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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 50, 52, 53 and 54

[NRC–2025–0974]

RIN 3150–AL43

Advisory Committee on Reactor Safeguards Functions

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations in response to section 4.(b) of Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Specifically, this direct final rule revises the NRC's regulations to reduce the personnel and functions of the Advisory Committee on Reactor Safeguards (ACRS) to the minimum necessary to fulfill the ACRS's statutory obligations.

DATES: The final rule is effective on February 1, 2027, unless significant adverse comments are received. Comments must be submitted electronically using *https://www.regulations.gov* by 11:59 p.m. eastern time on December 17, 2026. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received on this direct final rule will also be considered to be comments on the companion proposed rule published in the Proposed Rules section of this issue of the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2025–0974, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

Follow the search instructions on *https://www.regulations.gov* to view public comments. You can read a plain language description of this direct final rule at *https://www.regulations.gov/docket/NRC-2025-0974.* For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise Edwards, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7204, email: *Denise.Edwards@nrc.gov.*

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–0974 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–0974.
- *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.*
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B. Submitting Comments

Comments must be submitted electronically using *https://www.regulations.gov* no later than 11:59 p.m. eastern time on December 17, 2026. Please include Docket ID NRC–2025–0974 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

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

On May 23, 2025, President Donald J. Trump signed Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Section 4(b) of E.O. 14300 directs the NRC to reduce the personnel and functions of the ACRS to the minimum necessary to fulfill the ACRS's statutory obligations. It also directs the NRC to focus the ACRS's review of permitting and licensing issues on issues that are truly novel or noteworthy. This rulemaking implements Section 4(b) by revising the NRC's regulations to focus the ACRS's reviews on safety-significant issues, commensurate with risk, and novel or noteworthy technologies or analytical approaches.

III. Rulemaking Procedure

The NRC uses the ''direct final rule procedure'' for rulemaking when the NRC anticipates the rule is unlikely to attract significant adverse comments because the rule is non-controversial. As explained below, this rulemaking would limit the ACRS's functions to those obligations required by the Atomic Energy Act of 1954, as amended (AEA), and cease review of matters not identified as statutorily required. Moreover, the rescission of these regulations, which authorize the ACRS to conduct activities not expressly required by statute, does not prevent the Commission from requesting that the ACRS undertake a particular review or study in the future. Therefore, because the NRC does not anticipate significant adverse comments on this rulemaking and considers it to be non-controversial, the NRC is using the ''direct final rule procedure'' for this rule. The amendments are effective on February 1, 2027. However, if the NRC receives significant adverse comments on this direct final rule by December 17, 2026, then the NRC will publish a document that withdraws this action and will address the comments received in a subsequent final rule as otherwise appropriate. Absent significant modifications to the revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

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

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the **ADDRESSES** section of this document.

IV. Background

The ACRS was established by a 1957 amendment to the AEA as a statutory committee with an independent advisory role and focus to advise the Atomic Energy Commission. Following the enactment of the Energy Reorganization Act of 1974, the ACRS was assigned to the NRC with its statutory requirements intact. The ACRS assists the Commission's review and resolution of certain technical safety issues associated with the licensing of production and utilization facilities and the establishment of NRC reactor safety regulations.

The ACRS's minimum statutory obligations are specified in sections 29 and 182b. of the AEA. 42 U.S.C. 2039, 2232. Since its formation, the ACRS has provided independent reactor safety advice to the Commission in the review of safety issues associated with regulation of nuclear power plants. Since 1975, the Commission has codified minimum statutory obligations and referred additional duties to the ACRS, as authorized by the AEA, in the NRC's regulations in title 10 of the *Code of Federal Regulations* (10 CFR) parts 1, ''Statement of Organization and General Information,'' 2, ''Agency Rules of Practice and Procedure,'' 50, ''Domestic Licensing of Production and Utilization Facilities,'' 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants, 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors,'' and 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' Over time, the depth of ACRS review increased beyond its minimum statutorily required functions, due to additional duties referred to it by the Commission and additional reviews assumed by the ACRS without Commission referral. While ACRS recently began making certain improvements to perform more focused and efficient reviews, this rulemaking codifies some of those improvements and redefines the scope of the ACRS reviews to ensure that the size and duties of the ACRS are consistent with the statutorily required functions, to support timely and efficient licensing and rulemaking while maintaining its ability to conduct independent safety analyses.

V. Discussion

The NRC is amending its regulations to ensure the personnel and functions of the ACRS are reduced to the minimum necessary to fulfill the ACRS's statutory functions and to focus the ACRS's review of permitting and licensing issues on issues that are novel or noteworthy. This direct final rule aligns with the purpose of E.O. 14300 to efficiently promote the deployment of safe, abundant civilian nuclear energy and reform the structure, personnel, regulations, and basic operations of the NRC. Specifically, the NRC is amending its regulations governing the ACRS to focus on safety-significant reviews, promote balanced expertise, provide flexibility in the ACRS's structure, and clarify the scope and conduct of the ACRS's reviews and meetings. These amendments will reduce unnecessary regulatory burden on licensees and applicants and save the NRC resources without any compromise in the NRC's commitment to protect public health and safety and to promote the nation's common defense and security.

The ACRS's minimum statutory obligations are specified in AEA sections 29 and 182b. Section 29 states that the Committee shall ''advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request.'' In addition, Section 182b. states in part that the ACRS shall review certain license applications. The review of and reporting on the hazards of proposed and existing facilities and proposed reactor safety standards are the core statutory functions of the ACRS under the AEA. Section 29 also directs the ACRS to ''perform such other duties as the Commission may request.'' Over the past 50 years, the Commission has added additional duties for the ACRS via regulation. This direct final rule will modify the NRC's regulations to make licensing more efficient by limiting the

ACRS's work to its statutory obligations contained in the AEA without compromising safety.

Scope of ACRS Review and Reports

When discharging its duty under AEA section 29 to ''advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards,'' and its duty under AEA section 182b to review certain license applications the scope of the ACRS's review and reports should be focused on novel or noteworthy attributes of a facility's design, siting, and operation associated with (1) safety-related structures, systems, and components as described by the definitions given in NRC rules and regulations or (2) structures, systems, and components that perform safety-significant functions. This includes safety analyses and methodologies used to evaluate and classify structures, systems, and components, as well as structures, systems and components used to prevent reactor accidents and mitigate the consequences of a spectrum of analyzed events, including those used to control reactivity, ensure heat removal, or retain radionuclides to appropriately manage the radiological risks to the public.

This scope of review includes, for instance, issues such as reviewing and developing reports on licensing documents for construction permits and operating licenses for production and utilization facilities, advising the Commission regarding the hazards of proposed or existing nuclear facilities and the adequacy of proposed reactor safety standards, and evaluating new safety bases and analytical methods. However, the scope of ACRS's review does not include issues that are unrelated or merely tangential to a facility's safety. Examples include offsite emergency preparedness and response, threat assessment, physical security, force-on-force assessments, or operational radiation protection and siting matters that do not present significant reactor safety questions. Under this direct final rule the ACRS will focus its review on novel or noteworthy aspects of license applications or reactor safety standards. Re-reviewing technology or methods that have already been reviewed by the ACRS during previous licensing reviews or reviewing matters of no safety significance does not assist the Commission in making the findings that it is required to make under the AEA. This rule does not prohibit the ACRS from recommending that the Commission request the ACRS's review of specific safety-significant matters in a license application consistent with the discretionary review authority in AEA sections 29 and 182b., which specify the Commission may request the ACRS to perform other duties.

Accordingly, the NRC is amending §§ 1.13, 2.809, 50.58, 52.23, 52.53, 52.87, 52.141, 52.165, 52.177, 53.1155, 53.1215, 53.1245, 53.1286, 53.1324, 53.1381, 53.1431, and 53.1470 to clarify that the ACRS must report on those portions of the application which directly relate to safety issues that are novel or noteworthy. These changes clarify the scope of the ACRS's review to align with the minimum statutory responsibilities of the ACRS and with E.O. 14300, and to support timely and efficient licensing and rulemaking without compromising safety.

Review of Manufacturing License Applications

This direct final rule revises § 52.165 and § 53.1286 to focus the ACRS's review of manufacturing license applications on those portions of the application that concern reactor safety issues that are novel or noteworthy. Although the AEA does not address manufacturing license applications, allowing the ACRS to review portions of the license application directly related to reactor safety will increase efficiency by providing regulatory stability and finality on the issues reviewed and streamline downstream licensing actions.

Under section 182b of the AEA, the ACRS is required to review an ''application under section [103] or section [104](b) . . . for a construction permit or an operating license for a facility'' and an ''application under section [104](c) . . . for a construction permit or an operating license for a testing facility.'' 42 U.S.C. 2232(b). For all other activities that require a license—like manufacturing—ACRS review of the license application is not statutorily required.

Notwithstanding that ACRS review is not required for the NRC to issue a manufacturing license, a manufacturing license does provide regulatory stability and finality under § 52.171 with respect to the design of the reactor described in the Final Safety Evaluation Report (FSAR) submitted as part of the manufacturing license application. That is, the NRC makes regulatory findings on the adequacy of the design proposed in the manufacturing license application that can then be applied in a proceeding on a construction permit, operating license, or combined license without the need for further review by the NRC. This process streamlines downstream licensing actions. Specifically, an applicant may reference the use of one or more manufactured nuclear power reactors in a construction permit, operating license, or combined license application. In the proceeding on the referencing application, the Commission must treat as resolved those matters resolved in the proceeding on the manufacturing license application, including the adequacy of the design of the manufactured reactor.

Accordingly, to increase efficiency by providing regulatory finality on reactor safety issues, the NRC staff and applicant would engage with the ACRS on aspects of the manufacturing license that would otherwise be reviewed and reported as part of a construction permit, operating license, or combined license review. Under this scenario, the ACRS would have completed its statutory function by reviewing at the manufacturing license stage reactor safety issues that the ACRS otherwise would have to review in each application for a construction permit, operating license, or combined license. *See generally Nuclear Information and Resource Service* v. *NRC,* 969 F.2d 1169 (D.C. Cir. 1992) (approving the NRC regulatory provisions in 10 CFR part 52, subpart B, ''Standard Design Certifications,'' for approving a design via design certification rulemaking and thereby resolving safety issues in applications referencing the design certification). Under this direct final rule, the ACRS would only review portions of the manufacturing license application directly related to reactor safety issues that are novel or noteworthy to ensure issue finality for future construction permit, operating license, or combined license applicants relying on the manufactured design.

