No. V–2005–2 at 9–10 (June 14, 2007).

¹⁰⁰ *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII–2016–4 (October 16, 2017).

that occurred at the facility at issue approximately 20 years prior, the EPA explained:

In circumstances such as those present here where a preconstruction permit has been duly obtained, . . . when a permitting authority has made a source-specific permitting decision with respect to a particular construction project under title I, those decisions "define certain applicable SIP requirements for the title V source" for purposes of title V permitting. 57 FR 32250, 32259 (July 21, 1992). The EPA is now interpreting the regulations to mean that the issuance of a [n NSR] permit defines the applicability of preconstruction requirements under section (1) of the definition of "applicable requirement" for the approved construction activities for the purposes of permitting under title V of the Act. These source-specific permitting actions take the general preconstruction permitting requirements of the SIP—the requirement to obtain a particular type of permit and the substantive requirements that must be included in each type of permit—and evaluate at the time of the permitting decision whether and how to apply them to a proposed construction or modification.¹⁰¹

Further, the EPA stated:

Consistent with this reading, permitting agencies and the EPA need not reevaluate—in the context of title V permitting, oversight, or petition responses—previously issued final preconstruction permits, especially those that have already been subject to public notice and comment and an opportunity for judicial review. Concerns with these final preconstruction permits should instead be handled under the authorities found in title I of the Act. Where a final preconstruction permit has been issued, whether it is a major or minor NSR permit, the terms and conditions of that permit should be incorporated as "applicable requirements" and the permitting authority and the EPA should limit its review to whether the title V permit has accurately incorporated those terms and conditions and whether the title V permit includes adequate monitoring, recordkeeping, and reporting requirements to assure compliance with the terms and conditions of the preconstruction permit.¹⁰²

Shortly after issuing the *PacifiCorp-Hunter I Order*, the EPA issued the *Big River Steel Order*,¹⁰³ which applied similar statutory and regulatory interpretations to a different circumstance. In the *Big River Steel Order*, the EPA declined to use the title V petition process to review whether a PSD permit satisfied the relevant SIP

¹⁰¹ *PacifiCorp-Hunter I Order* at 10–11. As the EPA explained: "This interpretation applies to the facts of this Claim, where a permitting authority issued a source-specific title I preconstruction permit subject to public notice and comment and for which judicial review was available." *Id.* at 11 n.21.

¹⁰² *Id.* at 19 (citing 42 U.S.C. 7661c(a); 40 CFR 70.6(a)(3), 70.6(c)(1)).

¹⁰³ *In the Matter of Big River Steel, LLC*, Order on Petition No. VI–2013–10 (October 31, 2017).

requirements governing PSD permit content (including BACT) and modeling related to the NAAQS. The EPA did so notwithstanding the fact that the PSD permit at issue, and the title V permit being petitioned, were issued at the same time and in the same physical permit document.

Since the 2017 *PacifiCorp-Hunter I* and *Big River Steel Orders*, the EPA has issued approximately 30 other title V petition orders addressing similar issues under different fact patterns, as discussed in the following paragraphs. Although the EPA has largely followed the overarching interpretations and policies articulated in the *PacifiCorp-Hunter I* and *Big River Steel Orders*,¹⁰⁴ each decision about whether those interpretations were applicable depended on the specific facts at issue.¹⁰⁵ Through these case-by-case decisions, the EPA has clarified various aspects of the Agency's interpretation of the title V provisions. However, because those decisions are spread across many different orders, the EPA understands that not all stakeholders, including permitting authorities, permittees, and members of the public, may fully understand the Agency's views about which types of issues are, or are not, subject to review through title V. This apparent misunderstanding has persisted, notwithstanding the EPA's attempt to explain the Agency's views in the preamble to the January 2024 Proposed Rule.¹⁰⁶ Thus, the EPA seeks to clarify its position by providing a summary below of the most relevant aspects of these prior decisions.

In most of these decisions, the EPA concluded that NSR permitting actions established the relevant "applicable

requirements" for title V purposes, and the Agency declined to review the substance of those applicable requirements in the title V petition context. The EPA applied this approach to many different types of issues, including the sufficiency of major NSR permit terms,¹⁰⁷ the sufficiency of minor NSR permit terms,¹⁰⁸ issues related to modeling and the NAAQS,¹⁰⁹ procedures used to issue NSR permits,¹¹⁰ whether major NSR is applicable,¹¹¹ and other NSR-related issues.¹¹² Some of these orders involved situations in which NSR permits were issued well before the title V permits

being challenged,¹¹³ while others involved more contemporaneous NSR and title V permitting decisions.¹¹⁴

In other orders with materially different factual underpinnings, the EPA determined that it was appropriate to review certain NSR-related issues through the title V permitting process. For example, the EPA substantively engaged with title V petition claims concerning the sufficiency of monitoring established in NSR permits,¹¹⁵ requirements involving an explicit overlap between NSR and title V,¹¹⁶ and other questions about whether a title V permit assured compliance with the NSR-related requirements of the SIP for which no underlying NSR permit was issued¹¹⁷ or for which the underlying NSR permit did not involve public notice and the opportunity for comment.¹¹⁸

¹⁰⁷ *In the Matter of Torrance Refining Company, LLC*, Order on Petition No. IX-2024-13 at 49-60 (January 7, 2025) (*Torrance Order*); *In the Matter of Nucor Steel Louisiana, LLC, Direct Reduced Iron Facility*, Order on Petition No. VI-2023-17 at 19-20, 21 (September 27, 2024) (*Nucor Convent Order*); *In the Matter of Commonwealth LNG, LLC*, Order on Petition No. VI-2023-7 at 12-14 (January 30, 2024) (*Commonwealth Order*); *AK Steel Order* at 9-13; *In the Matter of Riverview Energy Corp.*, Order on Petition No. V-2019-10 at 19-29 (March 26, 2020) (*Riverview Order*); *In the Matter of South Louisiana Methanol, LP, St. James Methanol Plant*, Order on Petition Nos. VI-2016-24 & VI-2017-014 at 8-10 (May 29, 2018) (*South Louisiana Methanol Order*); *Big River Steel Order* at 8-20.

¹⁰⁸ *In the Matter of Delaware City Refining Company, LLC, Delaware City Refinery*, Order on Petition No. III-2022-10 at 26 (July 5, 2023) (*Delaware City Refinery Order*); *Valero Houston Order* at 65-66; *In the Matters of Superior Silica Sands & Wisconsin Proppants, LLC*, Order on Petition Nos. V-2016-18 & V-2017-2 at 14-15 (February 26, 2018) (*SSS/WP Order*); *In the Matter of Tennessee Valley Authority, Gallatin Fossil Plant*, Order on Petition Nos. IV-2016-11 & IV-2017-17 at 19-20 (January 30, 2018) (*TVA Gallatin II Order*).

¹⁰⁹ *In the Matter of Arizona Electric Power Cooperative Inc., Apache Generating Station*, Order on Petition No. X-2024-21 at 22-24 (September 16, 2025) (*Apache Order*); *Nucor Convent Order* at 19-20, 22; *In the Matter of Salt River Project Agricultural Improvement and Power District, Coolidge Generating Station*, Order on Petition No. IX-2024-7 at 25, 31 (September 11, 2024) (*SRP Coolidge Order*); *Commonwealth Order* at 12-14; *Riverview Order* at 19-21; *Big River Steel Order* at 8-20.

¹¹⁰ *Century Aluminum Order* at 19-20; *AK Steel Order* at 9-13.

¹¹¹ *In the Matter of Humboldt Redwood Company, LLC*, Order on Petition No. IX-2025-1 at 10-12 (May 5, 2026) (*Humboldt Order*); *Apache Order* at 20; *In the Matter of South32 Hermosa Inc.*, Order on Petition No. IX-2024-20 at 9-11 (May 30, 2025) (*South32 Hermosa Order*); *SRP Coolidge Order* at 11-14, 22-23; *In the Matter of Intercontinental Terminals Co. LLC, Pasadena Terminal*, Order on Petition No. VI-2024-13 at 21-23, 25-26 (February 7, 2024) (*ITC Pasadena Order*); *In the Matter of Waelz Sustainable Products, LLC*, Order on Petition No. V-2021-10 at 9-16 (March 14, 2023) (*Waelz Order*); *In the Matter of Yuhuang Chemical Inc. Methanol Plant*, Order on Petition Nos. VI-2017-5 & VI-2017-13 at 7-8 (April 2, 2018) (*Yuhuang II Order*); *In the Matter of ExxonMobil Corp., Baytown Olefins Plant*, Order on Petition No. VI-2016-12 at 9-12 (*ExxonMobil Baytown Olefins Order*); *PacifiCorp-Hunter I Order* at 8-20.

¹¹² *In the Matter of ExxonMobil Corp., Baytown Refinery*, Order on Petition No. VI-2016-14 at 12-13 (*ExxonMobil Baytown Refinery Order*); *ExxonMobil Baytown Olefins Order* at 9-12.

¹¹³ *Torrance Order* at 51; *ITC Pasadena Order* at 21-23; *Delaware City Refinery Order* at 16; *Valero Houston Order* at 65-66; *ExxonMobil Baytown Refinery Order* at 12-13; *ExxonMobil Baytown Olefins Order* at 9-12; *TVA Gallatin II Order* at 19-20.

¹¹⁴ *Humboldt Order* at 10-12; *Apache Order* at 22-24; *South32 Hermosa Order* at 10-11; *Nucor Convent Order* at 20; *SRP Coolidge Order* at 12-14; *Commonwealth Order* at 13-14; *Waelz Order* at 13-15; *Riverview Order* at 24-28; *South Louisiana Methanol Order* at 9; *Yuhuang II Order* at 7-8; *SSS/WP Order* at 14-15; *Big River Steel Order* at 8-20.

¹¹⁵ *ITC Pasadena Order* at 13-14; *In the Matter of Gulf Coast Growth Ventures, LLC, Olefins, Derivative, & Utilities Plant*, Order on Petition No. VI-2021-3 at 17-19 (May 12, 2022) (*Gulf Coast Growth Ventures Order*); *ExxonMobil Baytown Chemical Order* at 20-21; *South Louisiana Methanol Order* at 10-11; *Yuhuang II Order* at 8; see also, e.g., *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20; *PacifiCorp-Hunter I Order* at 16, 17, 18, 18 n.33, 19.

¹¹⁶ *In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 1 (West) & Plant 3 (Asphalt Unit)*, Order on Petition No. VIII-2024-18 at 29-30 (December 30, 2024) (*Suncor West II Order*); *In the Matter of HighPoint Operating Corporation, Anschutz Equus Farms 4-62-28*, Order on Petition No. VIII-2024-6 at 15-16 (July 31, 2004) (*HighPoint Order*); *In the Matter of DCP Operating Company LP, Platteville Natural Gas Processing Plant*, Order on Petition No. VIII-2023-14 at 15-16 (April 2, 2024) (*DCP Platteville I Order*); *In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII-2022-13 & VIII-2022-14 at 53-54 (July 31, 2023) (*Suncor East Order*); *ExxonMobil Baytown Chemical Order* at 13-14; *In the Matter of Coyote Station Power Plant*, Order on Petition Nos. VIII-2019-1 & VIII-2020-8 at 12-13 (January 15, 2022) (*Coyote Station Order*).

¹¹⁷ *Suncor West II Order* at 29-30; *West Elk Order* at 13 n.17; *Suncor East Order* at 45-48, 54-55; *SRP Agua Fria I Order* at 11 n.18; *In the Matter of Salt River Project Agricultural Improvement & Power District, Desert Basin Generating Station*, Order on Petition No. IX-2022-3 at 12 n.20 (July 28, 2022) (*SRP Desert Basin Order*); *In the Matter of BP Products North America, Inc., Whiting Business Unit*, Order on Petition No. V-2021-9 at 13 n.24 (March 4, 2022) (*BP Whiting II Order*).

¹¹⁸ *In the Matter of TPC Group LLC, Houston Plant*, Order on Petition Nos. VI-2025-2 & VI-2025-3 at 43 n.243 (May 6, 2026) (*TPC Houston Order*); *ITC Pasadena Order* at 24-25; *Coyote Station Order* at 12.

¹⁰⁴ As discussed later in this preamble, in response to a 2020 decision by the U.S. Court of Appeals for the Tenth Circuit, the EPA has not applied this approach in title V petition orders regarding facilities located within the jurisdiction of the Tenth Circuit in certain circumstances and, therefore, has not fully achieved national uniformity in this respect.

¹⁰⁵ See, e.g., *PacifiCorp-Hunter I Order* at 11 n.21 ("This interpretation applies to the facts of this Claim, where a permitting authority issued a source-specific title I preconstruction permit subject to public notice and comment and for which judicial review was available. The EPA is not considering at this time whether other circumstances may warrant a different approach."); *Sierra Club v. EPA*, 926 F.3d 844, 850 (D.C. Cir. 2019) (emphasizing the case-specific nature of the EPA's decision to apply the interpretation at issue in the *PacifiCorp-Hunter I Order*, as well as the case-specific nature of any future EPA decisions to apply or not apply the same interpretation to different fact patterns).

¹⁰⁶ In recent permitting decisions and title V petitions, the EPA has observed that both State permitting authorities and public petitioners have often misapplied, misinterpreted, or ignored the interpretations and policies expressed in these orders and in the January 2024 Proposed Rule.

Two of the EPA's petition orders, the *PacifiCorp Hunter I Order* and the *ExxonMobil Baytown Olefins Order*, were challenged in different Federal circuit courts of appeal, which issued decisions the same year. The U.S. Court of Appeals for the Fifth Circuit upheld the *ExxonMobil Baytown Olefins Order*.¹¹⁹ There, the Fifth Circuit found persuasive and upheld the "EPA's view that Title V permitting is not the appropriate vehicle for reexamining the substantive validity of underlying Title I preconstruction permits."¹²⁰ The Fifth Circuit's conclusion did not turn on application of *Chevron* deference and was instead "based principally on Title V's text, Title V's structure and purpose, and the structure of the Act as a whole."¹²¹

The U.S. Court of Appeals for the Tenth Circuit issued a ruling vacating and remanding the *PacifiCorp-Hunter I Order*.¹²² Unlike the Fifth Circuit, the Tenth Circuit did not address the EPA's statutory interpretation but instead rejected the Agency's reasoning as inconsistent with the Agency's regulations.¹²³ According to the Tenth Circuit, the EPA's regulations require that title V permits ensure compliance with all "applicable requirements," which the Tenth Circuit interpreted to include all requirements in the SIP, including those related to major NSR.¹²⁴

Because these two courts ruled on different grounds (with the Fifth Circuit focusing on the statute and the Tenth Circuit focusing on the EPA's existing regulations), the legal reasoning underlying their holdings is not in direct conflict. However, in practice, the differing rulings have made it difficult

for the EPA to apply a uniform interpretation of the Agency's current title V regulations nationwide.

Within the Tenth Circuit's jurisdiction, in the EPA's subsequent responses to petitions on the *PacifiCorp-Hunter permit (PacifiCorp-Hunter II*¹²⁵ and *PacifiCorp-Hunter III*¹²⁶), the Agency reviewed whether a source should have obtained a major NSR permit for projects previously authorized by a minor NSR permit. These reviews were intended to avoid conflict with the Tenth Circuit's decision on the *PacifiCorp-Hunter I Order*.

In title V petition orders regarding permits issued by States outside of the Tenth Circuit, however, the EPA maintained its post-2017 approach. As the EPA explained:

EPA continues to believe that the interpretation of the CAA upheld by the Fifth Circuit's decision in *Environmental Integrity Project v. EPA*, 969 F.3d 529 (5th Cir. 2020), is correct. EPA thus intends, where supported by the facts of individual permits, to continue to apply the reasoning of *In re Big River Steel, LLC*, Order on Petition No. VI-2013-10 (October 31, 2017), when issuing and reviewing title V permits and reviewing petitions on permits for sources in states outside of the Tenth Circuit. That is, where EPA has approved a state's title I permitting program, duly issued preconstruction permits establish the NSR-related "applicable requirements" for the purposes of title V. As with "applicable requirements" established through other CAA authorities, the terms and conditions of those permits should be incorporated into a source's title V permit without a further round of substantive review as part of the title V process.¹²⁷

Thus, when reviewing permits issued by permitting authorities in States outside the Tenth Circuit's jurisdiction, the EPA continued to apply the Agency's post-2017 approach and generally declined to use the title V process to review the substance of NSR permitting decisions. In the rare situations outside the Tenth Circuit in which the EPA decided that it was appropriate to use the title V process to review certain NSR issues, these decisions were not based on the Tenth Circuit's interpretation of the Agency's regulations, but rather on unusual factual circumstances that, in the Agency's view at the time, provided a basis for reviewing such issues under

the EPA's post-2017 interpretation of the regulations.¹²⁸

The EPA maintained that the *Big River Steel Order* and subsequent title V orders reflect the best interpretation not only of the relevant statutory provisions, but also of the existing regulations. Nonetheless, in light of the differing circuit court decisions, the EPA considers it prudent to update the Agency's regulations to clarify the Agency's interpretation of the statute. Thus, on January 9, 2024, the EPA proposed regulatory amendments to the definition of "applicable requirements."¹²⁹ The proposed regulatory amendments were designed to allow the EPA to apply a single framework across the Nation by revising the regulatory language that the Tenth Circuit found to be in conflict with the Agency's current interpretation. The January 2024 Proposed Rule was also designed to more clearly align the EPA's regulations with the Agency's statutory interpretation endorsed by the Fifth Circuit. After considering public comments on the January 2024 Proposed Rule, the EPA is taking final action on the proposed regulatory text to codify the approach that the Agency has applied since 2017, which will now apply nationwide.¹³⁰

B. Summary of the EPA's Approach and Final Action

The EPA is finalizing amendments to the Agency's regulations to clarify the Agency's approach to the intersection between title I permitting and title V permitting. In sum: provided that a source obtains an NSR permit under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, such NSR permit establishes all NSR-related "applicable requirements" of the SIP (or FIP) that are applicable to the construction of the new source or modification authorized by the permit for purposes of title V. As with "applicable requirements" established under other CAA authorities (e.g., NSPS, NESHAP), the EPA will not

¹¹⁹ *Env't Integrity Project v. EPA*, 969 F.3d 529 (5th Cir. 2020).

¹²⁰ *Id.* at 546.

¹²¹ *Id.* at 541. The Fifth Circuit stated its conclusion several ways, as the following examples illustrate: "Concluding EPA's interpretation of the Title V program is independently persuasive and therefore entitled to the mild form of deference recognized by *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944), we deny the petition." 969 F.3d at 535. "[W]e find [the EPA's] reasoning persuasive as a construction of the relevant provisions of Title V." *Id.* at 540. "Applying *Skidmore*, we ask whether EPA's interpretation of Title V in the *Hunter Order* is persuasive. Specifically, we inquire into the persuasiveness of EPA's current view that the Title V permitting process does not require substantive reevaluation of the underlying Title I preconstruction permits applicable to a pollution source. As we read it, the *Hunter Order* defends the agency's interpretation based principally on Title V's text, Title V's structure and purpose, and the structure of the Act as a whole. Having examined these reasons and found them persuasive, we conclude that EPA's current approach to Title V merits *Skidmore* deference."

¹²² *Sierra Club v. EPA*, 964 F.3d 882 (10th Cir. 2020).

¹²³ *Id.* at 897.

¹²⁴ *Id.* at 885–86, 890–91.

¹²⁵ *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition Nos. VIII-2016-4 & VIII-2020-10 (January 13, 2021).

¹²⁶ *In the Matter of PacifiCorp Energy, Hunter Power Plant*, Order on Petition No. VIII-2022-2 (September 27, 2022).

¹²⁷ *PacifiCorp-Hunter III Order* at 16 n.29; see also *PacifiCorp-Hunter II Order* at 15 n.26.

¹²⁸ *TPC Houston Order* at 42 n.243; *ITC Pasadena Order* at 13–14, 24–25; *SRP Agua Fria I Order* at 11 n.18; *SRP Desert Basin Order* at 12 n.20; *Gulf Coast Growth Ventures Order* at 17 n.28; *ExxonMobil Baytown Chemical Order* at 14 n.27; *BP Whiting II Order* at 13 n.24; *Coyote Station Order* at 12.

¹²⁹ 89 FR 1150 (January 9, 2024).

¹³⁰ Some public commenters on the January 2024 Proposed Rule—in particular, permitting agencies and regulated entities operating within the boundaries of the Fifth Circuit's jurisdiction—suggested that this rulemaking is not necessary. However, as other commenters recognized, the EPA considers this rulemaking necessary to provide clarity and uniformity across the Nation.

reevaluate those NSR decisions through the title V process.

The EPA is updating paragraphs (1) and (2) of the definition of “applicable requirement” in 40 CFR 70.2 and 71.2. Paragraph (1) of this definition addresses SIP (and FIP) requirements more generally. This final rule adds text to paragraph (1) to clarify that, for purposes of title V, if an NSR permit is issued under an EPA-approved or EPA-promulgated title I program (*i.e.*, SIP or FIP), with public notice and the opportunity for comment and judicial review, the terms and conditions of that preconstruction permit define the NSR-related applicable requirements of the SIP or FIP that apply to the activities authorized by such a preconstruction permit.

This rule also adds text to paragraph (2) of the definition of “applicable requirement” in 40 CFR 70.2 and 71.2 to clarify that, for purposes of title V, the relevant terms and conditions of all types of NSR permits issued under a SIP or FIP, including minor NSR permits, are applicable requirements that must be included in a title V permit, regardless of whether the procedures referenced in paragraph (1) are followed.

In the January 2024 Proposed Rule, the EPA requested comment on any other changes to the regulatory text that would be necessary to fully effectuate the Agency’s existing and proposed approach. Several commenters provided helpful suggestions intended to make the EPA’s approach even clearer in the part 70 regulations. In response to some of those comments, the EPA is finalizing changes to 40 CFR 70.8 and 70.12 to clarify that potential or alleged defects in an applicable requirement established outside of the title V process do not present a basis for the EPA’s objection to a title V permit. This principle has been an implicit, and generally well-understood, element of the title V program throughout the program’s existence, and one that was repeatedly emphasized in the January 2024 Proposed Rule.¹³¹ Nonetheless, the EPA agrees with commenters that the Agency’s regulations should be updated to more explicitly clarify this longstanding principle.

C. Rationale for the EPA’s Approach and Final Action

This subsection of the preamble explains the overarching legal and policy basis for the EPA’s approach and addresses comments that either

supported or opposed the Agency’s approach. The next subsection of the preamble (III.D) addresses more specific issues about how this approach functions in various fact patterns.

As explained in the following subsections, title V of the CAA does not compel the EPA to use the title V operating permit process to review the substance of decisions made during the title I (NSR) preconstruction permitting process. The statute requires that title V permits assure compliance with “applicable requirements” of the CAA, but the statute does not define this term or expressly provide that permitting authorities must or may reevaluate NSR permitting decisions. The best reading of the relevant statutory provisions is that the terms and conditions of an NSR permit issued under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, define the relevant NSR-related applicable requirements of the SIP (or FIP) for purposes of title V permitting.

The EPA’s interpretation is supported by the structure and purpose of title V. Congress designed title V to consolidate, assure compliance with, and improve the enforceability of applicable requirements established under other CAA programs. The title V program was not intended to create new substantive requirements or modify substantive requirements added in those other programs (other than to include supplemental compliance assurance measures, if necessary). Nor was it intended to create a second round of review for already established applicable requirements that introduce additional burdens and delays for permitting authorities and permitted sources. This understanding of the purpose of title V—both in general and as it relates to the intersection of title V and NSR permitting—is reflected in the statute, regulations, legislative history, EPA statements contemporaneous with the promulgation of the initial title V regulations, and various Federal court decisions and EPA statements since that time.

The EPA’s interpretation is also consistent with the structure of the CAA as a whole. The EPA’s approach gives weight to the title I mechanisms that Congress provided to establish the specific NSR-related requirements of SIPs, as well as the title I and title III procedures for evaluating, challenging, and enforcing title I permitting requirements. It also respects the system of cooperative federalism reflected in the NSR and title V permitting programs.

The EPA’s approach also reflects better policy than alternative approaches because it ensures that applicable requirements established in different CAA programs are treated consistently in title V permitting, accounts for the limitations associated with title V oversight tools, emphasizes title I avenues of review, and respects the finality of, and fosters certainty in, title I permitting decisions.

1. Best Reading of the Statutory Text

The text of title V alone does not conclusively define the scope of issues subject to review (or re-review) during the title V permitting process. In relevant part, CAA section 504(a) requires that title V permits “include enforceable emissions limitations and standards . . . and such other conditions as are necessary to assure compliance with applicable requirements of this chapter [*i.e.*, the CAA], including the requirements of the applicable implementation plan [*i.e.*, the SIP or FIP].”¹³² Similarly, CAA section 505(b) requires that if the EPA determines that a title V permit is “not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan,” the EPA must object to the permit, and if the EPA does not, any person may petition the EPA to do so.¹³³ Similar references to “applicable requirements” and “requirements of the applicable implementation plan” appear in other parts of title V.¹³⁴

However, the term “applicable requirements” is not defined in the CAA, and the statute does not otherwise specify the role of the title V permitting process in determining the applicable requirements of the CAA or the requirements of an applicable implementation plan for a particular source or construction activity. Instead,

¹³² 42 U.S.C. 7661c(a).

¹³³ 42 U.S.C. 7661d(b)(1)–(2).

¹³⁴ For example: “The term ‘schedule of compliance’ means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.” 42 U.S.C. 7661(3). “Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.” 42 U.S.C. 7661a(a). The regulations to implement the program shall include a “requirement that the applicant submit with the application a compliance plan describing how the source will comply with all applicable requirements under this chapter.” 42 U.S.C. 7661b(b). Like CAA section 504, these sections do not specify the scope of the term “applicable requirements” or how the permitting authority or the EPA is to determine what the applicable requirements are for an individual source as part of its title V permit.

¹³¹ See, *e.g.*, 89 FR 1150 at 1175 and 1176. See section III.C.2 of this preamble for further discussion.

Congress delegated to the EPA the discretion to fill in these details consistent with the text of the relevant provisions and the structure of the statute as a whole.

Specifically, CAA section 502(b) instructs the Administrator to promulgate regulations “establishing the minimum elements of a permit program to be administered by any air pollution control agency,” including a requirement at CAA section 502(b)(5)(A) that the permitting authority have adequate authority to “issue permits and assure compliance by all sources required to have a permit under this subchapter with each applicable standard, regulation or requirement under this chapter.”¹³⁵ Under CAA section 505(b)(2), which governs objections by the EPA and petitions to the Administrator, also instructs the Administrator to promulgate regulations that implement the petition provisions within that paragraph.¹³⁶ This includes the requirement that the Administrator object if a petitioner demonstrates that a permit is not in compliance with “the requirements of this chapter, including the applicable implementation plan.”¹³⁷

Given the instruction from Congress for the EPA to promulgate regulations about the title V permit program and the title V petition process, the EPA finds it necessary and appropriate to “fill up the details” of title V of the CAA through regulations,¹³⁸ including determining what constitutes “applicable requirements” and “the requirements of the applicable implementation plan.” As detailed below, these regulations represent the best reading of the relevant provisions and the structure of the statute. The EPA is exercising discretion to codify the best reading of the statute in the regulations to promote clarity, national consistency, and understanding on the part of the public and the regulated community.

With respect to title I preconstruction permits, the statutory terms “applicable requirements” and “requirements of the applicable implementation plan” are particularly ambiguous and require further interpretation. As explained in section III.C.3.a of this preamble, during the preconstruction permitting process, permitting authorities determine which NSR requirements in the SIP (or FIP) are applicable (e.g., major NSR or minor NSR requirements) to new or modified

sources, and derive the specific permit conditions (e.g., emission limitations and other standards) applicable to a given source or modification based on the general direction in the SIP. In many situations, the public has the opportunity to provide comments on draft permits and to seek review in State court. At the end of this NSR permitting process, the NSR permit terms reflect the NSR-related requirements of the SIP (or FIP) applicable to the new or modified source.

The key inquiry is whether the title V permitting process should or may be used to double-check—and re-check during every subsequent title V renewal permit—the substantive adequacy of applicable requirements established through NSR permitting decisions. In other words, the question is whether title V should or may be used to assess whether the requirements embodied in an NSR permit were properly derived from the general, overarching SIP (or FIP) provisions governing NSR.

Title V of the CAA contains no language expressly mandating such a reevaluation through title V. Notably, the Fifth Circuit found the CAA’s silence on this topic a persuasive reason for upholding the EPA’s statutory interpretation that is the basis for this rule.¹³⁹ The statute’s silence on this topic stands in contrast to the presence of more specific statutory mandates, such as the requirement that title V permits be used to add compliance assurance measures like monitoring, recordkeeping, and reporting requirements.¹⁴⁰

Moreover, the CAA’s references to “applicable requirements” and “the requirements of the applicable implementation plan” do not compel such a reevaluation notwithstanding the text and structure of the title I NSR

provisions. Notably, the Fifth Circuit rejected the notion that the general term “applicable requirements” should be construed as “broad and sweeping,” or that this term should be read to mandate using title V to review whether requirements in an NSR permit accurately reflect the requirements of a SIP.¹⁴¹

In this action, the EPA is adopting the best reading of the statutory terms “applicable requirements” and “requirements of the applicable implementation plan” in CAA sections 504(a) and 505(b) in the context of title I NSR permits issued under a SIP or FIP.¹⁴² The best reading is that the terms and conditions of an NSR permit issued under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, define the relevant set of “applicable requirements” of the SIP or FIP for purposes of title V permitting. That is, the “requirements of an applicable implementation plan” relevant to a particular construction project are the requirements that the permitting authority determined to be applicable during the NSR permitting process, as reflected in the terms of such an NSR permit. The EPA also considers this interpretation to be the best reading of the statutory text in light of the structure and purpose of title V, the legislative history of title V, the structure of the CAA as a whole, and other policy reasons derived from the purposes of the statute generally and title V specifically, as explained in the following subsections of this preamble.

Public comments from permitting authorities and regulated entities generally agreed that the EPA’s interpretation reflects the best reading of the relevant statutory text, and these commenters supported or echoed EPA’s views regarding the structure and purpose of title V, the legislative history of title V, the structure of the CAA as a whole, and other policy reasons

¹³⁹ *Env’t Integrity Project*, 969 F.3d at 541–42. Specifically, the court stated the following: “We find persuasive EPA’s position that Title V lacks a specific textual mandate requiring the agency to revisit the Title I adequacy of preconstruction permits. Our own review of Title V confirms that it contains no such explicit requirement, nor any language guiding the agency on how to perform a review of that nature. The principle that a matter not covered is not covered is so obvious that it seems absurd to recite it. A number of cases have identified the *casus omissus pro omisso habendus* est canon, under which a statute should not be read to include matter it does not include. Here, Title V does not tell EPA to reconsider [NSR] in the course of Title V permitting. We reject Petitioners’ position because there is a basic difference between filling a gap left by Congress’ silence and rewriting rules that Congress has affirmatively and specifically enacted.” *Id.* at 541–42 (cleaned up) (citing *Lamie v. U.S. Tr.*, 540 U.S. 526, 538 (2004); *Iselin v. United States*, 270 U.S. 245, 251 (1926); *Yates v. Collier*, 868 F.3d 354, 369 (5th Cir. 2017); *In re Miller*, 570 F.3d 633, 638–39 (5th Cir. 2009)).

¹⁴⁰ 42 U.S.C. 7661c(c); see 40 CFR 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d at 680.

¹⁴¹ See *Env’t Integrity Project*, 969 F.3d at 543 (“[Petitioners] would effectively rewrite the clause to read: ‘a *de novo* reconsideration of the source’s preconstruction permitting.’ Surely, Congress would not have hidden that regulatory elephant in this residual mousehole.”).

¹⁴² See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). As discussed in the January 2024 Proposed Rule, the EPA considers the Agency’s longstanding prior regulations to be consistent with this statutory interpretation. However, in light of the Tenth Circuit’s ruling (which held that the EPA’s prior regulatory definition of “applicable requirement” precluded the Agency’s approach in a particular situation), the EPA is amending the Agency’s regulations to more clearly reflect the Agency’s statutory interpretation. For further discussion of the EPA’s interpretation of the Agency’s prior regulations, see *Big River Steel Order* at 9–11.

¹³⁵ 42 U.S.C. 7661a(b)(5)(A).

¹³⁶ 42 U.S.C. 7661d(b)(2).

¹³⁷ *Id.*

¹³⁸ *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 395 (2024) (quoting *Wayman v. Southard*, 10 Wheat. 1, 43 (1825)).

discussed in the following sections of this preamble.¹⁴³ Public comments from environmental and public interest groups generally opposed—but did not specifically rebut—the EPA’s overall statutory interpretation.¹⁴⁴

2. Structure and Purpose of Title V

The EPA’s interpretation of “applicable requirements” in the context of title V and NSR permitting is supported by the structure and purpose of the title V program—namely to consolidate, assure compliance with, and improve the enforceability of applicable requirements established under other CAA programs. The title V program was not intended to establish new substantive requirements or modify substantive requirements created in other programs (other than to include supplemental compliance assurance measures, when necessary), nor was it intended to add the further burdens and delays associated with a re-review of already established applicable requirements. This purpose is reflected in the statute, regulations, legislative history associated with Congress’s enactment of title V, EPA statements contemporaneous with the promulgation of the initial title V regulations, and various Federal court decisions and EPA statements since that time.

As introduced in section III.B of this preamble, a core purpose and function of title V is to identify, consolidate, and assure compliance with the requirements applicable to individual sources from other, more substantive CAA programs. This function is embodied primarily within CAA section 504 and 40 CFR 70.6(a) and (c), which generally require that title V permits include conditions that assure an individual source’s compliance with all CAA applicable requirements.

¹⁴³ See section 3.1 of the RTC. To the extent comments from permitting authorities and regulated entities opposed the EPA’s statutory interpretation, such opposition was generally limited to a particular element of this interpretation: that an NSR permit must undergo public notice and the opportunity for comment and judicial review before it could be said to conclusively establish the “applicable requirements” of the SIP for purposes of title V. That specific topic is discussed further in section III.D.5 of this preamble and section 3.5.7 of the RTC.

¹⁴⁴ To the extent adverse public comments raised specific arguments or rebuttals regarding the relevant statutory text, nearly all of those arguments were related to a specific type of question (as opposed to the EPA’s overarching framework): should title V be used to review questions about whether major NSR requirements should be applicable to a particular construction activity at a stationary source? That specific topic is discussed further in section III.D.3.b of this preamble and section 3.5.2 of the RTC.

When Congress enacted title V in 1990, it explained this purpose as follows:

The first benefit of the title V permit program is that . . . it will clarify and make more readily enforceable a source’s pollution control requirements. Currently, in many cases, the source’s pollution control obligations . . . are scattered throughout numerous, often hard-to-find provisions of the SIP or other Federal regulations. . . . The air permit program will ensure that all of a source’s obligations . . . will be contained in one permit document.¹⁴⁵

In addition to identifying and consolidating existing requirements applicable to a source, CAA section 504 provides the authority to use title V permits to establish additional requirements relating to compliance assurance. For example, title V permits may be used to create or supplement monitoring requirements when necessary to assure an individual source’s compliance with underlying applicable requirements that do not themselves contain sufficient monitoring provisions.¹⁴⁶ Where Congress intended title V to serve as a vehicle for the reevaluation of existing requirements or for imposing new requirements, it expressly said so.

Beyond title V’s consolidation and compliance assurance functions, title V generally does not impose new pollution control requirements on sources or provide a vehicle to modify such requirements established under

other CAA programs. As stated in the congressional record:

The permit provisions of title V provide a focus for this harmonization [of other titles of the CAA], although *title V does not change, and gives EPA no authority to modify, the substantive provisions of these other titles.* . . . Title V creates no new substantive emission control requirements. Nothing in the permitting title should be read to increase the stringency of any control requirement nor to delay or accelerate the effectiveness of such requirements, except as expressly provided in titles I, III, and IV.¹⁴⁷

Recognizing the core functions of the title V program, the EPA’s regulations have provided since 1992: “All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements. While *title V does not impose substantive new requirements*, it does require that fees be imposed on sources and that certain procedural measures be adopted especially with respect to compliance.”¹⁴⁸ These principles are further explained in EPA statements contemporaneous with the initial 1992 title V regulations,¹⁴⁹ subsequent rulemakings,¹⁵⁰ and in numerous orders

¹⁴⁷ Conf. Rep. on S. 1630, Speech of Rep. Michael Bilirakis (October 26, 1990), 6 CAA Legislative History at 10768 (1998) (emphasis added).

¹⁴⁸ 40 CFR 70.1(b) (emphasis added).

¹⁴⁹ See 57 FR at 32251 (July 21, 1992) (“While title V generally does not impose substantive new requirements, it does require that . . . certain procedural measures be followed, especially with respect to determining compliance with underlying applicable requirements. The program will generally clarify, in a single document, which requirements apply to a source and, thus, should enhance compliance with the requirements of the Act. . . . The title V permit program will enable the source, States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements. Increased source accountability and better enforcement should result.”); *id.* at 32284 (“As discussed above, title V is primarily procedural and is not generally intended to create any new substantive requirements. . . . The title V permit is intended to record in a single document the substantive requirements derived from elsewhere in the Act. Therefore, in most cases the only emissions limits contained in the permit will be emissions limits that are imposed to comply with the substantive requirements of the Act (including SIP requirements).”).

¹⁵⁰ See 81 FR 57822, 57826–27 (August 24, 2016) (“For the most part, title V of the CAA does not impose new pollution control requirements on sources. The definition of ‘applicable requirements’ in the part 70 regulations includes many standards and requirements that are established through other CAA programs, such as standards and requirements under sections 111 and 112 of the Act, and terms and conditions of preconstruction permits issued under the New Source Review programs. 40 CFR 70.2. Once those air quality control requirements are established in those other programs, they are incorporated into a source’s title V permits as appropriate. . . . [I]n providing an opportunity for harmonization through title V of the CAA, Congress did not replace or remove the procedures and requirements for establishing substantive

¹⁴⁵ S. Rep. No. 101–228 at 347 (December 20, 1989), *reprinted* in 5 Legislative History of the Clean Air Act Amendments of 1990 (CAA Legislative History) at 8687 (1998). Other portions of the history of this legislation describe the purpose of title V in similar terms. *See, e.g.*, Conf. Rep. on S. 1630, Speech of Rep. Michael Bilirakis (October 26, 1990), 6 CAA Legislative History at 10768 (1998).

¹⁴⁶ See 42 U.S.C. 7661c(c); 40 CFR 70.6(c)(1); *Sierra Club v. EPA*, 536 F.3d 673, 674–45, 680 (D.C. Cir. 2008) (“Title V did more than require the compilation in a single document of existing applicable emission limits and monitoring requirements. It also mandated that ‘[e]ach permit issued under [Title V] shall set forth . . . monitoring . . . requirements to assure compliance with the permit terms and conditions.’ . . . [T]he Act requires: a permitting authority may supplement an inadequate monitoring requirement so that the requirement will ‘assure compliance with the permit terms and conditions.’” (citations omitted)); *see also, e.g., In the Matter of CITGO Refining and Chemicals Co., L.P., West Plant*, Order on Petition No. VI–2007–01 at 6–8 (May 28, 2009). This additional purpose is similarly reflected in the legislative history. *See, e.g.*, S. Rep. No. 101–228 at 347, 5 CAA Legislative History at 8687. Various compliance assurance requirements are included within title V and the EPA’s implementing regulations; not all are restricted to monitoring. *See* 42 U.S.C. 7661c(a), (b), (c); 40 CFR 70.6(a)(1), (a)(3), (c), 71.6(a)(1), (a)(3), (c); *see also, e.g., In the Matter of Suncor Energy (U.S.A.), Inc., Commerce City Refinery, Plant 2 (East)*, Order on Petition Nos. VIII–2022–13 & VIII–2022–14 at 13–17 (July 31, 2023).

responding to petitions challenging individual title V permits.¹⁵¹ Likewise, Federal courts across the Nation have acknowledged and reiterated these general principles.¹⁵²

Not only were these general principles well-established at the inception of the title V program, both Congress and the EPA specifically spoke to the manner in which these general principles would guide the interaction between title V and title I permitting programs. For example, a Senate report accompanying title V explained:

New and modified major sources are already required to obtain construction permits under the [NSR] and [PSD] provisions of the current Act. *EPA should avoid imposing additional construction permit requirements under title V.* Thus, construction permits may continue to be issued under the existing provisions of the Act, but title V will apply with respect to existing source requirements not otherwise required in the construction permit, e.g., fees.¹⁵³

Thus, the legislative history articulates Congress's intent that, notwithstanding the enactment of title V, NSR permits would continue to be issued as they had for over a decade. Title V permits would be used to incorporate the requirements of NSR permits, but not to alter or impose additional NSR-related requirements.

requirements that exist in other provisions of the CAA.”).

¹⁵¹ Hundreds of EPA petition orders include background discussion reiterating this core function of title V. Electronic copies of these orders are available on the EPA's public database, <https://www.epa.gov/title-v-operating-permits/title-v-petition-database>. To the extent individual petition orders contain particularly relevant discussion, they are discussed elsewhere in this preamble.

¹⁵² See, e.g., *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 309 (2014) (“Unlike the PSD program, Title V generally does not impose any substantive pollution-control requirements.”); *Env't Integrity Project*, 969 F.3d at 250 (“By all accounts, Title V's purpose was to simplify and streamline sources' compliance with the Act's substantive requirements. Rather than subject sources to new substantive requirements—or new methods of reviewing old requirements—the intent of Title V was to consolidate into a single document (the operating permit) all of the clean air requirements applicable to a particular source of air pollution.” (cleaned up)); *id.* at 244; see also, e.g., *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 597 (D.C. Cir. 2016); *US v. EME Homer City Generation, LP*, 727 F.3d 274, 280 (3rd Cir. 2013); *Sierra Club v. Johnson*, 541 F.3d 1257, 1260 (11th Cir. 2008); *Sierra Club v. Leavitt*, 368 F.3d 1300, 1302 (11th Cir. 2004); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1026–27 (D.C. Cir. 2000).

¹⁵³ S. Rep. No. 101–228 at 349, 5 CAA Legislative History at 8689 (emphasis added). Similarly, one lawmaker involved in the statute's enactment explained: “In the past, some provisions of the Clean Air Act—for example, the nonattainment and PSD new source requirements—were, and will continue to be, implemented through preconstruction permits.” Conf. Rep. on S. 1630, Speech of Rep. Michael Bilirakis (October 26, 1990), 6 CAA Legislative History at 10768 (1998) (emphasis added).

As previously noted, in the 1991 and 1992 preambles to the EPA's initial title V rules, the Agency announced a similar understanding of the intersection of title V and title I permitting. The EPA did not express an intent to use the title V permitting process to review the applicable requirements established in preconstruction permitting programs under title I of the CAA. To the contrary, the EPA stated: “Any requirements established during the preconstruction review process also apply to the source for purposes of implementing title V. If the source meets the limits in its NSR permit, the title V operating permit would incorporate these limits *without further review*.”¹⁵⁴ Similarly, the EPA explained: “The intent of title V is *not to second-guess* the results of any State NSR program.”¹⁵⁵ Further, “[d]ecisions made under the NSR and/or PSD programs (e.g., [BACT]) *define applicable SIP requirements* for the title V source and, if they are not otherwise changed, can be incorporated *without further review* into the operating permit for the source. The title V program is not intended to interfere in any way with the expeditious processing of new source permits.”¹⁵⁶

The EPA's contemporaneous interpretation of the statute (and the regulations implementing this statute) should be afforded great weight, as the Fifth Circuit acknowledged.¹⁵⁷ Although the EPA departed from this interpretation, in part, from 1997–2017, the EPA's return to this interpretation reflects a better reading of the statute and congressional intent.¹⁵⁸ As the Fifth Circuit stated: “We find persuasive

¹⁵⁴ 56 FR 21712, 21738–39 (May 10, 1991) (emphasis added).

¹⁵⁵ *Id.* at 21739 (emphasis added).

¹⁵⁶ *Id.* at 21721 (emphasis added); see 57 FR at 32259 (July 21, 1992) (similar statements in the preamble to the EPA's 1992 final rule).

¹⁵⁷ *Env't Integrity Project*, 969 F.3d at 544 (“We also agree with EPA that the language in part 70's preamble is probative of Title V's purpose as a whole.”) An agency's contemporaneous interpretation is often given great weight in understanding the meaning of a statute. See e.g., *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 414 (1993) (“Of particular relevance is the agency's contemporaneous construction which ‘we have allowed . . . to carry the day against doubts that might exist from a reading of the bare words of a statute.’” (quoting *FHA v. The Darlington, Inc.*, 358 U.S. 84, 90 (1958))).

¹⁵⁸ See *Env't Integrity Project*, 969 F.3d at 544 (“We recognize that EPA has reverted to its original interpretation of § 70.2, reflecting its changing views of Title V. We take the agency's change of position into account in determining whether to defer to its position. But even when ‘the agency has embraced a variety of approaches’ we may still defer to its present position, ‘especially’ when the current view ‘closely fits the design of the statute as a whole.’” (quoting *Shahala*, 508 U.S. at 417–18; additional citation omitted)).

EPA's view that, because Title V was not intended to add new substantive requirements to the Act, it should not be interpreted as Petitioners urge. . . . This goal, as EPA argues, is at cross-purposes with using the Title V process to reevaluate preconstruction permits.”¹⁵⁹

Several public comments from environmental and other interest groups challenged this view. These commenters argued that using title V to substantively review NSR permitting decisions is not the same thing as establishing new substantive requirements because the substantive requirements related to NSR already exist in the SIP.¹⁶⁰ The EPA disagrees. As explained in section III.C.3.a of this preamble, NSR-related requirements of the SIP may be relatively general and require an additional step—the title I permitting process—to define on a case-by-case basis the nature of the requirement for individual sources engaged in construction projects. Thus, while general requirements exist in the SIP to obtain NSR permits that meet certain criteria, the specific requirements that are applicable to a particular source engaged in construction activity exist in conditions in the individual title I NSR permits, which are determined on a case-by-case basis. If title V permits were used to reevaluate substantive title I permitting decisions, the result of such an exercise—at least the result apparently desired by adverse commenters—could be a conclusion that different conditions are necessary to assure compliance with the SIP. To effectuate this conclusion, changes would have to be made to the requirements established through the title I permitting process. Changing the nature of an applicable requirement is functionally the same as creating a new applicable requirement and is, therefore, inconsistent with Congress's design for title V.

Other statutory provisions within title V further support the EPA's interpretation. Title V requires State programs to have “[a]dequate, streamlined, and reasonable procedures . . . for expeditious review of permit actions”¹⁶¹ Requiring a permitting authority, or the EPA, to go back and review final permitting decisions that have already been subject to the safeguards of public notice and judicial review would frustrate the goal

¹⁵⁹ *Env't Integrity Project*, 969 F.3d at 543–44.

¹⁶⁰ See section 3.5.2 of the RTC.

¹⁶¹ 42 U.S.C. 7661a(b)(6).

of “expeditious review of permit actions.”¹⁶²

Similarly, Congress provided abbreviated timeframes for the EPA to review a proposed title V permit: 45 days for the EPA’s independent review and 60 days if presented with a petition to object.¹⁶³ Based on “the abbreviated timeline Congress gave EPA,” the Fifth Circuit in *Env’t Integrity Project* concluded “that these timelines are inconsistent with an in-depth and searching review of every permitting decision regarding a given source.”¹⁶⁴ This point is compounded by the fact that title V permits must be renewed every five years.¹⁶⁵ As the Fifth Circuit stated, “the fact that Title V permits must be renewed every 5 years tends to support the agency’s view that Title V was not intended to serve as a vehicle for reexamining the underlying substance of preconstruction permits. Subjecting a source’s preconstruction permit to periodic new scrutiny, without any changes to the source’s pollution output, would be inconsistent with Title V’s goal of giving sources more security in their ability to comply with the Act.”¹⁶⁶

In summary, neither the structure of title V nor the congressional record indicates that Congress intended the EPA to reevaluate and rewrite substantive title I preconstruction requirements through the title V process. Title V was enacted largely to identify and consolidate the variety of requirements applicable to each facility and assure compliance with these requirements through provisions like monitoring, recordkeeping, and reporting. Reexamining title I permits through title V would not help address either of these objectives. Moreover, congressional intent for efficiency would be undermined if permitting authorities were required to second-guess complex decisions reflected in State-issued title I permits during title V review and then re-check these decisions during each subsequent title V

renewal.¹⁶⁷ Such a review would also be generally incompatible with the limited timeframes that Congress provided for the EPA’s review of title V permits. These considerations related to the structure and purpose of title V align with the EPA’s interpretations of the statute from the early 1990s, as well as the opinions of Federal courts.

All indications of congressional intent suggest that the EPA’s role in oversight over the issuance of title V permits should be limited. In the case of preconstruction permitting requirements derived from title I of the CAA, the purpose of title V is to ensure that the terms and conditions of the preconstruction permit are properly included as “applicable requirements” and that the permit contains monitoring, recordkeeping, and reporting sufficient to assure compliance with those permit terms and conditions.¹⁶⁸

Adverse public comments emphasized other purposes of the title V program: to serve as a comprehensive document that clarifies all CAA requirements to which a source is subject, and to promote compliance and enforcement of such requirements. The EPA agrees that these are important functions of title V permits. The EPA’s approach in this final rule integrates all of these key features of the title V program. Title V permits must collect all CAA-based requirements that are applicable to a source and include conditions sufficient to assure compliance with those requirements. But that does not mean that title V permits should be used to reevaluate substantive decisions underlying the establishment of the applicable requirements themselves.

3. Structure of the CAA as a Whole

The EPA’s interpretation of “applicable requirements” as that term relates to the interface of title I and title V permits is supported by the structure of the CAA as a whole.¹⁶⁹ Specifically, the EPA’s interpretation is consistent with the title I permitting mechanisms that Congress provided to establish and define the NSR-related requirements of SIPs; the title I and title III procedures for evaluating, challenging, and enforcing title I permitting requirements; and the overarching system of cooperative federalism

reflected in the NSR and title V permitting programs.

a. Implementation of SIP Requirements Through Title I NSR Permits

States must submit SIPs containing NSR permitting programs to the EPA for approval through a rulemaking process.¹⁷⁰ States then determine and define the specific NSR-related requirements of SIPs that apply to individual construction projects by issuing NSR permits to individual facilities. This two-step process under title I is central to the EPA’s interpretation of the statutory term “applicable requirements” as it relates to the interface between title I and title V permits. It also differentiates NSR-based applicable requirements from other types of applicable requirements as discussed in section II of this preamble.

The portions of a SIP addressing NSR are general in nature. SIPs require new and modified sources to obtain certain permits before beginning construction, specify thresholds and other methods to determine what type of permit a source must obtain, identify other preconditions to obtaining a permit (including requirements related to the NAAQS), and establish guidelines for setting specific limitations and other conditions that must be included in a permit. Because the NSR-related provisions within a SIP are necessarily general, they are not self-implementing, and further fact-specific analysis is required to develop the specific requirements applicable to a particular new or modified source.

The key question is whether title V is the appropriate mechanism to establish (or reevaluate) the specific NSR-related SIP requirements that are applicable to construction activities at a particular source. As noted earlier in this preamble, title V of the CAA does not mandate this outcome, and the structure of title I elucidates that this was not Congress’s intent or the best reading of the statute.

Congress required in title I that SIPs regulate construction and, for major sources and modifications, require preconstruction permits.¹⁷¹ The title I preconstruction programs approved by the EPA into SIPs rely on preconstruction permitting programs to fulfill these statutory directives for both

¹⁶² *Id.*

¹⁶³ 42 U.S.C. 7661d(b); see 40 CFR 70.8(c), (d).

¹⁶⁴ *Env’t Integrity Project*, 969 F.3d at 544; see also *id.* at 545–46 (“Title I [includes] more detailed procedures for in-depth oversight of case-specific permitting decisions. Such permitting decisions follow state appeals or enforcement actions authorized by other provisions of the Act, including citizen suits under Title III. Those mechanisms are better structured to provide agency and citizen oversight of preconstruction permitting. . . . Title V contains none of the procedures that would guide those challenges, as Titles I and III do. . . . And those avenues provide more time for development and consideration of the potential issues.” (internal citations and quotations omitted)).

¹⁶⁵ 42 U.S.C. 7661a(b)(5)(B), (b)(6); see, e.g., 40 CFR 70.6(a)(2).

¹⁶⁶ *Env’t Integrity Project*, 969 F.3d at 544–45.

¹⁶⁷ 42 U.S.C. 7661a(b)(6).

¹⁶⁸ 42 U.S.C. 7661c(a), (c); see 40 CFR 70.6(a)(1) and (3), and (c)(1).

¹⁶⁹ See *Utility Air Reg. Grp.*, 573 U.S. at 320 (acknowledging the “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme” (internal citations and quotation marks omitted)).

¹⁷⁰ 42 U.S.C. 7410(a)(2)(C). This section of the preamble primarily discusses the issuance of NSR permits under an EPA-approved SIP. Similar principles apply to the issuance of NSR permits under an EPA-promulgated FIP.

¹⁷¹ See 42 U.S.C. 7410(a)(2)(C), 7475(a)(1), 7502(c)(5).

major and minor NSR.¹⁷² It thus follows that the title I preconstruction requirements for individual sources are established under these permitting programs in the SIP, not through title V. The SIPs identify the title I permitting process as the mechanism by which the more general SIP requirements applicable to construction of stationary sources will be defined for each new or modified source. During that title I permitting process, a permitting authority determines which NSR-related requirements of the SIP are applicable and designs specific permit terms and conditions to satisfy these more general SIP requirements. In many situations, this process also includes the opportunity for interested parties to evaluate and challenge the State's decisions. Overall, the process is designed to result in an NSR permit that contains all terms and conditions necessary to satisfy the NSR-related requirements of the SIP. Thus, it is the title I permitting process—not the general requirements within the SIP itself—that defines the “applicable requirements” of the CAA related to NSR, at least insofar as title V is concerned.

In summary, the NSR requirements of a SIP are not self-implementing, but they also do not depend on the title V process to be defined. Instead, the applicable NSR-related requirements of SIPs are established through a dedicated title I-based permitting process that typically includes its own public participation opportunities and EPA oversight authority.

The CAA requires that title V permits assure compliance with “requirements of an applicable [SIP].” But the CAA does not specify that title V be used to re-create or reevaluate the requirements of the SIP that were already defined

through the specific mechanism Congress designed to define them: the NSR permitting process. Again, the purpose of title V is not to create or alter the substantive requirements from other parts of the CAA, but instead to identify, consolidate, and assure compliance with those requirements established in these other programs that apply to each individual source.

b. Oversight of Title I Programs and Permitting Decisions

The many programmatic and case-specific oversight tools contained within title I demonstrate that it is not necessary or appropriate, and Congress did not intend, to use additional title V permit oversight tools to second-guess the results of title I permitting decisions.¹⁷³ Title I provides opportunities for programmatic oversight, oversight of individual permitting decisions, and oversight through enforcement.

Through the review of SIP submissions, the EPA ensures that States have programs in place that provide the authority to issue substantively sound preconstruction permits, while respecting Congress's intended role for the States. Congress gave the EPA authority under title I to disapprove any proposed SIPs that are inconsistent with Federal statutory and regulatory authorities governing NSR.¹⁷⁴ For example, if a State submits a proposed SIP containing rules to calculate major source emissions thresholds, and those rules are inconsistent with the CAA or its implementing regulations, the EPA cannot approve the SIP. If the State's program fails to meet statutory or regulatory requirements related to NSR, the EPA can call for a revision of the SIP.¹⁷⁵ Further, if a State fails to properly implement its NSR program, the EPA can take additional actions, including orders, administrative penalties, and civil actions.¹⁷⁶ The availability of these title I-based authorities obviates the need to use title V-based oversight tools to address programmatic issues associated with State NSR programs.

In terms of reviewing individual title I permits, each SIP must provide for public notice and an opportunity for comment on major NSR permits, and this may also be required for other types of permits under preconstruction permit programs.¹⁷⁷ The EPA may provide feedback on State-issued NSR permits through this process.¹⁷⁸ Thus, both interested parties and the EPA can seek to correct potential errors in proposed preconstruction permits, including threshold determinations about whether a source or modification is minor or major, and can challenge the content of permit terms. Should a State permitting authority fail to address legitimate comments, the commenters can seek review of preconstruction permits in State administrative and judicial forums, and the EPA has additional oversight authority under the CAA.¹⁷⁹ The availability of these title I permitting-based avenues for review and oversight of individual title I permitting decisions obviates the need to use title V-based oversight tools to address the same issues with respect to individual construction authorizations.¹⁸⁰

¹⁷⁷ 42 U.S.C. 7475(a)(2); 40 CFR 51.161, 51.165(i), 51.166(q).

¹⁷⁸ Title I of the CAA specifically contemplates that the “interested persons” who may comment on State-issued PSD permits include “representatives of the Administrator.” 42 U.S.C. 7475(a)(2).

¹⁷⁹ Inherent in this title I permitting scheme and reflected in the congressional record for the 1977 CAA Amendments, is the understanding that the adequacy of State NSR permitting decisions would be subject to review in State administrative and judicial forums. “In order to challenge the legality of a permit which a State has actually issued . . . a citizen must seek administrative remedies under the State permit consideration process, or judicial review of the permit in State court.” Staff of the Subcommittee on Environmental Pollution of the Senate Committee on Environment and Public Works, 95th Congress, 1st Session, A Section-by-section Analysis of S. 252 and S. 253, Clean Air Act Amendments 36 (1977), reprinted in 5 Legislative History of the Clean Air Act Amendments of 1977, at 3892 (1977). Note that the U.S. Supreme Court has also acknowledged the primacy of State courts to adjudicate disputes over NSR permit terms. See *Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461, 490 n.14 (2004); see also *id.* at 491–94 (addressing the relationship between State court review of NSR permits and Federal oversight tools related to NSR permits). The EPA has expressed similar views when approving individual NSR SIPs. See, e.g., 77 FR 65305, 65306 (October 26, 2012) [The EPA “interpret[s] the CAA to require an opportunity for judicial review of a decision to grant or deny a PSD permit, whether issued by EPA or by a State under a SIP-approved or delegated PSD program.”].

¹⁸⁰ Some permitting authorities and many regulated entities submitted comments on the January 2024 Proposed Rule expressing either concern or opposition to the EPA's focus on title I-based oversight over individual NSR permits—specifically, the Agency's position that an NSR permit must undergo public notice and the opportunity for comment and judicial review before

¹⁷² Adverse comments from environmental and public interest groups on the January 2024 Proposed Rule generally did not engage with the EPA's discussion of the structure of the CAA as a whole, including the mechanisms by which title I preconstruction requirements are established. However, as discussed further in section III.D.3.b of this preamble, some adverse commenters focused on the fact that Congress did not specifically require that the minor NSR program be implemented through permitting. That distinction is not particularly relevant because nearly all SIPs implement the statutory requirements governing minor NSR through title I permitting programs, which generally resemble major NSR permitting programs. To the extent that minor NSR requirements are not implemented through permitting in a particular instance, the EPA's approach recognizes this distinction. As discussed in section II.D.5 of this preamble, if a source does not obtain a title I permit to authorize construction, there would be no permit to establish the “applicable requirements” for title V purposes, and the EPA would review whether the title V permit assures compliance with any relevant NSR-related requirements of the SIP.

¹⁷³ As stated in section III.E.1 of this preamble, the EPA's view that reevaluation of NSR permits is not appropriate in the title V permitting context does not mean that the EPA agrees that the State reached the proper decision when setting terms and conditions of any particular NSR permit and does not diminish the opportunities to review NSR preconstruction permitting decisions under title I of the CAA. See *Env't Integrity Project*, 969 F.3d at 545–56.

¹⁷⁴ 42 U.S.C. 7410(k)(3).

¹⁷⁵ 42 U.S.C. 7410(k)(5).

¹⁷⁶ 42 U.S.C. 7413(a)(2), (a)(5).

Congress also provided the EPA and interested parties with various enforcement mechanisms to address non-compliance with title I permitting requirements on a facility-by-facility basis. The EPA possesses the authority to issue injunctive orders to halt construction.¹⁸¹ The EPA may also pursue various types of civil or criminal enforcement actions pursuant to CAA sections 113 and 167.¹⁸² In title III of the CAA, Congress also provided authority for citizens to bring enforcement actions in the first instance seeking civil penalties and injunctive relief against a source that is alleged to have violated certain NSR requirements.¹⁸³ These enforcement-based tools can be used to ensure that decisions made in establishing the terms of a major NSR permit, such as BACT limits, were made on reasonable grounds properly supported by the record.¹⁸⁴ Additionally, the enforcement tools can be used to address situations in which a source failed to obtain a required major NSR permit (even if it obtained a minor source permit).¹⁸⁵

Overall, the availability of these title I oversight tools—the SIP process, NSR permitting oversight, and NSR enforcement—weighs against using title V oversight tools to address alleged defects with NSR permitting decisions. As the Fifth Circuit explained:

EPA contrasts Title V's silence on this front with more stringent oversight authority provided in Title I, arguing that this supports reading the title V provision to supply a more limited oversight role for the EPA with regard to state implementation of preconstruction permitting programs. The agency explains that Title I is better geared for in-depth oversight of case-specific state permitting decisions such as through the state appeal process or an order or action under section[] 113 or section 167. And, the agency urges, the absence of such schemes in Title V shows Congress did not intend to recapitulate the Title I process in Title V. We find this reasoning persuasive.¹⁸⁶

Public comments from environmental and other interest groups argued that these title I-based oversight tools are

more burdensome and less efficient mechanisms for addressing perceived deficiencies with NSR requirements compared to title V's oversight tools.¹⁸⁷ Notwithstanding these concerns, the EPA considers the use of title I oversight tools to resolve title I issues to be more consistent with the structure of the CAA and with congressional intent than the use of title V oversight tools. Further, these title I-based oversight tools are more effective than the more limited title V oversight tools.¹⁸⁸

c. Cooperative Federalism and Congressional Intent

Congress, the EPA, and the courts have often described the CAA as a program of cooperative federalism.¹⁸⁹ The EPA and the States work together to realize the goals of the CAA, but they have different roles. States have the “primary responsibility” for developing SIPs in the first instance as well as issuing title I permits under SIP programs for sources within their jurisdiction.¹⁹⁰

There is no indication that, in enacting title V, Congress intended to change the balance of State responsibility and Federal oversight of title I permitting programs. To the contrary, as noted in section III.C.2 of this preamble, the legislative history surrounding the 1990 CAA Amendments suggests that Congress did not intend for the title V program to change the implementation of title I permits. Moreover, the fact that Congress specifically provided a title I-based mechanism to establish the applicable NSR-related requirements, as well as title I- and title III-based tools for the EPA and citizens to oversee this program, weighs against using title V to reevaluate, reestablish, or otherwise oversee those title I requirements. Consequently, a reading of title V that would transform it into an opportunity to reevaluate previous preconstruction approvals, instead of simply incorporating existing requirements into one document, would inappropriately “alter the fundamental details” of the oversight authorities the EPA has under title I.¹⁹¹

¹⁸⁷ See section 3.4 of the RTC.

¹⁸⁸ See section III.C.4.b of this preamble for further discussion of the practical considerations and other policy reasons why title V oversight tools are not well-suited to resolving complex NSR permitting issues.

¹⁸⁹ See, e.g., 42 U.S.C. 7401(a)(3)–(4); *Env't Integrity Project*, 969 F.3d at 545.

¹⁹⁰ 42 U.S.C. 7407.

¹⁹¹ *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 468 (2001) (“Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes.”).

The text of the CAA does not indicate that Congress intended to create this type of additional administrative oversight mechanism for preconstruction permitting actions in an operating permit program designed to consolidate and further enforcement of existing requirements. While there is language in title V requiring that a permit “assure compliance with applicable requirements of this chapter,”¹⁹² and similar language in other parts of title V, this type of general language does not clearly or specifically require a title V permitting authority to reevaluate preconstruction permitting decisions that have already been made under title I, and subject to review under title I, each time that it issues or renews a title V permit. Instead, this general language in the statute should be read to mean that the title V permit must include conditions to assure compliance with the terms and conditions of the source-specific preconstruction permits.

In summary, as the Fifth Circuit concluded in its close examination of Title V:

Beyond the structure of Title V, EPA also persuasively grounds its interpretation in the structure of the Act as a whole. According to EPA, when Congress added preconstruction permitting requirements to Title I in 1977, it understood that the adequacy of state preconstruction permitting decisions would be subject to review in state administrative and judicial forums. It gave EPA oversight authority over preconstruction permitting only in specific ways, to do specific things. For example, Congress delineated the processes EPA must go through to approve SIPs. When it enacted Title V thirteen years later, Congress granted EPA no such authority. Congress gave no clear indication that it intended to alter the balance of oversight EPA has over state permitting processes. Section 7661c(a)'s requirement that a Title V permit assure compliance with applicable requirements is general and broad and does not clearly or specifically require the revisiting of preconstruction permitting decisions. Once again, the elephants in mouseholes canon supports this reading.¹⁹³

4. Policy Reasons

In addition to the textual and legal interpretations supporting this action, several policy considerations also support this rule. The EPA's approach ensures that applicable requirements established in different CAA programs are treated consistently in title V permitting, accounts for limitations associated with title V oversight tools, emphasizes title I avenues of review,

¹⁹² E.g., 42 U.S.C. 7661c(a).

¹⁹³ *Env't Integrity Project*, 969 F.3d at 545 (cleaned up).

it could be said to conclusively establish the “applicable requirements” of the SIP for purposes of title V. That specific topic is discussed further in section III.D.5 of this preamble.

¹⁸¹ 42 U.S.C. 7413(a)(5)(A), 7477.

¹⁸² 42 U.S.C. 7413, 7477.

¹⁸³ 42 U.S.C. 7604(a)(1), (a)(3).

¹⁸⁴ See, e.g., *Alaska Dep't of Env't Conservation*, 540 U.S. at 484–88 (affirming application of CAA section 167 in this context).

¹⁸⁵ See e.g., *United States v. S. Ind. Gas & Elec. Co.*, No. IP99–1692–CM/F, 2002 WL 1760699, at *3–5 (S.D. Ind. July 26, 2002); *United States v. Ford Motor Co.*, 736 F. Supp. 1539, 1550 (W.D. Mo. 1990).

¹⁸⁶ *Env't Integrity Project*, 969 F.3d at 542 (internal quotations and citations omitted).

and respects the finality of, and fosters certainty in, title I permitting decisions.

a. Consistent Treatment of Applicable Requirements From Other CAA Programs

The EPA's approach aligns the Agency's treatment of preconstruction permits with how the Agency has consistently treated other "applicable requirements" under title V since the inception of the title V program. As detailed in section II.E of this preamble, for other types of applicable requirements, permitting authorities do not and cannot reconsider the content of those requirements in title V permits. Nor does the EPA in the Agency's title V permitting oversight role. For instance, neither permitting authorities nor the EPA can use the title V permitting process to revise the self-implementing substantive requirements of an NSPS established under CAA section 111 or a NESHAP established under CAA section 112. Similarly, it would not be appropriate for permitting authorities or the EPA to use the title V process to review or revise any self-implementing requirements of a SIP approved under CAA section 110. As explained in section II.G of this preamble, even if the EPA disagrees with the content of a SIP, until the Agency approves a corrective SIP revision or issues a FIP, the SIP requirement remains an "applicable requirement" that should be incorporated unchanged into the title V permit. Public commenters neither challenged these general principles nor presented any compelling reasons to treat applicable requirements related to the NSR program differently from applicable requirements under other CAA programs.

For purposes of establishing "applicable requirements" for title V permitting, it is logical and appropriate to treat decisions that go through similar processes similarly. Each of the applicable requirements addressed in the previous paragraph were established pursuant to a process that included public notice and the opportunity for comment and judicial review, which provides an opportunity for interested parties to review and, if necessary, challenge the sufficiency of those requirements at the time they are established. Once they are established following these procedures, it would be inappropriate to reevaluate the substance of these requirements in title V permitting. Likewise, most source-specific NSR permitting decisions must go through a similar process at the State level. Once established through the appropriate procedures, and unless and

until the terms and conditions of an NSR permit are revised, reopened, suspended, revoked, reissued, terminated, augmented, or invalidated through some other mechanism (such as a State court appeal or enforcement action), the "applicable requirements" remain the terms and conditions of the issued NSR permit. These requirements should be incorporated into the title V permit without further review like all other similarly established applicable requirements.

Any differences between NSR-based applicable requirements and other types of applicable requirements do not provide a convincing reason to treat NSR requirements differently. For example, the fact that NSR permits are reviewed through the State courts, as opposed to Federal courts, is not material. As discussed in section III.D.2 of this preamble, regardless of the jurisdiction involved, both processes are functionally similar and offer similar levels of public involvement and measured decision making.¹⁹⁴

Another difference is that NSR-related requirements of the SIP are often general and would not be described as "self-implementing" in the same manner as NSPS, NESHAP, or certain source-specific SIP requirements that are conclusively established by rulemaking. As explained in section III.C.3.a of this preamble, the NSR-related requirements of the SIP are defined for individual sources not through rulemaking, but rather through an adjudication: the NSR permitting process. Although the processes for deriving applicable requirements by rulemaking and adjudication are different in some respects, their relationship to the title V process should be the same. Under both processes, regulatory agencies determine the legal requirements that apply to a facility, following a process that typically involves public input and concludes in a final decision that is subject to judicial review. After a source goes through the preconstruction permitting process and obtains a final NSR permit, the terms of that NSR permit are immediately applicable and enforceable in the same manner as any NSPS, NESHAP, or source-specific SIP provision established through rulemaking. Provided there was an opportunity to comment on and seek judicial review of such requirements when they were established, the title V

permitting process should not be used to further adjudicate (*i.e.*, reopen or reconsider) those applicable requirements established by rulemaking or by adjudication.

The EPA's approach standardizes the Agency's treatment of questions related not only to the content of applicable requirements but also to the applicability of different types of CAA requirements. See section III.D.3 of this preamble for additional information about this particular topic.

b. Procedural, Resource-Based, and Other Practical Limitations of Title V Oversight Tools

In the EPA's experience, NSR permitting issues are among the most factually and legally complicated issues raised during the title V permitting (and petition) process. For multiple reasons, the oversight tools associated with the title V permitting process are a poor fit for resolving NSR permitting issues. Compared to the available title I avenues for review, the title V process features limited timelines and procedural opportunities to fully evaluate complex title I issues. Reviewing complex NSR issues through title V involves a considerable resource burden and often is impracticable for decisions made years ago or even for recent decisions, given the tight timelines written into title V.

Public comments from environmental and other interest groups argued that the title V permitting process provides an efficient and effective mechanism for oversight of title I permitting decisions.¹⁹⁵ The EPA does not find those policy-focused comments persuasive, for the reasons discussed below. Similarly, in light of the legal considerations discussed above, they do not provide a basis for the EPA to adopt a different approach.

Procedural constraints associated with title V oversight tools weigh against using these tools to resolve complex NSR issues. The CAA provides 18 months for a State to act on a complete title V permit application. Commenters argued that this should be ample time for a permitting authority to consider not only title V issues, but also NSR issues.¹⁹⁶ Based on the EPA's experience overseeing State title V programs, the Agency disagrees. Many permitting authorities already struggle to issue title V permits in a timely fashion due to resource constraints and other issues; requiring them to additionally consider or reconsider complex NSR issues through this

¹⁹⁴ To the extent Federal court review of NSR decisions offers independent value beyond that which may be achieved through State courts, the CAA specifically provides for various means by which the EPA or the public can raise NSR issues to Federal courts. See section III.C.3.b of this preamble for additional information.

¹⁹⁵ See section 3.4 of the RTC.

¹⁹⁶ See section 3.5.2 of the RTC.

process would inevitably lead to further delays that would be contrary to the statutory timelines in title V and title V's overall purposes.

Once a permitting authority has proposed a title V permit, Congress provided the EPA with only 45 days to review a proposed title V permit, followed by a 60-day period for the public to petition the Agency to object, followed by a 60-day period for the Agency to rule on a petition to object.¹⁹⁷ These brief title V review periods are inconsistent with an in-depth and searching review of potentially every source-specific preconstruction permitting decision that has been made by the permitting authority. By contrast, available title I review mechanisms—State court appeals and enforcement actions—are not subject to the same time constraints, allowing more time for development and consideration of NSR permitting decisions.

In addition to time constraints, the title V permitting and petition processes involve fewer opportunities to develop the factual record necessary for a complete review of complex NSR permitting issues. For example, by the time the EPA receives a title V petition, the Agency's review is generally limited to the record developed by the permitting authority.¹⁹⁸ By contrast, some State permit appeal and enforcement processes provide more in-depth oversight than title V could afford. Some States have administrative appeal processes that enable additional factual development before a final decision is reached on the permit. In addition, "unlike the permitting process, the enforcement process allows for discovery, hearings, cross-examination of witnesses, and expert testimony," all of which aid the fact-finder in deciding whether major or minor source preconstruction requirements apply to a facility or whether such requirements were correctly established.¹⁹⁹

Moreover, once a title V petition is filed, there are no formal opportunities for other affected parties, such as the permitted source or the State permitting authority, to directly participate in the review process; their opportunity to develop their position occurs earlier in the permitting process.²⁰⁰ These other affected stakeholders have more procedural safeguards in State appeal processes and enforcement actions than in the title V petition process. For

example, they may be parties to the action and appear with the opportunity to contest points raised by public challengers through briefs or other filings. Overall, title V oversight processes contain fewer mechanisms than title I oversight processes to fully consider and resolve complex NSR issues.²⁰¹

Title V's limited effectiveness in addressing NSR issues is compounded by the fact that title V permits must be renewed every five years. This fact, along with the EPA's longstanding position that all aspects of a title V permit are subject to review during renewal permit proceedings,²⁰² gives rise to the possibility that, in the absence of the Agency's approach, interested parties may seek to use title V oversight tools to review long-past NSR permit decisions. For example, in the 2016 *PacifiCorp-Hunter I* petition that precipitated the EPA's current interpretation, certain interest groups challenged an NSR applicability decision made nearly 20 years prior. Given State and Federal record retention schedules, staff turnover at State permitting authorities, and similar practical constraints associated with the passage of time, it may simply be impossible in a title V permitting action for a State to re-create a complete, defensible administrative record to support complex, substantive NSR permitting decisions, particularly those made long ago. Instead of pursuing challenges to NSR permitting decisions when a State incorporates a preconstruction permit into a title V permit or during subsequent title V renewals, interested parties can obtain more direct and timely relief through State permit appeals and enforcement actions at the time a title I permit is issued.

These constraints impact not only the EPA and State permitting authorities but also interested members of the public. Some commenters suggested that the title V petition process is simpler and

less expensive, and thus more accessible to the public, than title I oversight tools.²⁰³ But as the same commenters acknowledged, there are a number of limitations on the public's ability to effectively use the title V petition process to address NSR issues.²⁰⁴ Notably, Congress placed the burden on petitioners to demonstrate to the EPA's satisfaction that a title V permit does not satisfy the CAA.²⁰⁵ In other words, in situations in which NSR issues are properly within the scope of the EPA's title V review, the Agency is not required to undertake an exhaustive independent review of a State's NSR decisions. Instead, petitioners are required to provide sufficient evidence to the EPA to demonstrate that the State's NSR permitting decisions did not comply with its SIP-approved regulations or that the State's exercise of discretion under such regulations was unreasonable or arbitrary.²⁰⁶ Although this demonstration requirement reduces some of the aforementioned resource burdens on permitting authorities and the EPA, it places these burdens on the public, who are subject to similarly tight timelines and the other procedural limitations discussed in the preceding paragraphs (including limitations on the public's access to data). As a result of these constraints, combined with the complexity of NSR permitting decisions, it has historically been relatively uncommon for petitioners to successfully demonstrate that an NSR-related deficiency warrants the EPA's objection to a title V permit.²⁰⁷ As discussed throughout this preamble, interested parties would be better served to develop any challenges to NSR permitting decisions using the title I process.

Title V mechanisms are poorly suited not only for considering NSR-related issues, but also for resolving NSR-related issues. The relief that the EPA can provide through title V to correct an NSR deficiency is limited and indirect. When the EPA objects to a title V permit on the grounds that NSR requirements were not properly established by a State,

²⁰¹ See *Env't Integrity Project*, 969 F.3d at 545–46 ("We are persuaded by the agency's contrasting Title V against Title I's more detailed procedures for in-depth oversight of case-specific permitting decisions. Such permitting decisions follow state appeals or enforcement actions authorized by other provisions of the Act, including citizen suits under Title III. Those mechanisms are better structured to provide agency and citizen oversight of preconstruction permitting. . . . Title V contains none of the procedures that would guide those challenges, as Titles I and III do. . . . And those avenues provide more time for development and consideration of the potential issues." (internal citations and quotations omitted)).

²⁰² See, e.g., *In the Matter of Wisconsin Public Service Corporation, Weston Generating Station*, Order on Petition No. V–2006–4 at 5–7 (December 19, 2007).

²⁰³ See section 3.4 of the RTC.

²⁰⁴ See section 3.4 of the RTC.

²⁰⁵ 42 U.S.C. 7661d(b)(2).

²⁰⁶ See, e.g., *Appleton Order* at 5.

²⁰⁷ In addressing individual title V petitions between 1997 and 2017, the EPA rarely engaged with the merits of the substantive NSR issues at stake. The EPA denied between 75 and 80 percent of all petition claims implicating NSR issues. When the EPA did grant such claims and object to a source's title V permit, over 80 percent of such objections simply required the State permitting authority to better explain its NSR permitting decision. Viewed another way, only two to three percent of NSR-related claims in title V petitions resulted in the EPA expressly concluding that an NSR permitting decision was substantively flawed.

¹⁹⁷ 42 U.S.C. 7661d(b)(1)–(2).

¹⁹⁸ See 40 CFR 70.13.

¹⁹⁹ *Citizens Against Ruining the Env't v. EPA*, 535 F.3d 670, 678 (7th Cir. 2008).

²⁰⁰ 85 FR 6431, 6442 (February 5, 2020).

such objection does not directly invalidate an NSR permit or stop the initial construction or operation of a particular source authorized by an NSR permit. This is true not only when the NSR permit was issued long ago and construction has already been completed,²⁰⁸ but also when the NSR permit was issued more recently and construction has not yet begun. An EPA objection similarly cannot directly require the State to amend an NSR permit. Instead, the EPA's authority to object to a title V permit reaches only the terms of the title V permit itself. For example, the EPA could direct a State to include a compliance schedule in the title V permit directing the source to apply for a new NSR permit. Resolving such an objection would generally require some type of additional, legally distinct NSR permitting action by the State permitting authority. If the State ultimately failed to update the title V permit in a manner sufficient to resolve the EPA's objection, the Agency could assume responsibility to issue the title V permit.²⁰⁹ But even so, the EPA would remain unable to directly change the terms of the underlying NSR permit or to issue a new NSR permit to the source without first pursuing title I-based oversight authorities.²¹⁰ Thus, no matter what the EPA might do with respect to a title V permit, the Agency lacks title V-based authority to directly intercede and fix issues in NSR permits.

Certain public commenters downplayed these limitations, highlighting examples in which public involvement during the title V

permitting process provided an impetus for substantive NSR-related permit changes.²¹¹ But as these commenters admit, in each of the circumstances described, other non-title V mechanisms were used to actually correct the potential NSR deficiencies. The EPA understands that concerns raised during a title V permitting process, whether raised by the public or the EPA, might ultimately motivate a permitting authority or permittee to address NSR permitting defects through NSR permitting channels.²¹² But the point remains: title V oversight tools provide only indirect means of encouraging NSR-related changes and this limitation shows that the title V permitting process was not designed to be the primary mechanism to address perceived deficiencies related to NSR permitting.

Because title V oversight tools provide an ill-suited forum for considering and resolving the complex problems associated with NSR permitting, title V permitting authorities and the EPA should only consider whether the terms and conditions of an NSR permit have been properly included in a title V operating permit and whether there is sufficient monitoring, recordkeeping, and reporting to assure compliance with those terms and conditions. It is more efficient for State permitting authorities, the public, and the EPA to focus on these core title V issues, which are more clearly redressable through title V oversight tools, when preparing title V permits, challenging title V permits, and reviewing title V permits.

c. Emphasizing Title I Avenues of Review, Respecting Finality, and Fostering Certainty in Title I Permitting Decisions

As explained in the preceding subsection, the title I permitting process (and other oversight opportunities under titles I and III of the CAA) is better suited to address public concerns with NSR issues than the title V permitting process. The EPA's approach not only recognizes the limitations on using title V to review NSR issues, but is also consistent with the importance of public involvement in the title I permitting process to address these issues. This approach encourages interested parties to engage contemporaneously at the State level to

appeal preconstruction permitting decisions that they believe to be incorrect.

During the time period in which the EPA nominally considered the merits of NSR issues through the title V permitting and petition process in certain circumstances, the Agency observed that many petitioners would only raise NSR-related concerns through the title V process and would not seek relief through title I mechanisms. By doing this, interested parties bypassed an available public participation opportunity and denied the State an opportunity to hear and remedy public concerns contemporaneous with the State action. Moreover, given the inherent difficulty in demonstrating NSR permit flaws and the lack of effective relief available through the title V permitting process, use of title V (rather than NSR appeal processes) may have ultimately been less effective at fostering sound NSR permitting decisions. The EPA considers it better policy to encourage the public to use title I processes to address NSR-related concerns at the time these permits are issued and to reserve the title V permitting process for issues that may be more effectively addressed through title V authorities (e.g., monitoring).²¹³

Declining to review title I permitting decisions during the title V process avoids duplication and inefficiency, respects the finality of NSR permitting decisions that are subject to public notice and the opportunity for comment and judicial review, and acknowledges regulated entities' need for certainty when investing in the construction and modification of sources.

The availability of public notice, the opportunity for comment, and the opportunity for judicial review of underlying NSR permit actions weigh heavily against the need to repeat all or some of these procedures through title V permitting. The EPA's approach avoids an unnecessary and inefficient "second bite at the apple" along with a potentially unlimited number of additional "bites" each time a title V permit is reviewed.

The EPA's approach respects the finality of a permitting authority's title I permitting decisions, provided such decisions were made with the requisite level of formality, consideration, and public process (i.e., issued under title I authorities following public notice and

²⁰⁸ As explained previously, the EPA's regulations allow sources subject to major NSR preconstruction permitting requirements to apply for a title V permit within one year after beginning operation (well after beginning and completing construction), in most cases. 40 CFR 70.5(a)(1)(ii), 71.5(a)(1)(ii). The CAA similarly allows sources to apply for a title V permit up to 12 months after becoming subject to title V. 42 U.S.C. 7661b(c). This shows that Congress did not intend for the title V permitting process to be used to prevent the construction of a source authorized under title I.

²⁰⁹ 42 U.S.C. 7661d(c). The EPA could also assume responsibility to issue title V permits within a jurisdiction after determining, for example, that the State failed to properly administer and enforce its title V program. See 42 U.S.C. 7661a(i)(4); 40 CFR 70.10(b)(4), (c), 71.4(c).

²¹⁰ To directly mandate changes to an NSR permit issued by a State under an EPA-approved SIP, the Agency would need to pursue title I remedies. For example, a court order following a State court appeal or an enforcement action could directly mandate that the State permitting authority revise specific NSR permit terms or issue a different type of NSR permit. Alternatively, if the EPA wanted to directly issue an NSR permit to a source that was previously subject to a State permitting authority's jurisdiction, the Agency would first have to issue a "SIP Call" under CAA section 110(k) and ultimately impose a FIP, after which the Agency would retake the legal authority to issue NSR permits.

²¹¹ See section 3.5.2 of the RTC.

²¹² Another commenter provided examples in which a State permitting authority voluntarily used an NSR permitting process to address title V-related problems identified in EPA objections to title V permits. The willingness of some permitting authorities to use the NSR permitting process to address title V-related problems is beside the point. See section 3.4 of the RTC.

²¹³ As explained in section IV.B.5.a of this preamble, if there are no opportunities to participate in title I permitting decisions, title V will serve as a backstop to ensure that the public has an opportunity to comment on whether a source's title V permit assures compliance with the relevant NSR-related requirements of the SIP.

the opportunity for comment and judicial review). By contrast, allowing NSR permitting decisions to be reviewed using the title V permitting process would significantly undermine the finality of State title I permitting decisions. This would decrease the relative importance of States in the system of cooperative federalism established by Congress.

The EPA finds that the best policy (and best reading of the CAA as a whole, as described in section III.C.3 of this preamble) is that, where available, interested members of the public should directly participate in State preconstruction permitting decisions and, if necessary, seek review in State court immediately thereafter. This is a more direct and timely way to identify and correct errors in preconstruction permits. It provides for such review before sources reasonably begin relying on those permits to invest substantial resources into a facility. Thus, the EPA's approach fosters certainty and avoids upsetting settled expectations and reliance interests of sources that have obtained a legally enforceable preconstruction permit under title I. By contrast, under the EPA's former approach, stakeholders would always face the possibility that the Agency could identify errors with the State preconstruction permitting decisions during title V permit issuance or renewal. In such a circumstance, discovery of perceived errors could come years after the fact, long after a source is constructed and operating, either when a title V permit first incorporates the relevant NSR requirements, or decades after the fact, after the title V permit is subsequently renewed multiple times. In fact, this appears to be precisely the outcome desired by some environmental and other interest groups, who argued in comments that there are advantages to raising substantive NSR concerns years after a preconstruction permit is issued.²¹⁴ The EPA appreciates these concerns, but they do not provide a compelling reason to change the Agency's approach. Using the title V permitting process to address such issues years after the fact would significantly increase uncertainty for the regulated community. It would also increase the burden on the EPA, State permitting authorities, and the courts to consider such long-distant issues. As summarized by the Fifth Circuit in examining EPA's current approach:

EPA's position also respects the finality of the preconstruction permitting decision. The agency reasoned that it would be inefficient

to allow review via the Title V permitting process even after the preconstruction permits had been subject to public notice and comment and an opportunity for judicial review. And those avenues provide more time for development and consideration of the potential issues. We are persuaded that EPA's construction of Title V respects the finality of state preconstruction permitting decisions, which is consistent with the Act's cooperative federalism. Petitioners' contrary view of Title V would allow a federal agency to upset states' permitting decisions with no clear mandate from Congress to do so.²¹⁵

D. Application of the EPA's Approach to Different Fact Patterns

Determining the extent to which title V should be used to address NSR-related requirements of the SIP requires a fact-specific, case-by-case analysis of multiple variables associated with both title I and title V permitting. This subsection of the preamble explores the situations in which NSR-related applicable requirements of the SIP would be conclusively established through the NSR process and thus not subject to further review through title V. In general, the EPA's framework applies similarly regardless of: (i) the stage of the title V permitting or oversight process at issue; (ii) the NSR permit's origin (*i.e.*, from a SIP or a FIP), (iii) the type of substantive NSR requirement at issue (*e.g.*, NSR permit terms or major NSR applicability); and (iv) the procedures by which the NSR permit is incorporated into the title V permit (*e.g.*, sequentially or concurrently issued permits).

This subsection of the preamble also addresses the limited situations in which the title V process could be used to further address or define the requirements of the SIP, such as if no NSR permit has been issued at all, an NSR permit has been issued without public notice and the opportunity for comment and judicial review, or limited situations in which there is a substantive overlap between title V and NSR requirements.

As appropriate, the EPA addresses significant comments on each of these topics within the relevant subsections below. In the January 2024 Proposed Rule, the EPA solicited comment on three "alternative approaches" that would have involved using title V permits to address substantive NSR issues in additional, targeted situations. At the same time, the EPA expressed the Agency's view that the Agency's existing interpretations and policies reflect the best approach from both a legal and policy standpoint, and that

each of the alternative approaches suffers from legal and/or policy drawbacks. Comments from permitting authorities and regulated entities almost universally opposed these alternatives.²¹⁶ Comments from environmental groups expressed relative support for some of the alternatives but did not provide compelling legal or policy reasons to adopt any of these alternative approaches.²¹⁷ Thus, as explained further in the following subsections, the EPA is not finalizing any of those alternative approaches or other alternative approaches that commenters suggested but which the Agency did not propose.

1. Different Stages of the Title V Permitting and Oversight Process

The EPA's views regarding the NSR-title V interface have primarily been discussed in the context of one specific oversight tool: the EPA's responses to title V petitions. This final rule explicitly codifies the scope of issues that would be within the scope of the EPA's review in responding to title V petitions. However, the concepts underlying the EPA's current approach, as well as this final rule, are not confined to title V petitions but extend to other aspects of title V permitting. Specifically, the EPA's approach is equally relevant: (i) when prospective permittees prepare title V permit applications; (ii) when permitting authorities (including the EPA, where applicable) develop title V permits and respond to public comments on draft title V permits, (iii) when the Agency reviews and decides whether to object to proposed title V permits during the 45-day review period; (iv) when the Agency considers reopening title V permits for cause; and (v) when the Agency considers other programmatic oversight actions under, for example, 40 CFR 70.10.

2. Different Origins of NSR Permits (SIP or FIP)

As described earlier in this preamble, the EPA's approach to reviewing NSR issues through title V diverged in the late-1990s depending on whether the underlying NSR permit was issued under a State's EPA-approved SIP rules (which the Agency would review) or EPA-promulgated FIP rules (which the Agency would not review). At the time, this distinction was based on the differing routes to review such NSR permitting actions; appeals of SIP-based NSR permits were reviewed through the State court system, while appeals of FIP-

²¹⁴ See section 3.4 of the RTC.

²¹⁵ *Env't Integrity Project*, 969 F.3d at 546 (internal citations and quotations omitted).

²¹⁶ See section 3.5.2 of the RTC.

²¹⁷ See section 3.5.1 of the RTC.

based NSR permits proceeded through the EAB process and Federal court system.

Rather than presenting a basis to treat SIP-based and FIP-based title I permits differently, these NSR permit appeal pathways highlight why they should be treated similarly. Both SIP-based and FIP-based appeal pathways promote public involvement and ensure the substantive validity of the underlying NSR permitting decisions. Both pathways are similar to those used to establish (and, if desired, challenge) other types of applicable requirements of the CAA.²¹⁸ The fact that one pathway leads to State courts and the other pathway leads to Federal courts simply reflects the system of cooperative federalism established by Congress for the NSR program.²¹⁹

Overall, the EPA does not view the difference between NSR-based requirements established pursuant to a SIP and NSR-based requirements established pursuant a FIP to be meaningful insofar as title V is concerned. Both processes effectively establish and define the NSR-related requirements of title I for title V purposes. Accordingly, this rule codifies the EPA's current approach, which does not differentiate between NSR permits issued pursuant to a SIP or a FIP.²²⁰

The EPA observes that the majority of NSR permits issued across the Nation are now issued under EPA-approved SIP rules (as opposed to FIP rules). For convenience and brevity, throughout this preamble the EPA refers to NSR permits issued pursuant to a SIP or requirements of a SIP. Each of those references is intended to apply equally to NSR permits and requirements associated with a FIP.

3. Different Types of NSR Requirements (Permit Content, Applicability, etc.)

The EPA's current approach, as reflected in this final rule, applies regardless of the types of NSR requirements involved. Once an NSR permit has been issued under EPA-approved (or EPA-promulgated) title I rules, with public notice and the opportunity for comment and judicial review, that NSR permit defines all

NSR-related requirements of the SIP that are applicable to the construction of the new source or modification that was the subject of the permit.

The terms of both major and minor NSR permits are applicable requirements that must be included in title V permits.²²¹ These permit conditions are not derived or created within or through the title V process. Thus, the title V permitting process may not be used to reevaluate the terms or content of such major or minor NSR permits (e.g., whether the permit limits reflect BACT). Notably, this construct extends beyond simply not reevaluating the contents of NSR permits to other questions concerning NSR-related requirements of a SIP that may be relevant to a particular preconstruction authorization, including whether additional requirements of the SIP (e.g., major NSR requirements) should have been applicable to the construction, and questions regarding other types of SIP requirements that establish preconditions for NSR permit issuance (e.g., whether the permitting authority correctly determined that the construction would not cause or contribute to a violation of the NAAQS).

a. NSR Permit Content

When a permitting authority authorizes construction by issuing either a major NSR permit or minor NSR permit, it establishes emission limits and other standards necessary to satisfy the SIP requirements relevant to either major or minor NSR. For example, PSD permits must include emission limits reflecting BACT; NNSR permits must include emission limits reflecting the Lowest Achievable Emissions Rate (LAER), and minor NSR permits may contain analogous requirements depending on the terms of the SIP. Although SIPs contain general criteria

for establishing those limits, individual permit actions are necessary to specifically define the limits for each source subject to NSR. Once these limitations are established through the NSR permitting process, the title V process may not be used to reevaluate whether the resulting limits reflect the general SIP requirements related to BACT, LAER, or other similar requirements.

This framework for NSR permit content appears to be a relatively uncontroversial aspect of the EPA's approach.²²² However, one set of public comments from environmental and other interest groups presented extensive arguments regarding a narrow fact pattern related to NSR permit content.²²³ Specifically, these commenters argued that the EPA's approach would allow NSR permits to contain allegedly illegal exemptions from emission limits during periods of startup, shutdown, and malfunction (SSM). Commenters presented a number of reasons why this particular type of alleged NSR permit defect should be subject to review through the title V process. These comments were substantively identical to arguments that the EPA recently considered in a title V petition response concerning the Torrance Refinery in Torrance, California.²²⁴ The EPA's petition response order explains, in detail, why this type of issue is no different from any other type of claim alleging that the terms of an NSR permit are not stringent enough to satisfy the legal requirements governing the issuance of an NSR permit and therefore why such issues are not subject to review through the title V process. The EPA affirms that position in this rule.

b. NSR Applicability

In the January 2024 Proposed Rule, the EPA solicited comment on an alternative approach that would have treated questions about major NSR applicability differently from other

²¹⁸ See section III.C.4.a of this preamble for additional information.

²¹⁹ For additional information about how the EPA's approach to SIP-based NSR permits comports with the structure of the CAA and congressional intent, see sections III.C.2 and III.C.3 of this preamble.

²²⁰ This approach is consistent with the 1992 to present regulatory definition of "applicable requirement," which treated SIP-based and FIP-based requirements the same. See 40 CFR 70.2, 71.2 (definition of applicable requirement, items (1) and (2)) (2025).

²²¹ The EPA's prior regulations reflected this understanding. Since 1992, the definition of "applicable requirement" has included "Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including Parts C or D, of the Act." 40 CFR 70.2 (emphasis added) (2025). This definition included not only the specifically listed major NSR permits (required under parts C or D), but also minor NSR permits issued under a SIP. This language, included in the 1992 final rule, reflects a change from the language in the 1991 proposed rule, which only included major NSR permits. See 57 FR at 32276 (July 21, 1992); 56 FR at 21768 (May 10, 1991). Nonetheless, to provide maximum clarity to the public, the EPA is finalizing a small change to make the inclusion of minor NSR permit requirements more explicit. Note that not every term of every NSR permit is an "applicable requirement" that must be included in a title V permit. Some terms of NSR permits may no longer be applicable because, for example, they are obsolete or extraneous. See *White Paper for Streamlined Development of Part 70 Permit Applications*, 7–16 (July 10, 1995).

²²² Notably, public comments on the January 2024 Proposed Rule opposing the EPA's approach raised fewer concerns and challenges to how the Agency's approach applies to questions about NSR permit content; most adverse comments instead challenged how the Agency's approach applies to questions about major NSR applicability, discussed in the next subsection of this preamble. The EPA also observes that the adverse decision from the Tenth Circuit discussed in section III.A.4 of this preamble did not directly speak to the Agency's treatment of questions regarding NSR permit content; the court's opinion addressed only the Agency's obligations to review questions concerning major NSR applicability under the language of EPA's former regulations as interpreted by the court. See *Sierra Club v. EPA*, 964 F.3d 882 (10th Cir. 2020).

²²³ See section 3.5.1 of the RTC.

²²⁴ See *Torrance Order* at 49–60.

types of NSR issues. Specifically, the alternative would have involved using the title V permitting process to review issues related to major NSR applicability (*i.e.*, whether a source should have received a major NSR permit instead of a minor NSR permit), regardless of whether such questions had already been conclusively decided in the process of issuing a minor NSR permit with public notice and the opportunity for comment and judicial review.²²⁵ The majority of public comments from permitting authorities and regulated entities opposed this alternative for the same reasons that they supported the EPA's overarching approach (as discussed in section III.C of this preamble).²²⁶ The EPA is not finalizing this alternative approach but instead is finalizing this rule as proposed and applying the same approach to all types of NSR issues, including questions about NSR applicability.

Comments from certain interest groups and one State permitting authority argued that the title V process should be used to determine which requirements are applicable to a source, even if it should not be used to second-guess the content of such requirements.²²⁷ Some of these comments stressed the importance or significance of decisions concerning major NSR applicability. Although the EPA appreciates the importance of NSR applicability decisions, their relative importance does not, in and of itself, present a reason to treat such decisions differently from other NSR permitting decisions within the context of title V permitting.

Many of the legal arguments included in adverse comments focused on how the EPA's approach applies to questions regarding major NSR applicability.²²⁸

Commenters cited several statutory provisions within title V that implicitly or explicitly refer to title I permitting requirements, specifically CAA sections 502(a), 502(f), and 504(a). Based on these references, commenters argued that the requirement to obtain a preconstruction permit is an "applicable requirement" of the CAA. Therefore, commenters concluded that the title V permitting process must be used to determine whether major NSR permitting requirements are applicable to a particular construction activity. The EPA disagrees with the commenters' statutory interpretation.

CAA section 504(a) provides that each title V permit must include "conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan."²²⁹ Major NSR requirements, as reflected in a SIP, may indeed be "applicable requirements" covered by this statutory provision, but only if they are applicable to emission units at a stationary source. Thus, the fact that major NSR requirements are contained within a SIP does not resolve the matter at hand. At issue here is whether the title V permitting process is the appropriate forum to resolve questions about applicability, particularly in situations in which questions regarding applicability have already been conclusively resolved through the proper title I channels—an adjudication involving the issuance of an NSR permit. As explained in section III.C of this preamble, the EPA interprets the various statutory provisions to mean that if an NSR permit is issued with public notice and the opportunity for comment and judicial review, that NSR permit establishes all relevant NSR-related requirements of the SIP (whether major or minor NSR) that apply to the

focus of the Tenth Circuit's adverse decision concerning the EPA's former regulations. *See Sierra Club*, 964 F.3d at 893–95.

²²⁹ 42 U.S.C. 7661c(a). CAA section 502(f) adds little of substance beyond the requirements of CAA section 504(a) and merely affirms that requirements similar to section 504(a) must be met for a State to receive partial approval of its operating permit program (in advance of full program approval). *See* 42 U.S.C. 7661a(f). Additionally, CAA section 502(a) provides: "Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification." 42 U.S.C. 7661a(a). To the extent this provision is relevant, it supports the EPA's position regarding the separation of title I and title V obligations. Using the title V process to reevaluate and change an NSR applicability determination that was finalized prior to construction could "alter the applicable requirement of this chapter that a permit be obtained before construction or modification." *Id.*

construction or modification of the source.

Adverse commenters contested this core interpretation, arguing that nothing in the CAA or the Federal NSR regulations makes a State's issuance of a minor NSR permit dispositive of whether major NSR requirements apply to a particular project. Commenters argued that major NSR requirements are self-executing and are not affected by issuance of a minor NSR permit. Thus, according to commenters, even if a minor NSR permit is issued, major NSR requirements in a SIP may still be "applicable requirements" with which a title V permit must assure compliance. Commenters asserted that minor NSR permits cannot define the applicable requirements of the SIP, because doing so would amount to a revision of the SIP without approval into the SIP.²³⁰

The EPA disagrees. Statutory silence on this particular topic does not support the commenters' position.²³¹ Rather, as explained in section III.C of this preamble, the best reading of the multiple statutory provisions at issue, in light of the structure and purpose of title V and of the CAA as a whole, is that the permitting mechanisms approved by the EPA into individual SIPs are the primary forums for determining and conclusively establishing which NSR-related requirements of the SIP are applicable to a particular construction project. Decisions that are made through—and could be challenged through—those title I adjudications should not be subject to further rounds of adjudication and substantive scrutiny in the title V process each time an operating permit is issued or renewed. These title I permitting decisions, including the decision that a minor NSR permit, rather than a major NSR permit, is required for a construction project, do

²³⁰ See section 3.5.2 of the RTC.

²³¹ This statutory silence is not unique to the relationship between minor NSR and major NSR permitting requirements. The CAA does not include express language indicating that issuance of a minor NSR permit is dispositive of whether major NSR requirements apply to a particular project. But the CAA similarly does not include express language indicating that issuance of an NSPS or NESHAP regulation, or approval of a SIP, is dispositive of whether the promulgated or approved regulations satisfy the underlying CAA criteria associated with NSPS, NESHAP, or SIP regulations. It is nonetheless consistent with the best reading of the statute for the EPA determine that such decisions—similar to decisions to issue a minor NSR permit—are dispositive for purposes of determining the "applicable requirements" for title V permitting. As explained elsewhere in this preamble, this title V-based interpretation does not mean such decisions are dispositive in all contexts, and interested parties may use the appropriate title I-based oversight tools to review and, if necessary, challenge such decisions (whether they involve the issuance of a minor NSR permit, the promulgation of NSPS or NESHAP, or the approval of SIP regulations).

²²⁵ The January 2024 Proposed Rule solicited comment on another alternative approach, which would have involved using title V to review questions related to major NSR applicability in situations in which NSR and title V permits were issued concurrently (or within a short period of time). This alternative was essentially a combination of the other two alternative approaches discussed in the January 2024 Proposed Rule. The EPA is not finalizing that combined alternative (or other combinations of alternatives requested by commenters) for the same reasons the Agency is not finalizing the individual alternative approaches.

²²⁶ See section 3.5.2 of the RTC.

²²⁷ See section 3.5.2 of the RTC. This line of reasoning, based on certain statements made when the EPA promulgated the part 70 rules, featured in the Tenth Circuit's interpretation of the prior regulatory definition of "applicable requirement." *See Sierra Club*, 964 F.3d at 893–95.