Qualifications for Appointment to the ACRS

This direct final rule revises § 1.13 to require that members of the ACRS possess demonstrated and recognized experience and backgrounds relevant to reactor safety, while not establishing a minimum number of years of education or professional experience. The AEA neither prescribes nor implies a minimum number of years of experience for appointment to the ACRS. Several past **Federal Register** notices issued by the Commission to solicit candidates for the ACRS have sought candidates with ''approximately 20 years of education and experience.'' [1] While such statements were non-binding recruiting

[1] *See, e.g.,* Request for Qualified Candidates for Appointment to the Advisory Committee on Reactor Safeguards, 89 FR 57946–47 (July 16, 2024).

guidance rather than firm eligibility requirements, such language may be misconstrued as establishing a de facto minimum experience threshold. This direct final rule revises § 1.13 to standardize the solicitation notices and eliminate references to a specific number of years of experience to be considered for appointment to the ACRS. The Commission will continue to seek highly qualified candidates with demonstrated expertise, judgment, or specialized knowledge directly relevant to reactor safety issues and the ability to provide independent advice on reactor safety matters. Eliminating references to a specific number of years of experience while maintaining a high standard for membership qualification would provide the benefit of an expanded pool of potential qualified applicants. Further, modern reactor safety issues frequently span multiple technical and operational disciplines and therefore benefit from hiring members across a range of multidisciplinary backgrounds. Eliminating references to a specific number of years of experience and recruiting members to the ACRS across multidisciplinary backgrounds would also avoid limitations on viewpoints within the ACRS, particularly for novel or noteworthy technologies that may be developed in the future where multidisciplinary backgrounds may be more beneficial to reviews involving novel or noteworthy technologies. Therefore, this direct final rule clarifies that members of the ACRS, collectively, should have expertise across multiple disciplines, without prescribing rigid experience requirements.

Restructuring the ACRS Membership

This direct final rule revises the NRC's regulations to restructure the membership of the ACRS to implement E.O. 14300, Section 4(b). Specifically, this direct final rule revises § 1.13 to establish a minimum of seven members for the ACRS. While the AEA states that the ACRS consist of a maximum of 15 members appointed by the Commission, codified as 42 U.S.C. 2039, the statute does not prescribe a minimum number of members on the ACRS. Based on past experience, the Commission has determined that 7 members is an adequate number of members for carrying out the ACRS statutory functions in ordinary circumstances. The determination of the minimum number of ACRS members necessary to effectively and efficiently fulfill its statutory obligations is predicated on ensuring the ACRS has the balanced technical expertise necessary to fulfill the Committee's statutory functions. However, the ACRS can scale up its membership, when needed, to respond effectively to increased demands associated with licensing activity, new reactor technologies, or other emerging safety issues. Although the Commission has set the minimum number of ACRS members at 7, it is understood that ACRS membership may temporarily drop below 7 members due to unexpected attrition.

Coordination Requirements Between the ACRS and the NRC Staff

This direct final rule also revises the NRC's regulations in § 1.13 to make a change to improve coordination between the ACRS and the NRC Staff. The NRC is revising its regulations to require that the ACRS work with leadership in the NRC's program offices to ensure that meetings between the ACRS and the NRC staff are limited to issues within the ACRS's scope of review. The purpose of this amendment is to promote disciplined meeting agendas and improve coordination between the ACRS and the NRC staff.

Self-Initiated Safety Reviews and Conducting Studies

This direct final rule revises § 1.13 so that the ACRS may not, on its own initiative, conduct reviews of specific generic matters or nuclear facility safety-related items. Nothing in this direct final rule prohibits the ACRS from requesting review of safety matters from the Commission nor does it limit the Commission's ability to request additional advice from the ACRS. In 1977, Congress amended AEA Section 29 to require a research study and annual report to Congress. Sec. 5, Public Law 95–209, 91 Stat. 1483. The relevant provision stated: ''Section 29 of the Atomic Energy Act of 1954 is amended by adding the following at the end thereof: 'In addition to its other duties under this section, the committee, making use of all available resources, shall undertake a study of reactor safety research and prepare and submit annually to the Congress a report containing the results of such study.' '' Congress then removed this requirement in 1998. Sec. 1201(a), Public Law 105–362, 112 Stat. 3292. From 1998 to 2004 the ACRS provided an annual report to the Chairman, per Commission direction, evaluating the NRC's safety research program. From 2004–2021, this report was biennial, and the frequency changed to triennial with the last report issued in March 2025. Rescinding this review authority from NRC regulations will align the ACRS's function with the AEA, promote timely and efficient agency operations, and will not affect NRC reactor safety research.

Authority To Recommend Rulemaking

This direct final rule rescinds § 2.809(a) and removes the authorization for the ACRS to recommend that the Commission initiate rulemaking in a particular area and require a response from the Commission within 90 days. The rescission of this provision will align the ACRS's function with the AEA, while retaining the ACRS's ability to review and report to the Commission on reactor safety standards. In addition, § 2.809(b) is moved to § 1.13(e), ''Review of Rulemakings,'' to more appropriately relocate it to § 1.13, ''Advisory Committee on Reactor Safeguards,'' where additional regulations on ACRS functions are located.

Referral of Applications for License Amendments

This direct final rule revises paragraph § 50.58(a) to remove the language that an application for an amendment to a construction permit or operating license may be referred to the ACRS for review and report. However, the Commission retains discretion to refer such applications to the ACRS in appropriate circumstances.

Section 182b. of the AEA states that the ACRS shall review ''any application for an amendment to a construction permit or an amendment to an operating license under section 103 or 104 a., b., or c. specifically referred to it by the Commission.'' Absent Commission referral, the ACRS review of amendments to licenses is not statutorily mandated by the AEA.

Referral of Applications for License Renewals

The direct final rule also amends §§ 52.29(d), 52.57(c), 52.177(e), and 54.25, to remove the requirement that the Commission refer license renewal applications. Section 182b. does not explicitly refer to applications for renewal of a license as requiring ACRS review. Therefore, the rescission of the corresponding regulations related to review of license renewal applications will align the ACRS's function with the AEA statutory obligations in accordance with E.O. 14300 and promote timely and efficient licensing decisions without compromising safety.

Conditional Review Authority Upon Commission Referral

The rescission of the regulations that authorized the ACRS to conduct activities not expressly required by statute does not prevent the Commission from requesting that the ACRS undertake a particular review or study in the future. Section 29 of the AEA authorizes the ACRS to perform

''such other duties the Commission may request.'' If the Commission is of the view that a particular activity supports fulfillment of the agency's statutory obligations, the Commission remains able to provide that direction pursuant to AEA sections 29 and 182b.

VI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this rule does not have a significant economic impact on a substantial number of small entities. These amendments will reduce unnecessary regulatory burden on licensees and applicants without any reduction in safety or security. This direct final rule affects only the licensing and operation of production and utilization facilities. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (§ 2.810).

VII. Regulatory Analysis

A. Need for the Rule

The NRC was created by Congress in 1974 to ensure the safe use of radioactive materials for beneficial civilian purposes while protecting people and the environment. The NRC protects public health and safety and advances the nation's common defense and security by enabling the safe and secure use and deployment of civilian nuclear energy technologies and radioactive materials through efficient and reliable licensing, oversight, and regulation for the benefit of society and the environment. From an economic perspective, common defense and national security are public goods for which the markets cannot maximize net benefits, and markets alone can sometimes create unintended impacts to public health and safety. Consistent with its statutory authority, NRC's regulatory framework provides reasonable assurance of adequate protection of public health and safety.

One way to conceptualize nuclear reactor licensing is not as a departure from a well-functioning market, but as a response to market failures that could cause a purely private market to produce suboptimal outcomes. Under this framework, the licensing regime exists because the market, left to itself, could systematically underprice certain risks and overproduce others.

The principal market failure is that an unregulated market may not account for the presence of significant negative externalities. A nuclear accident can impose costs on people who are not parties to the transactions between the reactor owner, its investors, its insurers, and its customers. Those costs include offsite health effects, environmental contamination, emergency response expenditures, long-term land-use restrictions, and broader economic disruption. Because these harms fall on third parties, a reactor developer may not fully internalize them when making capital investment decisions.

A second market failure that exists is information asymmetry. Reactor safety depends upon technical engineering judgments. Members of the public generally lack both the expertise and the access to evaluate whether a reactor has been designed and will be operated safely. The developer therefore possesses substantially better information than those who bear the risk. Licensing functions as a certification mechanism that reduces this asymmetry by requiring the applicant to demonstrate compliance with objective safety standards before construction or operation.

A third market failure arises from the creation of public goods in an efficient market. Much of the knowledge necessary to evaluate nuclear safety is costly but broadly beneficial once available. Because private firms cannot capture all the benefits of generating this information, they could underinvest in its development. A centralized regulator can produce and maintain this body of knowledge as a public good.

Another market failure concerns coordination. The safety of one reactor affects perception of the entire nuclear industry. A catastrophic accident at a single facility may reduce public confidence in all reactors. Individual firms therefore may have incentive to free ride on the safety investments of others while externalizing reputational risks onto the industry as a whole. Uniform licensing standards mitigate this by imposing minimum safety requirements.

These benefits must be weighed against the costs of regulation. Licensing imposes direct compliance costs and the time required to deploy new reactors, raising financing costs and exposing projects to regulatory uncertainty. Excessively prescriptive regulation may discourage innovation, favor incumbent technologies over novel designs, and create barriers to entry that reduce competition. From an economic perspective, these costs represent the deadweight losses associated with correcting the underlying market failures.

The normative justification for reactor licensing therefore depends on whether the social benefits of correcting these market failures exceed the social costs of regulation. An efficient licensing regime is one that requires applicants to internalize the expected external costs of reactor operation, reduces information asymmetries sufficiently to permit informed public and private decision-making, creates credible long-term commitments to safety, and supplies public safety information, while minimizing unnecessary delays, compliance burdens, and impediments to technological innovation.

This rulemaking is responsive to E.O. 14300 which requires the NRC to undertake a review and wholesale revision of its regulations and guidance documents. In accordance with E.O. 14300 the NRC identified changes across 10 CFR parts 1, 2, 50, 52, 53, and 54. These changes would yield significant efficiencies and reduce regulatory burden for licensees, and NRC while upholding our shared commitment to public safety.

B. Discussion

The NRC is amending its regulations to ensure the personnel and functions of the ACRS are reduced to the minimum necessary to fulfill the ACRS's statutory obligations in the AEA. By amending, removing, and providing administrative changes to these provisions, the NRC anticipates a more streamlined approval process for license renewal applications. The direct final rule will also result in alleviating the economic burden associated with the ACRS's review of license renewal applications and reactor safety research. As part of this rulemaking, the ACRS will no longer perform self-initiated reviews and will not recommend rulemaking that requires a Commission response within 90 days. These two provisions have historically been used infrequently and there is no data to determine what cost savings would occur due to their removal.