²²⁸ Thus, much of the general opposition to this rule may be more accurately understood to reflect opposition to this specific element of the rule. See section 3.5.2 of the RTC. Additionally, as noted in section III.B.4 of this preamble, this topic was the

not impermissibly revise the SIP, but rather conclusively establish and define which existing SIP requirements are applicable and how they apply to a given project.

Adverse commenters also argued that determining which requirements are applicable to a source is a core purpose and function of the title V program, as reflected in the legislative history and statements made by the EPA when promulgating the initial part 70 regulations.²³² The EPA acknowledges that identifying which CAA requirements apply to a source (*i.e.*, which requirements must be included in the title V permit) is a key function of the title V permitting process. This is necessary to fulfill the statutory requirement that title V permits assure compliance with all applicable requirements.²³³ However, to satisfy this obligation to identify all applicable requirements, it is only necessary and appropriate to use title V to substantively address questions regarding applicability if such questions require further site-specific factual analysis because such questions have not already been resolved by the underlying applicable requirement itself. In this respect, NSR applicability questions should be treated no differently from questions related to the applicability of different types of CAA requirements.

For example, in most cases, it would be appropriate to use the title V permitting process to determine whether (or which specific requirements within) a generally applicable NSPS, NESHAP, or SIP requirement applies to a particular source or piece of equipment. Likewise, title V could be used to address whether minor or major NSR requirements are “applicable requirements” that must be included in a title V permit if such a decision had not already been conclusively established through adjudication during a title I permitting process.

By contrast, if the applicability of a SIP requirement is established on the face of the SIP itself (*e.g.*, in a source-specific SIP provision established through rulemaking), the EPA would not substantively reevaluate this question through title V. If a minor NSR permit has been issued following public notice and the opportunity for comment and judicial review, major NSR applicability questions are similar to this example. That is, if an NSR applicability determination has already been made through the title I adjudication process (*e.g.*, if a State

decides that major NSR does not apply to a new or modified source and therefore issues a minor NSR permit, and the EPA and the public have an opportunity to contest that decision) that adjudication conclusively establishes the relevant requirements of the SIP that are applicable to the source or project. Any further action by the EPA through the title V adjudication process would involve reconsidering that final title I adjudication relevant to applicability. That would be inconsistent with how the EPA treats applicability questions that are established by rulemaking under other CAA programs. Overall, the EPA considers it more consistent with the structure of the CAA—specifically, Congress’s design of the relationship between title V and other CAA programs—and better policy to afford NSR applicability decisions made through a title I-based adjudication the same finality as applicability decisions under other CAA programs that are established by rulemaking. Title V does not provide a second opportunity to adjudicate such questions.

The EPA’s approach ensures that title V permits function consistently not only as to NSR requirements and other types of CAA requirements, but also as to different types of substantive NSR questions. Despite some differences between questions regarding NSR permit content and questions regarding NSR applicability, these two types of questions are fundamentally similar and functionally intertwined. They both involve fact-specific decisions about which specific requirements are necessary to implement the general SIP requirements related to NSR, and both of these decisions are made contemporaneously through a dedicated title I process.

SIPs contain general criteria and thresholds for determining the applicability of different NSR-related SIP requirements and for defining what those requirements must entail. Determining which specific requirements (*e.g.*, emission limits) apply to individual emission units requires adjudication through a fact-specific permitting exercise. When a permitting authority authorizes construction by issuing either a minor NSR permit or major NSR permit, it decides which NSR-related SIP requirements are applicable to different aspects of the project on a pollutant-by-pollutant basis. The resulting NSR permit might include PSD requirements (*e.g.*, BACT) for some pollutants, NNSR requirements (*e.g.*, LAER) for other pollutants, and/or minor NSR requirements for other pollutants. In

this manner, within a single NSR permit action, questions about the applicability of different NSR requirements are inextricably linked with questions about the content of the NSR permit (*i.e.*, the resulting emission limits). Further, questions about NSR permit content and NSR applicability are fundamentally similar because both questions address whether permit limits are set at a level stringent enough to satisfy the relevant general SIP requirements and both questions require a highly technical application of general SIP criteria to specific circumstances at the source.²³⁴

If an NSR applicability determination has already been adjudicated through the NSR process and a minor NSR permit is issued, any further action through title V related to major NSR applicability would likely require changes to emission limits and other applicable requirements established through that NSR process (since major NSR requirements are generally more stringent than minor NSR requirements). Using title V to reevaluate NSR applicability questions would inherently upset not only the NSR applicability decisions, but also NSR permit content decisions. The EPA does not view this result as consistent with the purpose of title V.

In summary, the NSR permitting process involves a merger of two concepts that are typically separate under other CAA programs: (i) developing emission limitations and standards, and (ii) determining which limitations are applicable to an individual source. In general, title V was designed for the latter, not the former. But if both steps occur in NSR through the same final adjudication, there is no need to adjudicate these matters again in title V. Once a title I-based adjudication is completed and a final NSR permit is issued, the limitations and other terms of that permit establish all relevant NSR-related requirements of the SIP (whether major or minor NSR) that apply to the construction or modification of the source. The terms of that NSR permit should be incorporated into the title V permit without further review, meaning no further review of that permit’s content or of the decision to include minor NSR requirements, as opposed to major NSR requirements, within the permit.

²³⁴ For example, questions whether (i) an emission limit that purports to satisfy BACT should instead be made more stringent to satisfy BACT are similar to questions whether (ii) an emission limit that purports to satisfy minor NSR requirements should instead be made more stringent to satisfy BACT.

²³² See section 3.3 of the RTC.

²³³ 42 U.S.C. 7661c(a).

c. Other Preconditions Associated With the Issuance of an NSR Permit

Permitting authorities satisfy other types of NSR requirements in a SIP when issuing NSR permits. One requirement that frequently arises in the context of title V petitions involves determining that the new source or modification will not cause or contribute to a violation of the NAAQS. To satisfy this requirement, the State must undertake a fact-specific analysis through the NSR permitting process. This analysis may involve atmospheric dispersion modeling that may result in the imposition of additional permit terms that restrict emissions to protect the NAAQS.²³⁵ In all cases, the NSR permitting process is designed to ensure that the NSR permit ultimately contains specific conditions as necessary to satisfy the NSR SIP requirement. Similar principles hold true for a variety of other substantive NSR requirements in SIPs, including a variety of requirements that are unique to NNSR.

Overall, substantive issues concerning NSR permit content, NSR applicability, and other NSR requirements are fundamentally similar. Each of these decisions requires a State to derive specific requirements for an individual source from general criteria in the NSR portion of the SIP, such as requirements to include limits reflecting certain technology-based criteria, to issue major NSR permits to projects meeting certain applicability criteria, or to ensure that permits meet certain criteria relevant to the NAAQS. Each of these determinations involve relatively complex, fact-specific decision making, which occurs during the NSR permitting process. Once that process concludes, the State issues an NSR permit that contains these source-specific applicable requirements of the SIP for the construction project being authorized. Thus, under the EPA's approach, all types of different NSR-related issues associated with authorizing construction are generally treated the same for purposes of title V review. The merit and validity of these substantive requirements are subject to review and correction through the available mechanisms for appeal of the NSR permit, and need not be further reviewed by a State permitting authority or the EPA through title V.

²³⁵ Not all NSR-based SIP requirements related to the NAAQS result in the imposition of requirements that apply to emission units at a source. As discussed previously, only those requirements that "apply to emissions units in a part 70 source" qualify as "applicable requirements" for title V purposes. 40 CFR 70.2; see 40 CFR 71.2.

Procedural requirements associated with the issuance of NSR permits are also not directly reviewable through title V for reasons distinct from the interpretation of "applicable requirements" at issue in this rule. Under the statute and the EPA's existing regulations, the Agency can object to a title V permit that does not comply with "applicable requirements" of the CAA or requirements of part 70, including procedural requirements of part 70.²³⁶ Procedural requirements associated with NSR permit issuance are not "applicable requirements" for title V purposes because they do not "apply to emissions units at a part 70 source."²³⁷ Rather, they dictate the behavior of permitting authorities in issuing NSR permits. Procedural requirements associated with NSR permit issuance are also not part 70 requirements because they are not related to title V or the part 70 regulations governing the issuance of a specific title V permit.²³⁸ Thus, alleged violations of procedural requirements associated with NSR permit issuance would not provide an independent basis for the EPA to object to a title V permit that incorporates such an NSR permit.²³⁹ Nonetheless, although procedural flaws with the issuance of an NSR permit would not provide a direct basis for the EPA to object to a title V permit, such procedural issues could impact whether other more substantive NSR issues should be reviewed through the title V process. See section III.D.5.b of this preamble for further information.

4. Different Procedures for Incorporating NSR Permits Into Title V Permits

In most cases, the EPA's approach applies in the same way regardless of the procedures by which a State permitting authority incorporates the terms of an NSR permit into a title V permit. In other words, as long as a permitting authority formally issues an NSR permit that has the force of

²³⁶ See 42 U.S.C. 7661d(b); 40 CFR 70.8(c)(1), 70.12(a)(2), (a)(2)(ii) through (iv).

²³⁷ 40 CFR 70.2.

²³⁸ Notably, the EPA's authority to object under CAA section 505(b) extends only to the particular proposed title V permit before the Agency for review; the CAA does not provide for the EPA's objection to NSR permits. The references within CAA section 505(b) to "any permit," "the proposed permit," "a permit," "the permit," etc. apply to the title V permit that a permitting authority proposes to issue and transmits to the EPA under CAA section 505(a)(1). 42 U.S.C. 7661d(a), (b)(1), (b)(2); see also 40 CFR 70.8(c)(1), (d) (similar language and cross-references as the statute), 70.12(a)(1) (requirement that petitioners identify the specific title V permit action on which the petition is based), 70.12(a)(2) (petition claims must be based on alleged deficiencies in the "permit process" associated with the title V permit being petitioned).

²³⁹ See *Century Aluminum Order* at 19–20.

law²⁴⁰—and regardless of whether the NSR and title V permits are issued sequentially, concurrently, or even in the same physical document—the unique title V oversight tools may not be used to review the NSR-related decision making underlying that NSR permit.

The EPA's approach is most straightforward if an NSR permit is issued in final form prior to the initiation of any title V permitting action or if an NSR permit has already been included in a previous version of a title V permit that is up for renewal. This is the default approach, as the EPA's regulations allow regulated entities subject to major NSR preconstruction permitting requirements to submit a title V permit application within one year after beginning operation, in most cases.²⁴¹ Additionally, if new requirements become applicable to a source, including by virtue of a change to the source (e.g., minor NSR requirements), the source's title V permit would need to be reopened to include such requirements within 18 months or at the next permit renewal, depending on the amount of time left before the title V permit expires.²⁴² Regardless of the specific timing, it should be straightforward in these instances to simply incorporate the applicable requirements from the previously finalized NSR permit into the title V permit.

Not all NSR and title V permits are processed sequentially; some are issued concurrently. It is important to recognize that the NSR and title V permitting programs are based on distinct Federal and State statutory and regulatory authorities and feature significant differences in both their substantive and procedural requirements. However, the two programs feature some overlapping public participation requirements, including requirements for public notice, the opportunity for public comment, and the opportunity for judicial review. Accordingly, some State permitting authorities choose to streamline permit issuance by conducting one process that satisfies both sets of overlapping requirements.

²⁴⁰ Because it is the NSR permit that establishes the "applicable requirements" for title V purposes, the EPA has long explained that title V permits do not supersede title I permits, which must remain in effect to authorize construction and/or operations, even after the terms of a title I permit are incorporated into a title V permit. See, e.g., 69 FR 10167, 10170 (March 4, 2004); 66 FR 64039, 64040 (December 11, 2001); Letter from John S. Seitz, EPA, to Robert Hodanbosi & Charles Lagges, STAPPA/ALAPCO, Encl. A at 4 (May 20, 1999).

²⁴¹ 40 CFR 70.5(a)(1)(ii); 40 CFR 71.5(a)(1)(ii).

²⁴² 40 CFR 70.7(f)(1)(i); 40 CFR 71.1(f)(1)(i).

Based on the EPA's experience, the mechanisms that State permitting authorities use to streamline the permitting processes vary considerably across the Nation. Different streamlining mechanisms have received various labels, including "combined," "merged," or "unified" permits.²⁴³ This preamble addresses three of the more common forms of streamlining. Some permitting authorities streamline NSR and title V permit issuance by processing the two permits concurrently, subject to overlapping public participation opportunities.²⁴⁴ There are two basic variations of concurrent permit issuance. First, the permitting authority could concurrently issue the NSR permit as a standalone document containing only NSR permit terms and also issue a title V permit containing all existing title V permit terms and the new NSR permit terms. Second, the permitting authority could issue one permit document that contains both the NSR permit and title V permit conditions. As an alternative to concurrent permit issuance, some permitting authorities employ a third mechanism, whereby the NSR permit is first issued with enhanced procedural and substantive requirements (based on title V requirements), then the NSR permit requirements are subsequently incorporated into a title V permit through an administrative amendment process that does not require public participation.

a. Concurrent Permit Issuance

In the January 2024 Proposed Rule, the EPA solicited comment on an alternative approach that would have treated permits processed under the first two streamlining mechanisms—NSR permits processed concurrently with, or in the same document as, title V permits—differently than NSR and title V permits that are processed sequentially. Public comments almost universally opposed this alternative.²⁴⁵

²⁴³ The EPA considers it more appropriate to refer to the results of such streamlining as a combined "permit," as opposed to a combined "program." This is because, although a single permit document may be used to satisfy both NSR and title V permitting requirements, the requirements of the NSR and title V programs are legally distinct. See *Riverview Order* at 25–26.

²⁴⁴ This process is similar to another mechanism for permit streamlining (not directly implicated by this rulemaking), under which a permitting authority may consolidate two procedures associated with title V permit issuance: the public's review of a draft permit and the EPA's review of a proposed permit. See 40 CFR 70.8(a)(1)(ii).

²⁴⁵ See section 3.5.4 of the RTC. One comment expressed support for a version of this alternative allowing the EPA to review NSR issues for up to five years, based on principles related to the statute of limitations. Another set of comments opposed

Within the January 2024 Proposed Rule, the EPA noted that it was not clear what legal basis would support such differential treatment based exclusively on the timing of NSR and title V permit issuance. One set of commenters attempted to offer "legal support" for this alternative, but those comments did not actually identify any statutory or regulatory basis for differentiating these situations or rebut the EPA's legal analysis presented in the January 2024 Proposed Rule (explained further below). Therefore, the EPA is not moving forward with this alternative.

As discussed earlier in this preamble, the relationship between NSR and title V permits is based on the EPA's interpretation of the statutory and regulatory term "applicable requirements" of the CAA, which reflects requirements that are conclusively established under other non-title V CAA programs. This concept is time-neutral, such that requirements that are properly established under another CAA program—regardless of when they are established—define the applicable requirements that must be included in a title V permit. To the extent the EPA has addressed timing considerations, it has been to ensure that the definition of "applicable requirement" is overinclusive with respect to requirements that have already been promulgated but are not yet effective.²⁴⁶ The alternative approach (that the EPA is not finalizing) would have entailed the opposite position, excluding recent NSR permitting decisions from establishing applicable requirements just because they were undertaken more recently. That approach would conflict with the EPA's treatment of applicable requirements under all other types of CAA programs. The EPA does not consider such an approach compatible with the structure and purpose of title V.²⁴⁷

this alternative but nonetheless characterized the alternative as preferable to the EPA's existing approach. The January 2024 Proposed Rule solicited comment on another alternative approach, which would have involved using title V to review questions related to major NSR applicability in situations in which NSR and title V permits were issued concurrently (or within a short period of time). This alternative was essentially a combination of the other two alternative approaches discussed in the January 2024 Proposed Rule. The EPA is not finalizing that combined alternative (or other combinations of alternatives requested by commenters) for the same reasons the Agency is not finalizing the individual alternative approaches.

²⁴⁶ See 40 CFR 70.2 (definition of "applicable requirement").

²⁴⁷ Commenters arguing against the EPA's time-neutral approach provided little support beyond a recitation of the Agency's previous statements indicating a reluctance to use title V to review long-past NSR decisions (summarized in section III.A.2

As noted earlier in this subsection, there are two approaches to concurrent or contemporaneous permit issuance. The first approach—featuring separate NSR and title V permit documents issued at or around the same time—is undoubtedly the clearest of the various streamlining approaches. There can be no mistaking that there are two legally distinct permit actions, and it is simple to identify which requirements are based on the NSR regulations (and thus not subject to additional review through title V).²⁴⁸

The second approach—featuring a single combined NSR and title V permit document—is also viable, provided the underlying authority for the NSR aspects of the permit document are readily ascertainable from the permit(s) and permit record(s).²⁴⁹ As explained in detail in several petition orders, even if NSR and title V permit authorizations are contained within one permit document, such a permit action actually reflects two legally distinct permit actions by the State: (i) a preconstruction permit issued under the EPA-approved title I SIP regulations governing NSR, and (ii) an operating permit under EPA-approved part 70 regulations governing title V.²⁵⁰ Again, NSR permits and title V permits are based on differing statutory and regulatory schemes, and although the two programs feature similarities, they also feature important substantive and procedural differences. A permitting authority's decision to increase administrative efficiency by issuing a single permit document to satisfy the legal requirements of two distinct permitting programs does not alter the applicability of requirements associated with each respective program. For example, substantive requirements unique to NSR would not be applied to establish or evaluate non-NSR-based title V permit terms. Likewise, procedural requirements unique to title V (including the EPA's objection

of this preamble). Neither those prior EPA statements nor these adverse comments explain how such a time-dependent approach would work within the statutory or regulatory provisions related to applicable requirements. Additionally, one of the commenters arguing against the EPA's time-neutral approach appeared to concede that the relevant CAA requirements are time-neutral. Most other commenters who addressed this issue supported the EPA's time-neutral approach.

²⁴⁸ See *Humboldt Order* at 10–12, *Nucor Convent Order* at 20; *Commonwealth Order* at 13–14; *South Louisiana Methanol Order* at 9; *SSS/WP Order* at 14–15.

²⁴⁹ See 40 CFR 70.6(a)(1)(i).

²⁵⁰ See *Apache Order* at 22–24; *South32 Hermosa Order* at 10–11; *SRP Coolidge Order* at 12–14; *Waelz Order* at 13–15; *Riverview Order* at 24–28; *Yuhuang II Order* at 7–8; *Big River Steel Order* at 11–12.

authority and public petition opportunity, among others) would not be extended to review substantive elements of the permit action unique to the NSR permitting process. The EPA's objection authority, and the public's ability to petition the Agency to object, are confined by the CAA to title V permits.²⁵¹ Combining the procedures by which a permitting authority issues NSR and title V permits does not alter this basic legal principle. Commenters provided no arguments to rebut this concept.

One set of commenters suggested that potentially unclear boundaries between the NSR and title V aspects of combined permits would present a legal basis for reviewing NSR issues through title V.²⁵² As explained in the January 2024 Proposed Rule, this would only be true in limited situations. Again, the fundamental legal underpinning of the EPA's approach is that once the NSR-related applicable requirements of the SIP are conclusively determined through a title I permitting process that features public notice and the opportunity for comment and judicial review, the Agency's title V oversight tools will not be used to substantively reevaluate those title I decisions. As relevant to concurrently issued NSR and title V permits, two qualifications arise from these principles.

First, NSR permits must be finalized by the time the title V permit is finalized to establish the "applicable requirements" for title V purposes.²⁵³ In the EPA's experience, this has not been an issue to date, and the Agency does not anticipate this will be an issue moving forward. From the EPA's perspective, the NSR-related aspects of a combined permit (*i.e.*, the preconstruction permit authorization) could be finalized before the title V permit is issued, or even before the proposed title V permit is provided to the Agency for review.

Second, it must be reasonably clear that there are separate legal authorizations taking place (a preconstruction permit under title I, and an operating permit under title V), both in general and with respect to specific permit requirements. The EPA encourages permitting authorities to be clear about the nature of (and the legal

authority underlying) combined permits in the public notice announcing such permit action, other portions of the permit record available for public review, and the terms of the permit(s).²⁵⁴ Differentiating between individual NSR-based and title V-based permit terms within a combined permit should be straightforward, as all title V permits "shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based."²⁵⁵ Thus, any NSR-related terms should be readily distinguishable from any non-NSR-related terms (or any title V-related terms related to monitoring and compliance assurance). The substance of appropriately designated NSR-based permit terms may not be subject to additional scrutiny through the unique title V oversight tools.

As acknowledged in the January 2024 Proposed Rule, it is possible that if NSR and title V permit documents have been merged to such an extent that it is impossible to legally distinguish the NSR permit action from the title V permit action, it may not be possible for the EPA to conclude that a title I permit has established all NSR-related requirements of the SIP and, therefore, it may be necessary to use the title V process to review whether the NSR-related requirements of the SIP are included in the title V permit. The EPA does not expect this to occur often.

Commenters raised various other concerns regarding the public's and the EPA's ability to effectively and efficiently participate in combined permitting procedures, including concerns regarding the increased volume of material to review and the increased potential for confusion.²⁵⁶

²⁵⁴ See, *e.g.*, 40 CFR 70.7(h)(2), 70.7(a)(5), 70.6(a)(1)(i).

²⁵⁵ 40 CFR 70.6(a)(1)(i). This requirement is important in all situations in which NSR permit terms (and permit terms derived from other CAA programs) are incorporated into a title V permit. However, it is especially important if NSR permit authorizations are issued within the same document as a title V permit in the first instance.

²⁵⁶ See section 3.5.4 of the RTC. As explained in the preamble to the January 2024 Proposed Rule, the public participation process for combined NSR and title V permits is not particularly complicated. First, the public could comment on all portions of a combined permit document during the comment period associated with the combined permit document. Similarly, all portions of a combined permit document could be challenged in a state-court appeal of the final permit action. Beyond that, the available mechanisms to challenge different permitting decisions would diverge. The EPA's 45-day review of the proposed permit, and the subsequent public petition opportunity, would apply only to title V-related aspects of the permit action. Likewise, unique oversight tools associated

Although the EPA appreciates these comments, on balance, the Agency considers the present approach to reflect the best policy. Among other considerations, as explained in the January 2024 Proposed Rule, the EPA's approach avoids disincentivizing or penalizing States from taking advantage of streamlined permit issuance procedures. As the EPA has recognized since the 1990s, these streamlined procedures are important tools to reduce administrative burdens and costs for permitting authorities, as well as delays for permittees, and are important tools to fulfill the CAA's directive to develop "[a]dequate, streamlined, and reasonable procedures for expeditiously" issuing permits.²⁵⁷

The EPA reiterates that policy considerations raised by public commenters are not directly relevant to the core legal underpinnings of this rulemaking. Based on those legal principles, the EPA finds that NSR permits issued concurrently with title V permits establish the NSR-related applicable requirements of a SIP in the same way that NSR permits issued sequentially with title V permits do. Therefore, the EPA's final rule applies the same approach regardless of whether NSR and title V permit actions are processed sequentially or concurrently.

b. "Enhanced NSR" and Title V Administrative Amendments

A third process used by some permitting authorities is often described as "enhanced NSR." The EPA's regulations allow requirements from an NSR permit issued with certain enhancements to be incorporated into a title V permit via administrative amendment procedures (instead of significant modification or minor modification procedures, which would

with title I permits (*e.g.*, the EPA's authority under CAA section 167 to order a stop in work) would apply only to title I-related aspects of the permit action.

²⁵⁷ 42 U.S.C. 7661a(b)(6); see *White Paper for Streamlined Development of Part 70 Permit Applications*, 14 (July 10, 1995) ("The EPA believes that the part 70 permit issuance process, involving as it does review by the permitting authority, public, and EPA, presents an excellent opportunity for the permitting authority to make appropriate revisions to a NSR permit contemporaneously with the issuance of the part 70 permit. The public participation procedures for issuance of a part 70 permit satisfy any procedural requirements of Federal law associated with any NSR permit revision. This parallel processing approach is also an excellent opportunity to minimize the administrative burden associated with such an exercise. By conducting a simultaneous revision to the NSR permit, the permitting authority would be revising the 'applicable NSR requirement' for purposes of determining what must be included in the part 70 permit.").

²⁵¹ 42 U.S.C. 7661d(b).

²⁵² See section 3.5.4 of the RTC.

²⁵³ Although the regulatory definition of "applicable requirement" includes "requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future-effective compliance dates," 40 CFR 70.2, 71.2, this covers only future-effective requirements that have already been finalized at the time of title V permit issuance.

otherwise be required). To qualify for this type of streamlined processing, the NSR permit would need to be issued following “procedural requirements substantially equivalent to the requirements of [40 CFR] 70.7 and 70.8 . . . that would be applicable to the change if it were subject to review as a permit modification, and compliance requirements substantially equivalent to those contained in [40 CFR] 70.6.”²⁵⁸

The EPA proposed to remove this streamlining mechanism from the Agency’s regulations for reasons that are only tangentially related to the core issues in this rulemaking. The EPA received comments from various groups—in particular, State permitting authorities that use or are interested in using this streamlining mechanism—which generally opposed the Agency’s removal of this mechanism. Some comments proposed alternative approaches that would not require the EPA (or permitting authorities) to eliminate this procedure altogether.²⁵⁹ After considering those comments, the EPA is severing this issue from this final rule and taking no further action related to “enhanced NSR” at this time.

The EPA’s severance of the regulatory revisions associated with this topic does not affect the types of issues that would be subject to the Agency’s review of permits issued following the “enhanced NSR” process. As explained in the January 2024 Proposed Rule, the EPA will not use the Agency’s title V-based objection authority to address the substance of NSR permitting decisions made through this “enhanced NSR” process.

5. No Permit Issued Through a Title I Permitting Process With Public Notice and the Opportunity for Comment and Judicial Review

There may be certain limited situations in which the title V permitting process is the appropriate venue for addressing certain NSR permitting issues for a particular permittee. This conclusion is based on the same statutory and regulatory interpretations underlying situations in which the title V permitting process is not appropriate for addressing NSR permitting issues. In sum, as explained further in the following subsections, if applicable requirements are conclusively established under another CAA program, they are not substantively addressed again through title V. If applicable requirements are not conclusively established under another CAA program, however, they

may be substantively addressed through title V to fulfill the statutory mandate that each title V permit assures compliance with all applicable requirements, including requirements of the SIP.²⁶⁰

a. No Title I NSR Permit Issued

Title I permits issued with public notice and the opportunity for comment and judicial review conclusively establish NSR-related “applicable requirements” of the SIP for title V purposes. But if a facility proceeds with construction without any title I-based preconstruction permit (or similar authorization), there is nothing to conclusively establish all relevant NSR-related applicable requirements of the SIP.²⁶¹ In this rare and limited situation, the title V process can, and should, be used to assure compliance with any relevant underlying NSR-related applicable requirements of the SIP. This is similar to how the title V process is used to define the specific requirements necessary to assure compliance with general requirements of other CAA programs that are not conclusively established through a separate rulemaking or adjudication (e.g., permitting) process, as discussed in section II.F of this preamble.

This concept could result in the EPA using title V oversight authorities to review NSR issues in two limited situations. First, the EPA will continue to review substantive NSR issues in which no preconstruction permit is issued to authorize particular construction projects (sometimes called “unpermitted projects”). In this case, a title V permit action may be the first and only permit action associated with the relevant construction activities, and the title V process can be used to ensure that any new or modified sources that do not obtain a preconstruction permit comply with all relevant NSR-related requirements of the SIP.²⁶²

²⁶⁰ 42 U.S.C. 7661c(a).

²⁶¹ As discussed in more detail in the following subsection of this preamble, in addition to facility-specific NSR permits, permitting authorities also use other streamlined permitting mechanisms like general permits or permits by rule to authorize qualifying construction activities. Permitting authorities may also issue combined permit documents that serve as both a title I preconstruction authorization and a title V operating permit, as explained in section III.D.4.a of this preamble.

²⁶² See *Suncor West II Order* at 29–30; *West Elk Order* at 13 n.17; *Suncor East Order* at 45–48, 54–55 (reviewing NSR issues in which the State “has not issued any title I NSR permits that would establish the NSR-related ‘applicable requirements’ of the SIP”); *SRP Agua Fria I Order* at 11 n.18 (reviewing NSR applicability issues in which no NSR permit had been issued); *SRP Desert Basin Order* at 12 n.20 (same); *BP Whiting II Order* at 13 n.24 (reviewing an NSR-related emission limit that

Second, if a preconstruction permit is issued, but not issued under title I, such a permit would not establish the NSR requirements of the SIP that apply to an individual source. Issuance of a non-title I permit does not reflect a determination as to which of the NSR requirements in a SIP apply to construction and thus does not fulfill any NSR requirements in the SIP. In this rare and limited situation, it would be appropriate to use the title V permitting process to assess whether there are NSR requirements in the SIP that apply to a construction project covered by a non-title I permit. Moreover, it would be appropriate to use the title V permitting process to explore whether a preconstruction permit was issued under a title I-based authority, as opposed to a non-title I authority.²⁶³

Most public commenters did not contest this principle. However, public comments from two trade associations representing regulated entities suggested that even in situations in which no title I-based NSR permit had been issued, the EPA should not consider substantive NSR issues during the title V permitting process.²⁶⁴ The basis for this suggestion is not clear to the EPA.²⁶⁵ The EPA does not view such an approach to be consistent with the statutory requirement that each title V permit

was established in a title V, as opposed to an NSR, permit action). Additionally, within a portion of the EPA’s 2017 *PacifiCorp-Hunter I Order* that was not challenged and not subject to the Tenth Circuit’s partial vacatur, the EPA addressed the merits of a petition claim involving allegedly unpermitted modifications. See *PacifiCorp-Hunter I Order* at 26–31.

²⁶³ For example, within a portion of the EPA’s 2017 *PacifiCorp-Hunter I Order* that was not challenged and not subject to the Tenth Circuit’s partial vacatur, the Agency addressed the merits of a petition claim involving an NSR permit that was allegedly not issued under EPA-approved SIP rules. See *PacifiCorp-Hunter I Order* at 24. Determining the authority underlying a preconstruction permit could also be relevant in other title V contexts. For example, States may issue preconstruction permits under State-only-enforceable laws (as opposed to Federally-approved and Federally-enforceable State laws, or Federal laws). Such State-only permit requirements may be included in title V permits, but they must be labeled as “State-only” or “not Federally enforceable” within a title V permit. 40 CFR 70.6(b)(2). Questions about the authority underlying such permits would therefore be relevant to determining whether 40 CFR 70.6(b)(2) was satisfied. See, e.g., *In the Matter of Phillips 66 Co., Borger Refinery*, Order on Petition No. VI–2017–16 at 8–10 (September 22, 2021).

²⁶⁴ See section 3.5.6 of the RTC.

²⁶⁵ This suggestion may have been based in part on language included in the Fifth Circuit’s decision upholding the EPA’s present approach, which referred to a situation in which a State’s preconstruction permitting decision process results in “no permit at all.” *Env’t Integrity Project*, 969 F.3d at 538. That section of the court’s opinion (a background section) appears to reflect an incorrect summary of the EPA’s views on this matter, and one that had no bearing on the ultimate disposition of that case.

²⁵⁸ 40 CFR 70.7(d)(1)(v); see 40 CFR 71.7(d)(1)(v).

²⁵⁹ See section 3.5.5 of the RTC.

assure compliance with all applicable requirements, including requirements of the SIP.²⁶⁶ Thus, the EPA maintains that in situations in which no title I preconstruction permit (or equivalent) is issued to authorize a particular construction activity, questions about whether NSR-related requirements of the SIP should be included in the title V permit are properly subject to review through the title V permitting process.

b. Title I NSR Permit Issued Without Public Notice and the Opportunity for Comment and Judicial Review

Since 2017, when the EPA began implementing the approach codified in this rule, the Agency has provided the following qualification: only title I preconstruction permitting decisions that have been subject to public notice and the opportunity for comment and judicial review conclusively establish the applicable requirements of the SIP, thereby foreclosing further substantive review of those SIP requirements during the title V permitting process. Therefore, the EPA will continue to review substantive NSR issues in the rare and limited situations in which the underlying NSR permit was not issued following public notice and the opportunity for comment and judicial review.

This element of the EPA's approach garnered significant interest, concern, and opposition in public comments from permitting authorities and regulated entities.²⁶⁷ Many commenters argued that the EPA lacks a legal foundation for differentiating between NSR permits that were issued with, or without, public notice and the opportunity for comment and judicial review. These commenters pointed out that the CAA does not require notice for all types of NSR permit actions, that the EPA has approved many SIP provisions that do not require notice for certain types of minor NSR permit actions, and that the Fifth Circuit's decision did not depend on this element. These commenters further argued that this distinction runs counter to the basic purpose of title V: to consolidate, but not substantively change, applicable requirements developed under other CAA programs.

The EPA considers this qualification to be an important element of the Agency's framework and the best reading of the statute. The EPA's approach is necessary to comply with the statutory directive that each title V permit assure compliance with NSR-related requirements of the SIP, while at

the same time respecting the overarching structure of the CAA and the role of title V permits in relation to other CAA requirements—in particular, that Congress did not design title V as a vehicle to substantively reevaluate applicable requirements that are conclusively established in another CAA program.

As explained in more detail in section III.C of this preamble, the CAA requires that each title V permit contain conditions sufficient to assure compliance with all applicable requirements of the CAA.²⁶⁸ The statute is clear that this includes requirements of the SIP, which would include NSR-related requirements that are applicable to a given construction activity. But the CAA does not further define the term “applicable requirements” or prescribe the circumstances in which it would or would not be appropriate for the EPA to consider the substantive adequacy of requirements established under other CAA programs in the context of title V. The EPA finds the best reading of the statute to be that if an applicable requirement is conclusively established outside of title V, title V may not be used to second-guess the substantive adequacy of that requirement. The next question—not directly answered by the statute—then becomes: what does it take to conclusively establish an applicable requirement, such that it may not be subject to further evaluation through title V?

For most CAA-based requirements, including NSPS, NESHAP, and many SIP requirements, the applicable requirements are conclusively established through a rulemaking process that involves public notice and comment and the opportunity for judicial review, and which, therefore, affords affected stakeholders the opportunity to contest such requirements at the time they are established. Once these requirements are established, the EPA's longstanding—and generally uncontested—position is that the substance of such requirements is not subject to further review through title V. As explained in section III.C.4.a of this preamble, for purposes of establishing “applicable requirements” for title V permitting, it is logical and appropriate to treat decisions that go through similar processes similarly. The approach codified herein—which is predicated on public notice and the opportunity for comment and judicial review during the NSR permitting process—aligns the treatment of requirements established for individual sources through

adjudication during the NSR permitting process with applicable requirements established by regulation under other CAA programs, while preserving for adjudication in the title V process any questions that have not been conclusively established by rulemaking or adjudication.

The EPA acknowledges that this concept is more complicated for NSR-related requirements than for many other types of CAA requirements. As discussed in section III.C.3.a of this preamble, establishing NSR-related applicable requirements for a particular construction project involves a relatively unique two-step process.²⁶⁹ This two-step framework is reflected in the EPA's longstanding regulatory structure (the first two items of the definition of “applicable requirement” in 40 CFR 70.2), as further clarified in the amendments in this rulemaking. First, each State's SIP includes broadly applicable NSR requirements that provide a framework for establishing more specific requirements at individual facilities. Second, the specific requirements that are applicable to a particular construction activity are established through adjudication during the NSR permitting process.

Some adverse public commenters focused on the second step, arguing that individual NSR permit actions may be fully final and effective preconstruction authorizations regardless of whether they feature public notice and the opportunity for comment and judicial review, especially if the EPA-approved SIP does not require such procedures for a particular type of permit action (e.g., certain minor NSR permits).²⁷⁰ The EPA does not dispute this point. In fact, the EPA's regulations confirm that the terms of an NSR permit reflect “applicable requirements” that must be included in a title V permit, regardless of the procedures through which an underlying NSR permit is issued.

The core issue addressed in this rulemaking is whether all NSR-related applicable requirements of the SIP—as referenced in CAA section 504(a) and reflected in item (i) of the regulatory definition of “applicable

²⁶⁹ Although this process is somewhat unique to the NSR program, it is functionally similar to certain other (non-NSR) SIP requirements that are defined generally within the SIP, and which must be defined more specifically in a subsequent site-specific action. As explained in section II.F of this preamble, when the underlying applicable requirement itself (*i.e.*, the SIP) does not conclusively define such requirements, it is appropriate to use the title V process to define precisely how such general SIP requirements apply to a particular facility to assure compliance with the general requirements of the SIP.

²⁷⁰ See section 3.5.7 of the RTC.

²⁶⁶ 42 U.S.C. 7661c(a).

²⁶⁷ See section 3.5.7 of the RTC.

²⁶⁸ 42 U.S.C. 7661c(a).

requirement”—have been definitively established through adjudication during the title I permitting process, such that they should not be further adjudicated through the title V permitting process. As explained throughout this preamble (as well as the January 2024 Proposed Rule preamble and prior title V petition orders), if an NSR permit is issued following public notice and the opportunity for comment and judicial review, this adjudication through the NSR permitting process provides a reasonable assurance that all NSR-related requirements of the SIP have been conclusively established, such that no further review of this question is necessary through a title V-based adjudication featuring similar participatory opportunities. But if NSR permitting decisions are not developed through a formal process that involves public notice and the opportunity for comment and judicial review, neither the EPA nor the public have any opportunity to consider, provide input on, or appeal whether all relevant NSR requirements of the SIP were properly established. In such a circumstance, it would be inappropriate to conclude, without any further substantive review, that a title V permit assures compliance with all NSR-related requirements of the SIP simply by incorporating the NSR permit. Put simply, this aspect of the EPA’s framework acknowledges the possibility that NSR-related requirements of the SIP might not be included or satisfied within a title I permit if neither the EPA nor the public have an opportunity to participate, evaluate, and contest a title I preconstruction permit proceeding.

There is a spectrum of different procedures used by permitting authorities across the Nation to issue minor NSR permits in particular. These procedures range from no explicit authorization at all, to a generic permit authorization (e.g., general permit or permit by rule), to a site-specific permit issued without any EPA or public involvement, to a site-specific permit issued following public notice and the opportunity for comment and judicial review. At one end of the spectrum—where no NSR preconstruction permit is issued at all—it would be unreasonable to conclude that all NSR-related applicable requirements of the SIP have been conclusively established. At the other end of the spectrum—where an NSR permit is issued following public notice and the opportunity for comment and judicial review—the EPA considers this sufficient to conclusively establish all NSR-related requirements of the SIP that apply to the construction activity at

issue. Differentiating based on the opportunity (or lack thereof) to evaluate and challenge an NSR permit when it is issued is the most logical way to draw a line within this spectrum.

The EPA’s approach to title V, as codified by this final rule, applies consistently across the Nation based on this single set of criteria. This is preferable to the approach advocated by some commenters, which would result in a fragmented and inconsistent approach to title V, varying according to the different procedural requirements that apply to the issuance of a particular type of NSR permit in a particular jurisdiction.²⁷¹

The EPA’s title V-focused framework applies uniformly based on the procedures actually followed when issuing a particular NSR permit, as opposed to the procedures required to be followed when issuing a particular NSR permit. Those requirements are not directly relevant to this rulemaking, as this rulemaking does not concern the statutory or regulatory requirements that dictate the procedures used to issue final and effective NSR permits. Rather, this rule concerns whether the title V permitting process should become a second opportunity to adjudicate the specific requirements for an individual source after they were already adjudicated and subject to review through a comparable process under title I.

A key premise underlying this rulemaking is that the title V permitting process was not designed by Congress as a mechanism to reevaluate NSR permitting decisions that establish the applicable requirements of the SIP for a particular construction project. Implicit in this concept is that there is a first opportunity for review when an NSR permit is issued. The approach advocated by some commenters would mean there is no opportunity for either the EPA or the public to review certain NSR permitting decisions, neither when the NSR permit is issued nor when the title V permit is issued.²⁷² Again, the EPA views such an approach as inconsistent with the statutory mandate that each title V permit assure compliance with all NSR-related applicable requirements of the SIP.²⁷³

The EPA reiterates that many of the legal and policy justifications throughout section III.C of this preamble are premised on the availability of opportunities for the Agency and the public to review, consider, and challenge NSR decisions through title I

permitting avenues at the time such decisions are made, as opposed to through the title V process. For example, the availability of title I permitting-based avenues for review and oversight of individual title I permitting decisions obviates the need to use title V-based oversight tools to address the same issues with respect to individual construction authorizations. Policy considerations, such as avoiding duplication and inefficiency, respecting the finality of NSR permitting decisions, and acknowledging regulated entities’ need for certainty, are most relevant in situations in which an NSR permit has been subject to public notice and the opportunity for comment and judicial review.²⁷⁴

Some commenters argued that this element of the EPA’s framework reflects a change in the Agency’s approach.²⁷⁵ The EPA disagrees; this is a longstanding element of the framework the Agency has consistently applied since 2017. Within the 2017 *PacifiCorp-Hunter I Order*, the EPA emphasized on five separate occasions that the Agency’s decision not to review NSR issues within that title V petition response—and several of the legal and policy rationales supporting this position—were based on the facts present there: “where a permitting authority issued a source-specific title I preconstruction permit subject to public notice and comment and for which judicial review was available.”²⁷⁶ The EPA has emphasized the same qualifications in essentially every one of the dozens of relevant title V petition orders to follow. On the limited occasions when the EPA has confronted NSR permits that were not issued with public notice and the opportunity for comment and judicial review, the Agency has been explicit that this provided a basis for the Agency to review certain underlying NSR issues.²⁷⁷

This precondition or qualification continues to apply to all EPA determinations moving forward,

²⁷⁴ Some public commenters noted that several of the EPA’s policy arguments—such as those outlining the difficulties in using the title V permitting process to consider or resolve complex NSR issues—apply equally well regardless of whether an NSR permit is issued with or without public notice. The EPA agrees, but this does not in and of itself represent the basis for changing the Agency’s approach, which is based on the more decisive legal and policy considerations discussed in this section of the preamble. See section 3.5.7 of the RTC.

²⁷⁵ See section 3.5.7 of the RTC.

²⁷⁶ *PacifiCorp-Hunter I Order* at 11 n.21; see *id.* at 16, 17, 18, 19.

²⁷⁷ See, e.g., *TPC Houston Order* at 42 n.243; *ITC Pasadena Order* at 24; *Coyote Station Order* at 12–13.

²⁷¹ See section 3.5.7 of the RTC.

²⁷² See section 3.5.7 of the RTC.

²⁷³ 42 U.S.C. 7661c(a).

regardless of when the underlying NSR permit was issued. Some public commenters argued that this element of the EPA's approach should not be used as a basis to review NSR decisions lacking notice that predated this rule.²⁷⁸ In other words, commenters argued that this element of the rule should only be applied prospectively to forthcoming NSR permits issued without notice, not retroactively to NSR permits issued without notice in the past. The EPA does not agree with that suggestion, which would be inconsistent with the approaches the EPA has applied for several decades. It would have been reasonable for outside parties to expect that the title V process could be used to review any past NSR permits that were not issued with notice and the opportunity for comment and judicial review, either based on the EPA's pre-2017 policies (which ostensibly allowed review of all NSR permit actions), or based on the approach the EPA has applied consistently since 2017 (described within this section of the preamble).

Many commenters addressed the EPA's suggestion in the January 2024 Proposed Rule that this element of the Agency's framework provides an "incentive" for permitting authorities to provide public notice on certain minor NSR permit actions that would not otherwise involve notice.²⁷⁹ These commenters argued that the EPA was effectively requiring permitting authorities to uniformly apply major NSR notice and comment procedures to all types of NSR permit actions. Commenters asserted that such a requirement is inconsistent with cooperative federalism, statutory requirements, and prior EPA SIP approvals, all of which allow a more tailored, flexible approach to minor NSR permitting procedures. Essentially, commenters took the position that if the EPA wanted to mandate additional public procedures for minor NSR permits, it should not attempt to do so through this title V rulemaking but instead should pursue such changes through the title I rulemaking process, including SIP revisions if needed.

The EPA disagrees with this characterization of the effect of this rulemaking. The EPA reiterates that, by codifying text in parts 70 and 71 referencing "public notice and the opportunity for public comment and judicial review" of NSR permits, this rule simply establishes a qualification, or precondition, relevant to whether underlying NSR decisions are insulated

from, or potentially subject to, additional review through title V. These regulatory revisions will not impose any binding procedural requirements governing a permitting authority's issuance of NSR permits. Rather, such procedural requirements are found in the relevant statutory and regulatory authorities governing NSR and the SIP regulations that implement them.²⁸⁰ The EPA further clarifies that it is not including this qualification in order to incentivize States to provide public notice on a broader range of NSR permits than would otherwise be required under the relevant title I procedural requirements. The EPA agrees with commenters that the appropriate venue to address the public participation requirements governing minor NSR is through a dedicated title I action. The EPA intends to address such requirements separately from this rulemaking.²⁸¹

Comments from some State permitting authorities and regulated entities raised concerns about the potential for increased costs and diversion of resources if they were to provide public participation for, e.g., all minor NSR permit actions.²⁸² The EPA appreciates those concerns and reiterates that this rule neither requires nor encourages permitting authorities to provide notice on more NSR permit actions than would otherwise be required. This programmatic decision is one that each permitting authority must make based on its own assessment of the associated legal requirements, benefits, and costs. Although it is possible that the title V permitting process may be used to evaluate NSR-related requirements that originate without a formal title I process involving public notice, the EPA expects that as a practical matter, this will occur infrequently. From 2017 to 2025, the EPA has confronted NSR-related issues in title V petitions on more than 30 occasions, but the lack of notice on an NSR permit has only provided the determinative basis for the Agency's review of NSR-related issues in one order.²⁸³ Overall, the EPA does not

expect that this aspect of the Agency's framework will materially impact NSR permitting practices.

The EPA reiterates that the lack of notice on an NSR permit—whether required by the SIP or not—would not, in and of itself, present an independent basis for the Agency's objection to the title V permit.²⁸⁴ Questions about the procedures used to issue NSR permits are only indirectly relevant to the EPA's review of title V permits or public petitions on title V petitions. Such questions may inform whether it is appropriate to use the title V process to review the substance of that NSR permit to ensure that the title V permit reflects, and assures compliance with, all relevant NSR applicable requirements of the SIP. Additionally, as noted in the January 2024 Proposed Rule, to the extent the public raises procedural issues in a title V petition, petitioners have the burden to demonstrate all claims within a title V petition, which would naturally include concerns related to NSR permit issuance procedures.²⁸⁵ Permitting authorities, in turn, have an obligation to respond to all significant public comments.²⁸⁶

Several commenters (particularly State and local permitting authorities) requested that the EPA delay issuance of this rule until the Agency has provided additional guidance about the meaning of the phrase "public notice and the opportunity for comment and judicial review."²⁸⁷ The EPA need not resolve such issues within this rulemaking or delay issuance of this rulemaking. The EPA is developing a separate action that will more clearly define required public participation procedures for minor NSR permitting actions; the EPA considers that action to be the more appropriate place to address such questions. The EPA notes that questions about the meaning of this phrase have not arisen in the past nine years the Agency has implemented the approach codified in this rule. To the extent the EPA encounters future disputes about the proper format or content of public notice or the opportunity for comment

²⁸⁰ See, e.g., 42 U.S.C. 7475(a)(2); 40 CFR 51.161, 51.165(i), 51.166(q).

²⁸¹ See Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans, 91 FR 41591 (July 7, 2026).

²⁸² See section 3.5.7 of the RTC.

²⁸³ In the *TPC Houston Order*, the lack of notice provided the determinative basis for the EPA's review of NSR-related issues. *TPC Houston Order* at 42 n.243. In the *Coyote Station Order*, the lack of notice was but one of multiple independent reasons for why the underlying NSR issues were properly subject to review through title V. *Coyote Station Order* at 12–13. Additionally, in the *ITC Pasadena Order*, the EPA stated that the lack of

notice associated with an initial NSR authorization would have provided a basis for the EPA to review certain NSR issues, but ultimately this basis for review was rendered moot by a subsequent NSR permit action that did include notice. *ITC Pasadena Order* at 24–26.

²⁸⁴ As explained in section III.D.3.c of this preamble, procedural requirements associated with NSR permit issuance are neither "applicable requirements" for title V purposes (because they do not apply to emission units at a part 70 source) nor part 70 requirements (because they are not related to the issuance of a specific title V permit).

²⁸⁵ 42 U.S.C. 7661d(b)(2); see 40 CFR 70.12(a)(2).

²⁸⁶ 40 CFR 70.7(h)(6).

²⁸⁷ See section 3.5.7 of the RTC.

²⁷⁸ See section 3.5.7 of the RTC.

²⁷⁹ See section 3.5.7 of the RTC.

or judicial review, the Agency will address those questions on a case-by-case basis.

Some commenters also requested clarification about how this aspect of the EPA's approach would be applied to particular situations.²⁸⁸ The situation of most interest involved general permits and permits by rule—both of which are commonly utilized mechanisms in EPA-approved SIPs to streamline minor NSR authorizations. In nearly all situations of which the EPA is aware, when a general permit or permit by rule is first developed, it goes through a process involving public notice and the opportunity for comment and judicial review. That process generally culminates in a general permit or permit by rule that includes criteria for determining what types of construction projects are eligible for authorization under the permit, as well as the substantive emission control requirements that apply to such projects, and that process also should involve an evaluation of other NSR-related requirements, such as the impact of projects on the NAAQS. Since the aforementioned NSR issues would have already gone through a process including EPA and public involvement, none of those issues would be subject to further review during the title V process. However, if construction at an individual facility is authorized using an existing general permit or permit by rule, the site-specific authorization typically does not involve public notice and the opportunity for comment and judicial review. As such, questions about whether a particular project qualified for authorization via a general permit or permit by rule, or instead whether that project may have triggered other NSR requirements within the SIP (e.g., major NSR requirements), would be properly subject to review during the title V process.²⁸⁹

Similar concepts apply to other examples raised by commenters, including PAL permits²⁹⁰ and NSR applicability determinations.²⁹¹ If NSR

decisions are made following a title I process with public notice and the opportunity for comment and judicial review, such decisions conclusively establish all NSR-related applicable requirements of the SIP, for purposes of title V. Decisions made informally without public notice do not conclusively establish all NSR-related applicable requirements of the SIP, and therefore would potentially be subject to additional scrutiny through title V. The EPA will address such issues on a case-by-case basis if and when they arise.

6. Issues Involving Overlapping Title V and NSR Requirements

In the limited circumstances in which the requirements of another CAA program and the requirements of title V substantively overlap, such areas of overlap may be addressed through title V. The EPA will continue to review issues involving an overlap of title V and NSR requirements. The most notable example involves using title V to evaluate the sufficiency of monitoring and related compliance assurance requirements associated with more substantive NSR permit requirements. As the EPA explained in one title V petition order:

Unlike the BACT determination claims discussed above, claims concerning whether a title V permit contains enforceable permit terms, supported by monitoring sufficient to assure compliance with an applicable requirement or permit term (such as an emission limit established in a PSD permit), are properly reviewed during title V permitting. The statutory obligations to ensure that each title V permit contains “enforceable emission limitations and standards” supported by “monitoring . . . requirements to assure compliance with the permit terms and conditions,” 42 U.S.C. 7661c(a), (c), apply independently from and in addition to the underlying regulations and permit actions that give rise to the emission limits and standards that are included in a title V permit. Therefore, the EPA will address the merits of those portions of the Petition that challenge the enforceability of emission limits and the sufficiency of monitoring conditions in the Permit.²⁹²

Some comments from regulated entities appeared to question or dispute this overarching principle, either generally or with respect to monitoring requirements established in NSR

permits.²⁹³ This is a longstanding element of the EPA's implementation of title V, based squarely in the statute and case law from the D.C. Circuit.²⁹⁴ The EPA is not changing the Agency's position regarding the review of monitoring and compliance assurance provisions in this rulemaking.

Additional comments from environmental and other interest groups argued that in cases in which the EPA determines that a title V permit lacks sufficient monitoring or is otherwise not enforceable as a practical matter, such a conclusion should extend beyond the title V permit and also affect substantive NSR issues.²⁹⁵ Commenters specifically discussed this concept in the context of “synthetic minor” limits within NSR permits, which a facility may voluntarily accept to avoid triggering major NSR or other requirements. Such limits must be enforceable as both a legal and practical matter to effectively restrict emissions and avoid major NSR applicability. According to commenters, if the EPA concludes in the title V process that such a limit (as reflected in a title V permit) is not enforceable as a practical matter, this must necessarily entail an EPA conclusion that the limit was ineffective to avoid major NSR applicability, and thus that the facility is subject to major NSR requirements. The EPA disagrees, as explained on multiple occasions. The EPA's objection in such an instance would be limited to the relevant title V obligations related to monitoring and enforceability and would not directly affect any NSR permitting decisions.²⁹⁶

The EPA has also considered (and will continue to consider) other issues involving an explicit overlap between NSR and title V. Examples addressed to date include situations in which a State's SIP rules and part 70 program rules explicitly require consideration of NAAQS impacts in a title V permit proceeding,²⁹⁷ in which both SIP and part 70 rules require an evaluation of the scope of the “stationary source” or “major source” subject to permitting requirements,²⁹⁸ and in which SIP rules explicitly require consideration of adjustments to a PAL in a title V renewal permit action.²⁹⁹

²⁸⁸ *Id.*

²⁸⁹ See *ITC Pasadena Order* at 24.

²⁹⁰ Under a PAL, provided facility-wide emissions remain below the limit, future construction activities are not subject to major NSR permitting requirements. Public participation occurs when the PAL permit is issued. The EPA would not use title V to second-guess requirements or criteria within the PAL, or the effectiveness of the PAL to restrict major NSR applicability. However, there may be a limited subset of questions that are not conclusively resolved when the PAL is initially established, and which could be subject to review through title V.

²⁹¹ Although there is no formal regulatory mechanism for EPA to officially provide an “applicability determination” related to NSR requirements—especially in jurisdictions in which

a State operates its own EPA-approved, SIP-based NSR program—EPA Regional offices and State permitting authorities occasionally provide such determinations by letter.

²⁹² *South Louisiana Methanol Order* at 10–11; see *SRP Coolidge Order* at 23 n.34; *ITC Pasadena Order* at 13–14; *Gulf Coast Growth Ventures Order* at 17–19; *ExxonMobil Baytown Chemical Order* at 20–21; *Yuhuang II Order* at 8; see also, e.g., *Big River Steel Order* at 17, 17 n.30, 19 n.32, 20; *PacificCorp-Hunter I Order* at 16, 17, 18, 18 n.33, 19.

²⁹³ See section 3.5.8 of the RTC.

²⁹⁴ 42 U.S.C. 7661c(c); 40 CFR 70.6(c)(1); *Sierra Club*, 536 F.3d at 680.

²⁹⁵ See section 3.5.2 of the RTC.

²⁹⁶ See *ITC Pasadena Order* at 13–14; *Yuhuang II Order* at 7–8.

²⁹⁷ *Suncor West II Order* at 29–30; *HighPoint Order* at 15–16; *DCP Platteville I Order* at 15–16; *Suncor East Order* at 53–54.

²⁹⁸ *Coyote Station Order* at 12–13.

²⁹⁹ *ExxonMobil Baytown Chemical Order* at 13–14.

Notably, the EPA's consideration of NSR-related issues within these past actions did not involve reevaluating or second-guessing the content of applicable requirements established in NSR permitting actions. Instead, the EPA's consideration of those issues was based either on unique requirements of title V (e.g., to add supplemental monitoring to the requirements in underlying applicable requirements) or on directives within the SIP itself, which effectively provided a mandate to further define applicable requirements of the SIP through the title V process (instead of the NSR process). Thus, the limited situations in which the EPA uses the title V process to address NSR-related issues is wholly consistent with the Agency's position that, in general, the title V process may not be used to second-guess or alter substantive applicable requirements that are established through a title I permitting process with public notice and the opportunity for comment and judicial review.

E. Impacts of the EPA's Approach and Final Action

This rule is primarily procedural and does not impose any specific or direct requirements on any potentially affected stakeholders. Additionally, given that this rule merely codifies the EPA's existing policies and interpretations that have been in place since 2017, any effects associated with the Agency's approach will not arise from this regulatory action itself. The EPA's approach most directly affects title V permitting practices. The following subsections of this preamble explain how the EPA's approach interacts with NSR permitting practices and enforcement considerations, and how the Agency's approach is expected to impact various affected stakeholder groups, including the Agency, permitting authorities, regulated entities, and the public.

1. Interaction With NSR Permitting

Although this rulemaking addresses the intersection of the NSR and title V permitting programs, the EPA's approach only directly affects implementation of the title V permitting program. More specifically, this rulemaking only affects the extent to which the title V permitting process will be used to consider substantive NSR issues, in the context of ensuring that title V permits assure compliance with NSR-related requirements of the SIP.³⁰⁰

This final rule does not affect the independent validity or enforceability of

NSR permit terms or the SIP (or FIP) requirements upon which they are based. As discussed throughout this preamble, if an NSR permit is issued following public notice and the opportunity for comment and judicial review, the terms and conditions of such a permit establish the NSR-related applicable requirements of the SIP (or FIP) for title V purposes. Although these permit terms should generally be incorporated into the title V permit without further substantive review, an EPA decision not to conduct that review in the title V process does not mean that the Agency agrees that the State action complies with NSR requirements. It merely indicates that a title V permit is not the appropriate venue to correct any deficiencies in the NSR permit. Thus, even if the EPA might find an error upon reviewing a preconstruction permitting decision made by the permitting authority, the terms of the NSR permit should be incorporated into the title V operating permit until such time that there is a final action to revise, reopen, suspend, revoke, reissue, terminate, or invalidate the preconstruction permit, such as a court order in a State court appeal or through an enforcement action.³⁰¹

By the same token, if an NSR permit is not issued through a process that included public notice and the opportunity for comment and judicial review, this rule does not address whether such a permit is valid or enforceable in its own right. Rather, this rule only affects how such a permit is treated through title V. The terms of such a permit would still need to be included in the title V permit under item (2) of the EPA's regulatory definition of "applicable requirement." However, any such permit terms (and underlying permit decisions) would not be sufficient to conclusively define the NSR-related "applicable requirements" of the SIP under item (1) of the EPA's regulatory definition. Therefore, questions about whether the title V permit assures compliance with all NSR-related of the SIP would be subject to review through the title V process

³⁰¹ As explained previously, this approach is analogous to how the EPA treats potential defects in other types of applicable requirements, including (non-NSR) requirements of the SIP. For instance, even when the EPA has made a determination that a provision of a previously approved SIP is not in compliance with the CAA, the Agency will not object to a permit that includes that provision until there is final action to remove it from the SIP. See, e.g., *Piedmont Green Power Order* at 28–29. The EPA's lack of objection to the inclusion of that requirement in the title V permit does not indicate that the Agency agrees that it complies with the CAA or applicable regulations; it merely indicates that a title V permit is not the appropriate venue to correct any such flaws in the SIP.

under these circumstances. But that is the only consequence insofar as this rule is concerned. Any relevant requirements of the SIP remain fully enforceable, and the independent enforceability of any NSR permit issued without an opportunity for comment and judicial review would be determined on the basis of those SIP requirements.

Some commenters, challenging the EPA's approach, argued that it is inconsistent to treat substantive NSR questions differently in the context of title V than in other contexts (e.g., title I permitting and enforcement contexts).³⁰² The EPA disagrees. The EPA's approach is the best way to reconcile the relevant statutory mandates with the intended purpose of the title V program and its relationship to other CAA programs—namely, that title V is designed to consolidate, but not to substantively reevaluate or change, underlying applicable requirements established in other CAA programs, including NSR. Given these title V-based constraints, it is appropriate for NSR questions to be treated differently in the context of title V than in other contexts that are more directly associated with the establishment or enforcement of NSR requirements.

2. Interaction With Enforcement

Comments from environmental and other interest groups argued that the EPA's approach will shift the pressure for handling NSR disputes away from the permitting process and towards the enforcement process.³⁰³ The EPA does not necessarily agree, as there remains the opportunity for the Agency and the public to oversee NSR permits through the title I permitting process. Nonetheless, to the extent the EPA's framework shifts NSR oversight to the enforcement process, the Agency considers that an appropriate outcome given the text and structure of relevant statutory provisions and programs. As explained in section III.C.3.b of this preamble, the title I permitting and title I and III enforcement mechanisms are the specific tools that Congress provided for overseeing NSR permitting decisions.

Commenters expressed concern that in certain situations, the enforcement process may not be available (e.g., due to a statute of limitations prohibiting certain types of enforcement or certain remedies, such as penalties, after a set number of years).³⁰⁴ Commenters

³⁰² See section 3.5.1 of the RTC.

³⁰³ See section 3.6.1 of the RTC.

³⁰⁴ *Id.*

expressed concern that there will be no available mechanisms to address allegations of noncompliance for construction activities that are decades old, given the EPA's approach codified in this rule. The EPA disagrees. Depending on the circumstances, such issues may still be redressable through enforcement, even in situations in which a statute of limitations may proscribe certain types of enforcement or certain remedies. To the extent such issues are not redressable because of the statute of limitations, that would be a function of Congress's decision to apply a statute of limitations to that circumstance rather than this final rule.

Various public commenters also expressed concerns regarding how the EPA's approach would itself affect the availability of enforcement.³⁰⁵ The incorporation of the terms and conditions of an NSR permit into a title V permit does not, by itself, diminish the ability to enforce preconstruction permitting requirements. As explained throughout this preamble, the EPA's approach and regulatory changes are restricted to defining the "applicable requirements" of the SIP that must be included in a title V permit, in the narrow context of fulfilling the statutory obligation that title V permits include conditions sufficient to assure compliance with the SIP.³⁰⁶ If a minor NSR permit is issued following notice and the opportunity for comment and judicial review, issuance of that minor NSR permit conclusively establishes which NSR-related requirements of the SIP must be included in the title V permit. This precludes further scrutiny of major NSR applicability questions using the EPA's title V oversight tools. But defining applicable requirements for title V purposes in this rule does not affect the use of title I-based oversight and enforcement tools to address questions related to major NSR applicability. However, as detailed in the following subsections, there are two situations in which enforcement of title I requirements could be impacted by a title V permit.

a. Permit Shields

Enforcement of NSR requirements could be affected by a title V "permit shield" imposed under CAA section 504(f) and 40 CFR 70.6(f) and 71.6(f). A permit shield, if part of an approved title V program and expressly included in a title V permit, may provide a sufficient defense from enforcement

actions under certain circumstances.³⁰⁷ This rule does not change the EPA's interpretation or enlarge the scope of a permit shield.

There are different types of permit shields under title V; two types are relevant here. First, a permitting authority can provide that compliance with the title V permit "shall be deemed compliance with other [non-title V] applicable provisions," but only if "the permit includes the applicable requirements of such provisions."³⁰⁸ If a title V permit includes this type of permit shield and also incorporates the terms of an NSR permit, the permit shield would provide that compliance with the title V permit would be deemed compliance with the corresponding underlying applicable requirements reflected in the NSR permit. However, compliance with such a title V permit would not be deemed compliance with any other requirements that are not contained in the NSR permit. For example, if a source obtained a minor NSR permit for a project and the title V permit included this type of permit shield, compliance with the title V permit would not preclude an enforcement action alleging a violation of title I of the CAA for failure to obtain a major NSR permit.

Public commenters expressed concern that the EPA's regulatory changes in this rulemaking would effectively transform this first type of permit shield into a second type of permit shield against claims related to major NSR applicability.³⁰⁹ The EPA disagrees. The first type of permit shield, by its terms, can only extend to the applicable requirements included and specifically identified in the title V permit, which would be the specific terms of the underlying NSR permit.³¹⁰ The CAA and the EPA's regulations expressly and unambiguously require additional action—a distinct, second type of permit shield—to shield a permittee against allegations concerning major NSR applicability during the enforcement process. Specifically, the statute and regulations provide that this shield is only available if the State, "in acting on the [title V] permit application[,] makes

a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof."³¹¹ In other words, this type of permit shield requires that the permitting authority make a written non-applicability determination during the title V permitting process and memorialize this determination within the title V permit record.

If a permitting authority chooses to include either type of title V permit shield, that decision would be made through the title V permitting process and based on title V authority. As such, the decision to provide such a permit shield would be subject to review and oversight through title V, including being subject to the EPA's objection authority and the public petition opportunity. Commenters on the January 2024 Proposed Rule questioned why this would be the case.³¹² To clarify the EPA's view, the Agency could object to a permit based on a determination that the permit shield was improperly granted and should not be included in the title V permit. This decision would only directly affect the title V permit terms establishing the permit shield. However, such a decision might require the EPA to substantively evaluate underlying NSR requirements covered by the title V permit shield—particularly in situations in which the permit includes the second type of permit shield, which could shield the source from violation of NSR-related SIP requirements that are not included in the title V permit.

The EPA notes that permit shields are optional, voluntary elements of title V permits. If a source wishes to take advantage of the unique enforcement-related protections associated with a title V permit shield, it must accept some title V-based scrutiny over such a decision. The availability of these title V oversight tools is important because an express title V permit shield can effectively preclude independent enforcement of the underlying applicable requirements through the Federal court system under CAA sections 113 or 304. By including an express permit shield through title V, enforcement-based oversight of the underlying applicable requirements themselves is replaced by oversight through the title V permitting process,

³⁰⁷ "A part 70 permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield." 40 CFR 70.6(f)(2).

³⁰⁸ 42 U.S.C. 7661c(f)(1); see 40 CFR 70.6(f)(1)(i) ("[T]he permitting authority may expressly include in a part 70 permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that: (i) Such applicable requirements are included and are specifically identified in the permit . . .").

³⁰⁹ See section 3.6.1 of the RTC.

³¹⁰ 42 U.S.C. 7661c(f)(1); 40 CFR 70.6(f)(1)(i).

³¹¹ 42 U.S.C. 7661c(f)(2); see 40 CFR 70.6(f)(1)(ii).

³¹² See section 3.6.1 of the RTC.

³⁰⁵ *Id.*

³⁰⁶ 42 U.S.C. 7661c(a).

which provides an alternative pathway to the Federal courts.³¹³

b. Jurisdictional Bars to Enforcement

As the Seventh Circuit has explained: “Title V itself reserves the EPA’s ability to bring an enforcement action for violations of the CAA unless an express ‘shield’ on the face of the permit bars that action. This provision would hardly be necessary if the EPA was supposed to resolve all alleged violations of the CAA in the permitting process.”³¹⁴ However, even absent an express permit shield, other circuit courts of appeal have barred enforcement actions that they viewed as impermissible collateral attacks on permits.³¹⁵ In these cases, the courts’ decisions were premised upon the notion that the EPA would assess the substantive validity or applicability of certain CAA requirements (including NSR requirements)³¹⁶ through the title V petition process, and that the EPA Administrator’s decision in response to a title V petition could be challenged in Federal court. Based on that premise, these courts decided that the jurisdictional bar in CAA section 307(b)(2) against “[a]ctions of the Administrator with respect to which review could have been obtained” applies to bar enforcement of these the substantive requirements underlying those enforcement actions.³¹⁷ These decisions, however, did not identify statutory or regulatory text to support this premise; to the extent they involved NSR issues, they may have been implicitly based on EPA practice from 1997 to 2017.³¹⁸

In light of the EPA’s approach since 2017 with respect to certain NSR permits, the EPA believes that the premise underlying those cases no longer applies.³¹⁹ This rule codifies the

EPA’s view that certain NSR issues are not subject to review through title V processes, including the title V petition process. Because the EPA Administrator will not consider or take any action concerning the substantive validity of certain NSR permitting decisions through title V, there is no opportunity for Federal judicial review of such issues through title V. Therefore, one could argue that the statutory bar in CAA section 307(b)(2) does not apply in situations where the EPA Administrator would not consider the substantive validity of NSR permitting decisions through title V. In other words, enforcement of certain NSR-related requirements in the district court may no longer be viewed as a collateral attack on an Administrator’s action (or lack thereof) through title V for which review could have been obtained in an appellate court. At least one court that considered this issue since the EPA revised the Agency’s interpretation in 2017 has declined to impose such a jurisdictional bar.³²⁰

3. Impacts on the EPA

This action most directly affects the EPA itself, specifically the Agency’s actions in overseeing both the title V and NSR permitting programs. This action will codify the EPA’s current framework regarding the scope of issues that the Agency will—and will not—review through unique title V permitting mechanisms, including the Agency’s 45-day review of title V permits and responses to citizen petitions challenging title V permits. Reflecting this existing approach more directly in regulations will provide consistency across the EPA’s regions and ensure that the Agency’s permitting oversight resources are most effectively focused on the issues for which such oversight can achieve the greatest results. For example, by not reviewing complex NSR issues through title V

rulemaking and the relevance of these cases to the issues raised herein. This preamble is not intended to encompass the EPA’s views on the merits of any other substantive aspects of these cases, including those courts’ overall interpretations of how section 307(b)(2) functions in the context of title V permits.

³²⁰ See *Sierra Club v. Entergy Arkansas LLC*, 503 F. Supp. 3d 821, 847–48 (E.D. Ark. 2020) (“In addition, plaintiffs maintain that the EPA’s interpretation of statutory language such that it will no longer oversee state Title I permit decisions through Title V petitions provides an additional basis upon which the Court should decline to find and impose an exhaustion requirement. The Court has examined the allegations in the amended complaint and the briefing with respect to the specific provisions of the CAA under which plaintiffs bring claims and the alleged requirements for bringing those claims in federal court. The Court is satisfied at this stage of the litigation that the Court has subject matter jurisdiction over plaintiffs’ claims in their amended complaint.”).

oversight tools, the EPA can prioritize using those tools to ensure that title V permits assure compliance with applicable requirements established in other CAA programs, such as by ensuring that title V permits include sufficient monitoring, recordkeeping, and reporting requirements. This action further emphasizes the EPA’s commitment to using the Agency’s existing title I oversight tools to address title I permitting issues, as appropriate. As discussed in section III.C.4.b of this preamble, those title I oversight tools are more effective in addressing title I issues than the EPA’s title V oversight tools.

4. Impacts on State, Local, and Tribal Permitting Authorities

This rule may also impact State, local, and Tribal permitting authorities that issue title V and/or NSR permits. From the EPA’s experience, most permitting authorities already implement their title V and NSR programs in a manner consistent with the Agency’s approach. That is, these permitting authorities do not use the title V permitting process to reevaluate NSR permitting decisions that they themselves previously made. For permitting authorities that have not been implementing the EPA’s current approach, this action is expected to decrease administrative burden. Permitting authorities should only have to address NSR-related permitting issues once: during the NSR permitting process.

Permitting authorities are not required to revise their regulations or submit revised part 70 regulations or SIP regulations for EPA approval as a result of this rule. The EPA views the existing part 70 and part 71 regulations—and, by extension, the equivalent regulations in EPA-approved State rules—to be consistent with the EPA’s approach. This rule is intended to make EPA regulations clearer. Nonetheless, permitting authorities that desire the greater certainty associated with the rule revisions finalized in this action are welcome to make changes to their regulations similar to those the EPA is proposing.³²¹

As discussed in section III.D.5.b of this preamble, this final rule does not itself mandate any requirements governing the procedures used to issue

³²¹ For example, States within the Tenth Circuit’s jurisdiction may currently have language that matches the language in the version of the EPA’s regulation that the Tenth Circuit considered in *Sierra Club*, 964 F.3d 882 (10th Cir. 2020). Now that the EPA is revising the Agency’s regulations, such States will have certainty that the Agency will not use the title V process to address NSR issues as to States within the Tenth Circuit.

³¹³ Specifically, if the EPA does not object to a title V permit on the Agency’s own volition and subsequently denies a petition requesting that the Agency object to the permit, such denial may be appealed to the relevant U.S. Court of Appeals. 42 U.S.C. 7661d(b)(2), 7607(b)(1).

³¹⁴ *Citizens Against Ruining the Env’t v. EPA*, 535 F.3d 670, 678 (7th Cir. 2008) (quoting 42 U.S.C. 7661c(f)).

³¹⁵ See *Nucor Steel-Arkansas v. Big River Steel, LLC*, 825 F.3d 444 (8th Cir. 2016); *EPA v. EME Homer City Generation, LP*, 727 F.3d 274 (3rd Cir. 2013); *Sierra Club v. Otter Tail Power Co.*, 615 F.3d 1008 (8th Cir. 2010); *Romoland School Dist. v. Inland Empire Energy Ctr., LLC*, 548 F.3d 738 (9th Cir. 2008).

³¹⁶ See *Nucor*, 825 F.3d at 452–53; *Romoland*, 548 F.3d at 754–56.

³¹⁷ 42 U.S.C. 7607(b)(2).

³¹⁸ One public commenter characterized some of these cases as holding that the CAA requires the EPA to review questions about major NSR applicability through the title V process. The EPA disagrees with that characterization of these court decisions. See section 3.6.1 of the RTC.

³¹⁹ The EPA’s discussion in this preamble of these court decisions is limited to the context of this

NSR permits (such as public notice and the opportunity for comment and judicial review). The EPA intends to address the relevant statutory and regulatory requirements governing that issue in a separate action.³²²

Nonetheless, as relevant to this action, it is possible that some permitting authorities may choose to change some of their NSR permitting practices to realize benefits in their permitting programs. For example, in order to ensure that the EPA will not use its title V oversight tools to revisit a permitting authority's NSR permitting decisions, it is possible that permitting authorities may decide to increase the amount of public participation opportunities offered on certain minor NSR permit actions. Some permitting authorities expressed concerns with the additional cost associated with this increased public participation. The EPA reiterates that this is a decision that each permitting authority may make for itself after considering the relevant costs and benefits of providing these opportunities. The EPA is neither requiring nor encouraging such practices within this action.

Permitting authorities that process NSR and title V permit actions through streamlined processes should consider the best way to achieve their administrative efficiency goals while maintaining the maximum amount of clarity regarding the distinctions between title I and title V permit actions. See section III.D.4 of this preamble for additional information about how the use of different streamlined permit issuance procedures generally does not impact the EPA's review of NSR issues through the Agency's title V authorities.

5. Impacts on Regulated Entities

This rule will have minimal to no impact on the substantive emission control requirements to which regulated entities are subject. In general, regulated entities should benefit from the approach described in this action, which increases certainty in final preconstruction permitting decisions and reduces burdens associated with second guessing requirements already established outside the title V process.

Similar to permitting authorities, some regulated entities expressed concern with additional costs and other impacts associated with the aspect of the EPA's approach involving the presence or absence of public notice and

the opportunity for comment when NSR permits are issued.³²³ As discussed in section III.D.5.b of this preamble, this final rule does not itself mandate any procedural requirements governing the issuance of NSR permits.

6. Impacts on the Public

The EPA expects that the public at large will benefit from the increased clarity provided in this rulemaking, as well as from more effective engagement in NSR permitting decisions. A central focus of this effort is to more clearly define the most appropriate and effective routes for the public to participate in—and, if necessary, challenge—different types of CAA permitting decisions. In this manner, this rule does not limit meaningful public participation but rather encourages more meaningful public participation by directing the public to the pathways that can be used to most effectively provide oversight over different types of permits.

As explained in section III.D.4.b of this preamble, the title V permitting process has generally been an ineffective mechanism to address deficiencies in NSR permitting actions. The available title I permitting and title III enforcement mechanisms are better tools for the public to utilize in addressing issues with NSR permitting decisions. The EPA's pre-2017 policies that ostensibly allowed interested parties to challenge NSR permit decisions through the title V process created a misleading incentive for such parties to forego those more appropriate and effective title I appeal mechanisms. As this rule makes clear, the interested public's attention and resources would be more effectively deployed in challenges to NSR permits through the appropriate title I permitting and title III enforcement channels.

In the limited circumstances in which the public lacks opportunities to address NSR permit deficiencies through the title I process, the title V permitting process serves as a backstop so that the public (and the EPA) have the ability to ensure that title V permits contain and assure compliance with the NSR-related requirements of the SIP.

The EPA received numerous comments from environmental and others interest groups, as well as members of the public, expressing concern that this rule would adversely affect air quality and public health, including in communities that are disproportionately impacted by pollution.³²⁴ The EPA does not expect

this rulemaking will materially affect air quality or public health. The title V program has never been a program for imposing substantive controls on air pollution. The EPA understands the commenters' perspective that in the past (pre-2017), the title V permitting process provided a mechanism for oversight of the NSR program, and in so doing ostensibly provided a vehicle for overseeing decisions that could affect air pollution and public health. But as explained above, that is not the purpose of the title V program.

IV. The General Duty Clause Concerning the Prevention of Accidental Releases of Hazardous Substances

A. Background and Summary of Final Action

On two occasions in recent years, the EPA received title V petitions requesting that individual title V permits include requirements designed to assure compliance with the "General Duty Clause" of CAA section 112(r)(1), which concerns the prevention of accidental releases of hazardous substances. These petitions were premised upon the suggestion that the General Duty Clause is an "applicable requirement" for title V purposes. However, as the EPA explained in the *Hazlehurst* and *Owens-Brockway Orders* denying both of these petitions, the General Duty Clause is not an applicable requirement for title V.³²⁵ The basis for this position was fully explained in the EPA's *Hazlehurst* and *Owens-Brockway Orders*, as well as the January 2024 Proposed Rule.³²⁶ Nonetheless, for the sake of transparency, the following section of this preamble restates and responds to significant public comments related to the EPA's rationale.

Although the current definition of "applicable requirement" in the EPA's part 70 and part 71 regulations may reasonably be read to exclude requirements of the General Duty Clause, the Agency is finalizing the regulatory amendments as proposed to provide further clarity.

This change is not expected to have any impacts on State permitting authorities, regulated entities, the public, or other stakeholders, as it simply clarifies an element of the title V program that has been understood and implemented in the same way since the

³²² See Minor New Source Review Program Air Permitting Public Participation Requirements for State Implementation Plans, 91 FR 41591 (July 7, 2026).

³²³ See section 3.5.7 of the RTC.

³²⁴ See section 3.6.2 of the RTC.

³²⁵ *In the Matter of Owens-Brockway Glass Container Inc.*, Order on Petition No. X–2020–2 at 21–28 (May 10, 2021) (*Owens-Brockway Order*); *In the Matter of Hazlehurst Wood Pellets, LLC*, Order on Petition No. IV–2020–5 at 7–14 (December 31, 2020) (*Hazlehurst Order*).

³²⁶ 89 FR 1150 at 1184–87 (January 9, 2024).

inception of the title V program in the early 1990s.

The majority of commenters on the January 2024 Proposed Rule, including comments from permitting authorities and regulated entities, supported the EPA's position on this topic.³²⁷ Comments from environmental and other interest groups opposed the EPA's proposed approach.³²⁸ The EPA's responses to those adverse comments are included either in the following subsections or in the RTC document available in the docket for this rulemaking.

B. Rationale for Final Action

1. Statutory Provisions

The General Duty Clause provides:

The owners and operators of stationary sources producing, processing, handling or storing [extremely hazardous] substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. *For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph.*³²⁹

The last sentence contains a key limitation of the General Duty Clause: citizen suits under CAA section 304 shall not be available to enforce the requirements of the General Duty Clause in the first instance; instead, this clause may only be enforced through action initiated by the EPA under CAA section 113.

This enforcement prohibition also effectively restricts the implementation of the General Duty Clause requirements through title V permitting. The CAA provides that all standards and limitations in title V permits are enforceable in the first instance through citizen suits initiated under section 304.³³⁰ Thus, if the requirements of the General Duty Clause were included in

title V permits, they would ostensibly be enforceable through enforcement of the title V permit itself. However, this would be in direct conflict with the unambiguous statutory prohibition on citizens initiating enforcement of the General Duty Clause under section 304.³³¹ To avoid this conflict and harmonize the language of the statute, the General Duty Clause must not be considered an “applicable requirement” that is implemented through title V permitting.

Public comments submitted by environmental and other interest groups argued that this statutory conflict related to enforcement could be resolved more narrowly without concluding that General Duty Clause requirements are not “applicable requirements” for title V purposes.³³² These commenters argued that if Congress had intended to prohibit General Duty Clause requirements from being included in title V permits, it could have expressly established such a prohibition. These commenters conclude that the statutory prohibition should be interpreted narrowly to only prohibit enforcement through the initiation of a citizen suit.

The EPA does not consider this to be the best reading of the statute when viewed as a whole.³³³ The most plausible way to accommodate the commenters' narrower approach would be to include General Duty Clause requirements in title V permits and include a clause specifically exempting those terms from citizen enforcement. But this would not resolve the statutory conflict with CAA sections 304(a)(1) and (f)(4), which mandate that standards and limitations in title V permits are enforceable by citizens initiating an action. Instead, the best interpretation of the statute—including additional statutory provisions discussed in the following paragraphs, which commenters did not address—is that Congress did not intend for the General Duty Clause of CAA section 112(r)(1) to be enforced, and therefore implemented, through title V permits. The best way to effectuate the statute is for the EPA to clarify that such obligations are not “applicable requirements” for title V purposes.

Other text within the General Duty Clause further evinces congressional intent that the General Duty Clause

would not be implemented through permitting. The statute indicates that the CAA section 112(r)(1) general duty shall be “in the same manner and to the same extent as section 654 of title 29”—that is, the general duty clause within the Occupational Safety and Health Act (OSH Act). The OSH Act provision, enacted in 1970, is not implemented through site-specific permits, and citizen suits are not authorized to enforce it.³³⁴ If Congress had intended the CAA General Duty Clause to be implemented in a fundamentally different manner than the OSH Act provision on which it was explicitly modeled—e.g., through a permitting program that could be enforced by citizens in the first instance—it could have specifically said so. However, instead, Congress precluded citizen enforcement under the CAA General Duty Clause, and nowhere did Congress imply that it would be implemented through permitting.

Additionally, the CAA requires that States have the authority to enforce title V permits to receive EPA approval of their permitting programs.³³⁵ The CAA General Duty Clause, however, is enforceable only by the Federal government. Because CAA section 304 is the only Federal authority through which citizens and State or local air agencies could enforce this type of CAA requirement, neither citizens nor State and local air agencies may enforce the General Duty Clause under the CAA. Because States cannot enforce this requirement, the EPA cannot delegate, and has not delegated, authority to implement or enforce the General Duty Clause to State or local air agencies.³³⁶ If the requirements of the General Duty Clause were considered “applicable requirements” to be included within individual title V permits, States would be unable to enforce these new permit provisions, which would contradict CAA section 502(b)(5). This would mean that all State and local title V programs would be fundamentally

³²⁷ See section 4.1 of the RTC.

³²⁸ See section 4.2 of the RTC.

³²⁹ 42 U.S.C. 7412(r)(1) (emphasis added).

³³⁰ This is because any person may, under CAA section 304(a)(1), bring a suit “against any person . . . who is alleged to have violated . . . or be in violation of (A) an emission standard or limitation under this chapter” In turn, “emission standard or limitation” is defined to include, *inter alia*, “any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter” 42 U.S.C. 7604(f)(4); see also 40 CFR 70.6(b)(1); see *United States v. Gonzales*, 520 U.S. 1, 5 (1997). As discussed later, the EPA's regulations contain a limited exception to this principle, which is not applicable to the General Duty Clause.

³³¹ The specific prohibition on enforcement of the General Duty Clause by initiation of a citizen suit must govern over the general enforceability of title V permits. See *Nitro-Lift Technologies LLC v. Howard*, 568 U.S. 17, 21 (2012).

³³² See section 4.2.1 of the RTC.

³³³ See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

³³⁴ See generally 29 U.S.C. 651–78.

³³⁵ 42 U.S.C. 7661a(b)(5); see also 40 CFR 70.4(b)(3).

³³⁶ Additionally, some States are prohibited by State law from having general duty authorities. 58 FR 62262, 62278 (November 26, 1993). Certain commenters characterized the EPA's lack of delegation of CAA section 112(r)(1) requirements as mere “inaction” by the Agency. Such commenters misunderstood the EPA's discussion on this point in the January 2024 Proposed Rule and in prior rulemakings. The EPA cannot delegate CAA section 112(r)(1) to States. However, as explained elsewhere in this preamble, the EPA can and has delegated to States the authority to implement and enforce certain other portions of CAA section 112(r), namely the section 112(r)(7) risk management plan program.

flawed—an absurd result Congress could not have intended.

Notably, each of the relevant statutory provisions discussed earlier—the General Duty Clause of CAA section 112(r)(1), the relevant portion of CAA section 304 authorizing citizen suits to enforce title V permit terms in the first instance, and the entirety of title V—were promulgated in the same legislative package: the 1990 CAA Amendments. Accordingly, the tension between these provisions is best understood as reflecting an intentional choice by Congress to distinguish the General Duty Clause in CAA section 112(r)(1) from other CAA requirements that would be implemented through the title V permitting program.³³⁷ For these reasons, the EPA rejects the request of public commenters to adopt an interpretation of the undefined statutory term “applicable requirements” that is “expansive[] and without restriction” with respect to the General Duty Clause in CAA section 112(r)(1).

2. Regulatory Provisions

Following the statutory text, the EPA’s regulations provide: “All terms and conditions in a part 70 permit . . . are enforceable by the Administrator and citizens under the Act.”³³⁸ Additionally, to be approvable by the EPA, State programs under part 70 must demonstrate authority to enforce permits.³³⁹ Neither of these regulatory requirements are compatible with the view that the General Duty Clause,

which is enforceable only by the EPA, should be included in title V permits.

The EPA must read the Agency’s regulations in a manner consistent with the statute. As explained in the *Hazlehurst and Owens-Brockway Orders*, the existing definition of “applicable requirement” can reasonably be read to exclude the General Duty Clause of CAA section 112(r)(1).³⁴⁰ Nonetheless, as noted by public commenters, the definition of “applicable requirement” could potentially be interpreted more expansively than the EPA intended. Thus, to provide maximum clarity to the public, the EPA is revising the definition of “applicable requirement” in 40 CFR 70.1 and 71.2 to make this more explicit.³⁴¹

3. EPA Guidance and Implementation

Some adverse commenters alleged that the EPA’s present approach is a “recent and significant change of course by the agency” that runs counter to “longstanding practice by EPA.”³⁴² The EPA disagrees. As explained in the January 2024 Proposed Rule, excluding the General Duty Clause from the regulatory definition of “applicable requirement” is consistent with how the EPA has described and implemented both the title V and CAA section 112(r) programs since their inception in the early 1990s. As commenters observed, several early EPA documents refer generally to CAA section 112(r) without specifying which precise portions of CAA section 112(r) would be implemented through title V.³⁴³ From these general references, these commenters incorrectly inferred that CAA section 112(r)(1) would be among the provisions implemented by States through title V. On the contrary, the EPA’s generic references to CAA section 112(r) were not intended to refer to CAA section 112(r)(1). In various rulemaking actions, the EPA has consistently indicated that the only applicable requirements related to CAA section 112(r) that need to be satisfied through title V are those related to CAA section

112(r)(7) risk management plans under 40 CFR part 68.³⁴⁴

The EPA made similar determinations in early title V petition orders. For example, in the 1997 *Shintech I Order*, the EPA concluded that “compliance with the provisions of 40 CFR 68.215 . . . is sufficient to satisfy the legal obligations of section 112(r) for purposes of part 70.”³⁴⁵ The EPA therefore specifically rejected the petitioners’ request for additional permit terms related to CAA section 112(r)(1), while noting the independent enforceability of the General Duty Clause.³⁴⁶ Adverse commenters mistakenly characterized *Shintech I* as standing for the proposition that section 112(r)(1) obligations are applicable requirements for title V purposes that would need to be included in permits for sources that are not subject to part 68 requirements.³⁴⁷ Rather, the *Shintech*

³⁴⁴ See, e.g., 57 FR at 32275–76; 60 FR 13526, 13526, 13535–36 (March 13, 1995); 61 FR 31668, 31688–89 (June 20, 1996). This rule does not affect the risk management plan program under CAA section 112(r)(7) or 40 CFR part 68 in any way. However, the limited intersection between CAA section 112(r)(7) risk management plans and title V permits provides context for the EPA’s position on the CAA section 112(r)(1) General Duty Clause. The EPA has, through rulemaking, limited the extent to which even the CAA section 112(r)(7)-related “applicable requirements” would be implemented through title V. Specifically, when the EPA promulgated the final part 68 risk management plan rules in 1996, the Agency determined that “generic terms in [title V] permits and certain minimal oversight activities” would assure compliance with risk management plan requirements. 61 FR at 31689; see also 57 FR at 32275 (“The EPA recognizes, however, that an RMP is not in any sense a ‘permit’ to release substances addressed therein, and that section 112(r) was not intended to be primarily implemented or enforced through title V.”) (citing 42 U.S.C. 7412(r)(7)(F)). For sources subject to both part 68 and title V, these permit content and State oversight requirements are codified at 40 CFR 68.215. For additional information concerning the limited intersection between risk management plans and title V permits, see *In the Matter of Newark Bay*, Order on Petition No. II–2019–4 at 9–16 (August 16, 2019). Requiring title V permits to include permit terms related to the General Duty Clause that are even more specific than those the EPA has established for risk management plans would go well beyond the EPA’s long-held view of the scope of CAA section 112(r)-related “applicable requirements” that would be implemented through title V.

³⁴⁵ *In the Matter of Shintech Inc., PVC Plant*, Order on Petition at 12 (September 10, 1997).

³⁴⁶ Specifically, the EPA emphasized that “compliance with the requirements of part 68 does not relieve Shintech of its legal obligation to meet the general duty requirements of section 112(r)(1) of the Act Section 112(r)(1) remains a self-implementing requirement of the Act, and EPA expects and requires all covered sources to comply with the general duty provisions of 112(r)(1).” *Shintech I Order* at 12 n.9. The EPA also explained that it would be improper to shield a source from liability under the General Duty Clause using a title V permit shield. *Id.*

³⁴⁷ Sources subject to the risk management plan regulations under part 68 are stationary sources

³³⁷ See *Maracich v. Spears*, 570 U.S. 48, 65 (2013) (“It is necessary and required that an interpretation of a phrase of uncertain reach is not confined to a single sentence when the text of the whole statute gives instruction as to its meaning.”); see also *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972) (“[In *pari materia*] is but a logical extension of the principle that individual sections of a single statute should be construed together [T]he rule’s application certainly makes the most sense when the statutes were enacted by the same legislative body at the same time.”); *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (“A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”).

³³⁸ 40 CFR 70.6(b)(1). This principle is subject to one exception: certain terms in a title V permit that are not based on the CAA may be labeled as “State-only” requirements that are not federally enforceable or enforceable by citizens through CAA section 304. 40 CFR 70.6(b)(2). The General Duty Clause, which is contained within the CAA, is not eligible for this treatment. Beyond this limited exception, neither the statute nor regulations contemplate other means by which the enforceability of title V permit terms could be restricted in a manner consistent with the limitations in the General Duty Clause discussed earlier.

³³⁹ 40 CFR 70.4(b)(3)(vii).

³⁴⁰ See *Hazlehurst Order* at 9–10; *Owens-Brockway Order* at 23–24.

³⁴¹ This regulatory amendment only affects the title V regulations in 40 CFR parts 70 and 71 because there are no corresponding regulations directly governing General Duty Clause obligations, as discussed further in section IV.B.4 of this preamble.

³⁴² See section 4.2.2 of the RTC.

³⁴³ See, e.g., 56 FR at 21761; Memorandum, *Relationship between the Part 70 Operating Permit Program and Section 112(r)* (June 24, 1994), available at <https://www.epa.gov/sites/production/files/2015-08/documents/opp112r.pdf>.

I decision reflected the fact that part 68 requirements under section 112(r)(7) are the only requirements of section 112(r) that must be included in a title V permit. As explained in the January 2024 Proposed Rule, this is true regardless of whether a source is subject to risk management plan requirements under part 68. For example, in the 2001 *Pencor-Masada I Order*, the EPA applied similar principles to a source that was not subject to part 68. There, the EPA reiterated that a source's obligations under the General Duty Clause are unaffected by compliance with part 68 or the terms of a source's title V permit.³⁴⁸ The EPA has made similar statements concerning title V and CAA section 112(r) in other guidance documents.³⁴⁹

Similar to the EPA's title V guidance, the Agency's longstanding guidance concerning the implementation of the General Duty Clause suggests that the General Duty Clause is not to be implemented through title V. Notably, in the EPA's comprehensive Guidance for Implementation of the General Duty Clause ("GDC Guidance"), the EPA details the mechanisms through which the General Duty Clause would be implemented and enforced, and never once mentions permitting as an available mechanism.³⁵⁰

In the January 2024 Proposed Rule, the EPA expressed the Agency's understanding that most permitting authorities implementing part 70 programs have historically followed the same view as the Agency. Adverse commenters identified two State permitting authorities that previously included generic General Duty Clause requirements in title V permits.³⁵¹ Commenters cited these examples to

support their characterization of the EPA's rule as a departure from longstanding practice and one that removes important mechanisms to protect the public from accidental releases. The EPA disagrees. The fact that a minority of State programs may have erroneously included a generic permit term related to the General Duty Clause does not change the fact that, from the EPA's perspective, these requirements have never been considered "applicable requirements" that should be implemented through title V permitting.³⁵² This final rule simply codifies the EPA's long-held position.

4. Additional Policy Considerations

If the EPA were to consider the General Duty Clause an applicable requirement with which a title V permit must assure compliance, this change in position would have significant programmatic impacts, upsetting the administration of both the title V and General Duty Clause programs nationwide. For example, the EPA expects that many major sources subject to the title V program may, at some time or another, also have obligations under the General Duty Clause. If the General Duty Clause were considered an applicable requirement, thousands of title V permits nationwide would need to be reopened to include conditions necessary to identify and assure compliance with the clause.

Adverse commenters argued that the resource burden of implementing the General Duty Clause through title V would be manageable, based in part on the fact that two State air permitting agencies had previously included General Duty Clause-related requirements in title V permits.³⁵³ As these commenters noted, one State permitting authority previously included a permit term indicating, in relevant part: "if the Permittee produces, processes, handles, or stores any amount of a listed hazardous substance, the Permittee has a general duty to take such steps as are necessary to prevent the accidental release of such substance and to minimize the consequences of any release." But as commenters implicitly acknowledged,

including this type of generic language serves little purpose.³⁵⁴ Indeed, commenters did not argue that this type of generic language should be included in title V permits. Instead, commenters repeatedly advocated for title V permit terms that "set[] out the specific and detailed conditions by which sources will comply" with the General Duty Clause. As explained in the January 2024 Proposed Rule, it would be exceptionally burdensome for permitting authorities to establish such detailed requirements for thousands of facilities across the Nation. Such an enormous resource burden on the permitting authorities that implement the title V program would hardly make sense given that these same permitting authorities cannot enforce the General Duty Clause.³⁵⁵ This is clearly not an outcome that either Congress or the EPA envisioned when establishing these two programs.

Other practical concerns—closely related to the legal issues discussed previously—weigh against implementing the General Duty Clause through title V. For example, there is no mechanism under the EPA's existing statutory and regulatory authorities to structure a title V permit containing General Duty Clause requirements in a way that avoids the statutory constraints on enforcement discussed earlier. All Federally enforceable permit terms must necessarily be enforceable by the State agencies issuing the permits as well as through the citizen-suit process.³⁵⁶ Neither the CAA nor the EPA's regulations provide that certain portions of the title V permit can be labeled "enforceable only by the EPA." Public commenters suggested that the EPA could use the rulemaking process to create an exception to this principle: a new class of permit terms that are considered Federally enforceable applicable requirements, but which are

where a specifically-identified regulated substance is present over a threshold quantity, as outlined in 40 CFR 68.130. However, the General Duty Clause is more expansive than the part 68 requirements in that stationary sources where any extremely hazardous substance is present must comply with the General Duty Clause. Therefore, there are some instances in which a source must comply with both part 68 and the General Duty Clause, and other instances in which a source is subject to the General Duty Clause alone.

³⁴⁸ See *Pencor-Masada I Order* at 31–32 n.38.

³⁴⁹ See, e.g., U.S. Environmental Protection Agency. (1993). Memorandum, *Title V Program Approval Criteria for Section 112 Activities*, available at <https://www.epa.gov/sites/production/files/2015-08/documents/t5-112.pdf>; U.S. Environmental Protection Agency. (1994). Memorandum, *Relationship between the Part 70 Operating Permit Program and Section 112(r)*, available at <https://www.epa.gov/sites/production/files/2015-08/documents/opp112r.pdf>.

³⁵⁰ U.S. Environmental Protection Agency. (2000). *Guidance for Implementation of the General Duty Clause, Clean Air Act Section 112(r)(1)*, EPA 550-B00-002, available at <https://www.epa.gov/sites/production/files/documents/genclauserep-rpt.pdf>.

³⁵¹ See section 4.2.2 of the RTC.

³⁵² To date, the EPA has not received a petition requesting the Agency's objection to this erroneous practice, and the Agency's lack of any proactive objection to any title V permits containing General Duty Clause provisions does not indicate the EPA's endorsement of this practice. See Memorandum, *Guidance on Streamlining Title V Operating Permit Reviews* at 3 (May 11, 2026), available at <https://www.epa.gov/system/files/documents/2026-05/guidance-on-streamlining-title-v-operating-permit-reviews-5-11-26.pdf>.

³⁵³ See section 4.2.2 of the RTC.

³⁵⁴ By the same token, removing this type of generic permit condition—as the two States at issue have done since 2017—has similarly little impact. With or without those erroneously included permit terms, each facility's specific obligations must be assessed by the EPA outside of the permitting context. Thus, the EPA disagrees with commenters' suggestion that this rule, or States' decisions to remove such provisions from title V permits, makes those permits "worse" or less protective of the public.

³⁵⁵ No statutory or regulatory mechanism currently exists for the EPA to establish General Duty Clause requirements for all title V sources nationwide. Even if it did, implementation of any such mechanism would present an even greater resource issue for the EPA and would run against Congress's intent that the title V program is to be primarily implemented by the States, not the Agency. See 42 U.S.C. 7661a; see, e.g., *Env't Integrity Project*, 969 F.3d at 536, 545.

³⁵⁶ See 42 U.S.C. 7604(a)(1), (f)(4), 7661a(b)(5)(E), 7661c(c); 40 CFR 70.4(b)(3)(vii), 70.6(b)(1).

not enforceable by States or citizens.³⁵⁷ Even assuming that the EPA possesses statutory authority to establish this unique class of title V permit terms, doing so would be unnecessary. The General Duty Clause under CAA section 112(r)(1) is the only type of requirement that could purportedly benefit from such a novel approach. A more straightforward and less novel solution, which reflects the best interpretation of the statute, congressional intent, and various policy considerations, is to exclude the General Duty Clause from implementation through title V permitting altogether. Indeed, the many novel questions and administrative steps that would be required to adopt such an approach to the General Duty Clause further suggests that Congress did not intend to encompass that provision within the statutory phrase “applicable requirements” without further discussion in the statute (and without debate).

The obligation that States retain sufficient authority to enforce title V permit terms, coupled with the inability of States to enforce the General Duty Clause, would create additional problems if the General Duty Clause were considered an “applicable requirement.” The EPA could face pressure to issue notices of deficiency to all 117 State, local, and Tribal permitting authorities nationwide for their failure to enforce all aspects of the title V program.³⁵⁸ Moreover, the EPA could face pressure to take over the issuance of all title V permits, or to issue partial permits to nearly every title V source to cover these sources’ General Duty Clause obligations.³⁵⁹ These are clearly not reasonable propositions, as such outcomes would be contrary to congressional intent for the title V program to be primarily administered by States, but nonetheless ones that could inevitably follow if the EPA were to consider the General Duty Clause an “applicable requirement” for title V purposes.

In addition to these untenable impacts to title V permitting, determining that the General Duty Clause must be included in title V permits would fundamentally alter the EPA’s implementation and enforcement of the General Duty Clause itself. The EPA has historically described the General Duty Clause as a “self-executing requirement.”³⁶⁰ This means that the

General Duty Clause is meant to be implemented and enforced independently as a direct requirement of the CAA, beyond any set of regulations or specific requirements detailed within individual title V permits.

Adverse commenters argued that title V permits, by their nature, can accommodate a balance between operational flexibility and the need for clear, enforceable permit requirements.³⁶¹ Commenters further argued that including specific, forward-looking permit terms reflecting each facility’s General Duty Clause requirements would aid in the facility’s understanding of risk management obligations and would aid the EPA’s enforcement of these requirements. Commenters argued that this type of proactive approach is preferable to reactive enforcement only after serious incidents occur.

As a general matter, the EPA agrees that the title V permitting program offers benefits for identifying and assuring compliance with many types of more typical emission standard-based requirements under regulations promulgated under the CAA. For example, as discussed in section II.F of this preamble, title V permits can be used to identify more specific requirements necessary to assure compliance with generic requirements in a SIP. However, as the EPA explained in the January 2024 Proposed Rule, these functions of the title V program are a particularly poor fit for implementing General Duty Clause obligations because they were not designed to be specifically identified or constrained through permitting.

The General Duty Clause, as its name suggests, is intended to be a general duty. Identifying specific obligations

“self-enabling” or “self-implementing” requirement. See Letter from Mathy Stanislaus, Assistant Administrator, EPA Office of Solid Waste and Emergency Response, to Hon. Mike Pompeo, U.S. House of Representatives (August 1, 2013)) (Stanislaus-Pompeo Letter); *Owens-Brockway Order* at 27; *Hazlehurst Order* at 12; *Pencor-Masada I Order* at 32 n.38; *Shintech I Order* at 12 n.9. As discussed in section II.E of this preamble, the EPA has also used the term “self-implementing” to refer to certain types of requirements in other CAA programs, including NSPS and NESHAP. The intent of this phrase is slightly different in the context of the General Duty Clause than in the context of NSPS and NESHAP. The requirements of the General Duty Clause flow directly from the statute and are implemented in the absence of implementing regulations. By contrast, emission standards like NSPS or NESHAP are generally “self-implementing” once regulations are promulgated. The similarity is that in both situations, the self-implementing requirements are enforceable regardless of whether they are reflected in a title V permit.