The NRC is also codifying language in § 1.13 to promote balanced expertise, provide flexibility in the ACRS's structure, and clarify the scope and conduct of the ACRS's reviews and meetings. Since its formation, the ACRS membership size has increased and decreased due to its workload. Revising § 1.13 to establish a minimum of 7 members for the ACRS is within the statutory requirement of maintaining a maximum number of 15 members. The ACRS has been operating above the minimum of 7 members with 9 members the past year; therefore, the change in regulation to include a minimum number of members does not result in a quantifiable cost savings for the NRC. This direct final rule also amends and

clarifies ACRS membership solicitation, screening, and qualification requirements that have been utilized by the NRC in the past. These revisions to the NRC's regulations do not result in quantifiable cost savings for the NRC, since these are matters of routine agency management.

Finally, the direct final rule's revisions to § 1.13(e) codifies existing ACRS practices relating to conduct of meetings and coordination with NRC staff. Therefore, the subpart to § 1.13 does not present any quantifiable cost savings in this direct final rule.

In addition, this direct final rule adds new clarifying language in 10 CFR part 52 for early site permit, design certification, combined license, standard design approval and manufacturing licenses that would focus future ACRS reviews. The ACRS implemented these focused reviews in June 2025, prior to this direct final rule. The NRC staff is unable to determine what cost savings would occur due to the clarification of the scope of the ACRS's review to align with the minimum statutory responsibilities of the ACRS, since there is no available data.

The remaining regulatory analysis focuses the calculations on the changes resulting from the ACRS no longer reviewing referred applications for license amendments (license renewal) or conducting studies of reactor safety research (triennial reviews).

For calculation purposes, the NRC assumed five license renewal applications per year with 85 plants anticipated for both initial and subsequent license renewals in the coming years. The ACRS normally allocates 87.5 hours to review a license renewal application. Therefore, during a one-year period, the ACRS spends a total of 437.5 hours reviewing 5 license renewals. The NRC estimates the annualized savings from rescinding the regulatory requirements for the ACRS's review of license renewal applications at $69,125, given the NRC's labor rate of $158 per hour. Moreover, during the application process, the licensee, the NRC regional staff, and the ACRS members meet to discuss the license renewal applications. The NRC staff has estimated the cost of attending this meeting at about $1,000 per person per meeting with 5 meetings occurring annually. The staff also estimates the number of participants in these meetings to be 23 in total including licensee, NRC, and ACRS personnel, at a cost of $23,000 for travel per meeting. Total annual savings for rescinding requirements for ACRS review of renewal applications is $115,000 non-discounted ($23,000 per meeting * 5 meetings annually). The staff calculated the total savings over a 17-year[2] period from rescinding ACRS involvement in license renewal applications to be $3.1 million non-discounted with total net present values (NPV) of 7 and 3 percent at $1.74 million and $2.3 million respectively. The staff assesses the annualized savings to be $184,125 discounted at both 7 and 3 percent.

In addition, the NRC is also rescinding ACRS triennial reviews of reactor safety research. The NRC observed a 50-year period for calculating the savings attributed to rescinding triennial reviews. In our analysis, the NRC determined that 17 triennial reviews would take place over a 50-year period.[3] The NRC also estimated that a triennial review meeting results in 430 hours of ACRS and NRC staff time. There are approximately 10 meetings that occur every triennial review period, for a total of 170 meetings throughout the 50-year period of analysis. The NRC calculated the amount of time saved from rescinding triennial reviews at 73,100 hours (430 hours per meeting * 170 meetings) over 50 years. The NRC estimated travel costs associated with triennial reviews to be $10,000 per meeting for the 170 meetings, totaling $1.7 million non-discounted. To quantify the savings from rescinding triennial reviews, the staff multiplied total hours saved over 50 years by using an NRC wage rate of $158 resulting in $11.6 million saved, non-discounted. With the combined hours saved and travel costs, the staff estimates total savings of $13.25 million non-discounted with total NPVs of 7 and 3 percent at $3.6 million and $6.7 million respectively, and an annualized savings of $259,800 at both 7 and 3 percent discount.

Furthermore, this direct final rule clarifies the scope of ACRS's reviews under 10 CFR part 53. The NRC has not received an application under 10 CFR part 53 regulation. Therefore, the NRC cannot determine the savings that would be generated as a result of these revisions to 10 CFR part 53.

The total cost savings from rescinding these provisions are estimated at $16.1 million[4] non-discounted with the annualized savings of $390,058 at 7 percent discount and $354,018 at 3 percent discount. The NRC expects this direct final rule to provide a net quantitative benefit without affecting public health and safety. In addition, the NRC has estimated, in 2024 dollars, the annualized in perpetuity for this rulemaking at $0.39 million at 7 percent.

[2] The 17-year figure is the estimated number of reviewing 5 applications per year out of 85 potential applicants (85 plants are anticipated to submit initial and subsequent license renewal applications at approximately 5 reviews per year).

[3] The 17-review figure is rounded up from the calculation of using the 50-year period of analysis divided by 3 (triennial), with the actual calculated value being 16.67.

[4] Final non-discounted value may not add due to rounding during the calculation process.

VIII. Backfitting and Issue Finality

This direct final rule does not constitute backfitting as that term is defined in the backfit rule in § 50.109, ''Backfitting,'' or affect the issue finality of an approval issued under 10 CFR part 52, ''Licenses, Certifications, And Approvals for Nuclear Power Plants,'' because it does not impose new or revised requirements on existing licensees or approval holders. As a general matter, eliminating a requirement does not meet the definition of ''backfitting'' because such an act by the NRC would be a nonmandatory relaxation of an existing requirement. For the same reason, the elimination of a requirement would not affect the issue finality of a 10 CFR part 52 approval.

IX. Plain Writing

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

X. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and NRC's NEPA implementing regulations in 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC has determined that this direct final rule is the type of action eligible for categorical exclusion because it meets criterion described in § 51.22(a)(1) regarding actions that are administrative, procedural, or solely financial in nature, and § 51.22(a)(3), which categorically excludes certain types of rules from environmental review. The agency action, therefore, belongs to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the actions within the category do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental impact

statement nor environmental assessment has been prepared for this rule.

XI. Paperwork Reduction Act

This direct final rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval numbers 3150–0011, 3150–0151, 3150–0274, and 3150–0155.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

XII. Executive Orders

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

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

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within the OMB will review all significant rules. OIRA has determined that this direct final rule is a significant regulatory action under section 3(f) of E.O. 12866; though not economically significant under section 3(f)(1). Accordingly, the NRC submitted this direct final rule to OIRA for review. The NRC has prepared an economic analysis in accordance with section 6(a)(3)(B) of E.O. 12866. More information can be found in Section VII of this document, ''Regulatory Analysis.''

B. Executive Order 14154: Unleashing American Energy

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

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

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

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

E.O. 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the AEA, the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes amended in this direct final rule are part of the NRC's regulatory permitting scheme authorized by the AEA, ERA, or NWPA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this direct final rule.

XIII. Congressional Review Act

This direct final rule is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

XIV. Availability of Documents

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

Document	Adams Accession No./ **Federal Register** Citation
Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993	58 FR 51735
Executive Order 14154, ''Unleashing American Energy,'' January 29, 2025	90 FR 8353
Executive Order 14192, ''Unleashing Prosperity Through Deregulation,'' February 6, 2025	90 FR 9065
Executive Order 14215, ''Ensuring Accountability for All Agencies,'' February 24, 2025	90 FR 10447
Executive Order, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' April 15, 2025	90 FR 15643
Executive Order 14300, ''Ordering the Reform of the Nuclear Regulatory Commission,'' May 29, 2025	90 FR 22587
Presidential Memorandum, ''Plain Language in Government Writing,'' June 10, 1998	63 FR 31885

List of Subjects

10 CFR Part 1

Flags, Organization and functions (Government Agencies), Seals and insignia.

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Confidential business information, Freedom of information, Environmental protection, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Penalties, Reporting and recordkeeping requirements, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Administrative practice and procedure, Antitrust, Backfitting, Classified information, Criminal penalties, Education, Emergency planning, Fire prevention, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Penalties, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Whistleblowing.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Combined license, Early site permit, Emergency planning, Fees, Inspection, Issue finality, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Penalties, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 53

Administrative practice and procedure, Antitrust, Backfitting, Construction permit, Combined license, Classified information, Criminal penalties, Early site permit, Emergency planning, Fees, Fire prevention, Fire protection, Inspection, Intergovernmental relations, Limited work authorization, Manufacturing license, Nuclear power plants and reactors, Operating license, Penalties, Prototype, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements, Standard

design, Standard design certification, Training programs.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 2, 50, 53, 52, and 54:

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Atomic Energy Act of 1954, secs. 23, 25, 29, 161, 191 (42 U.S.C. 2033, 2035, 2039, 2201, 2241); Energy Reorganization Act of 1974, secs. 201, 203, 204, 205, 209 (42 U.S.C. 5841, 5843, 5844, 5845, 5849); Administrative Procedure Act (5 U.S.C. 552, 553); Reorganization Plan No. 1 of 1980, 5 U.S.C. Appendix (Reorganization Plans).

■ 2. Revise § 1.13 to read as follows:

§ 1.13 Advisory Committee on Reactor Safeguards.

(a) *Establishment and purpose.* The Advisory Committee on Reactor Safeguards (ACRS) was established by section 29 of the Atomic Energy Act of 1954, as amended. The ACRS reviews and reports on safety studies and applications for construction permits and facility operating licenses; advises the Commission with regard to hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards; upon request of the Department of Energy (DOE), reviews and advises with regard to the hazards of DOE nuclear activities and facilities; and reviews any generic issues or other matters referred to it by the Commission for advice.

(b) *Membership and qualifications.* The ACRS must consist of no fewer than seven members and no more than 15 members, appointed by the Commission. No specific years' education and experience requirement is necessary to become a member of the ACRS. Individuals appointed to the ACRS should possess demonstrated technical competence, recognized expertise in disciplines relevant to reactor safety, sound judgement, intellectual independence, and the ability to contribute effectively in a multidisciplinary advisory environment. Collectively, the membership of the ACRS should provide balanced expertise across the relevant disciplines.

(c) *Conduct of meetings and coordination with the NRC staff.* The ACRS and the NRC staff are jointly responsible for ensuring that meetings between the ACRS and the NRC staff are conducted on matters limited to the statutory responsibilities of the ACRS and matters that are novel or noteworthy.