³⁶¹ See section 4.2.2 of the RTC.

within each source’s title V permit would conflict with the notion of a general duty. Moreover, determining whether an individual source has satisfied this general duty is highly circumstance-specific. The EPA interprets the General Duty Clause to require owners and operators to adhere to recognized industry practices and standards in addition to any applicable government regulations.³⁶² However, there may be situations that make a particular industry standard or municipal code inapplicable, unsuitable, or insufficient for a given source, and there may be other ways to abate hazards than those listed in a particular industry standard or municipal code. Each source’s obligations are dependent on the detailed knowledge of the individual source. Even in the absence of an industry standard, a source’s knowledge of a potential hazard and a feasible means to abate it is relevant to its general duty under CAA section 112(r)(1).³⁶³ Should a source learn of a hazard and a feasible means to abate it after its permit is written, the General Duty Clause would ordinarily hold the source responsible for its knowledge. Given that the factual circumstances and knowledge at the source, as well as any relevant industry guidelines, can change frequently, the source’s obligations under the General Duty Clause are necessarily fluid. If General Duty Clause obligations were to be included in title V permits as applicable requirements, the relevant permit terms would need to be constantly updated to accurately reflect a source’s obligations (inviting further scrutiny of the terms each time). Overall, identifying specific General Duty Clause requirements would not only curtail the flexibilities rightly available to a source, but it would also undermine the General Duty Clause by limiting the scope of a source’s potential obligations to those specific requirements contained in the permit.³⁶⁴

For these reasons, the EPA has rejected requests to define and restrict General Duty Clause obligations through rulemaking.³⁶⁵ It would be similarly

³⁶² See GDC Guidance at 2, 11–12.

³⁶³ See GDC Guidance at 12.

³⁶⁴ Were the General Duty Clause treated as a permit term, a source could argue it was shielded from its duty by the terms of the permit for hazards identified after the permit was issued. The potential for sources to request a title V permit shield to cover General Duty Clause obligations would exacerbate these concerns, notwithstanding that such a permit shield would not be appropriate, as the EPA has previously explained. See *Shintech I Order* at 12 n.9.

³⁶⁵ E.g., Stanislaus-Pompeo Letter.

³⁵⁷ See section 4.2.1 of the RTC.

³⁵⁸ See 40 CFR 70.10(b), (c)(1), appx. A.

³⁵⁹ See 40 CFR 70.10(b)(2)(iii); see also 40 CFR part 71.

³⁶⁰ 61 FR 31668, 31680 (June 20, 1996). The EPA has also described the General Duty Clause as a

inappropriate to define and restrict these obligations through title V permit terms. Public commenters appear to have misunderstood the relevance of the EPA's decision not to promulgate regulations under CAA section 112(r)(1); they suggest that the Agency's "own past regulatory inaction" cannot be "a reason to curtail the General Duty Clause's applicability."³⁶⁶ This argument misses the point: the lack of regulations implementing the General Duty Clause was not due to "regulatory inaction," but rather a conscious decision not to promulgate such regulations. Moreover, the same reasons underlying the EPA's past decisions not to define General Duty Clause obligations through rulemaking also support the Agency's position not to implement General Duty Clause obligations through individual title V permits. Neither of these decisions curtail the General Duty Clause's applicability.

In summary, the CAA specifically prohibits the General Duty Clause from being enforced through the citizen suit provision in section 304 that is available for all standards and limitations included in title V permits. The best interpretation of this statutory provision, among other relevant statutory provisions, is that Congress did not intend for the General Duty Clause to be considered an applicable requirement implemented through title V permitting. The EPA must draft and interpret the Agency's regulations consistent with the statute. Although the current part 70 and 71 regulations can be interpreted as consistent with this position, the EPA is amending the regulations to make this more explicit. This change is consistent with the EPA's implementation of both the title V and General Duty Clause programs since their inception in the early 1990s. Moreover, this amendment is consistent with sound policy and avoids nationwide programmatic impacts that would follow if the EPA attempted to implement the General Duty Clause through title V.

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

This action is considered an Executive Order 14192 deregulatory action. This final rule provides burden reduction by explicitly codifying the EPA's existing approach that limits opportunities for the public to challenge, and accordingly the need for regulated entities and permitting authorities to reevaluate, the substance of title I preconstruction permitting decisions during the title V permitting process. This action will reduce administrative costs of such duplicative reevaluations for regulated entities, permitting authorities, and the EPA. This rule also increases certainty in preconstruction permitting decisions, thereby reducing costs on regulatory entities associated with uncertainty. This rule will also allow the EPA to implement this approach within the jurisdiction of the United States Court of Appeals for the Tenth Circuit, thereby extending the deregulatory benefits of the Agency's approach to regulated entities and permitting authorities in that jurisdiction.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2060–0243 (for the Part 70 State operating permit programs) and 2060–0336 (for the Part 71 Federal operating permit program). The clarifications to the regulations finalized in this action do not directly change any of the information collection activities previously approved by OMB.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This final rule primarily concerns the EPA's exercise of the Agency's oversight obligations when reviewing title V permits issued by State, local, and Tribal permitting authorities, when reviewing title V petitions submitted by any person, and when issuing title V permits under 40

CFR part 71. This action does not directly impose any requirements on the entities involved in these processes (including permitting authorities, permittees, and members of the public). Although those entities could eventually be affected by case-by-case decisions made when the EPA exercises the Agency's oversight and/or permitting authorities, the economic impact of any such future decisions on any small entities is expected to be minimal and not adverse. For example, this final rule reduces uncertainty and costs for small entities that obtain both NSR and title V permits by clarifying the limited circumstances under which NSR permitting decisions could be subject to additional EPA scrutiny through the title V permitting process.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local, or Tribal governments, or the private sector.

F. Executive Order 13132: Federalism

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

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

This action does not have Tribal implications as specified in Executive Order 13175. One Tribal government (the Southern Ute Indian Tribe) currently administers an approved part 70 operating permit program, and one Tribal government (the Navajo Nation) currently administers a part 71 operating permit program pursuant to a delegation agreement with the EPA. This rulemaking does not require those entities to take any specific action, as described in section III.E.4 of this preamble. Thus, Executive Order 13175 does not apply to this action.

The EPA informally engaged with Tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Specifically, prior to issuing the January 2024 Proposed Rule, the EPA conducted

³⁶⁶ See section 4.2.2 of the RTC.

outreach with Tribal representatives through a call with the National Tribal Air Association. Further, the EPA offered to further discuss the regulation with the Southern Ute Indian Tribe and Navajo Nation. On December 14, 2023, the EPA offered formal consultation with the Southern Ute Indian Tribe and Navajo Nation. The EPA did not receive requests for consultation or any public comments from Tribal governments.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order.

Therefore, this action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

K. Congressional Review Act (CRA)

This action is subject to the Congressional Review Act (CRA), 5 U.S.C. 801–808, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action does not meet the criteria in 5 U.S.C. 804(2).

VI. Statutory Authority

The statutory authority for this action is provided by 42 U.S.C. 7401 *et. seq.* More specifically, CAA sections 502(b) and 502(d)(3) direct the Administrator of the EPA to promulgate regulations establishing minimum elements of State operating permit programs and give the Administrator the authority to establish a Federal operating permit program.³⁶⁷ Additionally, the Administrator

determines that this action is subject to the provisions of CAA section 307(d), which establish procedural requirements specific to rulemaking under the CAA. CAA section 307(d)(1)(V) provides that the provisions of CAA section 307(d) apply to “such other actions as the Administrator may determine.”³⁶⁸

VII. Judicial Review

CAA section 307(b)(1) governs judicial review of final actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit: (i) when the EPA action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.” For locally or regionally applicable final actions that are based on a determination of nationwide scope or effect, the CAA reserves to the EPA complete discretion to decide whether to invoke the exception in (ii).

This final action is “nationally applicable” within the meaning of CAA section 307(b)(1). This final action revises both the regulatory requirements in 40 CFR part 70 that govern State, local, Tribal, and U.S. territorial operating permit programs nationwide and the regulatory requirements in 40 CFR part 71 that govern Federal operating permits nationwide.

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review.

CAA section 307(d)(7)(B) also provides a mechanism for the EPA to convene a proceeding for reconsideration “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the

outcome of the rule.” Any person seeking to make such a demonstration should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, William Jefferson Clinton Building, 1200 Pennsylvania Ave. NW, Washington, DC 20460, with an electronic copy to the person listed in **FOR FURTHER INFORMATION CONTACT**, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004. The filing of a petition for reconsideration by the Administrator of this final action shall not postpone the effectiveness of this final action, affect the finality of this action for the purposes of judicial review, or extend the time within which a petition for judicial review must be filed. Under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

List of Subjects

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Lee Zeldin,
Administrator.

For the reasons set forth in the preamble, the EPA amends 40 CFR parts 70 and 71 as follows:

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. In § 70.2, amend the definition of “Applicable requirement” by revising paragraphs (1), (2), and (4) to read as follows:

§ 70.2 Definitions.

* * * * *

Applicable requirement * * *

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through

³⁶⁷ 42 U.S.C. 7661a(b) & (d)(3).

³⁶⁸ 42 U.S.C. 7607(d)(1)(V).

rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter, provided that where a preconstruction permit described in paragraph (2) of this definition is issued with public notice and the opportunity for comment and judicial review, the terms and conditions of such a permit establish and define, for purposes of this paragraph, the applicable requirements of the implementation plan that apply to the activities authorized by such a preconstruction permit;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D or section 110(a)(2)(C), of the Act;

* * * * *

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including any requirement under section 112(r)(1) of the Act;

* * * * *

■ 3. Amend § 70.8 by revising paragraph (c)(1) to read as follows:

§ 70.8 Permit review by EPA and affected States.

* * * * *

(c) * * *

(1) The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirements under this part. As part of this determination, the Administrator will not evaluate whether applicable requirements, as defined in § 70.2, were correctly established. No permit for which an application must be transmitted to the Administrator under paragraph (a) of this section shall be issued if the Administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information required under § 70.8(a)(1), including under § 70.8(a)(1)(i) or (ii) where applicable.

* * * * *

■ 4. Amend § 70.12 by revising paragraph (a)(2) to read as follows:

§ 70.12 Public petition requirements.

(a) * * *

(2) *Identification of petition claims.*

Any issue raised in the petition as grounds for an objection must be based on a claim that the permit, permit

record, or permit process is not in compliance with applicable requirements or requirements under this part. Any claim that an applicable requirement, as defined in § 70.2, was incorrectly established will not present grounds for the Administrator's objection. Any arguments or claims the petitioner wishes the Administrator to consider in support of each issue raised must be contained within the body of the petition, or if reference is made to an attached document, the body of the petition must provide a specific citation to the referenced information, along with a description of how that information supports the claim. In determining whether to object, the Administrator will not consider arguments, assertions, claims, or other information incorporated into the petition by reference. For each claim raised, the petition must identify the following:

(i) The specific grounds for an objection, citing to a specific permit term or condition where applicable.

(ii) The applicable requirement as defined in § 70.2, or requirement under this part, that is not met.

(iii) An explanation of how the term or condition in the permit, or relevant portion of the permit record or permit process, is not adequate to comply with the corresponding applicable requirement or requirement under this part.

(iv) If the petition claims that the permitting authority did not provide for a public participation procedure required under § 70.7(h), the petition must identify specifically the required public participation procedure that was not provided.

(v) Identification of where the issue was raised with reasonable specificity during the public comment period provided for in § 70.7(h), citing to any relevant page numbers in the public comment submitted to the permitting authority and attaching this public comment to the petition. If the grounds for the objection were not raised with reasonable specificity during the public comment period, the petitioner must demonstrate that such grounds arose after that period, or that it was impracticable to raise such objections within that period, as required under § 70.8(d).

(vi) Unless the grounds for the objection arose after the public comment period or it was impracticable to raise the objection within that period such that the exception under § 70.8(d)

applies, the petition must identify where the permitting authority responded to the public comment, including page number(s) in the publicly available written response to comment, and explain how the permitting authority's response to the comment is inadequate to address the issue raised in the public comment. If the response to comment document does not address the public comment at all, the petition must state that.

* * * * *

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

■ 5. The authority citation for part 71 continues to read as follows:

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

■ 6. In § 71.2, amend the definition of "Applicable requirement" by revising paragraphs (1), (2), and (4) to read as follows:

§ 71.2 Definitions.

* * * * *

Applicable requirement * * *

(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in part 52 of this chapter, provided that where a preconstruction permit described in paragraph (2) of this definition is issued with public notice and the opportunity for comment and judicial review, the terms and conditions of such a permit establish and define, for purposes of this paragraph, the applicable requirements of the implementation plan that apply to the activities authorized by such a preconstruction permit;

(2) Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under title I, including parts C or D or section 110(a)(2)(C), of the Act;

* * * * *

(4) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act, but not including any requirement under section 112(r)(1) of the Act;

* * * * *

[FR Doc. 2026–19671 Filed 9–24–26; 8:45 am]

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Part III

Department of Justice

Bureau of Alcohol, Tobacco, Firearms, and Explosives

27 CFR Part 555

Implementing the Safe Explosives Act; Final Rule

DEPARTMENT OF JUSTICE**Bureau of Alcohol, Tobacco, Firearms, and Explosives****27 CFR Part 555****[ATF No. 2002R-341F]****RIN 1140-AA00 and 1140-AA20****Implementing the Safe Explosives Act**

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) is finalizing two Department of Justice (“Department”) interim final rules (“IFRs”) implementing the Safe Explosives Act. This rule formally ends those rules’ interim status, responds to public comments from 2003 on the IFRs, rescinds ATF Ruling 2003–5 issued in response to IFR comments, and makes certain revisions to IFR provisions in response to the comments. They clarify when federal licensees/permittees must report changes in responsible persons and authorized employees; eliminate verifying identity of persons accepting delivery on behalf of distributees; and amend regulatory exemption language governing aspects of transporting explosive materials.

DATES: This rule is effective October 26, 2026.

FOR FURTHER INFORMATION CONTACT: Office of Regulatory Affairs, by email at ORA@atf.gov, by mail at Office of Regulatory Affairs; Enforcement Programs and Services, Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice; 99 New York Avenue NE; Washington, DC 20226; or by telephone at (202) 648–7070.

SUPPLEMENTARY INFORMATION:

- I. Executive Summary
- II. Background
- III. Analysis of Comments and Decisions for Interim Rule IFR 1
 - A. Reporting Changes in Responsible Persons and Employees Authorized To Possess Explosive Materials
 - B. eZ-Check System
 - C. Relief From Disabilities
 - D. Limited Permittee Transaction Report, ATF Form 5400.4
 - E. Explosives Employee Possessor Questionnaire, ATF Form 5400.28
 - F. Rocket Motors
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 - I. Safe Storage and Retaining Records
 - J. License/Permit Requirements for Treatment, Storage, Disposal Facilities
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- M. Safely Handling Explosives and Record-Keeping Manual
- N. Errors in Regulatory Text
- O. IFR Costs and Benefits Section
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- IV. Analysis of Comments and Decisions for Interim Final Rule (IFR) 2
 - A. Obligations To Verify Persons Accepting Explosives Delivery and ATF Ruling 2003–5
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- V. Final Rule
 - A. Amendment to § 555.57
 - B. Amendment to §§ 555.103 and 555.105
 - C. Technical Amendments
 - D. Guidance Documents Affected by This Final Rule
- VI. Statutory and Executive Order Reviews

I. Executive Summary**A. Purpose of the Regulatory Action**

The Safe Explosives Act (“SEA”), Title XI, Subtitle C of Public Law 107–296, of the Homeland Security Act of 2002 (November 25, 2002) (“HSA”), amended the federal explosives laws in 18 U.S.C. chapter 40 to, among other things: (1) include a federal licensing/permitting requirement for all explosive materials purchased or received on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new “limited permit” for certain types of explosives purchasers.

On March 20, 2003, ATF published an interim final rule in the **Federal Register** implementing the SEA, Implementation of the Safe Explosives Act, Title XI, Subtitle C of Public Law 107–296—Delivery of Explosive Materials by Common or Contract Carrier, 68 FR 53509 (Sep. 11, 2003) (“IFR 2”), which removed the requirement set forth in IFR 1 that all common/contract carriers making deliveries on or after May 24, 2003, complete ATF Form 5400.8, Explosives Delivery Record (“Form 5400.8”), prior to taking possession of explosive materials for delivery to a federal explosives licensee/permittee. This final rule adopts the regulations set forth in both interim final rules (collectively, “IFRs”) with minor technical amendments for purposes of clarity and some modifications in response to comments received.

B. Summary of the Major Provisions of This Rule

The SEA and its implementing regulations created important benefits to public security and safety. Prior to the SEA, ATF performed background checks on licensee/permittee responsible persons (“RPs”), but not on other employees who were authorized to possess explosive materials in the course of their employment. The SEA introduced a requirement that ATF also perform background checks on employees authorized to possess explosive materials to ensure that these employees are not prohibited by law from shipping, transporting, receiving, or possessing explosive materials.¹ This requirement was added to enable ATF to prevent a prohibited person, who otherwise might be hired if no background check was performed, from gaining access to and possessing explosives while employed by an explosives licensee/permittee. Moreover, the required background checks were introduced to help to ensure that criminals and other prohibited persons are not permitted to obtain explosive materials for illicit use. Thus, the SEA, as implemented through the two IFRs, introduced preventative tools to increase public safety and security.

The SEA also added that all persons who wish to acquire, but not deal in, explosive materials must obtain, at minimum, a “limited permit.” Further, the SEA added a requirement that ATF inspect all licensee/permittee storage facilities. This mandate was introduced to authorize ATF to verify that explosive materials are stored in accordance with the regulations and that stored explosive materials do not pose a threat to public safety. These changes were also implemented via the two IFRs in 2003.

This final rule adopts most provisions from IFRs 1 and 2 without change. However, this final rule does modify the verification requirements that apply when explosive materials are delivered via common/contract carrier. IFR 1 required common/contract carriers to verify the identity of the person accepting delivery on behalf of the distributee, verify that the person was authorized to accept on behalf of the distributee, note the type and number of the identification document furnished by the person, and report that information to the distributor. When IFR

¹ The Attorney General is responsible for enforcing the SEA. The Attorney General has delegated the responsibility for administering and enforcing the SEA and federal explosives laws to the Director of ATF, subject to the direction of the Attorney General and Deputy Attorney General. See 18 U.S.C. 847; 28 CFR 0.130(a).

1 was issued, explosives and transportation industry members informed ATF that these requirements placed an undue burden on common/contract carriers, and drivers were concerned that the requirements would be overly time consuming and potentially cause them to be held personally liable if the explosives were delivered to unauthorized persons.²

ATF acknowledged these concerns in two subsequent documents, issuing ATF Ruling 2003–5 in May 2003 and IFR 2 in September 2003. Pursuant to 27 CFR 555.22, which allows ATF to approve alternative procedures or variations from requirements, Ruling 2003–5 created a variance from the IFR 1 requirement to verify the identity of the person accepting explosive materials on behalf of a limited permittee. The ruling authorizes a variance from the requirements of § 555.105(b)(6)(iii) for federal explosives licensees/permittees distributing explosive materials to limited permittees via common/contract carrier. As an alternative method or procedure, such distributors may verify receipt of the explosive materials by telephone, facsimile, email, or other means within three business days after shipping the materials, in lieu of requiring the common/contract carrier to verify the identity of the individual accepting delivery of the explosives. In such cases, the distributor must note on ATF Form 5400.4, Limited Permittee Transaction Report (“Form 5400.4”), when delivery occurred and when they contacted the distributee. The ruling, however, did not remove the regulatory requirement from § 555.105(b)(6)(iii) and did not address the identity verification requirements for common/contract carriers when delivering to licensees/user permittees. IFR 2 removed the requirement from § 555.103(b)(2)(ii) that common/contract carriers must verify the identity of persons accepting on the licensee/user permittee distributee’s behalf but also did not remove the requirement from § 555.105(b)(6)(iii).

The remaining requirements that the recipient’s identity be verified by the common/contract carrier or the distributor when such carriers delivered to a limited permittee remained a concern for industry. Industry members raised burden issues and expressed concern about reconciling the ruling and the regulatory provision, as well as concerns about the different requirements for different distributees,

in public comments ATF received on both IFRs 1 and 2. Having considered the concerns expressed in the comments, ATF is issuing this final rule to remove the remaining IFR 1 verification and reporting requirement for common/contract carriers and to rescind ATF Ruling 2003–05 and its variance.

II. Background

Title XI of the Organized Crime Control Act of 1970 (“OCCA”), Public Law 91–452, 84 Stat. 922 (1970), added chapter 40 (Importation, Manufacture, Distribution, and Storage of Explosive Materials) to title 18 of the U.S. Code.³ This act established the foundational federal framework for regulating manufacturing, distributing, and storing explosive materials. One of title XI’s stated purposes was to reduce the “hazard to persons and property arising from misuse and unsafe or insecure storage of explosive materials.” Public Law 91–452, sec. 1101, 84 Stat. at 952. The Attorney General is responsible for implementing title XI. *See* 18 U.S.C. 847. Congress and the Attorney General have delegated that responsibility to the Director of ATF (“Director”), subject to the direction of the Attorney General and the Deputy Attorney General.⁴ *See* 28 U.S.C. 599A(b)(1), (c)(1); 28 CFR 0.130(a)(1)–(2); Treas. Order No. 221(2)(a), (d), 37 FR 11696–97 (June 10, 1972). Accordingly, ATF has promulgated regulations implementing title XI in 27 CFR part 555.

The Safe Explosives Act (“SEA”), Title XI, Subtitle C of Public Law 107–296, 116 Stat. 2135, 2280, of the HSA (November 25, 2002), amended the federal explosives laws in 18 U.S.C. chapter 40 to, among other things, (1) include a federal licensing/permitting requirement for purchasing and receiving explosive materials on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new “limited permit” for certain types of explosives purchasers. In general, the provisions of the HSA

became effective 60 days after the date enacted, on January 24, 2003.

A. Provisions of SEA Effective January 24, 2003

Pursuant to section 4 of the HSA, the following provisions of the SEA became effective on January 24, 2003, the general effective date provision for the entire HSA:

- Adding three categories of persons (citizen renunciants, aliens with certain exceptions, and persons dishonorably discharged from the Armed Forces) who may not lawfully ship, transport, receive, or possess explosive materials (HSA sec. 1123(a), (b));
- Specifying that it violates the law if a prohibited person ships or transports explosives or materials for explosives, or receives or possesses explosives or materials for explosives that have been shipped or transported, in or affecting interstate or foreign commerce (HSA sec. 1123(b)(3));
- Providing ATF with the authority to require licensed manufacturers, licensed importers, and persons who manufacture or import explosive materials or ammonium nitrate to provide ATF with samples, information on chemical composition, and other information relevant to identifying the product (HSA sec. 1124);
- Adding to the types of property which it is a crime to maliciously damage or destroy, or attempt to do the same, particularly when tied to explosives, property owned, possessed by, or leased to any institution or organization receiving federal financial assistance (HSA sec. 1125);
- Expanding ATF’s authority to grant relief from disabilities to all categories of prohibited persons if the applicant is found not to be likely to act in a manner dangerous to public safety and that such relief is not contrary to the public interest (HSA sec. 1126); and
- Adding a new theft-reporting violation, providing felony penalties for a licensee/permittee who fails to report a theft of explosives within 24 hours of discovery (HSA sec. 1127).

B. Provisions of SEA Effective May 24, 2003

Pursuant to section 1122(i)(1) of the HSA, the following provisions of the SEA became effective on May 24, 2003, 180 days after the date the HSA was enacted:

- Requiring each person receiving explosives to obtain a federal license/permit (HSA sec. 1122(b));
- Creating a new type of permit, the “limited permit” (HSA sec. 1122(c)(1)(A));

² *See* ATF Ruling 2003–5 (May 23, 2003), *Distribution of Explosives to Limited Permittees*, <https://www.atf.gov/media/19706/download> [<https://perma.cc/3RCR-SDKR>].

³ Some provisions of 18 U.S.C. chapter 40 still refer to the “Secretary of the Treasury.” However, the HSA transferred the functions of ATF from the Department of the Treasury to the Department of Justice, under the general authority of the Attorney General. 26 U.S.C. 7801(a)(2)(A); 28 U.S.C. 599A(c)(1). Thus, for ease of reference, this rule refers to the Attorney General where relevant.

⁴ In Attorney General Order Number 6353–2025, the Attorney General has delegated authority to the Director to issue regulations pertaining to matters within ATF’s jurisdiction, including under OCCA, the National Firearms Act, and the Gun Control Act. ATF’s jurisdiction also includes the Arms Export Control Act and the Contraband Cigarette Trafficking Act.

- Providing that only licensees and holders of user permits must post their licenses and permits and make them available for inspection (HSA sec. 1122(g));
- Requiring applicants to include specified identifying information for employees authorized to possess explosive materials, as well as fingerprints and photographs of “responsible persons,” in applications for licenses and permits (HSA sec. 1122(c)(1)(B));
- Requiring ATF to conduct background checks on responsible persons and employees authorized to possess explosive materials (HSA sec. 1122(h));
- Extending the time for ATF to act on an application for a license/permit from 45 days to 90 days (HSA sec. 1122(e)); and
- Authorizing warrantless inspections of explosives storage for applicants of limited permits and holders of limited permits (HSA sec. 1122(f)).

C. Interim Rules

On March 20, 2003, ATF published IFR 1, implementing the SEA. 68 FR 13768. The IFR 1 comment period ran through June 18, 2003. On September 11, 2003, ATF published IFR 2, which removed the requirement from IFR 1 that common/contract carriers complete Form 5400.8 prior to taking possession of explosive materials for delivery to a licensee/user permittee, regardless of whether the carrier was hired by the distributor or distributee. 68 FR 53509. ATF believed that this requirement was unduly burdensome and unnecessary due to Department of Transportation (“DOT”) and Transportation Security Administration (“TSA”) regulations that became effective after IFR 1 was published.⁵

Once the DOT and TSA rules were published, certain employees of motor, water, air, and rail carriers were no longer subject to 18 U.S.C. 842(i) while commercially transporting explosives. Rather, these employees became subject to DOT and TSA security threat assessment standards. To evaluate relevant security threat assessments, DOT and TSA began to collect specific information to ensure that employees of common/contract carriers transporting explosives do not pose a security threat.

Thus, ATF determined that there was a significantly diminished need to collect similar information via Form 5400.8 to ensure that explosives were not handed to prohibited persons for possible diversion to criminal or terrorist use. However, ATF continued to require that distributors verify the identity of persons accepting explosive materials on behalf of the common/contract carriers and required distributors to record the name of the common/contract carrier and the full name of the driver in their permanent records. The comment period for IFR 2 closed on October 14, 2003.

III. Analysis of Comments and Decisions for IFR 1

In response to IFR 1, ATF received 20 comments. Comments were submitted by explosives industry members; mining, ski, and transportation associations; model hobby rocket enthusiasts; and individuals. Most commenters expressed specific concerns regarding the interim regulations, which are addressed below.

A. Reporting Changes in Responsible Persons and Employees Authorized To Possess Explosive Materials

Effective May 24, 2003, the SEA required ATF to conduct background checks on RPs and employees authorized to possess explosive materials, upon request by a licensee/permittee. The regulations at 27 CFR 555.57(b) therefore specify that all persons who have been issued licenses/permits since May 24, 2003, “must report to the Chief, Federal Explosives Licensing Center, any change in responsible persons or employees authorized to possess explosive materials.”

Comments Received

Three commenters expressed concerns regarding the phrase “any change.” An explosives industry technical association stated that the reporting requirement should apply only when a new RP or “possessor employee” is added.

Another commenter, a trade association for ski resorts, asked whether the reporting requirement applies to both additions and deletions to a permittee’s list of authorized employees. The commenter requested that deletions be limited to employees not eligible for rehire so that employers would not have to delete and then re-add the same seasonal employees that return year after year.

Similar concerns were raised by an explosives industry representative organization. This commenter

contended that the phrase “any change” was very broad and could be interpreted to mean retirement, resignation, dismissal, reassignment, or promotion. The commenter believed that ATF intended the reporting requirement to apply only when a new RP or employee, not previously reported to ATF, is authorized to possess explosive materials, and suggested that the regulation be amended to reflect this.

ATF Response

ATF acknowledges commenters’ concerns about IFR 1’s reporting requirements for changes in RPs and employees authorized to possess explosive materials. ATF recognizes that the commenters may be interpreting “any change” to mean they must report only new RPs and employees authorized to possess explosive materials because § 555.57(b) does not specify the method for reporting other changes in employment. However, there is a public safety risk and potential harm to the licensee/permittee of not reporting RPs or employees who are no longer authorized by the licensee/permittee. Former RPs have, in some such cases, removed all other persons from the licensee/permittee or put the licensee/permittee out of business, and formerly authorized employees, in some such cases, have acquired explosives in the name of the licensee/permittee, also causing them to incur charges for such purchases. Due to the risks that former RPs or former employees authorized to possess explosive materials could pose if not reported to ATF and removed from authorized actions, ATF intended that the regulations at § 555.57(b) require a licensee/permittee to report to ATF (1) new RPs or employees authorized to possess explosive materials, (2) RPs that cease to be employed by, or otherwise vacate their positions as RPs with, the licensee/permittee, and (3) any employee authorized to possess explosive materials that leaves or otherwise ceases to be an employee of, or ceases to need to possess explosives as part of their employment with, the licensee/permittee.

Accordingly, this final rule amends § 555.57(b) to clarify that the licensee/permittee must report each new and each removed RP to the Chief, Federal Explosives Licensing Center (“FELC”),⁶ within 30 days of adding or removing the RP. The licensee/permittee must report each new RP by submitting ATF

⁵ See Hazardous Materials: Enhancing Hazardous Materials Transportation Security, 68 FR 23832 (May 5, 2003) (DOT interim final rule); Limitations on the Issuance of Commercial Driver’s Licenses with a Hazardous Materials Endorsement, 68 FR 23844 (May 5, 2003) (DOT interim final rule); Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License, 68 FR 23852 (May 5, 2003) (DHS interim final rule).

⁶ On August 11, 2014, ATF issued a final rule titled “Technical Amendments to Regulations,” which, among other things, updated this position title in § 555.57 and wherever it appeared in 27 CFR part 555. 79 FR 46690.

Form 5400.13A/5400.16 (now changing to Form 5400.27), Explosives Responsible Person Questionnaire ("Form 5400.13A/5400.16"), but may just notify ATF in writing when they remove an RP. This final rule also amends § 555.57(c) to clarify that the licensee/permittee must report each new and each removed employee authorized to possess explosive materials to the Chief, FELC, within 30 days of adding or removing the employee or the employee's authorization to possess explosive materials for that licensee/permittee. The licensee/permittee must report each new employee authorized to possess explosive materials by submitting ATF Form 5400.28, Explosives Employee Possessor Questionnaire ("Form 5400.28"), but may just notify ATF in writing when the licensee/permittee wants to remove an employee. Finally, the rule amends § 555.57(d) to clarify that new RPs and employees authorized to possess explosive materials may possess explosive materials as part of their job duties from the time they are hired, as long as the licensee/permittee submits the required form to add them, along with all accompanying items, as required by the regulations, and unless or until the Chief, FELC, notifies the licensee/permittee that the individual is prohibited from doing so.

B. eZ-Check System

The SEA mandates that each person who wishes to acquire explosives, whether in interstate or intrastate commerce, obtain a federal explosives license/permit. In general, the interim regulations at § 555.103(b)(1)(ii) provide that a licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials must verify the license/permit status of the distributee prior to releasing the explosive materials to them. Section 555.103(b)(2)(i) requires that, prior to or with the first order of explosive materials, the distributee must provide the distributor with a certified copy of the distributee's license/permit.

With respect to firearms, ATF has established a system that federal firearms licensees ("FFLs") may voluntarily use to verify the validity of a license held by another FFL. This system, the FFL eZ-Check system, is accessed via ATF's website. The eZ-Check system is popular with FFLs and is an efficient method of verifying license status. ATF believed a similar system would be useful for verifying the explosives license/permit status of persons ordering explosives. Accordingly, in IFR 1 ATF requested

of such a system and whether it should be used in conjunction with the procedures set forth in the regulations.

Comments Received

Two commenters addressed this subject and endorsed establishing an eZ-Check-type system for explosives licenses/permits.

ATF Response

Although this rule does not establish or mandate the use of such a system, ATF separately agreed with the commenters and developed a federal explosives licensee/permittee eZ-Check system. Since 2017, ATF has made available to federal explosives licensees/permittees an eZ-Check system on its website. Although creating the eZ-Check system was responsive to the comments on this topic, it did not affect the regulations. As a result, ATF is not making any changes in this final rule in response to these comments.

C. Relief From Disabilities

Prior to the SEA, federal law authorized ATF to grant relief from prohibitions that disable a person from distributing, receiving, possessing, and shipping or transporting explosives. However, this authority applied only to prohibited persons disabled because they were under indictment for or convicted of a felony. The SEA amended 18 U.S.C. 845(b), expanding ATF's authority to grant relief from disabilities to all categories of prohibited persons if ATF finds that the applicant is not likely to act in a manner dangerous to public safety and that granting such relief is not contrary to the public interest. The Attorney General delegated this authority to the Director, and IFR 1 implemented this provision of the law in 27 CFR 555.142.

Section 555.142 also specifies categories of persons to whom the Director generally will not grant relief unless there are extraordinary circumstances or a compelling need, where granting such relief is consistent with the public interest. Such categories of persons generally presumed ineligible for relief include persons who have not been discharged from parole or probation for at least two years, fugitives from justice, prohibited aliens, persons who are unlawful users of or addicted to any controlled substances, persons adjudicated as "mental defective" or committed to a mental institution (with certain exceptions), and persons prohibited by the law of the state where the person resides from receiving or possessing explosive materials. Section 555.142 also provides that the Director may grant relief to aliens who have been

lawfully admitted to the United States or to persons who have not been discharged from parole or probation for a period of at least two years if the Director determines that the applicant has a compelling need to possess explosives, such as for purposes of employment.

Comments Received

Four commenters expressed concerns regarding the provisions of § 555.142. One commenter argued that there is a group of individuals for whom granting relief from disability is in the public interest, for whom there is a compelling need to possess explosives, and for whom special processing of relief from disability applications is warranted. The commenter stated that each year, ski resorts employ citizens of Australia, New Zealand, France, and Canada to work in the U.S. as ski patrollers. According to the commenter, many of these employees are highly skilled and experienced avalanche-control workers who return to the same resorts in the U.S. year after year to work specifically in avalanche control.

The commenter contended that the expertise and skill these international employees provide to the ski industry and the resulting benefit to public safety warrant them having relief from disability. The commenter requested that ATF allow these employees to apply for relief from disability before they arrive in the U.S. for the season, with some provision that approving their seasonal visa would act as the final step in their clearance to possess explosives at resorts and to work in avalanche control. In addition, the commenter stated that once such employees are granted relief from disability, they should not be required to reapply for relief for subsequent ski seasons or, alternatively, they should have to reapply for relief from disability only every three to five years. The commenter added that if its suggested revisions to the regulation do not appear workable, an expedited relief from disability process should be established to accommodate these employees.

Another commenter, a professor who works in the mining engineering arena, expressed similar concerns. The commenter stated that the commenter's university has developed an international reputation for explosives engineering and has had many foreign students and scholars visit its department over the past 20 years. According to the commenter, several students have only student visas and, in light of the SEA, are unable to take any "hands-on" explosives classes or do research in explosives. The commenter

noted that some students had applied for relief from disabilities in accordance with the regulations, but that the application process is very lengthy. Accordingly, the commenter recommended “a relief process that only takes a couple of weeks” or “a guided step-by-step process given on the web with an example so that applicants have something to go by.”

Except as provided in § 555.142(c)(3), the regulations specify that the Director will not grant relief if the applicant is prohibited by the law of the state where the applicant resides from receiving or possessing explosive materials. A third commenter argued that because Congress has granted DOT authority to preempt state and local requirements as to transporting hazardous materials, the requirement that the Director not grant relief if there is conflict with state law should apply only in very limited circumstances. A fourth commenter expressed similar concerns and stated that the requirement should apply only to aliens handling explosives incidental to, and in connection with, the commercial export of explosives by rail or truck to Canada from the U.S.

ATF Response

ATF disagrees that the regulations need to be revised as suggested. As described above, the Director may grant relief to an alien who has been lawfully admitted to the U.S. if the Director determines that (1) the alien is not likely to act in a manner dangerous to public safety, (2) granting such relief is not contrary to the public interest, and (3) the alien has a compelling need to possess explosives, such as for employment. To receive relief, the alien must submit ATF Form 5400.29 (now 5400.31), Application for Restoration of Explosives Privileges (now Request for Relief from Explosives Disability) (“Form 5400.29”), and include certain additional documentation.

The SEA does not require that relief applications be submitted from a location within the U.S. Therefore, an alien who has been lawfully authorized to enter the U.S. may submit the alien’s relief application from a location outside the U.S. before arriving in the U.S. However, in submitting a relief application, whether from a location within or outside the U.S., the alien must be able to show that they have been lawfully admitted to the U.S. (See § 555.142(f)(1)(ix)).⁷ In addition, the

alien must provide certification that they are legally authorized to work in the U.S., or other purposes for which they are required to possess explosives; certification from an appropriate law enforcement agency in the applicant’s country of citizenship stating that the applicant does not have a criminal record; and, if applicable, certification from a federal explosives licensee/permittee or other employer (including a university or college) stating that the applicant is employed by the employer and must possess explosive materials for purposes of employment.

The regulation at § 555.142(d) states that any person who has been granted relief is relieved of all disabilities disclosed on the application for relief. This paragraph further states that the relief from disabilities granted to aliens will be effective only so long as the aliens retain their lawful immigration status. Therefore, provided that aliens have not failed to disclose any prohibitive disabilities in their initial relief applications, do not incur any new disabilities, and retain lawful immigration status on each subsequent or intermittent return to the U.S., the aliens would not be required to reapply for relief.

In response to commenters requesting an expedited process or step-by-step instructions, ATF has detailed instructions in Form 5400.29 (now 5400.31) that identify additional documents that aliens must include with their applications. Further, ATF also provides detailed information on completing a relief application on its website.⁸ While considering and reviewing each application, ATF relies not only on the information provided with the application, but also on information provided by other sources to verify that the information received with the application is accurate. Processing delays often occur as a result of an incomplete or improperly completed relief application package; ATF’s inability to contact, locate, or schedule in-person interviews with persons identified within the relief application; and delays in responses from other federal, state, or foreign government law enforcement agencies. Public safety requires that ATF obtain information from other agencies and through personal interviews; any expedited processes or shortened

occur after the alien has been admitted to the United States.

⁸ See ATF, *Apply for Relief from Federal Explosives Disabilities* (Mar. 13, 2025), <https://www.atf.gov/explosives/tools-services-explosives-industry/current-licensees/apply-relief-federal-explosives-disabilities> [https://perma.cc/P26U-HC48].

timelines could negatively affect ATF’s ability to obtain vital information. Despite these requirements, ATF attempts to process relief applications as quickly as possible, and in less than the 120 days that applicants are told to expect. Therefore, ATF declines to adopt the commenter’s suggestion to develop an expedited relief process for foreign visitors studying at academic institutions. However, due to some confusion expressed about when aliens may begin the relief request process, ATF is amending § 555.142(f)(1)(ix) to clarify that aliens can begin the request process before they enter the U.S., although it cannot be completed until they have been lawfully admitted.

The other commenters suggested that ATF, when evaluating relief from explosives disability applications, should disregard state prohibitions as they relate to persons transporting explosive materials within the U.S. and under the regulation of DOT. The commenters refer to a specific example where DOT was authorized to exempt specific state transportation laws that regulate the transportation of hazardous materials. Federal law, at 18 U.S.C. 845(a)(1), exempts from ATF regulation any aspect of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and that are regulated by DOT or the Department of Homeland Security (“DHS”). In other words, if DOT or DHS have issued regulations on safety or security aspects of transporting explosive materials by those means, ATF will not also issue regulations on that topic. Following the publication of IFR 1, DOT and DHS published regulations generally exempting persons from the application of 18 U.S.C. 842(i) while they are commercially transporting explosives.⁹

ATF believes the provision at 27 CFR 555.142(c)(2)(vi), which generally prohibits granting relief if the person is prohibited by the law of the state where the person resides from receiving or possessing explosive materials, is an effective and appropriate interpretation of the “public interest” standard of 18 U.S.C. 845(b)(2). It is not in the public interest to expend federal resources to investigate and act on a relief application if the applicant is barred from possessing explosives in his or her state of residence. In addition, ATF believes it is appropriate to recognize the state’s interest in determining the categories of persons who may lawfully possess explosives while residing within that state. ATF declines to second-guess state officials by

⁹ See footnote 5, *supra*.

⁷ Although an alien may begin the application process to request a relief from disability while still outside the United States, they cannot receive the relief until they have been lawfully admitted. Certain steps of ATF’s assessment process must also

conducting investigations of individuals who have categorically been prohibited from receiving and possessing explosives under state law.

ATF also believes the contentions of these commenters relating to DOT preemption of state law are not relevant to relief from disability applications. To the extent that prohibited persons receive or possess explosives during aspects of transporting them that are regulated by DOT and relate to safety and security, the preemption provisions of 18 U.S.C. 845(a)(1) would apply, and such possession in these circumstances would not be prohibited under this chapter. Because it is not relevant if a person transporting explosives during aspects covered by DOT regulations is prohibited from possessing explosives, the person does not need relief from ATF to possess explosives while under the DOT regulations. As a result, ATF neither disregards nor considers state prohibitions as they relate to persons transporting explosive materials within the U.S. under DOT's regulation.

For these reasons, ATF declines to adopt these commenters' recommendations relating to relief applicants and state law disabilities.

D. Limited Permittee Transaction Report, ATF Form 5400.4

Prior to the SEA, intrastate purchasers of explosives could acquire explosives without a federal license/permit but needed to complete ATF Form 5400.4, Explosives Transaction Record ("Form 5400.4"). The form required the intrastate purchaser to certify that the purchaser was not a prohibited person. Effective May 24, 2003, ATF revised the Explosives Transaction Record form and retitled it as Limited Permittee Transaction Report. Limited permittees complete the form when purchasing explosive materials from licensees/permittees within their state of residence. Among other things, the form requires that the limited permittee provide information regarding their intended use of the explosive materials. ATF stated in IFR 1 that the form also provides an option for the distributor to document information concerning the manufacturer's or importer's identification marks and the size of the explosives to be distributed. In addition, ATF solicited comments as to whether this optional information should be mandatory.

Comments Received

Three commenters expressed concerns with respect to Form 5400.4. One contended that ATF's use of the same form number, Form 5400.4, for two different information collections

was confusing and that ATF should have issued a new information collection utilizing a new form number. Specifically, the commenter stated, "Over the last 30 years, the explosives industry has become very familiar with the present Form 5400.4, completing the form almost 23,000 times annually." The commenter added that the new Form 5400.4 would be "completed by a different population of explosive users, have different content, and have different subsequent procedures than the present form."

With respect to the revised Form 5400.4, the commenter acknowledged that recording identification marks could be helpful to law enforcement officials in tracing explosives. However, the commenter recommended against a requirement to identify the size of explosives. According to the commenter, ATF could look up the identification marks in the inventory records, taking only a few minutes, while it would take the regulated community hours to record the same information on the form.

Another commenter recommended that the option for the distributor to document information concerning identification marks and explosives size be removed from the form or, as an alternative, clearly highlighted as not being required by law. According to the commenter, IFR 1 did not show how this information would benefit ATF nor did it provide data or information on why the optional information was added to the form.

A third commenter expressed concern regarding the availability of the revised Form 5400.4. This commenter stated that the form was not available until shortly before the time designated for compliance. Although the form could be obtained by downloading copies from ATF's website, the commenter argued that a large number of explosives distributors were located in areas where they might not have access to the internet. Accordingly, the commenter stated that ATF should allow licensees additional time to comply with use of the form. Similar concerns were raised by another commenter.

ATF Response

ATF declines to assign a different form number to the Limited Permittee Transaction Report. Over the 20-plus years since the interim rules were issued, ATF has seen no evidence that using the old explosives transaction form number for the new Limited Permittee Transaction Report has caused confusion among industry members, nor have there been any

enforcement problems associated with the use of the form number.

ATF agrees that ATF can readily locate information regarding the size of the explosives listed on Form 5400.4 in other required explosives records at the premises. Therefore, entry of this information on the form will remain optional. ATF also agrees with the suggestion that the form should clearly note that this information is optional. As a result, Form 5400.4 was revised in 2003 to prominently include the term "optional" next to the "size" column heading on the form.

ATF recognizes that the revised Form 5400.4 was not made available to the public until immediately prior to the effective date of the applicable SEA provisions. This was primarily due to the short time frame to implement the SEA. The new forms were made available as soon as possible, and ATF took steps to inform the industry of new or revised requirements that affected their conduct of business.¹⁰

Regarding the topic of entering the identification marks on the Limited Permittee Transaction Report, ATF has determined that it will remain optional to complete this section of the form because ATF can readily locate information regarding the identification marks listed on the report in other required explosives records at the premises. Form 5400.4 was revised to show that this information is optional.

E. Employee Possessor Questionnaire, ATF Form 5400.28

The interim regulations at 27 CFR 555.45 specified that license/permit applications postmarked on or after March 20, 2003, must be accompanied by Form 5400.28. Prior to May 24, 2003, responsible persons, *i.e.*, applicants and others who had the authority to direct the policies of the applicant with respect to explosive materials, were required to answer on this form whether they fell within any of the categories of persons prohibited from possessing explosive materials. The interim regulations also provided that on and after May 24, 2003, Form 5400.28 (which was retitled in 2003 as the Employee Possessor Questionnaire and has since been retitled in 2021 as the Explosives Employee Possessor Questionnaire), must be completed by each individual who will possess explosive materials in the course of his or her employment. Employees

¹⁰ See ATF Explosives Industry Newsletter (May 2003), <https://www.atf.gov/media/28951/download> [<https://perma.cc/PY78-9YTW>], and ATF Explosives Industry Newsletter (December 2003), <https://www.atf.gov/media/29071/download> [<https://perma.cc/988D-WNY6>].

completing the Form 5400.28 must provide appropriate identifying information, including residence address and name of employer, and must declare whether they fall within any of the categories of persons prohibited from possessing explosive materials. Beginning from that same time in 2003, RPs no longer completed Form 5400.28 because the identifying information for RPs was collected on ATF Form 5400.13/5400.16 (now changing to Form 5400.13), Application for an Explosives License/Permit ("Form 5400.13/5400.16"). In 2023, ATF received approval from the Office of Management and Budget ("OMB") to collect the identifying information for RPs on Form 5400.13A/5400.16 (now Form 5400.27) and no longer collects this information on Form 5400.13/5400.16 (now Form 5400.13).

Comments Received

Two commenters expressed concerns regarding Form 5400.28. One commenter contended that using the same form number for a completely different information collection was confusing and that ATF should have used a different form number for the Employee Possessor Questionnaire. The commenter also argued that the new Form 5400.28 is not necessary for ATF's performance of its duties. According to the commenter, "The FEL [federal explosives law] entitles ATF to obtain 'the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials [18 U.S.C. 843(a)]' from a license or permit applicant." The commenter added that the FEL does not give ATF explicit authority to obtain the extensive information required by the new Form 5400.28.

The second commenter expressed similar concerns, stating that "ATF should only ask for the minimum identifying information necessary in order to properly conduct the background check to determine qualification." The other commenter also claimed that approximately one half of the information required on the form was unnecessary for ATF to perform its duties and recommended that ATF obtain only the names and appropriate identifying information of employees authorized to possess explosive materials, and do so through the license/permit application form instead.

ATF Response

ATF does not believe that using an existing form number for the Explosives Employee Possessor Questionnaire,

Form 5400.28, has caused confusion or hindered proper execution of the form. Form 5400.28 has been in use since May 2003, and ATF has not been apprised of any logistic or administrative problems as a result of retaining the number Form 5400.28 for this form. Therefore, ATF is not adopting the suggestion that ATF change the form number.

Additionally, ATF does not agree with the commenters' assertion that Form 5400.28 seeks to collect more than the minimum identifying information necessary to efficiently and appropriately carry out ATF's statutory mandate to conduct background checks on employees authorized to possess explosive materials. The commenters did not provide any specifics on the identifying information in the Form 5400.28 fields that they believe is unnecessary. The SEA amended several provisions of the federal explosives laws, and Form 5400.28 is directly related to implementing these provisions. For example, the SEA (1) added in 18 U.S.C. 842(i) new categories of persons prohibited from receiving or possessing explosive materials; (2) required in section 843(a) that all applicants for a license/permit submit the names of, and appropriate identifying information regarding, all employees who will be authorized by the applicant to possess explosive materials; and (3) required in section 843(h)(1) that ATF determine if any RP or employee authorized to possess explosive materials is a prohibited person under section 842(i). Further, 18 U.S.C. 847 authorizes the Attorney General to issue rules and regulations she deems reasonably necessary to implement the law.

ATF uses Form 5400.28 to assist in background checks and the application process. Some of the requested information is applicable to specific prohibiting factors, such as the U.S.-issued alien registration number if an employee is not a U.S. citizen. ATF requires this and other requested information to address the broad range of circumstances that may be encountered when conducting background checks. A thorough and accurate background check ensures public safety and security by keeping explosives out of the hands of felons and other prohibited persons. In addition, obtaining thorough information results in quicker background checks so employers can be assured they are not placing explosives in the hands of prohibited persons.

With regard to the commenter's statement that certain information could be obtained from the license/permit application rather than through Form

5400.28, ATF does not agree. Form 5400.28 is the only document where this information is requested from an employee being authorized to possess explosive material. Although ATF asks for similar information for RPs, that reporting pertains only to RPs, not employees. Accordingly, ATF does not believe that Form 5400.28 is duplicative, and this final rule does not adopt the commenters' recommendation.

F. Rocket Motors

The SEA requires that all persons receiving explosives on or after May 24, 2003, obtain a federal explosives license/permit. In addition, even before the SEA, licensees/permittees were required to comply with the provisions of part 555 including, among other things, storage and other safety requirements, as well as record-keeping and theft-reporting. In the past, ATF took the position that these requirements of the SEA and part 555 applied to ammonium perchlorate composite propellant ("APCP"), including when APCP is used as a component of a rocket motor. (A rocket motor consists essentially of APCP, black powder, or other low explosives encased by a cardboard, plastic, or metallic cylinder.)

On March 16, 2009, the U.S. District Court for the District of Columbia vacated ATF's classification of APCP as an explosive as defined under 18 U.S.C. 841(d). *Tripoli Rocketry Ass'n, Inc. v. ATF*, No. 00-0273, 2009 WL 10737191 (D.D.C. Mar. 16, 2009). On July 17, 2009, ATF issued an open letter to all federal explosives licensees/permittees informing them that rocket motors that contain only APCP are no longer regulated under the federal explosives laws; that no one is required to obtain a federal explosives license/permit to manufacture, import, purchase, distribute, transport, or receive APCP; and that these types of rocket motors are not subject to regulatory requirement under 27 CFR part 555.

1. Rocket Motors and Rocket Propellants Are Not Explosives

Comments Received

Five commenters argued that rocket motors and rocket propellants (including APCP) are not explosives and should not be regulated by ATF. One of the commenters stated, "[e]xtensive testing by [the National Association of Rocketry Standards and Testing Committee] of ammonium perchlorate involving irradiation by radio waves, high temperatures (>100 °C), physical shock, static discharge (several

thousand volts), and unconfined burning has not revealed any explosive-like properties. Furthermore, the burn rate for ammonium perchlorate is well below that considered to be deflagration.”

ATF Response

The definition of explosive materials as it pertains to APCP and rocket motors was not affected by the enactment of the SEA. Under 18 U.S.C. 841(d), the term “explosives” is defined as “any chemical compound[,], mixture, or device, the primary or common purpose of which is to function by explosion.” The definition states that the term “includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.” ATF is also required under the law to publish an annual list of items that fall within the definition of explosives. Beginning with the publication of the first “Explosives List” in 1971, ATF classified APCP as an explosive. This classification was based upon the statutory definition of “explosives,” which contemplates that items can “function by explosion” either by detonating (dynamite and other high explosives detonate) or by deflagrating (low explosives, such as black powder, pellet powder, and rocket propellants, deflagrate, or burn very quickly). Because APCP deflagrates when confined, ATF classified it as an explosive. The SEA had no impact on this definition or classification, so at the time the IFRs were published, APCP remained an explosive.

In 2006, three years after the IFRs were published, ATF addressed the subject of rocket motors in a final rule, Commerce in Explosives-Hobby Rocket Motors, 71 FR 46079 (Aug. 11, 2006) (“hobby rocket motors rule”). In this rule, ATF affirmed and reinstated into its regulations an exemption for rocket motors containing 62.5 grams or less of APCP and other explosive propellants. In 1981, ATF exempted from regulation Class C explosives, which included “common fireworks” and certain other explosives designated by DOT regulations, one of which was originally termed “toy propellant devices and toy smoke devices” that contained a “small charge” of slow-burning propellant or smoke-producing powder. DOT subsequently renamed these devices “model rocket motors.” However, between 1996 and 1998, when ATF updated its regulations to reflect various DOT revisions, it inadvertently removed the exemption language. Despite this administrative error, ATF continued to

exempt sport rocket motors containing 62.5 grams or less of propellant, and in the 2006 final rule, it reinstated the exemption in 27 CFR 555.141(a)(10). The exemption is for model rocket motors that consist of APCP, black powder, or other similar low explosives, contain no more than 62.5 grams of total propellant weight, and are designed as single-use motors or as reload kits capable of reloading no more than 62.5 grams of propellant into a reusable motor casing. *Id.*

However, as discussed above, on March 16, 2009, the U.S. District Court for the District of Columbia vacated ATF’s classification of APCP as an explosive as defined under 18 U.S.C. 841(d). *Tripoli Rocketry Ass’n, Inc.*, 2009 WL 10737191. Accordingly, APCP is no longer classified by ATF as an explosive material, and rocket motors that consist solely of APCP, irrespective of the total APCP weight contained therein, are no longer regulated by ATF.

Notwithstanding the court’s decision on APCP, black powder and other low explosives used to manufacture and assemble rocket motors continue to be subject to ATF regulations. As noted above, ATF exempts single-use rocket motors or reload kits containing 62.5 grams or less of black powder or other low explosives or propellants. However, persons purchasing, storing, or engaging in the business of importing, manufacturing, or dealing in these materials (other than APCP) remain subject to the federal explosives laws and regulations.

2. Model Rockets/Rocket Motors Containing APCP Are “Propellant-Actuated Devices” and, as Such, Are Exempt From ATF Regulation

Propellant-actuated devices manufactured, imported, or distributed for their intended purposes are exempt from explosive regulations pursuant to 27 CFR 555.141(a)(8). Prior to amendment in 2009,¹¹ the term “propellant-actuated device” was defined in § 555.11 as “[a]ny tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.” In applying that regulatory definition, ATF classified certain specific aircraft slide inflation cartridges, inflatable automobile occupant restraint systems, nail guns, and diesel and jet engine starter cartridges as propellant-actuated devices. The comments discussed below were submitted during the time this

definition was still in effect. It has since been revised.

Comments Received

Two commenters asserted that model rocket motors met the definition of a propellant-actuated device and, as such, were exempt from ATF regulation. According to one of the commenters, the intended purpose of model rocket motors is not to function by explosion. Rather, their intended purpose is to propel a model rocket. The second commenter stated the following:

[P]ropellant actuated devices are exempted from BATFE regulation. As any first year aeronautical student can tell you, rocket motors function by the expulsion of propellant mass according to the mass equation[—]

$$F = -c (dm_e)/(dt)$$

They do not explode. Under these definitions, rocket motors are exempt from BATFE regulation.

ATF Response

The definition of a propellant-actuated device was not affected by the enactment of the SEA. The comments regarding rocket motors’ status as a propellant-actuated device were submitted when ATF’s regulations did not address rocket motors as propellant-actuated devices. The question of whether a rocket motor is a propellant-actuated device is now moot. ATF amended the definition of “propellant actuated device” in the 2009 propellant rule to exempt from the term “hobby rocket” motors consisting of APCP, black powder, or other similar low explosives, regardless of amount, and rocket-motor reload kits that can be used to assemble hobby rocket motors containing APCP, black powder, or other similar low explosives, regardless of amount.

3. Exemption of Rocket Motors Containing 62.5 Grams or Less of Propellant

Comments Received

As stated above, at the time of the interim final rule in 2003, ATF had exempted from regulation rocket motors containing 62.5 grams or less of explosive propellant, including APCP. One commenter requested that ATF continue this exemption, stating that “[a]ll of my rockets have been, and will be within that limit.” Another commenter indicated that the 62.5-gram exemption threshold should be increased in order to launch larger model rockets.

¹¹ Commerce in Explosives—Amended Definition of “Propellant Actuated Device,” 74 FR 1878 (Jan. 14, 2009) (“2009 propellant rule”).

ATF Response

The passage of the SEA did not affect ATF's exemption of rocket motors containing 62.5 grams or less of propellant. This final rule maintains the existing regulatory exemption.

In the hobby rocket motors rule, published August 11, 2006, ATF explained its historical determination of using 62.5 grams as an appropriate threshold for the amount of propellant exempt from explosive regulations. 71 FR 46079. In keeping with guidelines published by the National Fire Protection Association, and with regulations promulgated by the predecessor of the Consumer Product Safety Commission, and at the request of both the National Association of Rocketry ("NAR") and Estes Industries, ATF determined that 62.5 grams was an appropriate ceiling for what could be considered a "small charge" of propellant for these "toy" devices. 71 FR 46084. As explained in that same rulemaking, ATF believes that rockets utilizing motors containing 62.5 grams of propellant or less have a shorter range and are less likely to be used as weapons against a particular target without detection. In addition, rockets powered by motors containing 62.5 grams of propellant or less have less power to cause significant damage when used against a target. ATF further believes that rocket motors containing more than 62.5 grams of propellant pose a significant threat to public safety because they can be modified for use as weapons. The 62.5-gram limit achieves a reasonable balance between ATF's goal of allocating its resources in the most efficient and effective manner and its goal of maintaining public safety. Therefore, ATF will not revisit the weight threshold for the exemption of rocket motors at this time.

4. Model Rocket Propellant Is Not a Threat to Public Safety or Homeland Security

Comments Received

One commenter argued that model rocket propellant should not be regulated because it does not pose a significant risk to public safety and is not a threat to homeland security. According to the commenter, due to the cost and limited use of hobby rocket propellant in "toy" rockets, criminals are not going to buy hobby rocket motors for nefarious activities. Since hobby rocket motors do not have guidance systems and warheads, they are, according to the commenter, useless as weapons.

ATF Response

ATF already addressed the issue of the potential for model rocket propellants to pose a risk to homeland security when it published the 2009 propellant rule (described above), affirming ATF's long-standing policy of 62.5 grams as an appropriate threshold for exempting rocket model propellant from explosive regulations. Therefore, further discussion of this issue is unnecessary.

5. IFR 1 Fails To Recognize Its Economic Effects on Businesses Comments Received

Two commenters argued that IFR 1 will have a significant economic impact on businesses. One commenter stated that many people are unable to get a permit due to storage requirements and would need to purchase land to build a magazine, which is beyond what a typical person can afford. The commenter argued that permitting, storage, and other requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome for the average sport rocketry hobbyist. Furthermore, the commenter asserted that reduced participation in the hobby will have a negative effect: "Businesses will die. They've already started collapsing."

The second commenter challenged ATF's certification, pursuant to the Regulatory Flexibility Act, that IFR 1 would not have a significant impact on a substantial number of small entities. The commenter stated that commercial shipping companies will not ship hobby rocket motors because the interim rule requires that these companies ensure their employees who handle explosive materials are not prohibited persons under the law. According to the commenter, shipping companies do not want to risk fines or criminal prosecution if a prohibited person might have access to explosives in the process. This makes the cost of shipping rocket motors more expensive.

ATF Response

ATF disagrees with the commenters' assertion that the interim regulations were likely to result in significant reduction in participation by rocketry hobbyists, which, in turn, would have had a negative effect on small businesses. A review of NAR Board of Trustees' meeting minutes dated February 6, 2004 (on file with ATF), stated that the organization's membership base had remained statistically flat for the preceding three years, even though IFR 1 was issued and became effective nearly one year before

that period ended. In addition, a review of NAR's meeting minutes dated July 28, 2008, indicated that its membership was holding between 4,500 and 4,600 and that membership dues income was stable. These figures showed no decrease in numbers during the time in which APCP was regulated, before ATF's classification was overturned. In August 2009, the NAR Board of Trustees stated that membership had increased to 4,750.¹² Further, NAR's Board meeting minutes from February 2013 noted that membership had risen to over 5,670.¹³ As of 2025, NAR's website states that it has over 9,000 members.¹⁴ Although ATF has no specific data on rocketry sales, ATF has seen no evidence that participation in the sport has declined or that small businesses were negatively impacted by IFR 1. ATF acknowledges that the increase in NAR membership numbers after 2009 may have been partly due to the removal of APCP as a regulated explosive material, but, as noted above, even when APCP was still regulated, NAR membership remained steady following the promulgation of IFR 1. This suggests that IFR 1 did not in fact negatively impact small businesses such as those dealing in model rockets.

The commenter's concern regarding the interim rule's requirements for shipping companies to ensure that prohibited persons are not handling explosives is also moot. In IFR 2, published in 2003, ATF made clear that as a result of the publication of certain rules by DOT and DHS, employees of motor, water, air, and rail carriers were no longer subject to the provisions of 18 U.S.C. 842(i) regarding prohibited persons while they are engaged in the commercial transportation of explosives.

ATF also disagrees with the underlying premise of the comment asserting that many rocketry hobby enthusiasts would leave the sport, in part as a result of burdensome storage requirements of the SEA. ATF notes that the SEA made no changes to the requirements for proper storage of regulated explosives as they relate to participants within the rocketry hobby or the explosives industry. All such persons have been required to properly store regulated explosive materials since the inception of the federal explosives

¹² NAR, *Board of Trustees' Meeting Minutes* (Aug. 6–7, 2009).

¹³ NAR, *Board of Trustees' Meeting Minutes* (Feb. 21–22, 2013).

¹⁴ NAR, *About the National Association of Rocketry*, https://www.nar.org/content.aspx?page_id=22&club_id=114127&module_id=667398 (last visited July 23, 2025) [<https://perma.cc/8Y8V-CX89>].

regulations in January 1971. The federal explosives regulations relating to the proper storage of regulated explosives can be found at part 555, subpart K—Storage.

ATF also disagrees with the same commenter's assertion that the costs of licensing or permitting would be prohibitive. Even prior to enactment of the SEA, persons wishing to obtain explosive materials from out-of-state sources or to transport materials in interstate commerce were required to obtain an ATF license/permit, and those wishing to engage in the business of manufacturing, importing, and dealing regulated rocket motors were required to obtain the appropriate ATF license. In contrast, persons could acquire explosive materials in the state where they resided, including rocket motors containing greater than 62.5 grams of propellant, without needing to obtain a federal explosive license/permit. The enactment of the SEA and the implementing regulations primarily affected only these latter persons engaging in intrastate acquisitions and transportation of explosive materials, including rocket motors containing greater than 62.5 grams of propellant. With these persons in mind, Congress created the limited permit, which allows a person to acquire explosive materials up to six times per year and transport the materials within their own state. This permit costs \$25 for the original permit for a one-year period and is renewable each year for \$12. It is unlikely that these minimal costs will be so onerous as to cause a significant percentage of hobbyists to abandon their rocketry activities.

6. Burdens of the Permit and Storage Requirements on Model Rocket Hobbyists

The SEA requires that any person receiving, shipping, transporting, or causing the transportation or distribution of explosive materials on or after May 24, 2003, obtain a federal license/permit. A federal explosives license is required to authorize continual explosives distributions. A federal explosives permit authorizes a person to distribute only surplus explosives stock; it does not authorize the distribution of explosive materials as a matter of continual business operations. There are two types of explosives permits: (1) a “user permit,” which allows the holder to transport, ship, or receive explosive materials in interstate or foreign commerce; and (2) a “limited permit,” which allows the holder to receive explosive materials only within his or her state of residence on no more than six separate occasions

during the one-year period of the permit. Although applicants for a federal explosive license/permit have always been required to have a place of storage for explosive materials, the SEA amended 18 U.S.C. 843(b)(4), to require that ATF, prior to issuing a license/permit, verify by inspection “that the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe.”

Comments Received

Several commenters expressed concerns regarding the impact of permit and storage requirements on the model rocket hobby. A couple of commenters indicated that the compliance requirements for rocket motors containing more than 62.5 grams of propellant were overly burdensome and would result in reduced participation in the hobby. One commenter stated that, since obtaining a permit would require a background check, fingerprints and photographs, and interviews, hobbyists would quit the hobby rather than apply for the permit.

A few commenters stated that rocket model hobbyists would be unable to obtain a federal permit because of storage requirements and the fees associated with obtaining a permit. In particular, they stated that many cities would not allow explosives to be stored in a residential area. According to one commenter, purchasing land and constructing an explosives magazine was not a viable option. Another commenter stated that he had had an explosives license since 1997 and had never been required to have storage¹⁵ but indicated that storage was not an issue for him because “I manage my

acquisition of ‘explosives’ [rocket motors] so that I never have excess stock.” According to the commenter, the effect of the interim rule would be that he would either obtain an explosives magazine or not renew his license.

Another commenter stated the limited permit was not useful because many states did not have a vendor that sold high-power rocket motors. Rocket model hobbyists would therefore be required to obtain a user permit (to acquire and transport explosive materials interstate), which would be cost prohibitive.

Lastly, one model rocket hobbyist stated that he was in the process of applying for a user permit. The commenter noted that he was having difficulty completing the application because it requested information that did not pertain to rocket hobbyists. For example, the commenter stated that he was not in the business of selling explosives and, as such, did not have “business hours.”

ATF Response

ATF disagrees that the compliance requirements for rocket motors containing more than 62.5 grams of propellant are overly burdensome. As previously stated, the propellants contained within model rocket motors has been regulated by ATF since 1971 (including APCP until March 2009). Therefore, since 1971, any person receiving rocket motors containing more than 62.5 grams of propellant in interstate commerce was required to obtain a federal explosives license/permit and maintain all appropriate storage and records for their rocket motors. Moreover, ATF no longer classifies APCP as an explosive, and thus rocket motors consisting solely of APCP (regardless of the weight of the APCP) are not currently subject to regulation by ATF.

Individuals do not appear to be discouraged in pursuing the rocket model hobby despite requirements that they undergo a background check and submit fingerprints and photographs as part of obtaining a federal explosives license/permit. Membership in groups such as the NAR has increased over time since implementation of the SEA, as discussed in section III.F.5 of this preamble. With passage of the SEA, Congress made clear that all persons acquiring non-exempt explosive materials must obtain a license/permit from ATF and submit information to enable ATF to conduct background checks. ATF believes that the information it requires applicants to submit is part of a reasonable process that helps to ensure that prohibited

¹⁵ Explosives regulations were first issued by the IRS (before ATF was created as a bureau) in 1971 and codified at 26 CFR part 181; those regulations included the requirement that all applicants for an explosives license/permit have a place of storage. See *Title 26—Internal Revenue*, 36 FR 658 (Jan. 15, 1971). That storage requirement has remained in effect continuously since then, although ATF's explosives regulations have since moved to 26 CFR part 555. However, ATF also allows applicants to use a contingency storage agreement to meet this requirement. See, e.g., ATF Explosives Industry Newsletter at 2 (Jan. 2014), <https://www.atf.gov/media/29021/download>; ATF Form 5400.13/5400.16 (now becoming Form 5400.13), Application for Explosives License or Permit (which has included a contingency plan option since at least 2003), <https://www.atf.gov/rules-and-regulations/form-and-information-collection-notices/application-explosives-license-or-permit-atf-f-5400-13/5400-16>. These contingency storage agreements are between the applicant (including renewal applicants) and an active licensee/permittee, who agrees to provide the applicant access to their magazine if the applicant needs to store explosives. The commenter might have been referring to this practice.

persons do not gain access to explosive materials.

ATF also believes that the storage requirements are not overly burdensome or inappropriate. Prior to the SEA, the federal explosives laws and regulations required that all persons store explosive materials in conformity with the regulations at part 555. *See* 18 U.S.C. 842(j); 27 CFR 555.29. These provisions remain unchanged post-SEA enactment. Additionally, ATF storage regulations in 27 CFR part 555, subpart K, have always prohibited any person from storing explosives within a residence or dwelling, and require that all persons store explosives in accordance with the tables of distances to inhabited buildings, highways, passenger railways, and other magazines. Compliance with the federal explosives laws and regulations confers no right or privilege for persons to store explosives contrary to state or local laws that may impose additional storage requirements. Other than a new verification and a requirement for inspection prior to issuing a federal explosives license/permit, neither the SEA, the SEA interim regulations, nor this final rule changed the storage requirements. Congress added the verification requirement to provide tighter security over explosive materials and to ensure that storage requirements are being met.

Though ATF is cognizant of the cost of a new explosives storage magazine, ATF has provided the industry with alternate means of storing explosive materials in place of individually purchased and owned storage magazines. These alternatives include shared storage arrangements, off-site storage, and club and association storage arrangements. *See* ATF Explosives Industry Newsletter at 2–3 (Jan. 2014); ATF Form 5400.13, Application for Explosives License or Permit. As a result, ATF does not believe that the requirement to obtain and substantiate the proper and secure storage of explosive materials is overly burdensome or inappropriate.

Although some rocketry enthusiasts without in-state access to rocket motors would need to obtain a user permit to go out of state to acquire and transport explosive materials, ATF notes that persons, including rocket model hobbyists, acquiring or transporting regulated explosive materials from out-of-state sources have already been required since 1971 to obtain a federal explosives license/permit. The fee for a user permit, which is valid for three years, is \$100, or about \$33.33 per year. 27 CFR 555.43. The user permit fee has remained unchanged since 1998. *See* 27 CFR 55.43; Commerce in Explosives

(95R–036P), 63 FR 44999, 45002 (Aug. 24, 1998).

To defray costs, rocketry enthusiasts may join or form rocketry clubs. These clubs can be set up to take responsibility for obtaining all appropriate licenses or permits, as well as storage. Notably, in such club arrangements, the club may not “distribute” explosives to its members; rather, one of the club’s RPs must oversee all explosives activities of its members. In addition, the club members may incur the cost of membership dues, but as members they may participate in their hobby without having to individually bear the costs of complying with storage, licensing, or permitting requirements. Sharing the cost of compliance reduces the cost and burden to any individual club member. Accordingly, ATF disagrees that fees to obtain the appropriate license/permit are overly burdensome or cost prohibitive.

Another commenter stated that he was having difficulty completing the explosives permit application because it appears that some portions may not pertain to his proposed activities. ATF is aware that some individuals may have questions regarding proper completion of the form. Therefore, ATF FELC’s telephone number and address are included with each application packet. Additionally, ATF’s website contains general information regarding the application process.

7. Exemption for Black Powder in Small Quantities

Comments Received

One commenter suggested that an exemption be given for small amounts of black powder for use in model rocket ejection systems, *i.e.*, to deploy the parachute. The commenter stated that he uses about 20 to 30 grams of black powder per year to release the parachute on his model rockets.

ATF Response

ATF cannot grant an exemption for small quantities of black powder used in model rockets because black powder is an explosive material. In exempting up to 50 pounds of commercially manufactured black powder, Congress limited the exemption to that black powder intended for use solely in sporting, recreational, or cultural purposes in antique firearms and antique devices. 18 U.S.C. 845(a)(5); 27 CFR 555.141(b). However, rocket motors and other rocket component parts (*e.g.*, parachute ejection systems) are not antique firearms or antique devices, and, therefore, the black powder used in these devices does not fall under this

statutory exemption. The implementation of the SEA had no effect on the black powder exemption specified at 18 U.S.C. 845(a)(5) and therefore it is not within ATF’s statutory authority to grant the requested exemption.

G. Warrantless Inspections

The SEA authorized warrantless inspections of places of storage maintained by federal explosives licensees, permittees, and applicants for limited permits. 18 U.S.C. 843(f). Regulations that implement this provision of the law are in 27 CFR 555.24.

Comments Received

One commenter objected to warrantless inspections, stating that “[w]arrantless searches of any sort are prohibited by the constitution. This phrase should be struck for that reason.”

ATF Response

ATF declines to adopt the commenter’s suggestion to strike from the regulations the reference to warrantless inspections. Contrary to the commenter’s assertion, the U.S. Supreme Court has held that only “unreasonable searches” without a warrant are prohibited, and therefore some warrantless searches of business, residences, and private property are constitutional. “The touchstone of the Fourth Amendment is reasonableness, and the reasonableness of a search is determined ‘by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.’” *United States v. Knights*, 534 U.S. 112, 118–19 (2001) (citing *Wyoming v. Houghton*, 526 U.S. 295, 300 (1999)).

The Court has specifically recognized the validity of warrantless regulatory inspections of business premises when they are limited in time, place, and scope and when there is express statutory authority to conduct such inspections. For instance, in *United States v. Biswell*, 406 U.S. 311 (1972), a pawnbroker licensed under the Gun Control Act of 1968 (“GCA”) sought to exclude evidence obtained during a warrantless inspection of his business premises. The pawnbroker alleged that the provision of the GCA authorizing warrantless searches of business premises was unconstitutional under the Fourth Amendment. The Supreme Court upheld the warrantless inspection, noting that close scrutiny of the traffic in firearms is essential to prevent violent crime and to assist the

states in regulating firearms within their borders. *Id.* at 315. The Court also stated that inspections for compliance with the requirements of the GCA posed limited threats to the pawnbroker's justifiable expectations of privacy because of pervasive federal regulation of the firearms industry. *Id.* at 316.

The Supreme Court also has recognized the validity of warrantless searches of residences and private property. In *Griffin v. Wisconsin*, 483 U.S. 868 (1987), the Court held that the warrantless search of a probationer's residence was "reasonable" because it was conducted pursuant to a valid regulation governing probationers. *Id.* at 880. The Court's holding was based on the proposition that the government operation of a probation system, like its supervision of a regulated industry, presents "special needs" beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements. *Id.* at 875–76.

Such "special needs" have been extended to drug testing of students and federal employees. Citing *Griffin*, the Supreme Court has explained:

[I]n certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion. Therefore, in the context of safety and administrative regulations, a search unsupported by probable cause may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.

Bd. of Educ. v. Earls, 536 U.S. 822, 829 (2002) (internal citations and quotations omitted). Applying this standard, the Court in *Earls* found a school's drug testing policy constitutional because of the student's diminished expectation of privacy in school and the school's interests in the testing.

The lower federal courts also have applied the "special needs" to an individual's property outside of the home. In *Palmieri v. Lynch*, 392 F.3d 73 (2d Cir. 2004), the court noted that warrantless searches have been allowed when conducted under a regulatory scheme where there was a reduced expectation of privacy. *Id.* at 79. Applying the test outlined in *Earls*, the Second Circuit held that the special needs exception applied to an individual's property surrounding his home because of the government's interest in regulating construction on protected wetlands, the minimal intrusion at issue, and the individual's

diminished expectation of privacy, which resulted from a combination of the plain view doctrine and the individual's voluntary application for a permit to build on wetlands and notice that the process would require some form of on-site inspection. *Id.* at 81–83.

One of the purposes of Title XI of the OCCA is to reduce hazards to individuals and property arising from the misuse and unsafe or insecure storage of explosive materials. In furtherance of Congress's intention to provide tighter security over explosive materials, the SEA amended the OCCA to include provisions that authorize warrantless inspections of places of storage of applicants for federal explosives licenses/permits, 18 U.S.C. 843(f), and that require the Attorney General, prior to issuing a license/permit, to verify by inspection that "the applicant has a place of storage for explosive materials which meets such standards of public safety and security against theft as the Attorney General by regulations shall prescribe," *id.* 843(b)(4). ATF's authority to conduct an inspection and examination of a licensee's/permittee's premises pursuant to 18 U.S.C. 843(f) is generally limited to normal business hours, even where a permittee may not have business hours.

Just as the courts have recognized the governmental interest in regulating probationers and construction on wetlands, there is a substantial government interest in regulating the storage of explosive materials, including those stored in a residential area: explosives present a substantial and immediate threat to all people in the vicinity, and the government accordingly has a substantial interest in reducing that threat.

Licensees/permittees who voluntarily seek the privilege to receive and possess explosives, a highly regulated activity, accept the legal responsibility of complying with federal explosives laws. As discussed, the SEA and implementing regulations explicitly provide for warrantless inspection of storage locations to ensure public safety, and such inspections are limited to both normal business hours and the storage location. Through the application process, applicants learn of their responsibilities in storing the explosives and keeping accurate acquisition and disposition records. Applicants are required to confirm that they understand these requirements. Accordingly, applicants are aware that by voluntarily taking on this responsibility, they have a reduced expectation of privacy in the records

they are required to maintain and in the storage location.

An individual applicant is responsible for choosing the storage location. The indoor storage of explosives in, or directly adjacent to, a residence or dwelling is generally prohibited and will only be allowed if the applicant applies to ATF for and is approved a variance from the storage regulations to do so.¹⁶ If an applicant chooses to store explosives at or near a residence and is granted a variance by ATF to do so, the applicant is aware that the storage area will be inspected as provided by law, which includes the possibility of a warrantless inspection.

The leading case on the "closely regulated" or "pervasively regulated" industry exception to the warrant requirement of the Fourth Amendment is *New York v. Burger*, 482 U.S. 691 (1987). The Court held that the automobile junkyard industry was a "closely regulated" business and that a warrantless inspection was reasonable and thereby comported with the Fourth Amendment. *Id.* at 712.

The *Burger* analysis has four parts. As a threshold matter, a court examines the nature and extent of government regulation of the relevant industry to determine whether the industry is in fact "closely regulated." *Id.* at 703–05. Then, if the industry is indeed closely regulated, a warrantless inspection will be constitutional if (1) there is a substantial government interest that informs the regulatory scheme giving rise to the inspection, (2) the warrantless inspection is necessary to further the regulatory scheme, and (3) the regulatory scheme includes a constitutionally adequate substitute for a warrant, such as by giving regulated parties notice that inspections will occur and defining the scope of the inspections. *Id.* at 708–12.

At the threshold, the explosives industry is "closely regulated." In *Burger*, the Court determined that junkyards were pervasively regulated because the provisions regulating the industry were extensive: operators could not engage in the industry without first obtaining a license, including meeting registration

¹⁶ See 27 CFR 555.22, 555.208(b)(1), 555.210(b)(1), 555.211(b)(1); ATF Ruling 2002–3, *Indoor Storage of Explosives in a Residence or Dwelling* (Aug. 23, 2002), <https://www.atf.gov/explosives/docs/ruling/2002-3-indoor-storage-explosives-residence-or-dwelling/download> [<https://perma.cc/668W-XQEN>]; ATF Ruling 2002–4, *Indoor Storage of Explosives in Business Premises Directly Adjacent to a Residence or Dwelling* (Aug. 23, 2002), <https://www.atf.gov/explosives/docs/ruling/2002-4-indoor-storage-explosives-business-premises-directly-adjacent/download> [<https://perma.cc/2PHV-7VZ7>].

requirements and paying a fee; they had to maintain acquisition and disposition records and make the records and inventory available for inspection; they had to display their registration number at the place of business; and they were subject to criminal penalties, losing the license, or receiving civil fines for not complying. *Id.* at 704–05. In addition, the Court noted that the regulatory scheme’s duration was also relevant to the “closely regulated” inquiry. *Id.* at 705.

Federal explosives regulations, enforced by ATF and other agencies, are just as extensive as the regulatory scheme in *Burger*. The regulations touch all aspects of the industry, including storing and inventorying, licensing, permitting, and record-keeping, consumer and occupational safety, transporting, and environmental impact, among others. In addition, the explosives statute and regulations include all characteristics that the Court itemized for junkyards in *Burger*, including licenses, records, inspections, and penalties. And as to duration, the federal government has regulated explosives since at least the Federal Explosives Act of 1917, Public Law 65–68, 40 Stat. 385 (Oct. 6, 1917) (previously codified at 50 U.S.C. 121–144), which was significantly amended in 1941, *see* Act of Dec. 26, 1941, Public Law 77–381, 55 Stat. 863 (Dec. 26, 1941). Although the Federal Explosives Act was repealed by OCCA in 1970, *see* 84 Stat. at 960, OCCA simultaneously replaced it with 18 U.S.C. chapter 40, which continues to regulate explosives, and which was modified by the SEA in 2003. Given the extent and duration of explosives regulation, the explosives industry is a closely regulated industry within the meaning of *Burger*. Indeed, the regulatory scheme governing the explosives industry is entirely analogous to that regulating the firearms industry, *see e.g., United States v. Fillman*, 162 F.3d 1055, 1057 (10th Cir. 1998) (finding 18 U.S.C. 842(i) of the explosives statute “*in pari materia* with 18 U.S.C. 922(n),” a provision of the Gun Control Act of 1968)), which industry has already been found to be a pervasively regulated industry, *see United States v. Biswell*, 406 U.S. 311 (1977). Because the explosives industry is “closely regulated,” the question is then whether the regulatory scheme satisfies the remaining three requirements of *Burger*. It does. Regarding the first requirement, there is a substantial government interest in ensuring that explosives do not fall into the hands of prohibited persons, are not lost or stolen or used in terrorist

activities, and are stored and transported in ways that minimize risk to public safety. Regarding the second requirement, inspecting licensee/permittee operations and records is necessary to further these substantial government interests because doing so allows ATF to observe the explosives, assess how they are stored, compare them with records to ensure all explosives are accounted for, and ensure the regulatory safeguards are being met. Finally, regarding the third requirement, federal explosives laws at 18 U.S.C. 842 and 843(f) and 27 CFR part 555 provide an adequate substitute for a warrant because they clearly describe the responsibilities of federal explosives licensees; define the scope of ATF’s inspection authority; and place licensees/permittees on notice of the fact and frequency of inspections. The explosives industry thus also satisfies these last three steps in the *Burger* test, such that warrantless inspections are reasonable.

The federal explosives laws were patterned after the GCA, and the warrantless inspection provisions of 18 U.S.C. 843(f) are substantially similar to those of the GCA upheld as constitutional by the Supreme Court in *Biswell*. As with explosives licensees/permittees, firearms licensees whose business premises and places of storage are located in a residence or private property are subject to warrantless inspection. *See, e.g., United States v. Cerri*, 753 F.2d 61 (7th Cir. 1985). The rationale set forth in the *Biswell* case is applicable to federal explosives licensees/permittees. The inspections conducted to ensure that explosive licensees/permittees are complying with federal law and the regulatory scheme, are non-criminal in nature and are minimal in that they are limited to the places where records and explosives are stored. Under these circumstances, there is a limited invasion of privacy, and no violation of the Fourth Amendment.

H. Transportation Issues

1. Regulatory Exemption Language Should Track Statutory Language Comments Received

Under 18 U.S.C. 845(a)(1), “aspects of the transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security” are exempted from the federal explosives laws (except for specified plastic explosives and bombing and arson offenses). To avoid any confusion regarding the impact of the interim rule implementing the SEA

on the transportation and shipping of explosives, several commenters recommended that the regulatory language at 27 CFR 555.141(a)(1) track the text of the statute.

ATF Response

ATF believes that amending the regulatory language to reflect that of the statute will improve clarity for regulated parties. Therefore, ATF is revising the regulation at § 555.141(a)(1) to read as, “[a]spects of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security.”

2. Explosives Delivery Record, ATF Form 5400.8

In the preamble of IFR 1, ATF stated that, on and after May 24, 2003, all common/contract carriers, prior to taking possession of explosive materials for delivery to a federal explosives licensee/permittee (including a limited permittee), were to complete Form 5400.8 (68 FR at 13771). The implementing regulations required all distributors to document and certify certain identifying information of the individual accepting possession of the explosive materials for the common/contract carrier.

Comments Received

A few commenters expressed concerns regarding the delay in issuing the form and its availability. They stated that the form was not available to the public until approximately two weeks before the effective date. Furthermore, the commenters disagreed with ATF’s recommendation at the time that licensees download the form and make copies of it until they received their supply of the forms. The commenters contended that many explosives distributors are located in remote areas where they may not have access to the internet. One commenter stated that these distributors might not be able to obtain, or might have difficulty in obtaining, the form as a result.

Furthermore, the same commenter added that, subsequent to publication of IFR 1, DOT and DHS published interim final rules that affected the transportation exception at 18 U.S.C. 845(a)(1).¹⁷ According to the commenter, “DOT/DHS rules now occupy the field of transporter qualification and credentialing Consequently, Form 5400.8 has no effect.” The commenter urged ATF to eliminate those aspects of the form that

¹⁷ See footnote 5, *supra*.

impose obligations on individuals who have been qualified to transport commercial explosives pursuant to DOT's regulations.

ATF Response

ATF recognizes that the revised Form 5400.8 was not made available to the public until immediately prior to the effective date of the applicable SEA provisions. This was due primarily to the short time frame for implementation of the SEA. ATF made the new forms available as soon as possible and took steps to inform the industry of new or revised requirements that affected their conduct of business.

ATF's publication of IFR 2 on September 11, 2003, made Form 5400.8 obsolete. In that IFR, ATF amended ATF regulations to remove the procedures related to the use of Form 5400.8 in transactions among licensees, user permittees, and limited permittees. ATF explained its conclusion that the information required on Form 5400.8 was not needed to trace delivery of explosives to a common/contract carrier. 68 FR 53511. Furthermore, in light of rules published by DOT and DHS, ATF concluded there was no longer a significant reason to collect all of the information required by the form. Instead, ATF stated that it was continuing certain verification requirements (addressed in comment responses in section III.H.3 of this preamble) but was instead allowing distributors to record the relevant information in their permanent records, which are subject to inspection. ATF stated that it did not believe that elimination of the form would result in diversion of explosive materials to criminal or terrorist use. *Id.* Because Form 5400.8 has been obsolete since 2003, ATF believes this issue was resolved through IFR 2, and the comments were addressed through that process.

3. Transporter Obligations To Verify Identity of Person Accepting Delivery

The SEA mandated that all persons who wish to acquire explosive materials, whether in interstate or intrastate commerce, must obtain a federal explosives license/permit. IFR 1, which implemented the SEA, required distributors to verify certain information prior to relinquishing possession of explosive materials.

As implemented by IFR 1, § 555.103, which regulates transactions among licensees/user permittees, included in paragraph (b)(2)(ii) a requirement that distributees must provide the distributor a list of individuals authorized to accept delivery on behalf of the distributee and

keep it updated. In addition, this paragraph prohibited a distributor from transferring explosive materials to any person whose name does not appear on the current version of that list. These requirements continue to remain in effect. In addition, § 555.103(b)(2)(ii) required that, in all instances, the distributor was required to verify the identity of the person accepting possession of explosive materials on behalf of the distributee by examining an identification document before relinquishing possession.

As written in IFR 1, these last two requirements (distributor must not transfer to unauthorized person and must verify identity of person accepting) also applied to common/contract carriers of explosive materials, because they could be deemed to be filling both the role of distributee when accepting possession of explosive materials from a licensee/user permittee and the role of distributor when transferring possession of explosive materials to a licensee/user permittee. Therefore, a few months after IFR 1, ATF issued IFR 2, which amended § 555.103(b)(2)(ii) to explicitly except common/contract carriers from the requirement to verify the identity of the accepting person during deliveries to licensees/user permittees. It did so by adding "except as provided by paragraph (b)(3) of this section" before the phrase "in all instances." Paragraph (b)(3) was titled "Delivery of explosive materials by common or contract carrier." The exception for common/contract carriers from the § 555.103(b)(2)(ii) requirement to verify the identity of persons accepting explosive materials on behalf of licensee/user permittee distributees is still in effect.

Section 555.103(b)(3), as implemented in IFR 1, also specifically required that prior to relinquishing explosive materials, distributors had to verify the identity of the person accepting possession on behalf of the common/contract carrier and required the common/contract carrier to complete Form 5400.8 (discussed in section III.H.2 of this preamble) for this purpose. A similar requirement also existed in § 555.105, Distributions to limited permittees, in § 555.105(b)(6)(iii)–(iv). The requirement in both §§ 555.103 and 555.105 for the distributor to verify the identity of the common/contract carrier and driver remains in effect, but IFR 2 removed the requirement to use Form 5400.8 in both.

In addition, as implemented by IFR 1, § 555.105(b)(6)(iii) required that, if the common/contract carrier was hired by the distributor, then the common/

contract carrier was required to verify the identity of the person accepting delivery on behalf of the limited permittee distributee and provide that information back to the distributor. This requirement was premised on ATF's view, at the time of IFR 1, that the common/contract carrier was acting as an agent of the distributor.

However, shortly after IFR 1 became effective on March 20, 2003, and before the comment period for IFR 1 closed, ATF issued ATF Ruling 2003–5¹⁸ on May 23, 2003, to reduce the identity verification burden placed by § 555.105(b)(6)(iii) on common/contract carriers when transporting to limited permittees. Ruling 2003–5 provided an alternate method for meeting the identity verification obligations in deliveries to limited permittees from those in the regulation, and allowed the distributors, rather than the common/contract carriers, to verify that the explosive materials were received by limited permittees no later than three business days after shipment. This change was further reinforced by ATF guidance.¹⁹ Both the regulatory requirement for common/contract carriers to verify the recipient's identity and the ruling's alternative option for distributors to verify instead remain in effect.

Comments Received

In 2003, several commenters raised concerns about carrier obligations under these provisions as implemented through IFR 1. These commenters argued that the requirement for carriers to verify the identity of the person accepting possession of explosive materials was burdensome, impractical, and created potential liability issues for carriers. One commenter expressed concerns that it would be both burdensome and impractical for carriers, in either a distributor or a distributee role, to be prohibited from receiving or relinquishing explosive materials unless they had a current list of persons authorized to accept such materials. This commenter stated that the carrier would not be able to verify, at the time the explosive materials are loaded in the vehicle, the identity of the person who would later accept delivery because the carrier would not have that person's identification to match against the list provided to the distributor. The commenter added that the carrier driver could not be presumed to later check the identification against the list at the time of delivery. The commenter stated

¹⁸ See footnote 2, *supra*.

¹⁹ ATF Explosives Industry Newsletter at 6 (June 2005), <https://www.atf.gov/media/28996/download>.

that ATF would therefore need to provide instructions on how identification credentials would be exchanged to enable the distributor to verify the acceptor's identity before delivery.

Another commenter also described the impracticalities of requiring a carrier, in a distributor role, to verify the identity of the person accepting the explosive materials. This commenter stated it was not always possible for carriers to verify the identity of the person accepting possession because of the complex and various methods of distribution and transportation used by the industry. They asked ATF to clarify how identification credentials were to be exchanged between the distributor and the distributee to meet these obligations.

One commenter recommended an alternative method in which the distributees (rather than the carrier or the distributor) would be required to confirm delivery of an explosives shipment via common carrier by the end of the next business day after the explosives were delivered. If the distributee did not confirm delivery by the end of the next business day after the scheduled delivery date, distributors would be required to check the status of the shipment with the distributee by the end of the second business day after the scheduled delivery.

A third commenter raised concerns that focused on the similar requirements of § 555.105(b)(6)(iii). This commenter stressed that the time and complications involved in requiring carrier drivers to verify identity would cause delays that would seriously compromise both the "just in time" delivery system relied upon by manufacturers and retailers, and one of the central principles of hazardous materials transportation safety—i.e., minimizing travel time. The commenter also noted that delays in delivery were contrary to the hazardous materials regulations and provided some examples of delays caused by the named recipient being out sick, no longer employed, or married with a different last name, thereby preventing delivery until the situation was resolved.

Although ATF issued Ruling 2003–5, described above, to provide an alternative method to the carrier verification requirements for limited permittee transactions in § 555.105(b)(6)(iii), this commenter contended that the ruling did not address the larger issue that distributors were still required to verify the identity of recipient licensee/user permittee distributees under § 555.103(b)(2)(ii), even though almost all such transfers

were performed by carriers. This comment was made before IFR 2 was issued a few months later, in which § 555.103's requirement was addressed. The commenter concluded by stating that ATF's interim regulations "impose burdens on transporters of explosives regulated by the DOT." In addition to concerns that verification would be overly time consuming, commenters were also concerned that they could be held personally liable for delivering explosives to persons not authorized to receive them.

Several commenters argued that ATF did not have the authority to impose the requirement that carriers, whether common or private, verify and confirm the identity of the person accepting on behalf of a distributee. Lastly, where regulations required that a distributor have a current list of the names of "persons" authorized to accept delivery, one commenter asked that ATF clarify whether "person" means "person" as defined in the law (18 U.S.C. 841(a)) or if it refers to an "individual."

ATF Response

ATF acknowledges that the regulations at §§ 555.103(b)(2)(ii) and 555.105(b)(6)(iii), as implemented through IFR 1, placed additional duties on common/contract carriers by requiring them to verify identity and delivery. Therefore, as mentioned above, after issuing IFR 1 in March 2003, ATF issued Ruling 2003–5 in May 2003 and IFR 2 in September 2003 to address these concerns.

With regard to § 555.103, ATF agrees with the commenter's contention that Ruling 2003–5 did not address the issue that distributors were still compelled to verify the identity of individuals accepting explosives on behalf of licensee/user permittees because Ruling 2003–5 provided an alternative only to requirements in § 555.105. However, ATF believes that IFR 2 resolved this commenter's concern with the requirement in § 555.103(b)(2)(ii). IFR 2 amended § 555.103(b)(2)(ii) to except common/contract carriers from the identity and delivery verification requirements when delivering to licensee/user permittee distributees by adding "except as provided in paragraph (b)(3)" before the distributor's requirement to verify the identity of the person accepting delivery "in all instances." IFR 2 also amended paragraph (b)(3) of the section, covering deliveries made via common/contract carrier, to remove the requirement for the common/contract carrier to verify the identity of the person authorized to accept delivery of the explosive

materials on behalf of licensee/user permittee distributees.

For clarity, ATF notes that these amendments did not affect the distributor's requirement under § 555.103(b)(2)(ii) to verify the identity of the individual accepting the explosive materials on behalf of the distributee prior to relinquishing them when the distribution occurs "by distributor"—directly between the distributor and the distributee or their authorized person, whether at the distributor's premises or via delivery by the distributor or their employee (not involving a common/contract carrier). That requirement remains in effect.

With regard to § 555.105, Ruling 2003–5 allowed a variance from the requirement under § 555.105(b)(6)(iii) that a common/contract carrier must verify the identity of persons accepting delivery on behalf of a limited permittee distributee. Specifically, Ruling 2003–5 allowed an alternative method by which distributors of explosives, rather than the carriers, could verify no later than three business days after shipment that the limited permittee distributee received the explosive materials. The ruling did not remove the requirement from the regulation, however, and the provision at § 555.105(b)(6)(iii), still requires that carriers, if hired by a distributor, verify the identity of the person accepting the delivery on behalf of the distributee and provide that information back to the distributor. ATF agrees with commenters that the existence of this regulatory provision along with the variance in Ruling 2003–5 is not the clearest way to address the situation.

ATF, therefore, sees merit in making further clarifying amendments to §§ 555.103(b) and 555.105(b) in light of the above comments and pursuant to discussions with industry members. In this final rule, ATF is amending these sections in a manner that provides greater consistency, reduces burden on common/contract carriers and distributors, and still addresses Congress's concern that the explosives regulations provide for substantial security. Specifically, the final rule amends §§ 555.103 and 555.105 to make clearer the verification procedures applicable under the following circumstances: (a) distribution of explosive materials by distributor; and (b) distribution of explosive materials via common/contract carrier. The revised regulations thus differentiate between two clear circumstances, improving on the somewhat confusing current divisions between four circumstances.

With regard to distributions effected “by distributor”—at the distributor’s premises or by distributor delivery—this final rule does not change the requirement in either §§ 555.103 or 555.105 that the distributor must verify the identity of the distributee, or the person accepting on the distributee’s behalf. This rule makes the following edits with regard to “by distributor” distributions in both sections for clarity: (1) to combine distributions at the distributor’s premises and via distributor delivery into one set where they have previously been split, and (2) to change the word “person” to “individual” in response to comments requesting that ATF clarify which requirements apply to a “person” (which by definition can include a corporation, etc.) versus an “individual” (which does not include corporations or other entities).

However, this final rule eliminates any remaining requirement in either section for a distributor or a common/contract carrier to verify the identity of a person accepting possession on the distributee’s behalf when distributions occur via common/contract carrier. This rule also makes the following edits, parallel to those for “by distributor” distributions, with regard to “via common/contract carrier” distributions in both §§ 555.103 and 555.105 for clarity: (1) to combine carriers hired by distributor and carriers hired by distributee into one set where they have previously been split, and (2) to change the word “person” to “individual” in response to comments requesting that ATF clarify which requirements apply to a “person” (which by definition can include a corporation, etc.) versus an “individual” (which does not include corporations or other entities).

Under this rule, when the distribution occurs via a common/contract carrier, the distributor must still verify the identity of the carrier’s driver and record that information, as before. However, the rule removes the requirements for the common/contract carrier or the distributor (as previously required by IFR 1 or alternatively by Ruling 2003–5, respectively) to verify the accepting person’s identity or to verify that the delivery occurred. Removing the common/contract carrier requirement to verify will now apply consistently to distributions involving licensee/user permittee distributees and ones involving limited permittee distributees, rather than having differing requirements for each.

For security and law enforcement reasons, ATF believes it would be best to have verification occur for all distributions. However, ATF recognizes

the need to balance those concerns with the verification limitations inherent in common/contract carrier deliveries.

ATF considers there to still be value in verifying identity whenever feasible, so ATF continues to retain the verification requirements for “by distributor” distributions and the identity verification requirements for common/contract carrier drivers.

Although removing the requirement to verify distributee identity when the distribution occurs via common/contract carrier presents a risk, ATF believes that this approach to such deliveries is preferable to the two-part option suggested by one of the commenters and will more smoothly fit into standard business practices. Some of the risk arising from not verifying in these cases can be offset by the fact that the distribution will occur at the distributee’s premises, where certain actions will naturally occur as part of standard business practices and other obligations. For example, the distributee has a vested interest in ensuring that it receives the explosive materials it ordered and paid for, and already, as a matter of standard business practice, will check to ensure delivery occurred. If it does not receive the expected delivery, the distributee will reach out to the distributor and/or carrier to notify them that the delivery did not occur and find out what happened. This will help ensure that any potential diversion of the explosives for criminal or other improper purposes does not go unnoticed and can instead be reported to the proper authorities.

Furthermore, the distributee also already has the responsibility of ensuring that it designates individuals authorized to accept explosives on its behalf and provides a list of authorized individuals to the distributor. ATF still considers this an important accountability step in light of the statute’s requirement that explosives be distributed only to licensees/permittees. So, the requirement that distributors must verify that they are distributing to an authorized individual when they do so directly (not via a common/contract carrier) remains, even when the distributor is delivering to the distributee, because both ends of the equation in this situation (unlike in situations involving common/contract carriers) have an obligation in this regard. However, the distributee also has a responsibility on its end to ensure that an authorized person is present and accepts the delivery, even when a common/contract carrier is delivering. In addition, the distributee must still record the delivery in its acquisition

record, which helps ensure the delivery went to the permitted person.

In response to other comments, ATF also concurs that the regulation at § 555.103(b)(2)(ii) should be clarified with regard to individuals accepting on the distributee’s behalf. This section would better achieve the objectives of the SEA by changing the term “persons” in this section to “employees and responsible persons” (the term “responsible person” is defined, and ATF is therefore not changing the word “person” to “individual” in this context). The language in § 555.103 is being amended accordingly in this final rule.

4. Definition of “Possess” as It Applies to Transportation

Comments Received

In IFR 1, ATF stated its belief that it is essential that Form 5400.8 be executed in all instances when licensees/permittees transfer possession of explosive materials to a truck driver who is not an employee of the distributor. Completing Form 5400.8 would “help ensure that explosives are not placed in the hands of prohibited persons for possible diversion to criminal or terrorist use.” 68 FR 13772. This requirement was in effect until May 24, 2003. After that date, ATF continued to require common/contract carriers taking possession of explosive materials, whether hired by the distributor or distributee, to complete Form 5400.8. But ATF no longer required employees of purchasers to complete the form. 68 FR 13771.

Two commenters interpreted ATF’s requirements to mean that persons who transport explosives are “possessors.” They both argued that federal law makes a clear distinction between those who transport and those who receive or possess explosive materials, with one of these commenters noting that, “Congress would not have distinguished these classes of persons if they were deemed to be one and the same.” Both commenters believed that persons who transport explosives should not be considered possessors and should not be subject to the disqualifications imposed by 18 U.S.C. 842(i). One commenter stated that “ATF should affirmatively renounce its interpretation that persons engaged in transportation in commerce also ‘possess’ explosives” within the meaning of federal explosives law.

ATF Response

ATF agrees that Congress did not intend the terms “transport or ship” and “receive or possess,” as applied to

persons, to have identical meanings. However, ATF disagrees with the commenters' conclusions that these terms must necessarily apply to completely separate and exclusive groups of persons. Rather, both of these terms can apply to the same person at the same time. For example, a person who manufactures explosive materials, places them on a vehicle, and drives this vehicle to another location in order to use the materials both "possesses" and "transports or ships" the materials. Therefore, ATF is not adopting the suggestion that ATF generally interpret these terms as having exclusive applications to different groups of persons. Additionally, common/contract carriers are exempted from provisions of the SEA that are regulated by DOT or DHS. *See* 18 U.S.C. 845(a)(1).

As stated above, ATF amended ATF regulations with the publication of IFR 2, making Form 5400.8 obsolete.

5. Selective Application of Statutory Provisions

Comments Received

ATF regulations at 27 CFR 555.26(a) provide that, "[n]o person, other than a licensee/permittee knowingly may transport . . . any explosive materials." Two commenters claimed that there is some confusion as to whether common carriers are required to obtain a permit to transport explosives. One commenter argued that this confusion is based, in part, on information ATF provided on its website regarding implementation of the SEA. The commenter argued that "If the permit requirements of the statute and regulations are not being applied [to commercial transportation], ATF needs to clarify if it is because the transportation exception [in the federal explosives law] is effective . . . or because ATF has chosen not to exercise its authority."