(d) *Scope of ACRS review.* (1) The ACRS will review novel or noteworthy attributes of a facility's design, siting, and operation associated with either:

(i) Safety-related structures, systems, and components as described by the definitions outlined in NRC rules and regulations; or

(ii) Structures, systems, and components that perform safety-significant functions.

(2) This includes safety analyses and methodologies used to evaluate and classify structures, systems, and components, as well as structures, systems and components used to prevent reactor accidents and mitigate the consequences of a spectrum of analyzed events, including those used to control reactivity, ensure heat removal, or retain radionuclides to appropriately manage the radiological risks to the public.

(e) *Review of rulemakings.* When a rule is within the purview of the ACRS, as defined in paragraph (d) of this section, and under development by the NRC staff, the NRC staff will ensure that the ACRS is given an opportunity to provide advice to the Commission on the adequacy of the rule focusing on novel or noteworthy issues.

(f) *Advice and recommendations.* Nothing in this section alters the Commission's ability to consider reports and recommendations by the ACRS that are timely received, nor does it limit the Commission's ability to request additional advice from the ACRS.

PART 2—AGENCY RULES OF PRACTICE AND PROCEDURE

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

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

§ 2.809 [Removed and Reserved]

■ 4. Remove and reserve § 2.809.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 5. The authority citation for part 50 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 102, 103, 104, 105, 108, 122, 147, 149, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; ADVANCE Act of 2024, sec. 301 (42 U.S.C. 2133 note).

■ 6. In § 50.58, revise paragraph (a) to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards (ACRS).

(a) Each application for a construction permit or an operating license for a facility which is of a type described in § 50.21(b) or § 50.22, or for a testing facility, must be referred to the ACRS for a review and report. The ACRS must report on those portions of the application which concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy. Any report must be made part of the record of the application and available to the public, except to the extent that security classification prevents disclosure.

* * * * *

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 7. The authority citation for part 52 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 103, 104, 147, 149, 161, 181, 182, 183, 185, 186, 189, 223, 234 (42 U.S.C. 2133, 2134, 2167, 2169, 2201, 2231, 2232, 2233, 2235, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); 44 U.S.C. 3504 note.

■ 8. Revise § 52.23 to read as follows:

§ 52.23 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission must refer a copy of the application for an early site permit to the ACRS. The ACRS must report on those portions of the application which concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

§ 52.29 [Amended]

■ 9. In § 52.29, remove paragraph (d).

■ 10. Revise § 52.53 as follows:

§ 52.53 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission must refer a copy of the application for design certification to the ACRS. The ACRS must report on those portions of the application which concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

§ 52.57 [Amended]

■ 11. In § 52.57, remove paragraph (c).

■ 12. Revise § 52.87 as follows:

§ 52.87 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission must refer a copy of the application for a combined license under this subpart to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy, and must apply the standards referenced in § 52.81, in accordance with the finality provisions in § 52.83.

■ 13. Revise § 52.141 as follows:

§ 52.141 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission must refer a copy of the application for standard design approval to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

■ 14. Revise § 52.165 to read as follows:

§ 52.165 Referral to the Advisory Committee on Reactor Safeguards (ACRS).

The Commission must refer a copy of the application for a manufacturing license to the ACRS. The ACRS must report on those portions of the manufacturing license application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

§ 52.177 [Amended]

■ 15. In § 52.177, remove paragraph (e).

■ 16. Revise appendix N to part 52 to read as follows:

Appendix N to Part 52—Standardization of Nuclear Power Plant Designs: Combined Licenses To Construct and Operate Nuclear Power Reactors of Identical Design at Multiple Sites

The ACRS must report on each of the applications as required by § 52.87. Each report must be limited to those safety matters for each application which are not relevant to the common design. In addition, the ACRS must separately report on the safety of the common design, provided, however, that the report need not address the safety of a referenced standard design certification or reactor manufactured under subpart F of this part.

PART 53—RISK-INFORMED, TECHNOLOGY-INCLUSIVE REGULATORY FRAMEWORK FOR COMMERCIAL NUCLEAR PLANTS

■ 17. The authority citation for part 53 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 11, 101, 103, 108, 122, 147, 161, 181, 182, 183, 184, 185, 186, 187, 189, 223, 234 (42 U.S.C. 2014, 2131, 2132, 2133, 2134, 2135, 2138, 2152, 2167, 2169, 2201, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act of 1982, sec. 306 (42 U.S.C. 10226); National Environmental Policy Act of 1969 (42 U.S.C. 4332); 44 U.S.C. 3504 note; Pub. L. 115–439, 132 Stat. 5571.

■ 18. Revise § 53.1155 to read as follows:

§ 53.1155 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for an early site permit to the Advisory Committee on Reactor Safeguards (ACRS). The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

■ 19. Revise § 53.1215 to read as follows:

§ 53.1215 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for standard design approval to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

■ 20. Revise § 53.1245 to read as follows:

§ 53.1245 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for design certification to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

■ 21. Revise § 53.1286 to read as follows:

§ 53.1286 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the copy of the application for a manufacturing license to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy.

■ 22. Revise § 53.1324 to read as follows:

§ 53.1324 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for a construction permit to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy, and must apply the standards referenced in § 53.1315, in accordance with the finality provisions in § 53.1318.

■ 23. Revise § 53.1381 to read as follows:

§ 53.1381 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for an operating license to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy, and must apply the standards referenced in § 53.1375.

■ 24. Revise § 53.1431 to read as follows:

§ 53.1431 Referral to the Advisory Committee on Reactor Safeguards.

The Commission must refer a copy of the application for a COL to the ACRS. The ACRS must report on those portions of the application that concern its scope as defined in § 1.13 of this chapter and focus on issues that are novel or noteworthy, and must apply the standards referenced in § 53.1422, in accordance with the finality provisions in § 53.1425.

■ 25. In § 53.1470, revise paragraph (g) to read as follows:

§ 53.1470 Standardization of commercial nuclear plant designs: licenses to construct and operate nuclear power reactors of identical design at multiple sites.

* * * * *

(g) The ACRS must report on each of the applications as required by the applicable sections of this subpart. Each report must be limited to the scope as defined in § 1.13 of this chapter, for each application not resolved by the common design and must focus on issues that are novel or noteworthy. In addition, the ACRS must separately report on reactor safety matters of the common design, *provided, however,* that the report need not address reactor safety matters resolved in a referenced standard design certification or reactor manufactured under this part.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

■ 26. The authority citation for part 54 continues to read as follows:

Authority: Atomic Energy Act of 1954, secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 223, 234 (42 U.S.C. 2132, 2133, 2134, 2136, 2137, 2201, 2231, 2232, 2233, 2236, 2239, 2273, 2282); Energy Reorganization Act of 1974, secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); 44 U.S.C. 3504 note. Section 54.17 also issued under E.O. 12829, 58 FR 3479, 3 CFR, 1993 Comp., p. 570; E.O. 13526, 75 FR 707, 3 CFR, 2009 Comp., p. 298; E.O. 12968, 60 FR 40245, 3 CFR, 1995 Comp., p. 391; ADVANCE Act of 2024, sec. 301 (42 U.S.C. 2133 note).

§ 54.25 [Removed]

■ 27. Remove § 54.25.

Dated: November 12, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

[FR Doc. 2026–23343 Filed 11–16–26; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF93

Chartering and Field of Membership for Federal Credit Unions; Associational Common Bonds and Client-Customer Relationships

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend its criteria for determining associational common bonds. The amendments clarify that requiring members to buy a good, product, or service from a group as a condition of membership will no longer automatically bar eligibility as a recognized association. After considering public comments, the Board finalizes the proposed rule with certain modifications. The Board's revisions detail how NCUA assesses client-customer relationships (including relevant examples). These changes also simplify NCUA's process for reviewing pre-approved groups.

DATES: This final rule is effective on January 4, 2027.

FOR FURTHER INFORMATION CONTACT: John Tamashiro, Director, Division of Consumer Access, Office of Credit Union Resources and Expansion at (703) 548–2577 or 1775 Duke Street, Alexandria, VA 22314, or Keisha Brooks, Attorney-Advisor, Office of General Counsel, at (703) 518–6540 or at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Federal Credit Union Act (FCU Act) recognizes three types of federal charters—single common bond (occupational and associational), multiple common bond (more than one group each having a common bond of occupation or association), and community. NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of NCUA's regulations (Chartering Manual) implements the FCU Act.[1] For chartering purposes, a common bond is a fundamental requirement for a recognized association.[2]

In the Credit Union Membership Access Act (CUMAA), Congress found that ''[a] meaningful affinity and bond among members, manifested by a commonality of routine interaction, shared and related work experiences, interests, or activities, or the maintenance of an otherwise well understood sense of cohesion or identity is essential to the fulfillment of the public mission of credit unions.'' [3] While the FCU Act does not explicitly define ''common bond,'' the Board clarified its meaning in the Chartering Manual. A common bond is the characteristic or combination of characteristics which distinguishes a particular group of persons from the general public.[4] Furthermore, the Chartering Manual defines an associational common bond to include individuals and groups whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.[5]

Within this framework, the Chartering Manual reflects a long-standing policy that associations based primarily on a client-customer relationship do not meet associational common bond requirements.[6] Based on agency experience with particular requests, the members of an association based primarily on a client-customer relationship had only an interest in purchasing a good, product, or service from the group.[7] The group operated in a manner indistinguishable from a vendor providing a good, product, or service to the general public. Its charter and bylaws lacked provisions for membership governance or qualifications beyond paying for a good, product, or service. Membership fees (in terms of amount, timing, and structure) functioned merely as payments for a good, product, or service.

Still, the Chartering Manual does not preclude an association with an incidental client-customer relationship if other associational common bond requirements are met.[8] In such circumstances, NCUA staff generally considered a client-customer relationship as incidental when it served a secondary role in relation to the group's associational common bond and activities. For this purpose, NCUA often considered multiple factors.

For example, past chartering policies mentioned electric cooperatives as groups that could meet associational standards, even though purchasing

[1] 12 CFR part 701, app. B (hereinafter cited as Chartering Manual). The Chartering Manual addresses all aspects of chartering FCUs. In that respect, it is similar to the regulations of the Office of the Comptroller of the Currency applicable to the chartering of national banks or federal savings associations. 12 CFR part 5.

[2] *See* 12 U.S.C. 1759(b).

[3] Public Law 105–219, 112 Stat. 913, 914 (Aug. 7, 1998).

[4] Chartering Manual, App. 1—Glossary ''Common bond.''