ATF Response

Both the statute at 18 U.S.C. 845(a)(1) and the regulations at 27 CFR 555.141(a)(1) make clear that a common/contract carrier that is regulated by DOT, and whose explosives activities are limited to commercial transportation, is not required to obtain a federal explosives license/permit. Therefore, ATF is not amending the regulation.

I. Safe Storage and Retaining Records

The regulations at § 555.121 provide that licensees/permittees must keep records pertaining to explosive materials in permanent form (*e.g.*, commercial invoices, record books). Such records must be kept on the business premises for five years from

the date a transaction occurs or until the licensee/permittee discontinues business or operations.

Comments Received

A commenter expressed concerns about protecting personally identifiable information ("PII") in the required records. The commenter noted that ATF did not provide guidance on how to store or protect mandated records that contain PII, which created privacy concerns, particularly when, the commenter explained, those records are delivered to the custody of a private entity. The commenter did not explain why they thought PII might be delivered to the custody of a private entity, but ATF notes that it does not require records be transferred to anyone other than ATF. The commenter requested that ATF provide information on safekeeping and eventually destroying the required records. Another commenter expressed similar concerns.

ATF Response

ATF has not been granted authority under the federal explosives law to mandate that licensees and permittees maintain their required explosives records in accordance with particular security specifications. The SEA had no effect on, nor did it initiate any changes relating to, the federal record-keeping requirements in regard to securing PII or other security procedures for records. As a result, ATF is unable to implement the commenters' suggestions. However, it would be prudent for industry members to develop internal controls on securely storing the required records as a matter of good business practice, given that such records are subject to inspection.

J. License/Permit Requirements for Treatment, Storage, Disposal Facilities

Section 555.102(b)(2) provides that, on and after May 24, 2003, permittees are not authorized to engage in the business of selling or distributing explosive materials. However, permittees may dispose of surplus stocks of explosive materials to other licensees/permittees in accordance with §§ 555.103 and 555.105.

Comments Received

One commenter stated that the U.S. Environmental Protection Agency ("EPA") used the term "dispose/disposing" in the context of EPA disposal time and tracking requirements triggered once a licensee/permittee declares explosive materials to be a hazardous waste. As a result, the commenter explained, it would create confusion for ATF to use the same terms

when referring to handling surplus stocks of explosive materials. The commenter stated that this overlap would suggest that EPA-regulated treatment, storage, and disposal facilities ("TSDFs") must also obtain an explosives license/permit to dispose of hazardous waste explosives. The commenter also stated that EPA had regulated the disposal of "reactive" wastes, which include explosives, since 1976 and that TSDFs were subject to stringent permitting requirements.

The commenter raised this question to EPA, which, according to the commenter, suggested that ATF use terms such as "surplus or recycling," rather than "dispose/disposing," to distinguish between usable explosives being returned to stock at some other location and explosives that have been declared waste and are destined for permanent destruction.

ATF Response

Federal explosives laws and regulations require that any person intending to acquire explosive materials must first obtain a federal explosives permit. Therefore, unless subject to an exemption, a TSDF receiving explosive materials is required to be permitted under 27 CFR part 555.

Regarding the suggestion that ATF use terms such as "surplus or recycling," rather than "dispose/disposing," to distinguish between usable explosives being returned to stock at some other location and explosives that have been declared waste and are destined for permanent destruction, ATF notes that the regulation authorizing permittees to "dispose of surplus stocks of explosive materials to other licensees or permittees" dates back to 1971. ATF has no record of any previous complaints or confusion within the explosives industry regarding the use of the terms "dispose" or "disposition" in federal explosives laws or regulations. ATF also has no record of the EPA or any other government agency expressing concern over any potential confusion in relation to these terms in federal explosives laws or regulations, or any potential for these terms to be confused with any related terms established in the laws or regulations that fall within their enforcement jurisdictions. Accordingly, ATF is not adopting the commenter's suggestion.

K. Possessing Explosives Prior to Completing a Background Check

Effective May 24, 2003, the SEA required ATF to conduct background checks on the individuals listed on license/permit applications as RPs and employees authorized to possess

explosive materials. The law requires ATF to determine whether any of the RPs or employees are prohibited persons under 18 U.S.C. 842(i) and to notify the employer of the determination.

Comments Received

A commenter requested that ATF clarify whether employees for whom background check paperwork has been submitted may possess explosives prior to ATF's response and until notification is received from ATF that such employee is prohibited from possessing explosive materials. Because ski resort business is highly seasonal, the commenter contended that "[l]imitations on the ability of an employee to possess explosives while awaiting a letter of clearance from ATF—unless brief, expedited processing deadlines were put in place—could put our avalanche control operations at risk."

ATF Response

ATF recognizes that industry members often have a limited time in which to staff positions that require an employee to possess explosives. ATF strives to process background check requests and issue appropriate letters to explosives companies and individuals in a timely manner. Despite these efforts, processing necessarily takes time, and requiring proprietors to wait for a response from ATF prior to allowing a newly hired employee to possess explosives would place a significant burden on the industry.

To address this burden, and in response to the comments raising concerns about such a burden, ATF has decided to amend § 555.57 to clarify that it will exercise its discretion under 18 U.S.C. 843(d) to refrain from seeking to revoke the license/permit of a licensee/permittee that employs prohibited persons under certain narrow circumstances. In particular, so long as the licensee/permittee has complied with the requirement to report any new RP or any newly hired or rehired employees authorized to possess explosive materials to ATF's FELC within 30 days after the date they were hired or otherwise placed in the position; and so long as neither the licensee/permittee nor the relevant RP knows, or has reason to know, that the new RP or employee is prohibited from possessing explosives, ATF will not revoke the license/permit on the basis that the licensee/permittee employed a person who, upon completing the relevant background check, was determined to be a prohibited person under section 842(i). For clarity, ATF

notes that this safe harbor would cease to be available if the licensee/permittee continues to employ a new RP or employee in a role that requires possessing explosive materials after learning that the new RP or employee is in fact a prohibited person, whether the licensee/permittee learns that information through the results of a background check or otherwise.

L. Meaning of "Possess"

As explained in IFR 1 (68 FR 13772–73), actual possession exists when a person is in immediate possession or control of explosive materials and includes instances where a person knowingly has direct physical control over the explosive materials at a given time. Where direct physical control over explosive materials is absent, a person has constructive possession where they knowingly have the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others.

Comments Received

Various comments addressed the meaning of "possess" in the regulations. According to one commenter, although the term "possess" or one of its derivatives is used 59 times in the interim regulations, the term was not defined. This commenter believes this term should be defined because its meaning "bears so greatly on maintaining compliance" with the laws and regulations.

Another commenter, an organization, similarly asked for a definition or clarification on the meaning of "possess," explaining that many of its members are involved in support activities (e.g., consultants, suppliers) where they may come into contact with commercial explosives and could be considered possessors. The commenter stated that prior to the SEA, these members would not have needed to obtain an explosives license/permit, but that it was now unclear whether they would be considered "possessors" under the interim rule. This commenter contended that ATF had provided inconsistent answers, "especially as it relates to the distinction between receivers and possessors."

The second commenter likewise argued that ATF had sent mixed messages as to whether persons such as blasting consultants, emergency response services, and commercial motor carriers, would be considered possessors and therefore need a permit. The commenter stated that "in some cases, ATF is equating 'receive' to 'possess,' and in others ATF is not" and

explained their belief that none of these types of persons needs an explosives permit from ATF unless the person purchases explosives. In their view, not only did federal explosives law clearly intend a distinction between "possess" and "receive," but also, ATF had enforced the laws for over 30 years in a manner that distinguished between the two terms.

A third commenter, which represents the crushed stone, sand and gravel—or aggregate—industries, also noted confusion regarding the meaning of "possess" in the context of who would be regarded as a "responsible person." Such persons are required to be listed on a license/permit application and undergo a background check. ATF had previously stated that possession may be either actual or constructive. According to this commenter, "the term 'constructive possession' was so open-ended and vague that a strict interpretation applied by [ATF] could result in costly compliance action by the commenter's member companies for little, if any, benefit." The commenter further argued that "it is not the intent of Congress to require background checks for every corporate officer or director of a company." All three commenters asked that ATF provide more specific guidance to the industry on the meaning of "possess" and who or what is covered in certain situations.

ATF Response

Although no definition of "possess" exists in the federal explosives statutes, the terms "possess" and "possession" have long been defined by the courts in both civil and criminal contexts, which ATF has used to provide guidance to the industry. *See, e.g., United States v. Van Horn*, 277 F.3d 48, 54–55 (1st Cir. 2002) ("Under settled law, possession may be actual or constructive, sole or joint Constructive possession is commonly defined as the power and intention to exercise control, or dominion and control, over an object not in one's 'actual' possession Constructive possession exists when a person knowingly has the power and intention at a given time to exercise dominion and control over an object, either directly or through others.") (internal citations omitted).

Relying on such case law, ATF has long construed the terms "possess" or "possession" as applying to an employee who is either in actual or constructive possession of the materials. On Form 5400.13/5400.16 (now becoming Form 5400.13) and Form 5400.28, ATF explains that actual possession exists "when a person is in immediate possession or control of

explosive materials (e.g., an employee who physically handles explosive materials as part of the production process; an employee who handles explosive materials in order to ship, transport, or sell them; or an employee such as a blaster, who actually uses explosive materials).” The forms also explain that constructive possession exists “when an employee lacks direct physical control over explosive materials, but knowingly has the power and intention to exercise dominion and control over the explosive materials, either directly or indirectly through others (e.g., an employee at a construction site who keeps keys for magazines in which explosive materials are stored, or who directs the use of explosive materials by other employees; or an employee transporting explosive materials from a licensee to a purchaser).”

Whether a person “possesses” explosive materials, either actually or constructively, has a bearing on determining whether one is an employee authorized to possess explosive materials, but not on whether one falls under the definition of “responsible person.” ATF believes the third commenter mistakenly applied standards for employees authorized to possess explosive materials to RPs. The SEA, at 18 U.S.C. 841(s), defines “responsible person” as “an individual who has the power to direct management and policies of the applicant pertaining to explosive materials.” ATF regulations (§ 555.11) further clarify that this term includes “partners, sole proprietors, site managers, corporate officers and directors, and majority shareholders.”

ATF recognizes that the industry would like more specific guidelines regarding applicability of requirements regarding employees authorized to possess explosive materials as they pertain to industry members’ particular situations. ATF published guidance in the May 2003 edition of the ATF Explosives Industry Newsletter²⁰ and maintains information on the ATF website.²¹ Unfortunately, it is impossible for ATF to formulate a general rule that would address every potential situation involving an

employee authorized to possess explosive materials that may arise in the industry. Each licensee/permittee must make a good-faith effort to determine which of its employees qualifies as an employee authorized to possess explosive materials. There may be situations in which, after consulting the above resources, an industry member still has questions or needs clarification on an issue involving an employee authorized to possess explosive materials. ATF field personnel are available to answer questions, and ATF will continue to respond to such requests and provide written responses to the industry on a case-by-case basis. Although ATF acknowledges that the meaning of “possess” has a bearing on whether a person needs to comply with federal explosive law and regulations, ATF believes the terms “possess” or “employee authorized to possess explosive materials” are sufficiently clear and therefore declines to define these terms.

ATF also agrees that the terms “receive” and “possess” are not synonymous with respect to the federal explosives regulations. With limited exceptions (for example, common/contract carriers transporting explosive materials), federal explosives laws and regulations require that any person receiving or possessing explosive materials must have a federal explosives license/permit. Although it is generally the case that all individuals receiving explosives also possess those materials, it is not necessarily the case that all persons in possession have “received” materials as the term is applied for purposes of complying with the regulations. For example, a person transporting explosive materials at a work site on behalf of their employer possesses the explosives, but they would not be considered to have “received” the materials for licensing, record-keeping, or other purposes under part 555.

It is important to note that such a distinction does not apply to those who acquire explosives unlawfully. Such individuals would likely have “received” and will be in “possession” of these materials under the law. For example, a person not employed by a licensee/permittee who purchases explosives in an illicit transaction or an employee authorized to possess explosive materials who steals explosives from an employer’s explosives magazine would have received and would possess such materials.

Commenters stated that ATF has provided inconsistent guidance regarding which types of industry

workers (e.g., blasting consultants, emergency response services, and commercial motor carriers) receive or possess explosives, and, therefore, require a license/permit under part 555. However, it is not feasible for ATF to formulate a general rule or attempt to develop a significant number of examples that would address every potential “receipt” versus “possession” situation that may arise in the industry. For ATF to determine which types of persons or entities receive or possess explosive materials (e.g., emergency responders, consultants, waterfront facilities), each scenario and its attendant circumstances must be examined. For example, an industry consultant in one scenario may purchase explosives for demonstration purposes, whereas a consultant in another scenario may provide instruction without ever purchasing or possessing explosives. Therefore, ATF will continue to make such determinations individually, considering factors and circumstances pertinent to each case.

M. Safely Handling Explosives and Record-Keeping Manual

Comments Received

One commenter recommended that the final rule include a provision that requires explosives licensees/permittees to maintain a written handling and record-keeping manual onsite that would contain the necessary paperwork and records required by ATF, as well as require employee training and procedures to ensure explosive materials are under custody of authorized personnel at all times. According to the commenter, when they visited locations where explosives were handled, the commenter frequently observed mishandling of explosive materials. The commenter cited examples such as magazines left open, residual and unused explosives left throughout the facility, and areas ready for blasting left unattended for long periods. Additionally, they observed that required records could be difficult to locate when ATF was conducting renewal or compliance inspections. The commenter stated that these situations were extremely dangerous and provided unauthorized individuals access to explosives.

ATF Response

Federal explosives laws generally grant the Attorney General the authority to prescribe rules and regulations necessary to carry out the provisions of 18 U.S.C. chapter 40. 18 U.S.C. 846. ATF has accordingly prescribed

²⁰ Other Frequently Asked Questions, ATF Explosives Industry Newsletter (ATF, Washington, D.C.), May 2003, at 5, <https://www.atf.gov/file/56531/download> [<https://perma.cc/9WAQ-UYBD>].

²¹ See ATF, Who is a “responsible person”? (Apr. 23, 2025), <https://www.atf.gov/explosives/qa/who-%E2%80%9Cresponsible-person%E2%80%9D> [<https://perma.cc/K8MN-LMRG>]; ATF, Who is a “possessor of explosives”? (Sep. 28, 2018) <https://www.atf.gov/explosives/qa/who-%E2%80%9Cpossessor-explosives%E2%80%9D> [<https://perma.cc/2FHQ-QNJA>].

regulations on various aspects of an explosive licensee's/permittee's business activities. ATF believes that the most effective regulations are those that address possessing, transferring, transporting, and shipping explosives, and ATF prioritized such regulations to ensure that prohibited persons do not possess explosives and that explosives are safely stored, shipped, transported, and possessed. ATF regulations contain requirements that licensees/permittees must meet to properly and safely store and manage explosives and to create and maintain required records, among other provisions, and ATF inspects operations to assess compliance with these important public safety components. Implicit in these requirements is a need for licensees/permittees to develop training and procedures to ensure that their employees comply with ATF's requirements. Including an additional regulatory requirement that licensees/permittees must develop and manage employee conduct, training, and procedures in a particular way as mandated by ATF would essentially duplicate this preexisting need without adding any further public benefit. Such a requirement would also be costly and difficult to enforce because ATF would have to review employee manuals, monitor employee training, or otherwise spend resources that could be better directed towards enforcing requirements with greater public benefits. In addition, because the explosives industry consists of more than 25 sectors, each with its own operational needs and using different types of explosives and in different ways, it is unrealistic for ATF to attempt to regulate procedures, training, and employee conduct at a detailed level. ATF would have to develop more than 25 sector-specific regulations for such practices, constantly update them as technology and explosives composition change for each industry sector, and also adjust for innovations in industry practice. ATF does not have the resources to do the research and constant monitoring of changes in technology, explosives, and more, or the necessary testing to go along with it. Nevertheless, ATF works closely with industry members not only to ensure compliance with all regulations under part 555, but also to address voluntary safety and security measures.²² In addition, ATF inspects licensee/permittee operations and

records to ensure compliance with part 555 requirements.

ATF encourages persons with information relating to unsafe or unsecured explosives practices to contact their nearest ATF field office, whose information can be found on ATF's website. In addition, there are other federal and state government agencies, in addition to many notable groups within the explosives industry, that have prepared explosives-related publications that address the safe handling and use of explosive materials.

N. Errors in Regulatory Text

Comments Received

The interim regulation at § 555.106(c), introductory text, reads as follows:

(c) A licensee shall not distribute any explosive materials to any person knowing or having reason to believe that the person . . .

According to a commenter, "[c]urrent rules state that 'persons' are subject to the receipt disqualifications at 18 U.S.C. 842(d) when the statutory applicability is to an 'individual.' ATF should correct this error to be consistent with the FEL [federal explosives law]."

ATF Response

The IFRs did not affect the applicability of § 555.106(c) to persons, as noted by the commenter, and therefore this issue is not within the scope of the notice. In any event, by using the term "person," rather than "individual," the regulation reflects the fact that, under federal law, it is unlawful for a person to assist any prohibited "person," including an individual or a legal entity such as a corporation, to receive or possess explosives. See 18 U.S.C. 2, 842(i). Therefore, ATF is not adopting the commenter's suggestion.

O. IFR Costs and Benefits Section

To implement the SEA, IFR 1 incorporated new requirements into ATF explosives regulations and included an accompanying cost-benefit analysis. Those requirements went into effect over 20 years ago with the publication of IFR 1 and have remained in effect. The costs stemming from these requirements were addressed in the IFR and became, for the purposes of standard economic analyses, sunk costs for industry after ten years. This section of the preamble is responding to comments that were submitted in 2003 on the IFR 1 cost-benefit analysis, and therefore affect only the IFR 1 projected costs through 2012. However, because time has passed since the IFRs were issued, ATF now has historical data on

some of the elements originally projected in 2003. To respond to these comments as accurately as possible, ATF is therefore responding to these comments using actual historical data where available.

For IFR 1 or IFR 2 requirements that are being revised through this final rule, ATF has included a new cost-benefit analysis covering those current costs in section VI.A.2 of this preamble. Therefore, the responses in this section do not include any new costs arising from this final rule. Specifically, ATF notes that IFR 2 covered only verification of delivery by common/contract carriers, and economic comments pertaining to IFR 2 were on that topic. However, ATF is removing that verification requirement via this final rule, so costs related to that issue are updated and addressed in the cost-benefit analysis in section VI.A.2 of this preamble.

1. Population of User Permittees and Limited Permittees

To implement the SEA, IFR 1 required that all persons (at the time of publication) who used explosives as part of their operations, but who were not otherwise licensed/permitted at the time, would thereafter have to obtain a license/permit prior to obtaining additional explosives. The SEA had created a new type of permit, a limited permit, that was intended to provide an easier option for such "non-permittees" to comply with the new licensing/permitting requirement. Therefore, in IFR 1, ATF estimated that 20,000 non-permittees would obtain a limited permit, which ATF concluded would mean that they could purchase explosives (at most) six times per year. In addition to obtaining a limited permit, ATF estimated that these new permittees would also need to undergo an inspection for an additional related cost.

Comments Received

One public commenter suggested that some non-permittee users of explosives—who would have had to acquire a license/permit as a result of the new SEA requirements—might have applied for a user permit instead of a limited permit because six purchases in a year might not have been sufficient for all non-permittees. This commenter broke out the estimated 20,000 applicants into two groups: suggesting that half (10,000) of the estimated affected population would apply for a limited permit and half (10,000) would apply for a user permit. The commenter also noted that there would be additional downstream effects (beyond

²² See, e.g., ATF, *Explosives Safety and Security* (Mar. 13, 2025), <https://www.atf.gov/explosives/tools-services-explosives-industry/current-licensees/explosives-safety-and-security> [<https://perma.cc/NVX4-B7W9>].

inspections) from increasing the number of permittees, such as appeals of adverse background checks and applications for relief of disabilities.

ATF Response

ATF agrees with the commenter that some of the non-permittees might have chosen to acquire user permits beginning in 2003 instead of limited permits. In addition, because ATF has historical data on the numbers of permit applications, ATF has used this data to re-calculate the types of permits the affected population would have acquired in response to IFR 1 (rather than using estimated projections, as occurs in regulatory analyses conducted when a rule is issued)—if the 2003 cost-

benefit analysis had included both kinds of permits.

To calculate the increase in user permits that could have been attributed to the SEA/IFR 1 requirement, ATF first ascertained a baseline of annual applications it received before the requirement. Because there is no means of determining which user permit applications stemmed from preexisting requirements versus those created by the SEA/IFR 1, ATF used the historical number of user permit applications it received from 2000 to 2002 to establish the pre-SEA average annual baseline. The annual average number of user permit applications during those three years was 2,074. Therefore, ATF uses the 2,074 average historical number as the baseline for purposes of responding

to this comment. Any increment above 2,074 user permit applications in a given year as is treated as stemming from the SEA/IFR 1 requirement. Table 1 shows the number of permit applications received during the 2000–2002 baseline period, and the resulting average. Note that ATF did not receive any limited permit applications during that time because the limited permit was a new type of permit added pursuant to the SEA/IFR 1. Table 2 provides the total number of applications ATF received for limited and user permits from 2002–2012. Table 2 also includes the estimated total number of permittees that may have applied for either a user permit or a limited permit due to the SEA requirement.

TABLE 1—HISTORICAL USER PERMIT DATA AND BASELINE AVERAGE

Fiscal year (FY)	Limited permit applications	All user permit applications
2000	n/a	1,985
2001	n/a	1,798
2002	n/a	2,438
Average .....	.....	2,074

TABLE 2—HISTORICAL LIMITED/USER PERMIT DATA, NET TOTAL PERMIT INCREASES

Fiscal year (FY)	Limited permit applications received (new)	User permit applications received	Net user permits received over pre-SEA baseline	Combined increase in permits attributed to SEA
2003	745	5,692	3,618	4,363
2004	748	2,460	386	1,134
2005	641	2,066	0	633
2006	466	2,636	562	1,028
2007	377	3,116	1,042	1,419
2008	280	2,239	165	445
2009	230	3,065	991	1,221
2010	259	2,967	893	1,152
2011	180	3,025	951	1,131
2012	182	4,199	2,125	2,307

Although ATF concurs that there were additional, ancillary effects arising from implementing this SEA licensing/permitting requirement in IFR 1, the majority of these effects are discussed in responses to specific comments in the rest of section III.O of this preamble, below. ATF notes that these effects stem from the incremental increase in permit applications. To determine the effect of the incremental increase on activities

such as inspections, appeals of adverse background checks, and applications for relief of disabilities, ATF first had to calculate the proportion of affected permits within the historical data on user permits applied for during 2003–2012. ATF did this by subtracting the 2,074 baseline (developed in Table 1 for pre-SEA annual numbers of user permits) from each year's total data on limited/user permit applications and

then dividing the number of affected permits by the total number of permits to calculate the proportion affected. Table 3 illustrates the total historical number of limited/user permits; the combined total of affected permits (both limited permits and incremental addition of user permits); and the proportion. Table 3 thus illustrates the increased proportion of permits stemming from the SEA.

TABLE 3—PROPORTION OF SEA-ATTRIBUTED PERMITS FROM TOTAL PERMITS

FY	Total limited/user permits	Attributed limited/user permits	Proportion of SEA-attributed permits (%)
2003	6,437	4,363	68
2004	3,208	1,134	35
2005	2,707	641	24

TABLE 3—PROPORTION OF SEA-ATTRIBUTED PERMITS FROM TOTAL PERMITS—Continued

FY	Total limited/user permits	Attributed limited/user permits	Proportion of SEA-attributed permits (%)
2006	3,102	1,028	33
2007	3,493	1,419	41
2008	2,519	445	18
2009	3,295	1,221	37
2010	3,226	1,152	36
2011	3,205	1,131	35
2012	4,381	2,307	53

ATF used these percentages in its responses to comments below to determine the incremental impact (from the requirement that all persons using explosives must be licensed/permitted) on inspections, RPs, employees authorized to possess explosives, appeals of adverse background checks, and applications for relief of disabilities.

2. Population of Responsible Persons and Employees Authorized To Possess Explosive Materials

In IFR 1, ATF estimated that the requirement for more people to have a permit would result in 100,000 RPs and 1,000 employees authorized to possess explosive materials.

Comments Received

One commenter suggested that ATF underestimated the number and ratio of RPs to employees authorized to possess explosives materials. The commenter requested that ATF use historical data.

ATF Response

ATF partially concurs with using historical data. Although ATF has overall numbers on background checks for explosives RPs and employees authorized to possess explosive materials (“EP” in this response and Table 4), ATF systems do not separate background checks to differentiate between those pertaining to EPs or RPs specifically. Therefore, based on the overall number of background checks, ATF had to perform further calculations to derive a ratio from the total number of background checks to estimate the proportions of RPs and EPs.

Based on ATF’s internal database, ATF determined the average ratio of RPs to EPs is one RP to nine EPs. ATF then used this ratio in Table 4 to update the number of RPs and EPs.

To determine the estimated number of RPs and EPs affected by SEA/IFR 1’s licensing/permitting requirement, ATF started with actual data on the number

of background checks reported through NICS²³ each year, 2003–2012. Because each permit requires a background check, ATF then applied the annual proportion of permits attributed to the SEA/IFR 1 requirement (Table 3), to the number of background checks each year, resulting in the net number of additional background checks attributed to IFR 1. The first two columns of Table 4 reflect this calculation. Because RPs and EPs both undergo background checks, ATF then determined the number of RP/EP sets associated with the entire number of background checks occurring each year. It then applied the proportions attributable to SEA/IFR 1’s requirement from Table 3 to the number of sets per year, resulting in the number of RP/EP sets attributable to IFR 1. The middle two columns of Table 4 illustrate this calculation. The last two columns illustrate how many RPs and EPs were thus affected by this rule (two RPs per set, and 18 EPs per set).

TABLE 4—TOTAL NUMBER OF BACKGROUND CHECKS, PROPORTION ATTRIBUTED TO SEA/IFR 1, ESTIMATED NUMBER OF RP AND EP BACKGROUND CHECKS ATTRIBUTED TO SEA/IFR 1

FY	Background checks	Net background checks due to IFR 1	Sets of RPs/EPs based on background checks	Sets of RPs/EPs attributed to IFR 1	RPs attributed to IFR 1	EPs attributed to IFR 1
2003	30,172	20,451	1,023	693	1,386	12,474
2004	35,421	12,521	626	221	442	3,978
2005	60,417	14,306	715	169	338	3,042
2006	70,686	23,425	1,171	388	776	6,984
2007	62,791	25,508	1,275	518	1,036	9,324
2008	71,599	12,648	632	112	224	2,016
2009	54,254	20,104	1,005	372	744	6,696
2010	67,053	23,945	1,197	427	854	7,686
2011	82,949	29,272	1,464	517	1,034	9,306
2012	78,500	41,337	2,067	1,088	2,176	19,584

3. Appeals of Adverse Background Checks, Applications for Relief of Disabilities, and Number of Inspections

Another cost that ATF calculated in its analysis for IFR 1 was the cost for an inspection. Inspections were included

because, upon an initial application for a permit, a non-permittee must undergo a qualification inspection; hence, the number of inspections would increase with the number of new permits. ATF attributed no ancillary costs other than

those discussed above to the permitting increase at the time.

Comments Received

One commenter concurred that it was appropriate to include the cost of

²³ NICS is the Federal Bureau of Investigation’s National Instant Criminal Background Check System. For more information on NICS and how it

conducts background checks, see <https://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/nics/about-nics>.

inspections but suggested that an increase in permittees would result in additional actions/costs not included in ATF's analysis. The commenter cited appeals of adverse determinations from background checks and applications for relief of disabilities. As for inspections, the commenter concurred with ATF's assessment for inspections.

ATF Response

ATF concurs that additional costs to appeal adverse background-check determinations and request relief from disabilities should have been included

in the analysis in IFR 1. ATF therefore includes historical data on these costs in this response to public comments. *See* Table 5. In other words, because these persons would have had to become licensed/permitted due to the IFRs, they would have had to begin undergoing inspections. This increase in inspections would have resulted in additional background checks, which would in turn have resulted in additional appeals from background checks and additional requests for relief from disabilities.

Although the commenter did not raise a concern with the original inspection data, because ATF is updating all the hourly wages and costs for the original IFR 1 cost analysis—such as costs of appeals from background checks and requests for relief from disabilities—as well as the ones suggested by the commenter (*see* section III.O.7 of this preamble), ATF is also including historic data in Table 5 for inspections, appeals from background checks, and requests for relief from disabilities.

TABLE 5—TOTAL NUMBERS OF BACKGROUND CHECK APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

FY	Appeals from background checks	Requests for relief from disabilities	Inspections
2003	1	240	3,631
2004	4	240	1,892
2005	146	270	1,617
2006	188	405	1,367
2007	111	229	1,298
2008	170	235	1,136
2009	164	273	1,116
2010	269	269	1,108
2011	239	239	1,254
2012	193	192	1,602

As mentioned previously, not all historical numbers of permits, background checks, appeals, requests for relief, or inspections are attributable to IFR 1. Applications for permits and actions such as background check appeals and requests for relief from disabilities are all activities that existed prior to implementing the SEA. In other words, the SEA added to the existing permitting programs with background checks and appeals that supplemented the existing programs. Permittees and background checks that would have occurred regardless of implementing the SEA are considered sunk costs and were

not included as historical costs arising from implementing the SEA. During the initial period after implementing the SEA, there was an increase in applications; therefore, only the estimated increase is being attributed to IFR 1. As outlined in Table 3 above, ATF estimated the proportion of limited/user permits attributable to IFR 1. ATF has now applied those same proportions to the Table 5 historical numbers of background check appeals, requests for relief, and inspections. This calculation is reflected in Table 6 as a net increase attributable to IFR 1. For the purposes of this analysis, ATF assumes that the number of inspections

performed equals the number of incremental applications received for permits for 2003 because the increase in applications that year was due to the new requirement and they would all have been initial applications requiring an inspection the same year. For years after 2003, ATF used the historical percentages to calculate a net number of inspections because only a subset of existing permittees undergo compliance inspections in a given year. Table 6 illustrates the estimated net number of background check appeals, requests for relief from disabilities, and inspections attributable to the SEA/IFR 1 permitting requirement.

TABLE 6—SEA/IFR 1-ATTRIBUTABLE INCREASES IN BACKGROUND CHECK APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

FY	Net appeals from background checks	Net requests for relief from disabilities	Net inspections
2003	1	163	4,363
2004	1	85	1,284
2005	35	57	448
2006	62	89	536
2007	45	165	555
2008	30	40	229
2009	61	87	421
2010	96	97	399
2011	84	95	391
2012	102	126	660

4. Other Populations Not Considered by ATF

Comments Received

One commenter listed other requirements not considered as costs in the analyses in IFRs 1 and 2. The commenter attributed these proposed costs to the IFR 1 requirement that common/contract carriers verify the identity of the person accepting delivery of explosive materials and for the distributor to also maintain a list of authorized people. In particular, the commenter suggested that common/contract carriers would have to complete Form 5400.8 as part of verifying the recipient's identity and that distributors would be charged a service fee for returned shipments if the common/contract carrier was unable to verify the recipient.

The same commenter also noted that a list of persons authorized to receive explosives on behalf of a distributee would likely be identical to the list of persons authorized to order explosives for the same distributee, which was a list already required by the regulations at the time of IFR 1. Therefore, the commenter noted, costs for a list of authorized recipients required by IFR 1 would be minimal, at most.

ATF Response

ATF concurred in 2003 with the public commenter regarding prohibitive costs concerning explosives shipments via common/contract carriers. As a result, ATF alleviated those verification requirements pursuant to Ruling 2003–5 a couple of months after IFR 1, allowing an alternate process by which the distributor would verify receipt directly with the distributee in cases involving limited permittees receiving deliveries via common/contract carriers. ATF then removed the verification requirement for common/contract carrier deliveries to licensees/user permittees a few months later, via IFR 2.

In addition, ATF concurred in 2003 with the commenter's statement that using Form 5400.8 was burdensome, and in IFR 2, ATF removed that requirement as well. Therefore, no additional costs are being calculated now with regard to these previously canceled requirements.

Through this final rule, ATF is removing the last portions of the requirement to verify the identity of individuals accepting explosives deliveries on behalf of limited permittees via common/contract

carriers. This results in a new cost-benefit analysis for this rule (rather than an update to the IFR 1 analysis), set forth in section VI.A.2 of this preamble.

As for the costs of maintaining a list of persons authorized to accept delivery of explosives, ATF also concurs with the commenter that the requirement for a list of authorized recipients would essentially be the same list created by the preexisting requirement to maintain a list of persons authorized to order explosives on behalf of the permittee. ATF concurs that the cost to maintain a list of authorized persons would therefore be de minimis. As a result, ATF is not updating costs for the list in response to the comments.

5. Items Outlined as Application or Supporting Documentation Costs

In IFR 1, ATF supplied the following permit application and renewal costs as well as costs for RPs and authorized employees to obtain supporting documentation (such as fingerprints and photographs) to submit with the permit application for their background checks. Table 7 provides the breakdown of such cost items that were included in IFR 1.

TABLE 7—COST ITEMS FOR PERMIT APPLICATIONS AND SUPPORTING DOCUMENTATION

Cost item	Cost	Renewal cost
Fingerprint-based submission	\$10.00	.....
Passport photo	1.50	.....
Limited permit fee	25.00	12
User permit fee	100.00	50

Comments Received

One commenter (IME–8) concurred with the item costs and commented only that the expenses for renewals over time were not included in the IFR 1 analysis.

ATF Response

ATF disagrees that IFR 1 did not address recurring costs. IFR 1 did include a statement about recurring fees. However, ATF agrees the recurring costs were not illustrated over time. ATF concurs that a ten-year schedule would better illustrate recurring costs and is therefore including them in these responses to public comments. Because the costs include both the specific fees and costs originally included in Table 7 above and the hourly burden of acquiring fingerprints, etc., ATF has combined the updated data on these costs with the updated data on hourly burden and reflected the totals over ten

years in Table 12 (in section III.O.7 of this preamble).

6. Hourly Burdens

Comments Received

One commenter made suggestions regarding ATF's estimated hourly burden to perform certain actions, such as obtaining fingerprints, photographs, and documents to support requests for relief from disabilities. This commenter suggested that the time burden to acquire these items, such as traveling to and from a police station to complete fingerprint cards or traveling to and from appointments to obtain photographs, was more than the time calculated for completing the forms themselves. The commenter also included suggested hourly burdens for the time to draft a request for relief from disability and for actions associated with such requests, such as interviews of coworkers, neighbors, or family. The commenter also included suggested

hourly burdens to acquire documents or to participate in reference interviews. Further, the commenter suggested that technical advisors would be needed to review and complete an application for a permit.

ATF Response

ATF agrees that the original IFR 1 analysis did not include all the costs identified by the commenter and concurs with including most of them as part of updating the costs in response to these comments. Table 8 reflects the updated hourly burden analysis in response to these comments. To calculate the time to complete a permit application form or a transaction report, ATF used information contained on the actual ATF forms based on testing when the form was developed. ATF used the times provided by the commenter for all the other time costs. However, ATF disagrees with the commenter that technical advisors would be needed to

review and complete applications. The application consists of business details that an RP (such as a manager) would

know and individual information that the proposed RP or employee authorized to possess explosives would

know for the individual's own background checks.

TABLE 8—HOURLY BURDENS TO PERFORM ACTIONS *

Hourly burden action	Estimated hourly burden	Source
Application	0.33	ATF information collection (OMB-approved 1140–0070 (ATF Form 5400.13/5400.16—now Form 5400.13) **).
Managerial application	0.33	Public comment #8 (pg 16).
Renewal application	0.33	ATF information collection (OMB-approved 1140–0022 (ATF Form 5400.14/5400.15—now Form 5400.14)).
Obtain fingerprints	1	Public comment #8 (pg 15).
Obtain photograph	0.5	Public comment #8 (pg 15).
Request for relief from disability	5.92	Public comment #8 (pg 18).
Managerial relief from disability	1	Public comment #8 (pg 18).
Interviews and references of coworkers ...	2	Public comment #8 (pg 18).
Home interviews	0.51	Public comment #8 (pg 18).
Appeals for adverse background checks	2	Public comment #8 (pg 17).
Limited permit transaction report	0.33	ATF information collection (OMB-approved 1140–0075 (ATF Form 5400.4)).

* Data from “ATF information collection” sources comes from the hourly burden reported on the involved forms.

** Form 5400.13/5400.16 (now Form 5400.13) included, in 2003, the information on RPs that has since been split into a separate document (Form 5400.13A/5400.16, now Form 5400.27). However, the hourly burden in this table includes the time the form would have taken with both parts included in 2003.

7. Wages and Costs

Comments Received

One commenter suggested that ATF use a different source for wages than it relied upon in IFR 1. The commenter suggested ATF use Bureau of Labor Statistics (“BLS”) executive and managerial wages for RPs and blue-collar occupation wages for employees authorized to possess explosives. The commenter also suggested other employee wages in support of their statement that technical personnel would be needed to complete application forms (particularly, to develop schematic diagrams as supporting statements for the forms). Furthermore, this commenter suggested that if ATF were to incorporate the costs and wages as proffered by the commenter, this rule would be economically significant, meaning this

rule would cost more than \$100 million in any one year.

ATF Response

ATF largely concurs with the commenter's suggested wage rates and has adopted the occupations/wages supplied by the commenter to revise the IFR 1 analysis in response to these comments. However, ATF used a rounded calculation of the listed “total compensation” as the wages for the occupations supplied by the commenter. ATF used “total compensation” so as to include fringe benefit costs that accompany salaries/wages, such as insurance. However, ATF disagreed with the commenter's suggested employee wages for personal reference interviews from individuals who are not employees of the permittee, such as spouses. Because interviews of

non-employees are performed during non-work hours, ATF estimated a leisure wage rate based on a methodology from the Department of Health and Human Services (“HHS”).²⁴ The HHS methodology is to first obtain the average U.S. median non-leisure weekly wage from BLS, and divide it by 40 hours to derive the median hourly non-leisure wage. Step two is to obtain the average U.S. real household income before taxes and after taxes from the Census Bureau and divide the post-tax income by the pre-tax income to determine the net household income rate. Step three applies the net income rate to the median non-leisure hourly rate derived in step one to calculate the hourly leisure wage. Table 9 shows the steps and data used under this methodology to determine the leisure wage.

TABLE 9—CALCULATION OF LEISURE WAGE RATE

Inputs for leisure wage rate	Cost inputs	Source
Median weekly wage	\$618	Earnings and occupation: third quarter of 2003: The Economics Daily: U.S. Bureau of Labor Statistics (<i>bls.gov</i>).
Median hourly wage	\$15	\$618/40 hours = \$15.
Real household income pre-tax	\$43,318	<i>med-hh-inc2003.pdf</i> (<i>census.gov</i>).
Real household income post-tax	\$38,300	Alternative Income Estimates in the United States: 2003 (<i>census.gov</i>).
State and federal taxation	88%	\$43,318 pre-tax income – \$38,300 post-tax income = \$5,018 tax. \$5,018 tax/\$43,318 = 12% of wages as taxes. 100% – 12% = 88% wages post-tax.
Leisure wage	\$13.66	\$15 median hourly wage * 88% post-tax wage rate = \$13.66.
Rounded leisure wage rate	\$14	

²⁴ Jennifer R. Baxter, et al., *Valuing Time in U.S. Department of Health and Human Services*

Regulatory Impact Analyses: Conceptual Framework and Best Practices (June 2017), <https://>

aspe.hhs.gov/sites/default/files/private/pdf/257746/VOT.pdf.

Table 10 provides the rounded total compensation wage rates for occupations that were suggested by the commenter and that ATF used to reassess the IFR 1 analysis.

TABLE 10—ROUNDED HOURLY WAGE RATES FOR RELATED OCCUPATIONS

Job title	Total compensation	Source
Executive, administrative, and managerial	\$47.00	https://www.bls.gov/news.release/archives/ecec_08262003.pdf .
Blue-collar occupations	23.00	https://www.bls.gov/news.release/archives/ecec_08262003.pdf .
Leisure	14.00	https://www.census.gov/content/dam/Census/library/visualizations/2006/demo/2003-state-county-maps/med-hh-inc2003.pdf .

To calculate costs of fees and time associated with the ancillary effects of the SEA/IFR 1 permitting increase (*i.e.*, inspections, appeals, and requests for

relief), ATF primarily relied upon historical data. In addition, where relevant, ATF also incorporated hourly burdens and hourly wage rates proffered

by the commenter. Table 11 lists the revised per-action costs to comply with IFR 1.

TABLE 11—PER UNIT COST PER ACTION

Item	Individual cost
User permit fee and time (new)	\$116
User permit fee and time (renewal)	66
Limited permit fee and time (new)	41
Limited permit fee and time (renewal)	28
ATF inspection time	94
Responsible person costs and time	54
Employee authorized to possess costs and time	41
Appeal of background check costs and time	79
Request for relief from disability costs and time	236

Tables 12 and 13 combine the information from the tables above (in

section III.O of this preamble) to show the revised ten-year undiscounted costs

of implementing IFR 1, based on input from the comments as discussed above.

TABLE 12—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED LIMITED PERMITS, USER PERMITS, RPS, AND EMPLOYEES

Year	Limited permit applications	Net user permit applications	Responsible persons	Employees authorized to possess	Annual totals
2003	\$15,293	\$22,388	\$74,844	\$511,434	\$623,959
2004	25,806	0	23,868	163,098	212,772
2005	22,121	51,142	18,252	124,722	216,237
2006	16,077	94,822	41,904	286,344	439,147
2007	13,013	15,040	55,944	382,284	466,281
2008	9,660	90,206	12,096	82,656	194,618
2009	7,935	81,288	40,176	274,536	403,935
2010	8,942	86,566	46,116	315,126	456,750
2011	6,210	193,400	55,836	381,546	636,992
2012	6,279	193,400	117,504	802,944	1,120,127
10-year undiscounted total	131,336	828,252	486,540	3,324,690	4,770,818

TABLE 13—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS

Year	Appeals from background checks	Relief from disability	Inspections	Annual totals
2003	79	38,391	410,122	448,592
2004	79	20,060	120,696	140,835
2005	2,765	13,452	42,112	58,329
2006	4,898	21,004	50,384	76,286
2007	3,555	38,940	52,170	94,665
2008	2,370	9,440	21,526	33,336
2009	4,819	20,532	39,574	64,925
2010	7,584	22,892	37,506	67,982

TABLE 13—ANNUAL ESTIMATED INCREMENTAL COSTS TO IMPLEMENT IFR 1: INCREASED APPEALS, REQUESTS FOR RELIEF, AND INSPECTIONS—Continued

Year	Appeals from background checks	Relief from disability	Inspections	Annual totals
2011	6,636	22,420	36,754	65,810
2012	8,058	29,736	62,040	99,834
10-year undiscounted total	40,843	236,867	872,884	1,150,594

As illustrated by Tables 12 and 13, when the costs in the tables are added together, the new undiscounted costs attributable to IFR 1 are \$ 5,921,412. Therefore, IFR 1 would not have been economically significant, as it would not have cost the industry \$100 million in any given year. IFR 1 has thus not been economically significant since its implementation.

ATF notes that these costs already occurred more than ten years ago and hence have already been incorporated into current industry practices; thus, they are now considered sunk costs. These tables reflect revisions to the costs of the original requirements in IFRs 1 and 2, but they do not reflect any new costs that may arise from regulatory changes being made by this final rule. The cost-benefit analysis for regulatory changes being made in this final rule is in section VI.A.2 of this preamble.

8. Costs of Transportation

Comments Received

One commenter suggested that ATF also include transportation costs, which they estimated at \$6.2 million dollars annually, for shipment surcharges that would be added to all explosive material shipments as a result of implementing the SEA.

The commenter also suggested that ATF include transportation costs of an estimated \$12.5 million to account for the number of explosives shipments that would be returned to the distributor as a result of common/contract carriers being unable to locate persons at the distributees' premises who were authorized to receive explosive materials.

ATF Response

Examining historic data to which it has access, ATF is unaware of actual costs due to returned explosives shipments, as the commenter suggested would occur. Nor has ATF seen any evidence that surcharges have been added to any explosive materials shipment as a result of compliance with the SEA. Therefore, ATF is not adopting the commenter's suggestions on transportation costs.

9. Costs for Unfunded Mandates

Comments Received

One commenter stated that IFR 1 violated the Unfunded Mandates Reform Act of 1995 and did not account for the cost to comply with state and local explosives regulations that would have been triggered by now needing a federal explosives permit.

ATF Response

The Unfunded Mandates Reform Act does not address the costs of complying with state and local laws or regulations, even when states and localities choose to revise their laws based on changes to federal law. Instead, the Act is concerned with costs to governments of \$100 million or more in any one year from complying with the federal regulations. The IFRs did not impose any mandates on state, local, or tribal governments and thus did not create any unfunded mandates covered by the Act. Furthermore, a review of state explosives regulations, including the commenter's state, showed that state requirements are generally based on the type of explosives handled, not whether an individual or company needed a federal explosives permit. For these reasons, ATF has determined that no new permittees had to comply with state or local regulations due to becoming a permittee. Therefore, ATF has not included the cost of compliance with state or local regulations, nor does ATF believe that the SEA implementing regulations violated the Unfunded Mandates Reform Act of 1995.

10. Regulatory Flexibility Act Section

Comments Received

A commenter stated that IFR 1 did not include a regulatory assessment or a regulatory flexibility analysis and that ATF should not finalize the regulations without either analysis.

ATF Response

ATF partially disagrees. ATF conducted a regulatory assessment (or cost-benefit analysis) in section A of the IFR 1 preamble, under the Executive Order 12866 section, and did not find

any significant effect on small businesses. See 68 FR 13776–78. However, because the IFRs requested comments, ATF has revisited its original cost-benefit analysis in response to comments, as described in this section III.O of the preamble, using historical data and information gathered from public comments. Using that updated information, ATF is also including a revisited regulatory flexibility analysis in this response. Since the IFRs were published, ATF has been able to determine the actual effects of the SEA on businesses, and ATF used that information when it conducted the regulatory flexibility analysis in this response. Based on research on small businesses with reported revenue, ATF is again able to certify that the IFRs did not have a significant impact on small entities.

The provisions of the IFRs affected persons who held a federal explosives license as a manufacturer or importer of, or dealer in, explosive materials. It also affected persons who held federal user permits that authorized them to obtain explosives in interstate or foreign commerce. Users included farmers, construction companies, mining companies, logging companies, and hobbyists, such as fireworks and model rocketry enthusiasts. The IFRs also affected infrequent or occasional users who obtained explosive materials within their state of residence; responsible persons affiliated with federal explosives licensees/permittees; and employees authorized by a licensee/permittee to possess explosive materials in the course of their employment. Finally, the IFRs affected individuals subject to federal explosives disabilities under 18 U.S.C. 842(i).

Based on the number of licenses/permits, there are approximately 9,703 entities affected by this final rule. From these entities, ATF drew a random sample of 376 entities—a sample size that is statistically significant—using a 95 percent confidence level and a confidence interval of 5. ATF then reviewed annual sales data, labor-force information, and the North American Industry Classification System

(“NAICS”) codes for these entities using the database Dunn and Bradstreet. Based on the small business size standard from the NAICS code definitions, ATF determined that 335 entities in the sample were defined as

small and 41 were deemed not small. Of the 335 entities defined as small, no information was found for 191 of the entities, and they were thus considered too small to have any information. From this analysis, ATF is 95 percent certain

that between 35 percent to 88.5 percent of the affected population are small entities. The most frequently identified NAICS codes are listed in Table 14.

TABLE 14—TOP 11 NAICS AFFECTED BY THE IFRS

NAICS	Description	Number of companies	Percent of population
453998	All other miscellaneous store retailers (except tobacco stores)	11	9
213112	Support activities for oil and gas operations	9	7
237310	Highway, street, and bridge construction	7	6
237990	Other heavy and civil engineering construction	7	6
424690	Other chemical and allied products merchant wholesalers	6	5
334511	Search, detection, navigation, guidance, aeronautical, and nautical system and instrument manufacturing.	5	4
488119	Other airport operations	5	4
713990	All other amusement and recreation industries	5	4
999999	Other similar organizations (except business, professional, labor, and political organizations) ..	5	4
237130	Power and communication line and related structures construction	4	3
238910	Site preparation contractors	4	3
Percent of NAICS.	.....	.....	54

Based on public comments, ATF updated the cost figures in IFR 1 in the responses to public comments in this section III.O of the preamble. The IFR did not specify its per-entity cost, but based on the costs outlined in the IFR, ATF extrapolated that the per-entity cost of the IFRs would have been estimated at \$429.28.²⁵ Using the updated figures provided by public comments and estimating the anticipated per-entity expenses likely incurred by an entity in any given year, ATF estimates the per-entity cost for IFR 1 was \$1,376 per year.²⁶ Table 15 provides the percent revenue impact the IFR would have had on small entities.

TABLE 15—PERCENT IMPACT ON REVENUE OF SMALL ENTITIES

Percent Impact	Number
0 = X < 1	109
1 = X < 3	34
3 = X < 5	1
5 = X < 10	0
10+	0

Based on the revenues of the sampled small entities with revenue information, the provisions of IFR 1 would have affected those small entities by less than 5 percent of their overall revenue. As a result, the IFRs would not have had a significant impact on small entities.

P. IFR Paperwork Reduction Act Section

In IFR 1, ATF listed 13 new or revised regulations that contained information collection requirements as defined by the Paperwork Reduction Act (68 FR 13779) (“PRA”), with one exception (due to an administrative oversight). But, it did not include any forms involved in the information collections or the following aspects of the information collection requirement: the estimated total annual reporting or record-keeping burden; the estimated average annual burden hours per respondent; the estimated number of respondents; and the estimated annual frequency of responses.

Comments Received

One commenter expressed a concern regarding the manner in which ATF described the information collections in the interim rule. The commenter indicated that it was difficult to provide comments on the information collections because there was no detailed discussion for each information collection, only a reference to the regulations that contained them. According to the commenter, it was unreasonable to expect the public to decipher what ATF was proposing to collect “by such vague references.” The commenter stated they had separately viewed at least one form likely involved in these collections and that the hourly

burdens in the IFR 1 cost-benefit analysis section were not consistent with the hourly burdens reported on the actual ATF forms used to collect the information (under PRA sections on each form) for the same items.

ATF Response

In response to these public comments, ATF is providing more information about which information collections were affected by IFR 1. ATF has corrected the inconsistency noted by the commenter in the 2003 analysis between the hourly burdens in the analysis and the time reported on the forms. The revised information on these collections is included in the responses to public comments under section III.O.6 (Table 8) of this preamble and uses the hourly burdens as reported on the forms themselves. In addition, this response to comments includes Table 16 below, which correlates the regulatory sections originally listed in IFR 1 with the relevant information collection OMB control numbers, titles, and associated form numbers where applicable. The table itemizes the ICRs by the numbers and titles that were applicable when the IFRs were published in 2003, but also notes where ICRs have since been canceled or combined with others, and where titles or numbers have been changed or are in the process of changing.

²⁵ The total cost of the interim rule as stated in IFR 1 was \$4.3 million divided by 10,000 companies and assumed that the per-entity cost was

\$429.28. There were no additional costs incurred in IFR 2’s provisions, which consisted of a minor transfer of burden.