[5] Chartering Manual, App. 1—Glossary ''Associational common bond.''

[6] *See* IRPS 89–1, 54 FR 31166 (July 27, 1989); IRPS 94–1, 59 FR 29066, 29077 (June 3, 1994).

[7] For a discussion of the Board's evaluation of this client-customer relationship, see NCUA Board Decision, *In The Matter Of Tri-State Federal Credit Union,* Docket BD–18–10, 2010 WL 11814914 (December 1, 2010); *https://ncua.gov/regulation-supervision/board-appeals/decision-and-order-appeal-tri-state-federal-credit-union* (denying YMCA).

[8] 63 FR 71998, 72008 (Dec. 30, 1998). For an example of such an association, see NCUA Board Decision, *In the Matter of CACL Federal Credit Union,* Docket No. 00–FOM–002 (Apr. 13, 2000), *https://ncua.gov/regulation-supervision/board-appeals/decision-and-order-appeal-cacl-federal-credit-union.*

power was required.[9] These chartering policies noted that an electric cooperative must make a strong showing of common activities. Another important factor was electric cooperatives' distinctive relationship with their members. Unlike other client-customer groups, these members are both the owners and users of the cooperative.

The Chartering Manual also included one example of an incidental client-customer relationship—a fraternal association that offers insurance, which is not a condition of membership. This example led to the conclusion that, if a fraternal benefit association required its members to buy insurance from the group as a condition of membership, the association was automatically disqualified.[10]

On April 8, 2026, the Board announced its proposal to amend the Chartering Manual to clarify that a multifaceted approach remains NCUA's position, even if purchasing a good, product, or service from a group is a condition of membership.[11] In the proposed rule, the Board preserved the long-standing policy that an association based primarily on a client-customer relationship does not qualify as a recognized association. The Board proposed eliminating the fraternal association example of an incidental client-customer relationship that had been interpreted as automatically barring some groups with a mandatory purchase condition from associational eligibility. As proposed, NCUA would evaluate the circumstances as a whole. The comment period ended on June 8, 2026.

The final rule adopts the April 8, 2026, proposed rule with certain modifications discussed more fully in the section summarizing the comments. After carefully considering the public comments, the Board is amending the April 8, 2026, proposal to increase transparency into NCUA's process for reviewing client-customer relationships. These changes explain key considerations and provide examples. The Board's other changes aim to make NCUA's pre-approved group reviews more efficient. The final rule amends the associational common bond criteria applicable to single associational charters and multiple common bond federal credit unions (FCUs). Accordingly, the final rule does not apply to occupational common bond charters, community charters, or federally insured state-chartered credit unions.

B. Legal Authority

The Board is issuing this final rule pursuant to its authority under the FCU Act. Under the FCU Act, NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for federally insured credit unions (FICUs).[12] The FCU Act grants NCUA a broad mandate to issue regulations governing both FCUs and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[13] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[14] Section 209 of the FCU Act is a plenary grant of regulatory authority to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[15] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the federally insured credit union industry and the National Credit Union Share Insurance Fund remain safe and sound.

The Board is also issuing this final rule pursuant to its rulemaking authority under Section 109 of the FCU Act.[16] Section 109 of the FCU Act establishes the field of membership framework for FCUs.[17] Section 109 also describes the membership criteria for federal charters and grants the Board rulemaking authority with respect to such charters.[18] Section 109(d)(3) further directs the Board to issue guidelines or regulations, after notice and opportunity for comment, setting forth the criteria that the Board will apply in determining whether a group may be added to an FCU's field of membership.[19] Sections 109(a) and 109(f)(2)(E) reference more general rulemaking authority with respect to associational groups and fields of membership.[20] Pursuant to its authority under the FCU Act, the Board implements these statutory requirements through the Chartering Manual.

II. Final Rule

A. Overview

This final rule follows publication of the April 8, 2026, proposed rule, and takes into consideration the comments received on the proposal. By the close of the public comment period on June 8, 2026, the Board received 18 public comments. Comments were submitted by credit union trade associations, credit union leagues, FCUs, one associational group, an individual, and a bankers association. All commenters except one supported the proposal. Most commenters supported considering a group's structure, purpose, and activities rather than automatically excluding the group based on a mandatory purchase condition. Several commenters urged NCUA to clarify certain aspects of the proposal, including definitions, examples, and documentation guidelines. One bankers association opposed the proposal.

After carefully considering the issues raised by the commenters, the Board has made the following changes to the proposal: (1) detailing NCUA's criteria in reviewing client-customer relationships, (2) adding relevant examples, and (3) simplifying NCUA's review process for pre-approved groups.

B. Discussion of Public Comments

This section of the preamble discusses the significant issues raised by the commenters, and the Board's responses to the comments.

Comments on NCUA's Statutory Authority

Several commenters observed that the proposal was consistent with NCUA's statutory authority, noting that neither the FCU Act nor CUMAA requires disqualifying associations due to a client-customer relationship. Most commenters agreed that a mandatory purchase condition should not automatically bar eligibility as a recognized association if the client-customer relationship is incidental to the association's mission and activities. Many commenters observed that the proposal provides measured regulatory relief for single associational and

[9] *See* IRPS 89–1, 54 FR 31165, 31169 (July 27, 1989); IRPS 94–1, 59 FR 29066, 29076 (June 3, 1994); NCUA, OGC Legal Op. No. 13–0444, *Electric Cooperatives* (May 2013), *https://ncua.gov/regulation-supervision/legal-opinions/2013/electric-cooperatives.* In 2015, the Board determined that electric cooperatives are a pre-approved group that automatically meets the associational common bond standards. Final Rule, 80 FR 25924 (May 6, 2015); Chartering Manual, Chapter 2, section III.A.1.b.

[10] For an example of such an association, see NCUA Board Decision, *In The Matter Of [Redacted By Agency] Field of Membership Appeal,* Docket No. BD–03–24, 2024 WL 5245712 at *6–7 (Dec. 1, 2024), *https://ncua.gov/regulation-supervision/board-appeals/decision-and-order-appeal-field-membership-0.*

[11] Proposed Rule, 91 FR 17769 (Apr. 8, 2026). Readers seeking additional information may also consult the proposed rule's preamble for additional background pertaining to this rulemaking.

[12] 12 U.S.C. 1752–1775.

[13] 12 U.S.C. 1766(a).

[14] 12 U.S.C. 1787.

[15] 12 U.S.C. 1789.

[16] 12 U.S.C. 1759.

[17] 12 U.S.C. 1753(5), 1754, 1759.

[18] 12 U.S.C. 1759(b).

[19] 12 U.S.C. 1759.

[20] 12 U.S.C. 1759.

multiple common bond FCUs. Two commenters described the categorical exclusion based on a mandatory purchase condition as an unnecessarily restrictive barrier to groups with legitimate common bonds. Another commenter highlighted that eliminating the exclusion would provide additional flexibility for small FCUs when adding associations to their fields of membership. Another commenter noted that imposing eligibility restrictions beyond statutory requirements could reduce consumer access to affordable financial services from FCUs. According to this commenter, such barriers diminish competition in local financial services markets and leave consumers with fewer options, particularly those of modest means.

One bankers association opposed the rule, contending that, contrary to congressional intent, the proposal contributed to the erosion of field of membership restrictions under the FCU Act. Citing concerns regarding competitive equity and statutory fidelity, the commenter observed that the distinctive legal and tax status of FCUs is justified by their restricted mission and membership. This commenter noted that the proposed amendment, while narrow in isolation, is part of a series of incremental changes that collectively could greatly expand credit union membership beyond congressional intent.

NCUA Response. The Board welcomes the comments submitted on its April 8, 2026, proposed rule. After careful consideration, the Board believes that the regulatory changes are within the broad authority conferred in the FCU Act and consistent with congressional intent.

Section 109 of the FCU Act authorizes the Board to establish regulations for determining which groups meet field of membership requirements for FCUs.[21] Exercising this authority, the Board has periodically amended the Chartering Manual consistent with congressional objectives.[22] When appropriate, the Board has also adopted regulations designed to guard against excessive expansions.[23] The April 8, 2026, proposed rule was designed to address an unintended consequence stemming from the fraternal association example of an incidental client-customer relationship. As discussed in the preambles to the proposed rule and this final rule, the fraternal association example had led to the conclusion that, if a group required its members to buy a good, product, or service from the organization as a condition of membership, the group was automatically disqualified. This final rule clarifies that this example no longer automatically disqualifies such groups as associations that are based primarily on a client-customer relationship. The Board expects this change to enhance access to reliable financial services, especially for those of modest means, while reducing confusion. As discussed in this preamble, the Board notes that this change is distinct from the long-standing policy that associations that are based primarily on a client-customer relationship do not meet associational common bond requirements.

Excluding associations based primarily on a client-customer relationship will continue to serve as an effective gatekeeper to prevent unqualified groups from chartering or joining FCUs. The Board further notes that other provisions, like the threshold purpose requirement and the totality of the circumstances test, are designed to identify unqualified groups.[24] Lastly, NCUA has additional safeguards to protect the integrity of field of membership requirements, such as conducting quality assurance reviews and investigating field of membership complaints.[25]

Accordingly, the Board disagrees with the comment that the proposal could result in eroding statutory field of membership restrictions contrary to congressional intent. Thus, the Board has made no changes in response to this comment.

Comments on Defining a Client-Customer Relationship

Several commenters requested clearer guidance on defining a client-customer relationship, particularly the meaning of ''primarily'' and ''incidental.'' One commenter recommended defining a client-customer relationship as one in which the organization's sole purpose is selling a good, product, or service to its clients or customers. This commenter suggested a definition focusing on whether a qualifying association would still exist without the client-customer relationship, or whether the common bond is contingent upon the transaction.

NCUA Response. The Board acknowledges the concerns raised by the commenters. In the final rule, the Board intends for the terms ''primarily,'' ''client,'' ''customer,'' and ''relationship'' to be understood according to their common, ordinary meanings. For example, ''primarily'' means for the most part; chiefly.[26] The plain meaning of ''client'' includes a person who engages the professional advice or services of another; customer.[27] Additionally, ''customer'' ordinarily means one that purchases a commodity or service.[28] ''Relationship'' refers to the way in which two or more things or people are connected.[29] Further, given the definitions for common bond and associational common bond, the Board believes that introducing new regulatory definitions would be overly prescriptive.[30] After carefully considering the comments, the Board views a plain meaning approach as more suitable. Accordingly, the Board has made no changes to the final rule based on these comments.

Comments for Additional Guidance on Client-Customer Relationship Criteria

The Board proposed that NCUA would review the particular details of a group's structure, the scope and degree of its activities, and other factors surrounding its operation to determine whether the association is based primarily on a client-customer relationship. The Board also specifically sought comment on other relevant factors to determine whether an association's relationship with its members is primarily or incidentally a client-customer relationship.

Several commenters requested clarification on how NCUA would

[21] Sec. 1(a), Public Law 105–219, 112 Stat. 914 (Aug. 7, 1998).

[22] See Final Rule, 85 FR 56498 (Sept. 14, 2020).

[23] A recent example is the amendment instituting the requirement that an association must not have been formed primarily for the purpose of expanding credit union membership. *See* 80 FR 25924 (May 6, 2015).

[24] NCUA currently assesses whether a group meets the requirements for an associational common bond through an initial threshold review. This threshold review determines if the association's primary purpose is to expand credit union membership. If NCUA finds that the group was formed mainly for another purpose, NCUA proceeds with a totality of the circumstances test. This test evaluates whether the group meets other associational common bond standards. *See* Chartering Manual, Chapter 2, section III.A.1.a (Threshold Requirement Regarding the Purpose for Which an Associational Group is Formed and the Totality of the Circumstances Criteria).

[25] *See* Chartering Manual, Chapter 2, section IV.H (NCUA Supervisory Action To Remove Groups From the Field of Membership) and section IV.I (NCUA Investigation of Potential Field of Membership Violations).

[26] ''Primarily,'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/primarily* (last accessed Aug. 13, 2026).

[27] ''Client,'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/client* (last accessed Aug. 13, 2026).

[28] ''Customer,'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/customer* (last accessed Aug. 13, 2026).

[29] ''Relationship,'' *Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/relationship* (last accessed Aug. 13, 2026).

[30] *See* Chartering Manual, App. 1-Glossary ''Associational common bond''; ''Common bond.''

weigh these factors, especially mandatory purchase conditions. These commenters also asked how NCUA would review groups exhibiting both qualifying and disqualifying features. One opposing commenter cautioned that a discretionary inquiry, if not accompanied by objective guardrails, could stretch the common bond requirement over time and invite pressure to reinterpret statutory limits.

NCUA Response. After carefully considering the comments, the Board agrees that the final rule could provide additional transparency. Accordingly, the Board is amending the final rule to reflect the criteria used to evaluate client-customer relationships. These criteria include reviewing the group's mission, purpose, structure, and activities. Member qualifications and engagement beyond paying for services are also considered. Another consideration is how membership dues are structured.

In the final rule, a mandatory purchase condition remains a reasonable factor when evaluating a client-customer relationship. The final rule merely clarifies that such a requirement alone is not conclusive. A group with a mandatory purchase condition may be able to balance this indicator with strong evidence of an associational common bond through its organizational documents and common activities.

The frequency of member meetings, as well as opportunities to participate in furthering the association's goals, are other important indicators. Groups that sponsor a variety of opportunities for members to interact and assist in furthering defined associational goals are more likely to indicate an incidental client-customer relationship. Examples of such opportunities that develop common loyalties, mutual benefits, and mutual interests may include, but are not limited to, newsletters, community service activities, fraternal activities, or access to members-only events. In contrast, if a group's common activities are so insubstantial that it is indistinguishable from a vendor serving the general public (like a health club or an insurance company), this would suggest a strong client-customer relationship.

The Board reiterates that this change is simply a clarification reflecting how NCUA has historically evaluated client-customer relationships. The Board observes that these considerations align with NCUA's current approach. In response to the comments requesting further guidance, the Board is also including more examples of associations based primarily on a client-customer relationship and those with incidental client-customer relationships.

Comments on Pre-Approved Groups

In 2015, the Board automatically approved specific kinds of associations whose structures, practices, and functions routinely met associational common bond requirements.[31] Some associations within these pre-approved groups exhibited features of a client-customer relationship. To provide clarity, the preamble to the April 2026 proposed rule confirmed that pre-approved groups do not require additional NCUA review to demonstrate a valid associational common bond.[32]

Two commenters acknowledged that the proposed rule would reduce review resources by preserving the option for automatically pre-approved groups. Another commenter noted continued confusion regarding the automatic pre-approval of certain fraternal associations and the prohibition against associations based primarily on a client-customer relationship. Additionally, another commenter suggested the Board establish clear, consistent, and expedited pathways for well-qualified expansion requests.

NCUA Response. The Board recognizes that, in this area, the client-customer relationship provisions and other associational common-bond provisions could cause confusion for FCUs. After carefully considering the public comments, the Board has amended Chapter 2, Section III.A.1.b (Pre-Approved Groups) of the Chartering Manual. Drawing from the proposed rule's preamble, the changes reaffirm that, for chartering and expansion purposes, NCUA staff will not reassess a pre-approved group's client-customer relationship or the purpose of its formation.

By regulation, a pre-approved group has a defined purpose other than increasing credit union membership—for example, religious organizations, electric cooperatives, and alumni associations. Since 2015, NCUA has approved 95.62 percent of applications for pre-approved groups. None were denied for failing to meet the threshold purpose requirement. Moreover, the Board observes that electric cooperatives and qualifying fraternal benefit associations have long coexisted with the restriction on associations based primarily on a client-customer relationship. The Board believes the revisions clarify its expectations and will improve NCUA's efficiency in processing applications for pre-approved groups.[33]

Comments on Sample Associations With Incidental Client-Customer Relationships

Several commenters proposed incorporating examples that differentiate an association with an incidental client-customer relationship from an association based primarily on a client-customer relationship. These comments recommended the following as examples of associations with an incidental client-customer relationship: (1) fraternal associations that offer insurance benefits, (2) educational associations, (3) consumer cooperatives, (4) associations offering financial, legal, insurance, and real estate services within a broader membership framework, and (5) associations with required membership benefits. One commenter suggested removing the Knights of Columbus as an example of a recognized association to avoid confusion.

NCUA Response. The Board acknowledges the concerns raised by the commenters and appreciates their suggestions. After considering the recommendations, the Board is amending Chapter 2, Section III.A.3 (Sample Single Associational Common Bonds) to include more examples. For the reasons discussed in the preamble, the Board has added relevant examples for an electric cooperative and an organization that promotes educational initiatives among persons with a shared profession. The Board continues to believe that the Knights of Columbus provides a helpful illustration of a qualifying fraternal association. Accordingly, the Board has decided to retain the Chartering Manual's references to the Knights of Columbus. For consistency, the final rule also includes a reference among the sample single associational common bonds.

The Chartering Manual states that certain consumer cooperatives may qualify as an association.[34] Based on agency experience, these groups can differ significantly in their missions, structures, activities, and product offerings. This variation presents challenges for designating other consumer cooperatives as a

[31] Final Rule, 80 FR 25924 (May 6, 2015).

[32] Proposed Rule, 91 FR at 17770, fn. 25.

[33] This change does not affect NCUA's quality control safeguards that protect the integrity of field of membership requirements, such as quality assurance reviews and investigating field of membership complaints. *See* Chartering Manual, Chapter 2, section IV.H (NCUA Supervisory Action To Remove Groups From the Field of Membership); section IV.I (NCUA Investigation of Potential Field of Membership Violations).

[34] *See* Chartering Manual at Chapter 2, section III.A.1.c (Additional Information).

representative sample for prospective applicants. Due to similar concerns, the Board has also determined not to include the other suggested examples for incidental client-customer relationships.

Comments on Sample Associations Based Primarily on a Client-Customer Relationship

Commenters also suggested adding examples for the following associations based primarily on a client-customer relationship: (1) retail loyalty clubs and affinity programs, (2) health clubs, (3) groups with insurance benefits, (4) subscription relationships, programs, and commercial user bases that exist mainly for purchasing goods, products, or services, and (5) similar customer-facing arrangements in which the client-customer relationship is the core reason for the organization's existence.

NCUA Response. The Board notes that the Chartering Manual lists health clubs (like YMCAs) and an insurance company as examples of associations based primarily on a client-customer relationship.[35] The Board identified buyer's clubs in past chartering policies.[36] In the preamble to the proposed rule, the Board also referenced a retail loyalty club as illustrating an association based primarily on a client-customer relationship.[37] After considering the comments, the Board has determined that these and other examples would be useful to potential applicants. The additional examples include paid subscription-based plans for media streaming, ride sharing, and local delivery services. The final rule consolidates these examples in one section.[38]

Comments on Documentation Guidelines

One commenter recommended that the final rule specify the necessary supporting documentation, such as bylaws, membership criteria, evidence of member activity, governance rights, membership dues, purchase requirements, and a concise explanation outlining why the client-customer relationship is incidental rather than primary.

NCUA Response. The Board expects the current requirements to be sufficient to demonstrate how a group meets the associational common bond requirements, including when a client-customer relationship exists. At NCUA's request, applicants must provide a copy of the association's charter, bylaws, or other equivalent documentation.[39] These applications generally include a definition of the group that may be served based on such documentation.[40] When applying for new federal charters, organizers must demonstrate that the group meets the appropriate common bond criteria. For single common bond expansions, applicants must show how the group shares the FCU's common bond.[41] Accordingly, the Board has made no changes based on this comment.

Comments on Charitable Organizations

One FCU requested clarification on charitable or cause-based organizations where donations may fulfill membership requirements. The commenter questioned how the proposed amendments would relate to individuals or honorary members who only make donations to the charitable organizations and foundations.

NCUA Response. The Board proposed no changes to the existing provision that individuals or honorary members who only make donations to an association are not eligible to join the credit union.[42] The final rule has no effect on this restriction. Accordingly, the Board has made no changes to the final rule based on this comment.

Other Comments

Two commenters encouraged broader regulatory relief. One commenter recommended further streamlining the Chartering Manual and field of membership process. This commenter suggested modernizing the definition of association and membership to recognize digital communities, affinity groups, and modern economic relationships. Another commenter suggested redefining common loyalty and a common bond. While the Board appreciates the comments, these further amendments to the Chartering Manual are beyond the scope of this rulemaking. The Board will keep the suggestions for future consideration, as appropriate.

III. Regulatory Procedures

A. Executive Orders 12866, 13563, and 14192

Pursuant to Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Information and Regulatory Affairs (OIRA), within the Office of Management and Budget (OMB) in accordance with the requirements of the Executive Order.[43] Executive Order 13563 (''Improving Regulation and Regulatory Review'') supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866.[44] This final rule was drafted and reviewed in accordance with Executive Order 12866 and Executive Order 13563. OIRA has determined that this final rule is not a ''significant regulatory action'' as defined by section 3(f) of Executive Order 12866.