²⁶ ATF notes that annual expenses could be lower depending on types and number of applications for which permittees apply.

TABLE 16—INFORMATION COLLECTION REQUESTS AFFECTED BY IFR 1

CFR cited in IR	CFR cited in final rule	OMB control No.	ICR title	ATF form No.
§ 555.33 ...	§ 555.33	1140–0081	Appeals of Background Checks (changing to Appeals of Explosives Background Checks).	n/a.
§ 555.34 ...	§ 555.34	1140–0077 (canceled; content combined under 1140–0075).	Report of Stolen or Lost ATF Forms 5400.30, Intrastate Purchase Explosive Coupon.	n/a.
n/a	§ 555.43(a)(2)	1140–0027 (canceled) ...	User-Limited Permit	5400.21 (obsolete).
n/a	§ 555.43	1140–0025 (canceled; content combined under 1140–0075).	Limited Permittee Transaction Report	5400.4.
n/a	§ 555.43	1140–0070	Application for Explosives License or Permit (now Application for Explosives License/Permit).	5400.13/5400.16 (now 5400.13).
n/a	§ 555.43	1140–0022	Federal Explosives License (FEL) RENEWAL Application (now Application to Renew Explosives License/Permit).	5400.14/5400.15 (now 5400.14).
n/a	§ 555.45(b) and (c)(2)	n/a	User-Limited Special Fireworks	5400.21 (obsolete).
§ 555.54 ...	§ 555.54	1140–0080	Notification of Change of Mailing or Premises Address (changing to Application to Amend Explosives License/Permit).	5400.33 (form added in 2024; now changing to 5400.17).
§ 555.57 ...	§ 555.57	1140–0074	List of Responsible Persons (now Explosives Responsible Person Questionnaire).	5400.13A/5400.16 (now 5400.27).
§ 555.103	§ 555.103	1140–0079 (now combined under 1140–0075 as to limited permittees).	Transactions Among Licensees/Permittees and Transactions Among Licensees and Holders of User Permits (changing to Explosives Transactions Involving Licensees/Permittees).	n/a.
§ 555.105	§ 555.105	1140–0075	Transactions Among Licensees/Permittees, Limited (now Explosives Transactions Involving Limited Permittees).	5400.4 (moved from 1140–0025).
§ 555.110	§ 555.110	1140–0073	Furnishing of Samples (now Furnishing Explosives Samples).	n/a.
§ 555.125	§ 555.125	1140–0030	Records and Supporting Data: Importation, Receipt, Storage, and Disposition by Explosives Importers, Manufacturers, Dealers, and Users Licensed under Title 18 U.S.C. chapter 40 Explosives (changing to Records and Data: Importing, Receiving, Storing, Disposing of Explosives (Licensees/Permittees)).	n/a.
§ 555.142	§ 555.142(f)	1140–0076	Relief of Disabilities and Application for Restoration of Explosives Privileges (now Request for Relief from Explosives Disability).	5400.29 (now 5400.31).

IV. Analysis of Comments and Decisions for Interim Final Rule Two (IFR 2)

ATF published IFR 2 on September 11, 2003. 68 FR 53509. As described earlier, IFR 2 removed the requirement that common/contract carriers complete the Form 5400.8 prior to taking possession of explosive materials for delivery to a licensee/permittee, regardless of whether they are hired by the distributor or by the distributee. ATF believed that this requirement was unduly burdensome and unnecessary. However, ATF continued to require that distributors verify the identity of persons accepting possession of explosive materials for common/contract carriers and required distributors to record the name of the common/contract carrier and the full name of the driver in their permanent records.

ATF received four comments in response to IFR 2. The comments were submitted by an explosives industry

association, a package distribution company, and two associations representing the trucking industry. All four commenters supported ATF's removal of the requirement that common/contract carriers complete Form 5400.8 prior to taking possession of the explosive materials. This form is now obsolete. The commenters, however, raised other issues in response to IFR 2. These issues are discussed below.

A. Obligations To Verify Persons Accepting Explosives Delivery and ATF Ruling 2003–5

Comments Received

In response to IFR 2, a commenter asked for verification on whether its interpretation of the effect of the amendments under IFR 2 is correct. Under their reading, IFR 2 “eliminate[s] the requirements for distributors to verify the identity of individuals certified by licensee/user permittee distributees to accept explosives when

distribution is accomplished by common carriers, or in the case of individuals certified by distributees who are limited permittees, common carriers hired by the distributee.” The commenter stated that if their understanding of the exception was incorrect, then ATF should immediately publish a notice to further clarify the requirement(s), and that the publication should also explain how, in the absence of these exceptions, distributors are expected to accomplish the prescribed verification of the respective distributee when neither party is in physical proximity as the transfer of explosives materials takes place.

Even if their interpretation of the exception were correct, the commenter argued there were two issues that remained unresolved. First, there was confusion regarding the delivery of explosive materials to limited permittees by a common/contract carrier hired by the distributor. The commenter argued that this requirement in

§ 555.105(b)(6)(iii) contradicts the variance ATF issued in Ruling 2003–5 absolving carriers of any verification obligations and allowing verification of delivery by a number of alternate means, provided the verification is accomplished within three business days. According to the commenter, even though ATF verbally stated its intent not to overturn the variance provided in Ruling 2003–5, “these informal means of public notice are wholly inadequate.” The commenter further stated that the instructions on the ATF website directly contradicted those included in the IFRs, making this issue “confusing and potentially prejudicial to the regulated industry.”

Another commenter also noted that IFR 2 did not change the requirements specified in § 555.105(b)(6)(iii) that a common/contract carrier, hired by a distributor, verify the identity of the person accepting delivery of the explosives on behalf of the distributee. This commenter asked whether Ruling 2003–5, which authorized a variance from this requirement by allowing the distributor distributing the explosives to verify delivery within three business days, was still in effect.

A third commenter also raised concerns regarding the continued requirements of § 555.103(b)(6)(iii). The commenter argued that situations may arise where the driver would be unable to deliver the explosives, *e.g.*, the person listed on the limited permit is not able to accept delivery of the explosives due to sickness or is no longer employed by the consignee. The commenter stated that if the driver is unable to deliver the explosives due to an inability to comply with the requirement, then “explosives must remain ‘in transportation’ longer than necessary” and that delayed delivery of explosives “undermines one of the central principles of hazardous materials transportation safety.” In addition to safety issues, the commenter contended that a delay in the delivery of explosives means that the carrier “must now figure out how to accommodate the reduction of cargo capacity as this freight remains on the truck and the route is completed.” The commenter also expressed concern regarding the issue of liability (*i.e.*, that ATF would begin an enforcement action if the driver made mistake in the verification of the person accepting delivery of the explosives).

The commenter asked that the variance allowed by Ruling 2003–5 be incorporated into the regulations because the “variance, while creating an alternative means of compliance, does not trump the text of the regulation,

which as written obligates the common/contract carrier to verify the identity of the person accepting delivery.” Another commenter echoed the concerns raised by the other commenters and supported the recommendations made by the third commenter.

ATF Response

ATF recognizes that the explosives industry has experienced some confusion with respect to Ruling 2003–5 and IFR 2. IFR 2 was not intended to integrate into the regulations all industry suggestions the agency had received regarding IFR 1. Rather, IFR 2 was primarily intended to respond to industry concerns and newly implemented DOT and DHS regulations regarding transporters of explosive materials. In the interest of proceeding expeditiously, IFR 2 focused on removing the requirement for carriers to complete Form 5400.8 and clarifying § 555.103(b)(2) as applied to deliveries by common carriers.

Ruling 2003–5 was published on May 23, 2003, shortly after publication of IFR 1 and prior to publication of IFR 2. The ruling provides an alternate method from the requirement of § 555.105(b)(6)(iii), which was implemented in IFR 1 and remained unchanged after IFR 2. The ruling allows a distributor to verify via telephone, fax, or email the delivery of explosive materials through a common/contract carrier to a limited permittee, in lieu of the common/contract carrier employee verifying the identity of the person accepting delivery on behalf of the limited permittee and then providing this information to the distributor. Ruling 2003–5 remained in effect after IFR 2 and ATF is unaware of any significant problems having developed in the explosives industry as a result of implementing Ruling 2003–5.

As discussed in section III.H.3 of this preamble, ATF is amending §§ 555.103 and 555.105 in this final rule to make clearer the verification procedures applicable under the following circumstances: (a) distribution of explosive materials by a licensee/permittee; or (b) distribution of explosive materials by a common/contract carrier.

In the final rule, the requirement that a distributor make a positive identification of a distributee remains unchanged if the transfer of explosive materials occurs directly between the licensed or permitted distributor and the distributee at the distributor’s premises or is delivered to the distributee by an employee of the distributor. However, under the final

rule, there is no longer a requirement for common/contract carriers to identify the individual accepting possession, as implemented by IFR 1. In addition, the final rule also no longer allows a variance for the distributor to verify the delivery, as established in Ruling 2003–5. Instead, the final rule removes the requirement for either the common/contract carrier or the distributor to verify the identity of the individual accepting delivery on the limited permittee’s behalf when delivery occurs via common/contract carrier. It therefore removes the burdens and complications inherent in both the IFR 1 provision and the ruling variance, as described by comments. This final rule accordingly helps minimize the number of checks and other actions necessary to complete the transportation process, but still ensures that there is a record of the delivery and that the explosive materials reached the designated limited permittee, thus promoting public safety and facilitating ATF inspections.

Ruling 2003–5 will remain in effect only until the effective date of this final rule, at which time it will be obsolete and rescinded. Accordingly, ATF believes these changes address the commenters’ concerns.

B. “Private” Carriers and Common/Contract Carriers

As discussed, IFR 2 eliminated the requirement in § 555.103(b)(2)(ii) that common/contract carriers, as distributors, verify the identity of the person authorized to accept the explosive materials when delivering to licensees/user permittees. Furthermore, Ruling 2003–5 authorized a variance from § 555.105(b)(6)(iii), allowing distributors, rather than the common/contract carrier, to verify the identity of the person accepting delivery of the explosive materials on behalf of a limited permittee within three business days of the shipment. Despite these changes, §§ 555.103(b)(3) and 555.105(b)(6)(i) require that if a distributor makes a delivery away from their premises to a limited permittee (not via a common/contract carrier), then the distributor must, in all instances, verify the identity of the individual accepting possession. In other words, distributor employees delivering the explosive materials as agents of the distributor are still required to verify the identity of the individual receiving the explosive materials, whereas common/contract carriers are relieved from such burden.

Comments Received

In addition to a comment received on this topic in response to IFR 1, ATF

received a second comment in response to IFR 2. This commenter also contended that employees of “private” carriers who perform only functions related to commercial transportation of explosives should be regulated by DOT, not ATF. According to the second commenter, DOT did not distinguish between “private motor carriers” and “common or contract carriers,” as ATF did, when regulating safety and security of transported items, and the commenter referred to a then-recent DOT rule that, the commenter said, had filled the field for “private” carriers.

The commenter contended that “[t]here is, however, a much larger policy issue at work here.” According to the commenter, either there is a security risk that necessitates that the common or private carrier verify the identity of the person accepting delivery of the explosive materials, or there is not. The commenter asked ATF to explain why there is a security risk sufficient to impose this requirement upon carriers “simply because they are ‘private’ carriers and why such risk does not exist when the transportation is performed by a common carrier. There is no justification for this distinction.”

ATF Response

ATF largely agrees that an employee of an explosives company who delivers explosive materials in commerce (*i.e.*, a private motor carrier) is performing a transportation function similar to that of a driver employed by a common/contract carrier. However, ATF does not agree that such a driver, employed by the distributor, performs only the same function as a driver for a common/contract carrier, and should therefore also be exempt from verifying the identity of the employee/RP accepting delivery of explosive materials. When a common/contract carrier effects the delivery, the carrier is neither an employee nor agent of the distributor and therefore cannot act on behalf of the distributor in confirming that the delivery went to the person identified in the distributor’s records. Similarly, the carrier also is not an employee or agent of the distributee and therefore cannot act on the distributee’s behalf to confirm delivery was accepted by an authorized person. Furthermore, ATF agrees that the same security and accountability concerns reflected in the SEA apply in both types of delivery and that they should thus both be subject to the same verification requirements. That is why they both existed when IFR 1 was published. But, removing the identity verification requirement when delivery occurs via common/contract carrier is not based on an assessment that the

security and accountability concerns do not apply when common/contract carriers deliver explosives. It is instead a recognition that the common/contract carriers are not employees of the distributor and they are not regulated by ATF as long as they simply transport the explosive materials. *See, e.g.*, 18 U.S.C. 845(a)(1) and 27 CFR 555.141(a)(1). As a result of these two factors, it is not feasible to require them to do the verification steps.

This final rule therefore amends §§ 555.103(b) and 555.105(b) to remove the requirement to verify the identity of the authorized employee/RP who accepted possession of the explosive materials on the distributee’s behalf when a common/contract carrier delivers them. The risk in these cases is mitigated to some degree by other requirements and by sound business practice. At their premises, for example, the distributee is in the best position to verify that delivery occurred and would already do so as a matter of routine business. The distributee would also already, in the normal course, contact the distributor and/or the common/contract carrier quickly if the delivery did not occur, thereby offsetting some accountability concerns without imposing additional regulatory requirements for distributors or carriers. When the distributor accomplishes the delivery itself, either at their premises or via their own delivery process, there is no need to delay confirmation of the delivery. Additionally, the delivery driver, as an employee or agent of the distributor, can be provided with the current list of persons authorized to accept delivery by the distributee and can confirm as part of the driver’s employment that the employee/RP accepting delivery is authorized to do so, thereby fulfilling the goals of any confirmation requirement (such as increased accountability and a reduced risk of diversion) that ATF might otherwise impose. In light of these practices, and based on its experience after more than two decades implementing the SEA, ATF has determined that the verification requirements in §§ 555.103(b) and 555.105(b) have, at most, minimal public safety benefits and impose burdens that outweigh such potential benefits.

C. Carriers of Non-Placarded Loads

Comments Received

One commenter, a large package delivery company, stated that a relatively small percentage of its domestic parcel volume included certain Class 1 explosive substances and

articles that DOT regulated as hazardous materials under the hazardous materials regulations (49 CFR parts 171–180) and that the commenter had specifically approved and listed for carriage. Most importantly, the commenter said, it only carried non-placarded quantities of explosives and generally did so on a contract-only basis with approved shippers.

Shortly after publication of IFR 1, the commenter noted that on May 5, 2003, DOT and DHS published interim rules related to the SEA.²⁷ According to the commenter, the interim rules “announced that the carriage of non-placarded loads of Class 1 explosive substances and articles did not pose a security threat.” As a result of these interim rules, the commenter said, carriers of non-placarded loads of Class 1 explosive substances articles, including the commenter itself, were exempt from the prohibited person restrictions of the SEA (18 U.S.C. 842(i)), and “qualify for the exception of 18 U.S.C. 845(a)(1)” that exempted certain transportation activities from the SEA.

The commenter argued that because the federal explosives laws did not apply to non-placarded loads of explosive materials, “there is no requirement for the collection and dissemination of personal data from drivers for carriers such as themselves that are exclusively handling explosives in non-placarded quantities.” The commenter contended that, in light of DOT’s interim rules, ATF’s chain-of-custody rationale, described in IFR 2, as to why it collects certain information on Form 5400.8 for purposes of tracing explosives deliveries by a distributor to a common carrier, no longer justified regulating carriers of non-placarded loads of explosive materials. According to the commenter, both the chain-of-custody and section 842(i) rationales for collecting and disseminating information from carriers were based upon what the commenter described as “the worthwhile policy objective of reducing the diversion of explosives to criminal or terrorist use.” However, the commenter added that, according to DOT’s May 5, 2003, findings, this security objective was satisfied when carriers transported non-placarded loads of explosives. As a result, the commenter concluded, the new chain-of-custody rationale did not appear to justify applying IFR 1 to carriers such as the commenter.

Accordingly, the commenter asked ATF to clarify that carriers of non-

²⁷ See 68 FR 23832, 68 FR 23844, and 68 FR 23852.

placarded loads of explosive materials are exempt from the applicable provisions of §§ 555.103 and 555.105, as amended by IFR 2.

ATF Response

The commenter was correct that the exemption specified in the federal explosives laws under 18 U.S.C. 845(a)(1) applies to the aspects of the safe and secure transportation of explosive materials via railroad, water, highway, or air that are regulated by DOT or DHS. As a result, those persons deemed qualified by DOT or DHS to safely transport explosive materials would be exempt from the provisions of 18 U.S.C. 842(i), even with respect to appropriately non-placarded commercial shipments. *See* 27 CFR 555.141(a)(1).

In IFR 2, ATF stated its conclusion “that some of the information required on ATF Form 5400.8 is not needed to trace delivery of explosives to a common or contract carrier.” ATF also stated, in light of that conclusion and the interim rules published by DOT and DHS, that “there is no longer a significant reason to collect all of the information required by ATF Form 5400.8.” The amendments in IFR 2 rendered using Form 5400.8 obsolete because ATF concluded that such information would be recorded in the permanent records of distributors. Therefore, although all common/contract carriers no longer need to complete Form 5400.8, they are still subject to requirements in §§ 555.103 and 555.105 under this final rule. The regulations, however, place the responsibility on the distributor to verify the identity of the driver for the common/contract carrier before transferring possession of explosive materials in an effort to ensure accountability for explosive materials.

D. Request To Use Company Identification Card

IFR 2 did not change the requirement that distributors of explosive materials verify the identity of the person accepting possession for the common/contract carrier. In IFR 1, § 555.103(b)(3) required the distributor to examine “an identification document (as defined in § 555.11).” The regulation defines “identification document” as “a document containing the name, residence address, date of birth, and photograph of the holder and which was made or issued by or under the authority of the United States Government, a state, a political subdivision . . . which, when completed with information concerning a particular individual, is of a type

intended or commonly accepted for the purpose of identification of individuals.” 27 CFR 555.11. The amendments made in IFR 2 specified that distributors must examine “such person’s valid, unexpired driver’s license issued by any state, Canada, or Mexico.”

Comments Received

A common carrier commenter asked ATF to allow drivers to demonstrate proof of identity by means of a carrier company identification card instead of a commercial driver’s license. The commenter’s request was based on two considerations. First, the commenter contended that verifying an individual’s identity could be accomplished by means of documents other than a driver’s license. The commenter added that such documentation would most likely be another type of photo identification, and suggested that a carrier-issued identification card, with a picture and other identifying information, that could be independently verified with the carrier company, would be sufficient. They added that this would be particularly true in cases of parcel pick-up, when the driver and shipper already know each other and the driver has other specific identifying attributes, such as a carrier uniform and vehicle, that serve to support the fact that the driver is employed by the carrier.

Second, the commenter stated that requiring drivers to show their driver’s licenses raises potential privacy issues (such as exposure of home addresses, dates of birth, and, especially, social security numbers (“SSNs”), though the practice of using SSNs on licenses has since diminished if not ceased entirely). The commenter suggested those privacy issues would be eliminated if ATF allowed the use of an identification card issued by the carrier company.

Another commenter had no objection to de minimis identification requirements, such as presenting a company photo-identification card, but had concerns similar to the first commenter’s about ATF’s requirement that driver’s licenses be used to confirm the identity of the driver. The commenter stated, “we remain concerned about the potential identity theft that could occur from the collection of information appearing on the [commercial driver’s license].”

ATF Response

ATF acknowledges the concerns regarding the privacy of a common/contract carrier employee who is required to present a valid, unexpired driver’s license issued by any state,

Canada, or Mexico. However, the requirement for a driver of a common/contract carrier to present a driver’s license prior to taking possession of explosive materials from a distributor is longstanding and precedes enactment of the SEA. A company-issued photo-identification card would not have met the definition of “identification document,” as defined above, which was used in IFR 1. It has been ATF’s long-standing position that a distributor generally must verify the identity of an employee of a common/contract carrier and document certain information from the employee’s driver’s license prior to transferring possession of the explosive materials.

One commenter suggested that a company-issued identification card would be sufficient for the purpose of an explosives distributor verifying the identity of a driver for a common/contract carrier. However, ATF does not have the authority to regulate the manner by which common/contract carriers issue employee identification cards, nor can ATF ensure that a company-issued identification card would meet the standards of security and validation generally associated with government-issued identification documents. A government-issued driver’s license, by contrast, is issued after the government agency, through its legal authority, verifies specific vital information, such as the individual’s full name and date of birth, and thoroughly reviews the individual’s birth certificate, passport, or other legal document. In addition, a driver’s license generally contains specific security features that discourage, prevent, or clearly show unlawful alterations to the license.

ATF also finds the commenters’ concerns regarding privacy issues unpersuasive. Driver’s licenses and other government-issued identification documents are commonly used for a broad range of identification purposes and everyday commercial transactions. ATF is unaware of any significant or widespread privacy impairments associated with these routine uses of government-issued documents. For these reasons, ATF is not adopting this suggestion.

V. Final Rule

The final rule adopts the regulations set forth in both IFRs 1 and 2 with minor technical amendments for purposes of clarity, and some modifications, as described below, in response to comments received.

A. Amendment to § 555.57

As discussed in section III.A of this preamble, ATF is amending § 555.57 in response to commenter concerns that the regulation was unclear as to what type of employment action constitutes a change that licensees/permittees must report to ATF, and uncertainty about the required method of reporting, when to report, and when to submit photographs and fingerprint cards. This final rule revises § 555.57 by clarifying that the licensee/permittee must submit notice of a change and the appropriate identifying information for all new RPs and employees authorized to possess explosive materials to FELC within 30 days after hiring or appointing the person. The amendment also clarifies that licensees/permittees must submit a properly completed Form 5400.13A/5400.16 (now Form 5400.27) to notify ATF of new RPs, and must submit a properly completed Form 5400.28 to notify ATF of new employees authorized to possess explosive materials. In addition to appropriate identifying information for new RPs, the rule clarifies that the licensee/permittee must also submit a photograph and fingerprint card for each RP.

The final rule also clarifies that the phrase “any change” includes both adding and removing RPs and authorized employees. Therefore, the rule removes the phrase “any change” as not sufficiently clear, and instead clarifies that the licensee/permittee must submit written notice within 30 days after an individual ceases to be an RP or an employee authorized to possess explosive materials on the licensee’s/permittee’s behalf. This is necessary because of the significant damage a person can cause a licensee/permittee if the person remains authorized after they no longer fill the role of RP or employee authorized to possess explosive materials for that licensee/permittee.

The amended regulation also clarifies that ATF will not seek to revoke a licensee’s/permittee’s license/permit on the basis that they hired a prohibited person for a role that requires overseeing (as an RP) or possessing explosive materials, provided that: (1) the licensee/permittee has submitted the required form to the Chief, FELC, along with all written documentation and information required by the regulation; (2) neither the licensee/permittee, nor any RP for the licensee/permittee, knows or has reason to know that the new RP or employee authorized to possess explosive materials is prohibited from possessing explosive materials; and (3) the licensee/permittee

terminates the new RP or employee or transfers them to a role that does not require possessing or overseeing explosive materials upon learning any information indicating the person is prohibited under 18 U.S.C. 842(i), whether from a background check or otherwise.

B. Amendments to §§ 555.103 and 555.105

ATF’s regulations at 27 CFR 555.103 detail the steps that federal explosives licensees/permittees as distributors must take when they distribute explosive materials to licensees/user permittees. Section 555.105 details the steps distributors must take when they distribute explosive materials to limited permittees. As described in detail in sections III.H.3 and IV.A of this preamble, ATF published ATF Ruling 2003–5 to provide an alternative method by which distributors could meet the requirements in § 555.105(b)(6)(iii), which require common/contract carriers to verify the identity of persons accepting explosive materials on behalf of a limited permittee. This alternative allows a distributor to verify that a common/contract carrier has delivered explosive materials to the limited permittee, in lieu of the common/contract carrier making such verification upon delivery and providing this information to the distributor. Although this change was generally well received by the industry, explosives licensees/permittees commented that further regulatory amendments should be implemented for clarity and consistency because the regulatory provision remained as well, and because the ruling did not resolve the same common/contract carrier requirement with regard to licensee/user permittee distributees. Some commenters also felt that the requirement for the distributor to contact the distributee, while less burdensome than the IFR’s original requirement, was still somewhat onerous. Shortly after publishing Ruling 2003–5, ATF published IFR 2, which removed the requirement in § 555.103(b)(2)(ii) that the common/contract carrier verify the identity of persons accepting explosive materials on behalf of licensee/user permittee distributees. As commenters thereafter noted, this was an improvement, but still did not fully address all the concerns and potential issues. ATF agrees with commenters, and this final rule makes further clarifying amendments to §§ 555.103 and 555.105 to address those concerns.

In this final rule, ATF is amending these sections to provide greater consistency and reduce burdens on

carriers and distributors while still addressing Congress’s concern that the explosives regulations provide for substantial security. Specifically, the final rule amends the structure of §§ 555.103 and 555.105 to streamline the verification procedures by distinguishing between two rather than four groups: (a) distribution of explosive materials by a distributor; and (b) distribution of explosive materials via common/contract carrier. This minor structural change combines previously separate paragraphs/requirements on delivery at distributor premises and delivery by distributor’s carrier into one paragraph and one set of requirements, and combines previously separate paragraphs/requirements on common/contract carriers hired by distributors and common/contract carriers hired by distributees into another paragraph and single set of requirements.

In this final rule, the requirement that a distributor verify the identity of an individual receiving explosive materials remains unchanged if the transfer of explosive materials occurs “by distributor”—directly between the distributor and the distributee at the distributor’s premises or made via an employee driver of the distributor away from the distributor’s premises. This requirement is the same whether the recipient is a licensee/user permittee or a limited permittee. In addition, when delivery is being effectuated via a common/contract carrier, the distributor must still verify the identity of the carrier’s driver and record both the carrier and driver information before transferring possession to a common/contract carrier for delivery. This requirement is also the same whether the recipient is a licensee/user permittee or a limited permittee. However, under this final rule, there is now no requirement for common/contract carriers to verify the identity of the individual accepting possession on behalf of the distributee (whether the distributee is a licensee/user permittee or limited permittee), as was established under IFR 1, or for the distributor to contact the distributee to verify delivery as an alternative under Ruling 2003–5. Instead, the identity of the individual accepting on behalf of the distributee will not be verified when delivery occurs via common/contract carrier (whether the distributee is a licensee/user permittee or limited permittee). ATF Ruling 2003–5 is therefore also rescinded by this final rule, effective on the effective date of the rule.

ATF is also amending § 555.103(b)(2)(ii) by changing the term “persons” in this section to “employees and responsible persons.” And it is

amending §§ 555.103 and 555.105 to replace the term “person” with “individual” where appropriate to indicate a natural person.

C. Technical Amendments

ATF is making a minor technical amendment to § 555.126 to update the OMB approval number for the applicable information collection in that section because some information collections have been combined and are now approved by OMB under a different control number. ATF is also making a technical amendment to § 555.141 so that it accords with statutory language that exempts transportation of explosive materials via railroad, water, highway, or air that pertain to safety, including security, and that are regulated by DOT or DHS. ATF is also making a technical amendment to § 555.142(f)(1)(ix) to clarify that aliens can begin the request process before they enter the U.S., even if the process cannot be completed until they have been lawfully admitted. The current regulatory text is confusing, and some people erroneously interpret it as suggesting that the process may be fully completed before entering the country but nonetheless requires a document they cannot provide until after entering the country. ATF is making the two-stage process more explicit to alleviate this confusion. In addition, ATF is making minor plain language edits within the regulatory provisions being amended in this final rule, including changing “his” to “their,” simplifying sentences, and making section headings more consistent.

D. Guidance Documents Affected by This Final Rule

In conjunction with these changes, ATF is also rescinding one open letter that is now obsolete: Open Letter to All Federal Explosives Licensees and Permittees (May 16, 2003),²⁸ reminding of then-new SEA provisions and then-new forms and procedures. ATF will also be revising *ATF Publication 5400.23: Compliance Guidelines for Federal Explosives Licensees and Permittees* (Jan. 2023),²⁹ to reflect changes implemented in this final rule.

VI. Statutory and Executive Order Reviews

A. Executive Orders 12866 and 13563

Executive Order 12866 (Regulatory Planning and Review) directs 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 (Improving Regulation and Regulatory Review) emphasizes the importance of agencies quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting public flexibility.

OMB has determined that this rule is not a “significant regulatory action” under Executive Order 12866. ATF certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b), and Executive Order 13563.

The benefits of this rule include finalizing interim final rules that have been in effect but in interim status for 20 years; addressing comments from explosives licensees/permittees and transportation carriers that have been unresolved during that time; eliminating confusion arising from a combination of regulation and ruling variance; removing burdensome requirements for explosives distributors and common/contract carriers to verify identity and report delivery confirmation when explosive materials are delivered by common/contract carriers; streamlining and consolidating remaining verification requirements and restructuring regulatory sections to simplify and make consistent currently divergent explosives distribution requirements; enabling licensees/permittees to better incorporate distribution requirements into standard good business practices; exempt from ATF regulation certain types of explosives transportation that would otherwise be redundantly regulated by two or three agencies; and clarify the scope of the term “any change” so that licensees/permittees know when to submit change reports, thereby saving them time, reducing confusion, and increasing public safety and business security.

1. Need Statement

This rule finalizes two interim final rules that implemented provisions of the SEA in 2003 and which have been in effect since that time. The SEA amended federal explosives laws in 18 U.S.C. chapter 40 to, among other things: (1) include a federal licensing/permitting requirement for all purchases of explosive materials on or after May 24, 2003; (2) create additional categories of persons prohibited from shipping, transporting, receiving, or possessing explosive materials; and (3) create a new “limited permit” for certain types of explosives purchasers. This final rule adopts the regulations set forth in both IFRs 1 and 2 with two modifications

and some minor technical amendments. Costs associated with the IFRs themselves were accounted for in IFR 1, and ATF has responded to comments on, and updated, the IFR cost analysis in section III.O of this preamble. There are no new costs attributable to this final rule with regard to the provisions it is adopting from the IFRs without modification.

As detailed in section V of this preamble, this final rule is making two modifications to the regulatory provisions that were published in IFRs 1 and 2 and that have been in effect since 2003. First, this final rule amends 27 CFR 555.57 to address confusion from commenters about when they must submit notice to ATF of changes to RPs and employees authorized to possess explosive materials, to update the form by which to submit the notice, and to clarify that ATF will not seek to revoke a licensee/permittee’s license/permit if they hire a prohibited person for a role that requires overseeing (as an RP) or possessing explosive materials in certain narrowly defined circumstances. This modification does not change the requirements, costs, or burdens associated with IFR 1; instead, it simply clarifies the regulatory text in response to public comments.

Second, this final rule amends §§ 555.103 and 555.105 to remove all remaining requirements from the IFRs and ATF Ruling 2003–5 that common/contract carriers, or distributors in the alternative, must verify the identity of the individual receiving delivery of explosive materials from a common/contract carrier. This modification also does not result in any new costs, and, as discussed above in section V.B of this preamble, ATF estimates that it will result in a deregulatory savings to the industry. Although this rule will rescind the requirement for common/contract carriers or distributors to verify the identity of the individual accepting delivery from a common/contract carrier, ATF does not believe that this change will hamper the ability to trace explosive materials by more than a de minimis amount because distributors must still verify identity when a person receives explosive materials directly from the distributor (at the distributor’s business premises or via distributor delivery) and because licensees/permittees are still required to maintain records of transactions that can be checked during ATF inspections. ATF therefore estimates that this change will not pose any threats to public safety.

²⁸ <https://www.atf.gov/file/84176/download> [<https://perma.cc/A76V-R8DL>].

²⁹ <https://www.atf.gov/file/61601/download> [<https://perma.cc/D8W3-4LA7>].

2. Savings Arising From Amendments in This Rule

Currently, many distributors distribute explosive materials at their premises, or they use their own employees to deliver explosive materials to their recipients. In such cases, the distributor or their employee delivering the explosive materials verifies the recipient's license/permit, the identity of the individual accepting explosives on the distributee's behalf (including that the individual is on the list of authorized individuals), and delivery. These verification requirements already exist, and this final rule does not generate additional costs for these kinds of distributions.

Similarly, this rule is not changing the existing requirement that distributors must verify the identity of the driver when the explosive materials are being distributed via a common/contract carrier and record that information, along with the carrier's information, in the distributor's distribution record. No additional cost is being incurred as a result of this final rule for this requirement, either.

This final rule gives rise to savings associated with rescinding the remaining IFR 1 requirements (and the ATF Ruling 2003–5 alternative method) to verify the identity of the individual accepting delivery of explosive materials via a common/contract carrier.

Because only licensees can sell or distribute explosives, most of the savings associated with this provision would accrue to licensees. Permittees may distribute only surplus explosives to licensees/permittees (meaning they acquired more explosive materials than they needed). Limited permittees are further limited to distributing to only licensees/permittees that maintain residence in the same state.

To calculate the overall deregulatory savings to the industry, ATF assumes that distributors are explosives licensees distributing to an explosives licensee/permittee (distributee). Based on information within ATF's internal database, there are 3,391 licensees. For the purposes of this analysis, ATF is not including distributions from permittees because those transactions occur only to disburse excess supplies and are infrequent.

Because ATF does not maintain records of transactions by licensees, ATF assumes that transactions occur in an even distribution of 50 percent by distributor transactions (at the distributor's premises or using their own employees for delivery) and 50 percent via delivery by common/contract carrier. Furthermore, ATF

estimates the number of transactions that a licensee may have in any given year, based on evidence from ATF's Explosives Industry Programs Branch, as approximately four pages of transactions per year, and estimates there are 39 lines of transactions on a given page. Therefore, ATF estimates that a given licensee would experience around 156 transactions in a given year. Should an even 50 percent of 156 transactions be conducted via a common/contract carrier, ATF estimates an annual average of 78 such deliveries per licensee.

For the purposes of this analysis, ATF assumes, based on the public comments on IFR 1, and industry feedback and practices in the 23 years since then, that common/contract carriers have not been verifying the identity of individuals accepting delivery on behalf of the distributee, as required by IFR 1. Instead, ATF assumes that distributors have been contacting the distributees to verify delivery, pursuant to the alternative option permitted by ATF Ruling 2003–5. Given that assumption, for the purposes of this analysis, ATF estimates it would have normally taken a distributor 15 minutes to perform an initial call to a distributee and 15 minutes for the distributee to answer the initial call, for a combined hourly burden of 30 minutes (0.5 hours). Due to the nature of calling, the distributee might not be able to verify delivery with the initial call, so ATF anticipates a second call might be necessary to verify the delivery.

ATF anticipates that the second call would be similar in nature and take a combined 0.5 hours (15 minutes for the distributor and 15 minutes for the distributee) to confirm delivery. In terms of overall savings in time burden, ATF estimates that the annual hourly savings in time is 78 hours per distributor and 78 hours per distributee, for an industry time burden of 264,498 total industry hours.³⁰ Because ATF has no information from industry on how often a second call occurs, this estimate is based on an assumption that a second call has been necessary 100 percent of the time.

To calculate the monetized savings, ATF uses 2025 occupational data, the most recent year for which BLS wage rate data is available. According to BLS, the wage for Explosives Workers, Ordinance Handling Experts, and

Blasters (47–5032)³¹ is a nominal average of \$32.04. To account for fringe benefit costs that accompany wages, such as insurance, ATF estimated a private sector load rate by calculating private sector benefits from the BLS and determined that the overall private sector benefits are 43 percent in addition to an hourly wage, or a load rate of 1.43.³² This brings the \$32.04 wage to a loaded wage rate of \$46 (rounded). With a population of approximately 3,391 federal explosives licensees, ATF estimates that this provision would result in approximately \$12.2 million in savings per year (annually and annualized).³³

3. Benefits

The SEA and its implementing regulations published in IFRs 1 and 2, as finalized in this final rule, provide important benefits to public security and safety. Prior to the SEA, ATF performed background checks on licensee/permittee RPs, but not on their employees authorized to possess explosive materials. The SEA mandates that ATF perform background checks on RPs to ensure that the RPs are not prohibited from shipping, transporting, receiving, or possessing explosive materials. This enables ATF to prevent a prohibited person, who might otherwise be hired were a background check not instituted, from possessing explosives for an explosives licensee/permittee. Moreover, the required background checks help to ensure that prohibited persons are not permitted to obtain explosive materials for illicit use. By adding background checks for authorized employees, the SEA and the IFRs promoted these benefits.

Furthermore, the SEA requires that all persons who wish to acquire explosive materials obtain, at minimum, a "limited permit," and that ATF verify the storage facilities of all licensees and permittees. This mandate authorizes ATF to verify that explosive materials are stored in accordance with the regulations and that storage of explosive materials does not pose a threat to public safety. Thus, the SEA, as implemented by the IFRs and finalized in this final rule, provides preventative tools to increase public safety and security.

³¹ https://data.bls.gov/oesprofile/?major_group=470000&occupation=475032&measure=01&areas=INDUSTRY,STATE,MSA, [<https://perma.cc/X7JW-BX9K>].

³² 1.43 load rate = \$46 Total Compensation / \$32.04 Average Wages. https://www.bls.gov/news.release/archives/ecec_06122026.pdf, [<https://perma.cc/8WEJ-2TRW>].

³³ \$12,166,908 in monetized savings = 264,498 total industry hourly burden * \$46 loaded, hourly wage rate.

³⁰ 264,498 total industry hourly burden = 3,391 distributors * 0.5 hours per call (15-minutes for the distributor and 15-minutes for the distributee) * 2 calls per transaction * 78 common/contract carrier transactions per year.

B. Executive Order 14192

Executive Order 14192 (Unleashing Prosperity through Deregulation) requires an agency, unless prohibited by law, to identify at least ten existing regulations to be repealed or revised when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation that qualifies as an Executive Order 14192 regulatory action (defined in OMB Memorandum M–25–20 as a final significant regulatory action under section 3(f) of Executive Order 12866 that imposes total costs greater than zero). In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that any new incremental costs associated with new regulations must, to the extent permitted by law, also be offset by eliminating existing costs associated with at least ten prior regulations.

This rule is finalizing two interim final rules that have been in effect for 20 years and thus do not qualify as new regulations. In addition, this final rule also qualifies as a deregulatory action under Executive Order 14192 because it removes existing requirements for common/contract carriers and explosives distributees to verify identity and authorization status of persons accepting deliveries via common/contract carrier as well as reporting the delivery. This deregulatory action provides an annualized regulatory savings of \$1.98 million at 7 and 3 percent discount rates or \$119 million undiscounted over the course of the next ten years. It is also a deregulatory action because it exempts from ATF regulation transporting explosive materials via railroad, water, highway, or air that are regulated by DOT or DHS. In addition, these actions are also deregulatory because ATF will be able to consolidate and pare down four existing information collections into one and reduce ATF's collection burden under the Paperwork Reduction Act.

C. Executive Order 14294

Executive Order 14294 (Fighting Overcriminalization of Federal Regulations) 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 final rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14294 requirements.

D. Executive Order 13132

This final rule will not have substantial direct effects on the states, the relationship between the federal government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132 (Federalism), the Director, ATF, has determined that this final rule does not impose substantial direct compliance costs on state and local governments, preempt state law, or meaningfully implicate federalism. It thus does not warrant preparing a federalism summary impact statement.

E. Executive Order 12988

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform).

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601–612), agencies are required to conduct a regulatory flexibility analysis of any final rule subject to notice-and-comment rulemaking requirements unless the agency head certifies, including a statement of the factual basis, that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include certain small businesses, small 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.

This final rule will provide deregulatory savings to the explosives industry of \$585 per explosives licensee per year. Licensees will also not accrue additional costs due to this rule. Costs pertaining to the 2003 IFRs are considered sunk costs and are not considered incremental costs to licensees arising from this rule. Therefore, the Director certifies, after consideration, that this final rule would not have a significant economic impact on a substantial number of small entities.

G. Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not likely to have a significant economic impact on a substantial number of small entities under the Small Business Regulatory Enforcement Fairness Act of 1996.

H. Unfunded Mandates Reform Act of 1995

This final rule does not include a federal mandate that might 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 for inflation), and it will not significantly or uniquely affect small governments. Therefore, ATF has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

I. Paperwork Reduction Act of 1995

This final rule does not create new information collection requirements or add to the burden of existing ones under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and its implementing regulations (5 CFR part 1320). However, this final rule amends 27 CFR 555.103 and 555.105 by removing the identity verification requirements for common/contract carrier deliveries of explosive materials to limited permittees and by removing the different requirements for two kinds of distributor transfers and two kinds of common/contract carriers. This change will enable a reduction in the burden attributable to an existing Paperwork Reduction Act information collection covering those verification requirements (OMB control number 1140–0075) and will allow ATF to combine existing information collections 1140–0025 and 1140–0077, involving limited permittees, with 1140–0075 (also involving limited permittees). ATF has recently therefore updated 1140–0075 through the Paperwork Reduction Act process (including **Federal Register** notices with public comment periods) and rescinded 1140–0025 and 1140–0077 to reflect the reduced burden.

J. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OMB's Office of Information and Regulatory Affairs has determined that this rule does not meet the criteria in 5 U.S.C. 804(2) to constitute a major rule. This rule is not a major rule because it 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.

Disclosure

Copies of the interim rules, comments received in response to the interim rules, and copies of this final rule are available through the federal eRulemaking portal at <https://>

www.regulations.gov (search for RIN 1140-AA00 or 1140-AA20).

Severability

ATF has determined that this rule implements and is fully consistent with governing law. However, in the event any provision of this rule, an amendment or revision made by this rule, or the application of such provision or amendment or revision to any person or circumstance, is held to be invalid or unenforceable by its terms, the remainder of this rule, the amendments or revisions made by this rule, and application of the provisions of the rule to any person or circumstance shall not be affected and shall be construed so as to give them the maximum effect permitted by law. The Supreme Court has explained that where specific provisions of a rule are deemed unlawful, severance is preferred when doing so “will not impair the function of the [rule] as a whole, and there is no indication that the regulation would not have been passed but for its inclusion.” *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 294 (1988); *see also Sw. Elec. Power Co. v. EPA*, 920 F.3d 999, 1033 (5th Cir. 2019) (vacating only challenged portions of a rule). It is the intent of ATF that each and every provision of this regulation be severable from each other provision to the maximum extent allowed by law.

List of Subjects in 27 CFR Part 555

Administrative practice and procedure, Explosives, Freight, Hazardous substances, Imports, Penalties, Reporting and record-keeping requirements, Safety, Security measures, Seizures and forfeitures, Transportation, Warehouses.

For the reasons discussed in the preamble, ATF adopts IFR 1, published at 68 FR 13768 on March 20, 2003, and IFR 2, published at 68 FR 53509 on September 11, 2003, both amending 27 CFR part 555, as final rules with the following changes:

PART 555—COMMERCE IN EXPLOSIVES

- 1. The authority citation for part 555 continues to read as follows:

Authority: 18 U.S.C. 847.

- 2. Amend § 555.57 by:
 - a. Adding a heading to paragraph (a);
 - b. Removing, in paragraph (a), “shall file an ATF F 5400.13 or an ATF F 5400.16” and adding in its place “must file an ATF F 5400.13”;
 - b. Revising paragraphs (b) and (c);
 - c. Redesignating paragraph (d) as paragraph (e) and revising the newly redesignated paragraph (e);

- d. Adding a new paragraph (d); and
- e. Revising the OMB control number parenthetical at the end of the section.

The addition and revisions read as follows:

§ 555.57 Change of control, change in responsible persons, and change of employees.

(a) *Change of control.* * * *

(b) *Changes in responsible persons.*

(1) Licensees/permittees must report to the Chief, FELC, each responsible person they add to a license/permit, within 30 days after the date they hire that person. The licensees/permittees must submit this report on ATF Form 5400.27 and must also include photographs and fingerprint cards for every new responsible person. Licensees/permittees must also, within 30 days after the date the responsible person leaves or otherwise ceases to be a responsible person for the licensee/permittee, notify the Chief, FFLC, in writing that the individual is no longer their responsible person.

(2) Upon receiving a Form 5400.27, the Chief, FELC, will conduct a background check, in accordance with § 555.33.

(c) *Changes in employees authorized to possess explosive materials.* (1) Licensees/permittees must report to the Chief, FELC, each employee they authorize to possess explosive materials, within 30 days after they hire that employee or authorize them to possess explosives. Licensees/permittees must submit this report on ATF Form 5400.28. Licensees/permittees must also, within 30 days after the date the employee ceases to be an employee authorized to possess explosive materials on behalf of the licensee/permittee, notify the Chief, FFLC, in writing that the individual is no longer an employee authorized to possess explosive materials for the licensee/permittee.

(2) Upon receiving a Form 5400.28, the Chief, FELC, will conduct a background check, in accordance with § 555.33.

(d) *Possessing explosive materials.* ATF will not initiate action to revoke or suspend a license/permit under section 843(d) of the Act on the basis that the licensee/permittee employed a person prohibited under section 842(i) of the Act as a responsible person or in a role that required possessing explosive materials, provided that:

(1) The licensee/permittee has complied with the provisions of paragraphs (b)(1) and (c)(1) of this section, as appropriate;

(2) Neither the licensee/permittee, nor any responsible person for the licensee/

permittee, knows, or has reason to know, that the new responsible person or authorized employee is prohibited from possessing explosive materials, either before or at any point during the person's employment; and

(3) Upon learning any information indicating that the responsible person or authorized employee is prohibited from possessing explosive materials, whether from the results of a background check conducted under paragraph (c)(2) of this section or otherwise, the licensee/permittee ceases to continue employing the employed person as a responsible person or in a role that requires possessing explosive materials.

(e) *Records retention period.*

Licensees/permittees must retain reports required by paragraphs (b) and (c) of this section as part of their permanent records for the period specified in § 555.121.

(Approved by the Office of Management and Budget under control numbers 1140-0070 (ATF Form 5400.13), 1140-0072 (ATF Form 5400.28), and 1140-0074 (ATF Form 5400.27).)

- 3. Amend § 555.103(b) by:

- a. Revising paragraph (b)(2)(ii);
- b. Removing paragraph (b)(4);
- c. Redesignating paragraph (b)(3) as paragraph (b)(4), and revising the introductory text of the newly designated paragraph (b)(4);
- d. Adding a new paragraph (b)(3); and
- e. Revising the OMB control number parenthetical at the end of the section.

The revisions, additions, and removals read as follows:

§ 555.103 Transactions among licensees/permittees other than limited permittees.

* * * * *

(b) * * *

(2) * * *

(ii) The distributee must also provide the distributor with a current list of the names of employees and responsible persons authorized to accept delivery of explosive materials on behalf of the distributee. The distributee ordering explosive materials must keep the list current and provide updated lists to the distributor on a timely basis. A licensee/permittee selling or otherwise distributing explosive materials to another licensee/permittee must, prior to delivering the explosive materials, obtain from the distributee a current list of employees/responsible persons the distributee authorizes to accept deliveries of explosive materials on their behalf.

* * * * *

(3) *Distributing explosive materials by a licensee/permittee.* When the distributee takes possession of the

explosive materials at the distributor's premises or via delivery by the distributor, the distributor/distributor's driver must verify the identity of the authorized employee/responsible person accepting possession of the explosive materials on behalf of the distributee, before relinquishing possession. The distributor/distributor's driver must do so by examining the accepting individual's identification document (as defined in § 555.11) and by verifying that the accepting individual is the distributee or is named on the current list of employees/responsible persons provided by the distributee. A distributor may not transfer explosive materials to any individual who is not the distributee or whose name is not on the current list of employees/responsible persons authorized to accept delivery of explosive materials on behalf of the distributee.

(4) *Distributing explosive materials via common/contract carrier.* When a common/contract carrier transports explosive materials from a distributor to a distributee who is a licensee/user permittee, the distributor must take the following actions before relinquishing the explosive materials to the carrier:

* * * * *

(Approved by the Office of Management and Budget under control numbers 1140-0075 and 1140-0079)

■ 4. Amend § 555.105 by:

- a. Revising paragraph (b)(6)(i);
- b. Removing paragraph (b)(6)(ii);
- c. Redesignating paragraph (b)(6)(iii) as (b)(6)(ii), revising the introductory text of the newly designated paragraph (b)(6)(ii), and removing newly redesignated paragraph (b)(6)(ii)(C); and
- d. Removing paragraph (b)(6)(iv).

The revisions, removals, and redesignations read as follows:

§ 555.105 Distributions to limited permittees.

* * * * *

(b) * * *

(6)(i) *Distributing explosive materials by a licensee/permittee.* When the limited permittee takes possession of the explosive materials at the distributor's premises or via delivery by

the distributor, the distributor/distributor's driver must receive from the distributee an executed ATF Form 5400.4 in accordance with § 555.126(b), and must verify the identity of the employee/responsible person accepting possession on behalf of the distributee, before relinquishing the explosive materials. The distributor/distributor's driver must do so by examining the accepting individual's identification document (as defined in § 555.11) and by verifying that the accepting individual is the distributee or is named on the current list of authorized employees/responsible persons provided by the distributee. The distributor must note on Form 5400.4 the name of the distributee or the employee/responsible person accepting possession of the materials on behalf of the distributee, and the type and number of the identification document. The distributor may not transfer explosive materials to any individual who is not the distributee or whose name is not on the current list of employees/responsible persons authorized to accept delivery of explosive materials on behalf of the distributee.

(ii) *Distributing explosive materials via common/contract carrier.* When a common/contract carrier transports explosive materials from the distributor to a limited permittee:

* * * * *

■ 5. Amend § 555.126 by removing "1140-0078" in the OMB control number parenthetical at the end of the section and adding in its place "1140-0075".

■ 6. Revise § 555.141(a)(1) to read as follows:

§ 555.141 Exemptions.

(a) * * *

(1) Aspects of transporting explosive materials via railroad, water, highway, or air that pertain to safety, including security, and are regulated by the Department of Transportation or the Department of Homeland Security.

* * * * *

■ 7. Amend § 555.142 by:

- a. Removing, in paragraph (b), the form number and title "ATF Form

5400.29, Application for Restoration of Explosives Privileges" and adding in its place "ATF Form 5400.31, Request for Relief from Explosives Disability"; and

■ b. Revising paragraph (f)(1)(ix) to read as follows:

§ 555.142 Relief from disabilities.

* * * * *

(f) * * *

(1) * * *

(ix) In the case of an applicant who is an alien: documents showing that the applicant is an alien who has been lawfully admitted to the United States; applicant's information, including the applicant's DHS-issued alien registration number, country/countries of citizenship, and immigration status, and certifying that the applicant is legally authorized to work in the United States or other purposes for which possessing explosives is required; document from appropriate law enforcement agency of the applicant's country of citizenship certifying that the applicant does not have a criminal record; and, if applicable, document from a federal explosives licensee/permittee or other employer certifying that the applicant is employed by the employer and must possess explosive materials for employment purposes.

(A) These documents must be submitted in English.

(B) Aliens may begin the application process while still outside the United States, including providing documents that show they have a bona fide employment offer or other reason supporting the need to possess explosive materials. However, receiving some of the required documents (such as those showing the alien has been lawfully admitted to the United States) and part of ATF's assessment process cannot occur until the alien is in the United States. As a result, aliens should not expect to receive relief from disability before they arrive in the United States.

* * * * *

Robert Cekada,

Director.

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