Executive Order 14192 (''Unleashing Prosperity Through Deregulation'') requires 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.[45] This final rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866. This final rule is considered an Executive Order 14192 deregulatory action.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[46] If the agency makes such a certification, it shall publish the certification at the time of publication of either the proposed rule or the final rule, along with a statement providing the factual basis for such certification.[47] For purposes of this analysis, NCUA considers small credit unions to be those having under $100 million in assets.[48] The Board fully considered the potential economic impacts of the

[35] *See* Chartering Manual at Chapter 2, section III.A.1.c (Additional Information); Chapter 2, section III.A.3 (Sample Single Associational Common Bonds).

[36] *See* IRPS 89–1, 54 FR 31165, 31170 (July 27, 1989).

[37] 91 FR at 17771.

[38] *See* Chartering Manual, Chapter 2, section III.A.3 (Sample Single Associational Common Bonds).

[39] *See* Chartering Manual, Chapter 2, section III.A.1 (General).

[40] *See* Chartering Manual, Chapter 2, section III.A.1 (General).

[41] *See* Chartering Manual, Chapter 2, section III.B.1; Application for Field of Membership Amendment, NCUA Form 4015–EZ, *https://ncua.gov/files/publications/resources-expansion/NCUA_4015EZ.pdf.*

[42] *See* Chartering Manual, Chapter 2, section III.A.1.c (Additional Information).

[43] 58 FR 51735 (Oct. 4, 1993).

[44] 76 FR 3821 (Jan. 21, 2011).

[45] 90 FR 9065 (Feb. 6, 2025).

[46] 5 U.S.C. 601 *et seq.*

[47] 5 U.S.C. 605(b).

[48] 80 FR 57512 (Sept. 24, 2015).

regulatory amendments on small credit unions.

The final rule is designed to ease a regulatory burden for single associational common bond and multiple common bond FCUs of all sizes. This rule focuses on associational groups for a de novo FCU or who wish to join an existing FCU's field of membership. The Board believes that clarifying the associational common bond standards could provide more flexibility for groups with client-customer relationships. Under the final rule, such groups may no longer be deterred from applying for an FCU charter. Additionally, the amendments will enable such groups to avoid expending unnecessary time and resources to demonstrate eligibility. Only 21 de novo FCUs were chartered by NCUA from 2019 through 2025, of which 11 were either single associational de novo charters or multiple common bond de novo charters that included single associational groups. Given this context, based on its best assessment at this time, the Board expects that the final rule may result in a slight increase in federal charter applications, possibly leading to one or two de novo FCUs each year. To the extent there is any cost to small entities to voluntarily participate in the determination of whether the association is based primarily on a client-customer relationship, those costs are minimal and they are incurred infrequently.

The Board expects the amendment will offer multiple common bond federal charters greater flexibility in adding associations to their fields of membership. However, the regulatory relief is hard to quantify, as cases involving associations with purchase mandates are rare according to NCUA analyses. Based on its best assessment at this time, the Board does not expect that the amendments will likely cause a surge in associations with purchase mandates seeking FCU affiliation. Accordingly, NCUA certifies the final rule will not have a significant economic impact on a substantial number of small credit unions.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) generally provides that an agency may not conduct or sponsor, and notwithstanding any other provision of law, a person is not required to respond to a collection of information, unless it displays a currently valid OMB control number. The PRA applies to rulemaking in which an agency creates a new or amends existing information collection requirements. For purposes of the PRA, an information collection requirement may take the form of a reporting, recordkeeping, or a third-party disclosure requirement. NCUA has reviewed this rule and determined that it does not create any new or revise any existing collections of information. Accordingly, no PRA submissions to OMB will be made with respect to this rule.

D. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[49] NCUA, an agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. NCUA expects that any effect on states or on the distribution of power and responsibilities among the various levels of government will be minor. This rule applies only to FCUs. It does not apply to state-chartered credit unions, which are subject to the field of membership requirements of their respective states. The rulemaking therefore does not have direct effect on the states, the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

E. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[50] The final rule relates to field of membership requirements for FCUs, and any effect on family well-being is expected to be indirect.

F. Congressional Review Act

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (CRA), generally provides for congressional review of agency rules.[51] NCUA must submit a report to Congress and the Comptroller General when it issues a final rule, as defined by the CRA.[52] An agency rule, in addition to being subject to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' OIRA has determined that this rule is not a ''major rule'' within the meaning of the relevant sections of the CRA. NCUA will also file appropriate reports with Congress and the Comptroller General so this rule may be reviewed.

[49] 64 FR 43255 (Aug. 4, 1999).

[50] Public Law 105–277, 112 Stat. 2681 (1998).

[51] 5 U.S.C. 801–808.

[52] 5 U.S.C. 804(3).

List of Subjects in 12 CFR Part 701

Advertising, Aged, Civil rights, Credit, Credit unions, Fair housing, Individuals with disabilities, Insurance, Marital status discrimination, Mortgages, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination, Signs and symbols, Surety bonds.

By the National Credit Union Administration Board, this 13th day of November, 2026.

Melane Conyers-Ausbrooks,

Secretary of the Board.

For the reasons stated in the preamble, the NCUA Board amends 12 CFR part 701, Appendix B as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. Revise the authority citation for part 701 to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

■ 2. In appendix B to part 701, amend Chapter 2 by revising section III. to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

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Chapter 2—Field of Membership Requirements for Federal Credit Unions

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III—Associational Common Bond

III. A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond. Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);

• Non-natural person members of the association;
• Employees of the association (for example, employees of the labor union or employees of the church); and
• The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association's charter, bylaws, and any other equivalent documentation. Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of NCUA, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority. The associational sponsor itself may also be included in the field of membership—*e.g.,* ''Sprocket Association''—and will be shown in the last clause of the field of membership.

III.A.1.a—Threshold Requirement Regarding the Purpose for Which an Associational Group Is Formed and the Totality of the Circumstances Criteria

As a threshold matter, when reviewing an application to include an association in a federal credit union's field of membership, NCUA will determine if the association has been formed primarily for the purpose of expanding credit union membership. If NCUA makes such a determination, then the analysis ends and the association is denied inclusion in the federal credit union's field of membership. If NCUA determines that the association was formed to serve some other separate function as an organization, then NCUA will apply the following totality of the circumstances test to determine if the association satisfies the associational common bond requirements. The totality of the circumstances test consists of the following factors:

1. Whether the association provides opportunities for members to participate in the furtherance of the goals of the association;
2. Whether the association maintains a membership list;
3. Whether the association sponsors other activities;
4. Whether the association's membership eligibility requirements are authoritative;
5. Whether members pay dues;
6. Whether the members have voting rights; to meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
7. The frequency of meetings; and
8. Separateness—NCUA reviews if there is corporate separateness between the group and the federal credit union. The group and the federal credit union must operate in a way that demonstrates the separate corporate existence of each entity. Specifically, this means the federal credit union's and the group's respective business transactions, accounts, and corporate records are not intermingled.

No one factor alone is determinative of membership eligibility as an association. The totality of the circumstances controls over any individual factor in the test. However, NCUA's primary focus will be on factors 1–4.

III.A.1.b—Pre-Approved Groups

NCUA automatically approves the below groups as satisfying the associational common bond provisions. For this purpose, NCUA staff will not reassess the associational common bond of a pre-approved group regarding the purpose of the group's formation, the totality of the circumstances test, or a client-customer relationship. All other applicable requirements must be met. NCUA only approves regular members of an approved group. Honorary, affiliate, or non-regular members do not qualify. These groups are:

1. Alumni associations;
2. Religious organizations, including churches or groups of related churches;
3. Electric cooperatives;
4. Homeowner associations;
5. Labor unions;
6. Scouting groups;
7. Parent teacher associations (PTAs) organized at the local level to serve a single school district;
8. Chamber of commerce groups (members only and not employees of members);
9. Athletic booster clubs whose members have voting rights;
10. Fraternal organizations or civic groups with a mission of community service whose members have voting rights;
11. Organizations having a mission based on preserving or furthering the culture of a particular national or ethnic origin; and
12. Organizations promoting social interaction or educational initiatives among persons sharing a common occupational profession.

III.A.1.c—Additional Information

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Student groups (*e.g.,* students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

Tenant groups, consumer groups, and other groups of persons having an ''interest in'' a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. Health clubs are an example of a group not meeting associational common bond requirements, including YMCAs. However, having an incidental client-customer relationship does not preclude an associational charter if the associational common bond requirements are met. For example, an association that requires members to buy a good, product, or service from the group may still demonstrate that the client-customer relationship is incidental to the association's common bond, activities, and overall operations.

If a client-customer relationship exists, NCUA will review the particular details of the group's structure, the scope and degree of its activities, and other factors surrounding its operations to determine whether the association is based primarily on a client-customer relationship. In making this determination, NCUA's primary focus will be on the following considerations:

• Whether a client-customer relationship is merely supportive or supplementary to the group's primary mission and goals that further an associational common bond or whether the client-customer relationship is the central purpose for which the group exists,
• Whether the group's membership eligibility requirements and membership dues are principally based on a client-customer relationship, including whether purchasing a good, product, or service from the group is a condition of membership,
• Whether the group provides opportunities for members to participate in activities that further an associational common bond or whether those activities are so insubstantial that the group is indistinguishable from a vendor providing a good, product, or service to the general public, and
• Whether members connect with one another in the group's governance, meetings, or other common activities, or whether the members' connection is only an interest in purchasing a good, product, or service from the group.

No one factor alone is determinative. Examples of associations based primarily on a client-customer relationship and associations where such relationships are incidental appear in Chapter 2, Section III.A.3 (Sample Single Associational Common Bonds).

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association;
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio (pre-approved group under Chapter 2, Section III.A.1.b);
- Members of the Northern Michigan Electric Cooperative located in Marquette, Michigan (pre-approved group under Chapter 2, Section III.A.1.b with an incidental client-customer relationship);
- Voting members of Knights of Columbus, Lancaster Council 15081 located in Lancaster, Tennessee (pre-approved group under Chapter 2, Section III.A.1.b with an incidental client-customer relationship);
- Voting members of the National Association of XYZ Profession (pre-approved group under Chapter 2, Section III.A.1.b with an incidental client-customer relationship).

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States (too broadly defined) or
- Veterans of U.S. military service (group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University (no formal association);
- Employees of members of the Reston, Virginia, Chamber of Commerce (not a sufficiently close tie to the associational common bond);
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama (churches are not of the same denomination);
- Customers of Fleetwood Insurance Company (policyholders or primarily client-customer relationships do not meet associational standards);
- Members of the YMCA of Liverpool, Ohio (primarily client-customer relationships do not meet associational standards);
- Members of PriceCo Wholesale Buyers Club (primarily client-customer relationships do not meet associational standards);
- Members of Airways Frequent Flyer Mileage Rewards program (primarily client-customer relationships do not meet associational standards);
- Members of Supercenter Store Circle Retail Loyalty Club (primarily client-customer relationships do not meet associational standards);
- Members of Flicks Media Streaming Service (primarily client-customer relationships do not meet associational standards);
- Members of U-Drive Ride Sharing Services (primarily client-customer relationships do not meet associational standards); or
- Members of Grub-Cart Delivery Services (primarily client-customer relationships do not meet associational standards).

III.B—Associational Common Bond Amendments

III. B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a group that shares the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group that is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met. The Office of Credit Union Resources and Expansion Director must approve all amendments to an associational common bond credit union's field of membership.

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, the Office of Credit Union Resources and Expansion Director may require additional information prior to making a decision.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015–EZ) to the Office of Credit Union Resources and Expansion Director. An authorized credit union representative must sign the request.

III.C—NCUA Procedures for Amending the Field of Membership

III. C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the Office of Credit Union Resources and Expansion Director.

III.C.2—Office of Credit Union Resources and Expansion Director Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the Office of Credit Union Resources and Expansion Director may require an on-site review. In addition, the Office of Credit Union Resources and Expansion Director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered. In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Office of Credit Union Resources and Expansion Director Approval

If the Office of Credit Union Resources and Expansion Director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Office of Credit Union Resources and Expansion Director Disapproval

When the Office of Credit Union Resources and Expansion Director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Office of Credit Union Resources and Expansion Director Decision

If the Office of Credit Union Resources and Expansion Director denies a field of membership expansion request, merger, or spin-off, that decision may be appealed to the NCUA Board in accordance with the procedures set forth in subpart B to part 746 of this chapter.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the Office of Credit Union Resources and Expansion Director for reconsideration. A request for reconsideration should contain new and material evidence addressing the reasons for the initial denial or explain extenuating circumstances that precluded the inclusion of existing material evidence or information that should have been filed with the request for reconsideration. The Office of Credit Union Resources and Expansion Director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A petitioner may seek a second reconsideration based on new material evidence or information or extenuating circumstances that precluded the inclusion of such information in the previous request.

III.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III. D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director or Office of National Examinations and Supervision Director where the continuing credit union is headquartered, with the concurrence of the regional director or Office of National Examinations and Supervision Director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or in danger of insolvency, as defined in the Glossary, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger. If not corrected, conditions that could lead to insolvency include, but are not limited to:
- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record-keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability. As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director or Office of National Examinations and Supervision Director where the continuing credit union is headquartered, with the concurrence of the regional director or Office of National Examinations and Supervision Director of the merging credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director or Office of National Examinations and Supervision Director where the continuing credit union is headquartered, with the concurrence of the regional director or Office of National Examinations and Supervision Director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and

• Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors and, if applicable, Office of National Examinations and Supervision Director where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable. Spin-offs involving the creation of a new federally insured credit union require the approval of the Office of Credit Union Resources and Expansion Director. The Office of Credit Union Resources and Expansion also provides advice regarding field of membership compatibility when appropriate.

III.E—Overlaps

III. E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single associational federal credit unions to overlap any other charters without performing an overlap analysis.

III.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new Chartering and Field of Membership Manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

III. G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

• The group is within the field of membership of two credit unions and one wishes to discontinue service;

• The federal credit union cannot continue to provide adequate service to the group;

• The group has ceased to exist;

• The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or

• The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the Office of Credit Union Resources and Expansion Director will determine why the credit union desires to remove the group. If the Office of Credit Union Resources and Expansion Director concurs with the request, membership will continue for those who are already members under the ''once a member, always a member'' provision of the Federal Credit Union Act.

III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

• Spouses of persons who died while within the field of membership of this credit union;

• Employees of this credit union;

• Volunteers;

• Members of the immediate family or household;

• Honorably discharged veterans who served in any of the Armed Services of the United States in this charter;

• Organizations of such persons; and

• Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships. Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an ''immediate family or household'' of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as ''once a member, always a member.'' The ''once a member, always a member'' provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AI77

Small Business Investment Company (SBIC) Leverage Availability

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule.

SUMMARY: The U.S. Small Business Administration (''SBA'' or ''Agency'') is publishing this interim final rule (''IFR'') amending the U.S. Small Business Administration's loan guarantee regulations applicable to the Small Business Investment Company (''SBIC'') program to implement the

provisions of the Investing in All of America Act of 2025 (''the Investing Act''). These provisions increase the maximum amount of leverage available to SBICs issuing standard debentures in ratios of up to two-to-one against private capital, update the private capital definition to include certain government-sponsored corporations and college/university trusts or endowments, and grant Small Business Investment Companies access to additional ''bonus'' leverage for investments in critical technology areas, small manufacturers, rural areas, and low-income geographic areas, all in conformance with the Investing Act.

DATES: Effective date: This interim final rule is effective November 17, 2026. SBA will consider comments received on or before December 17, 2026.

ADDRESSES: You may submit comments, identified by RIN: 3245–AI77 or Docket Number SBA–2026–0232, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for Docket Number SBA–2026–0232 or RIN 3245–AI77.
- *Mail or Hand Delivery/Courier:* Joshua Carter, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov.* If you wish to submit confidential business information (''CBI''), as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Paul Van Eyl, Director of Financial Policy, Office of Investment and Innovation, Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to *oii.policy@sba.gov* with ''RIN 3245–AI77 Interim Final Rule'' in the subject heading. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Policy: Joshua Carter, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, *oii.policy@sba.gov,* 202–205–7159. This phone number may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

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

SUPPLEMENTARY INFORMATION: A summary of this rule may be found at *https://www.regulations.gov.*

I. Background Information

A. Small Business Investment Company Program

SBA's small business investment company (''SBIC'') program is designed to enhance small business access to capital by stimulating and supplementing ''the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.'' Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et seq.* (the ''SBIC Act''). SBA licenses SBICs to issue SBA-guaranteed loans (''Leverage''), typically with a ten-year term, the repayment of which is guaranteed by SBA using the full faith and credit of the United States. SBICs are privately owned and managed investment funds, licensed and regulated by SBA, that use capital raised from private investors and SBA-guaranteed loans to make equity and debt investments in qualifying small businesses. Recently, SBA has also entered into partnerships with the Department of War, National Aeronautics and Space Administration, and Department of Energy, to license SBICs that make investments in critical technology areas applicable to those agencies.

II. Justification for Publication as Interim Final Rule

The Administrative Procedure Act (''APA'') exempts rulemakings that involve matters relating to public property, loans, grants, benefits, or contracts from the APA's notice and comment procedures. 5 U.S.C. 553(a)(2). SBA notes that the provisions of the Investing Act being implemented by this interim final rule relate specifically to increasing the Leverage (*i.e.,* government-guaranteed loan) limits, increasing private capital inclusions for purposes of calculating Leverage, and granting additional ''bonus'' Leverage. Accordingly, as a rulemaking relating to the issuance of loans, SBA has determined that prior public notice and comment or delay in effective date is not required for this IFR's amendments to part 107. While SBA has determined that prior public notice and comment is not required for this IFR's amendments to part 107, SBA has nevertheless voluntarily elected to solicit comment. SBA will accept comments regarding this IFR on or before the date provided in the **DATES** section at the beginning of this IFR. Interested parties may submit comments and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document. SBA will issue a final rule at a later date considering comments submitted during this period. Thus, SBA issues this interim final rule without prior public notice and comment or a delayed effective date under 5 U.S.C. 553(a)(2).

III. Section by Section Analysis

A. Section 107.50—Definitions

SBA is amending 13 CFR 107.50 to add the four definitions applicable to requests for ''bonus'' Leverage that are expressly identified in the Investing Act. SBA is adding the definition of Covered Technology Category to have the meaning set forth at 10 U.S.C. 149(h). SBA is adding the definition of Low-Income Geographic Area to have the meaning set forth in sec. 351 of the SBIC Act. In addition, SBA is adding the definition of Rural Area to have the meaning set forth in sec. 343(a)(13) of the Agricultural Act of 1961. Finally, SBA is adding the definition of Small Manufacturer to have the meaning set forth in sec. 501(e)(6) of the SBIC Act.

B. Section 107.230

SBA is amending 13 CFR 107.230 to implement changes set forth in the Investing Act to the statutory definition of private capital. SBA is revising this section to expressly include, as private capital, funds invested in a Licensee by (i) a foundation, endowment, or trust of any college or university and (ii) business revenues from a Federally chartered or Government-sponsored corporation, thereby removing the ''Qualified Non-private Funds'' limitations that were previously applicable to such funds.

C. Section 107.1120(d)

SBA is making a modification to 13 CFR 107.1120(d) by removing the outdated reference to the $175 million

individual Leverage limitation set forth in this section and updating this section to reflect the appropriate limitations applicable under sec. 303(b)(2)(A)(ii) of the SBIC Act. SBA notes that this change is necessary to reflect the appropriate Leverage limitation increases set forth in the Investing Act.

D. Section 107.1150

This section identifies the Leverage limitations applicable to those SBICs approved to operate as a Leveraged Licensee. SBA is revising § 107.1150 by amending the introductory paragraph and paragraphs (a), (b), (d), and (e) to align with the applicable provisions set forth in the Investing Act.

First, SBA is removing the last sentence of the first paragraph set forth in § 107.1150 permitting SBICs to have a Leverage ratio exceeding 200 percent if the SBIC is able to demonstrate certain conditions that are satisfactory to SBA. SBA is removing this sentence in compliance with the update to sec. 303(b)(2) of the SBIC Act, which provides that an SBIC may not have a Leverage ratio exceeding 200 percent of its private capital. Similarly, SBA is amending § 107.1150(a)(1) by revising the applicable Leverage ratios for SBICs from 300 percent to 200 percent in accordance with the changes to sec. 303(b)(2) of the SBIC Act.

SBA is also amending the language set forth in § 107.1150(a)(3) to make clear that those SBICs already licensed in the program may apply for additional increases in Leverage following an increase to the outstanding Leverage maximum under the SBIC Act. This change will permit SBICs that were underwritten and approved for the maximum amount of Leverage under the SBIC Act at the time of licensure to apply for additional increases in Leverage following updates to the statutory maximum and provides transparency into SBA's credit policies by identifying the factors that SBA considers when evaluating requests to increase maximum Leverage amounts.

In addition, SBA is revising § 107.1150(b) to reflect that the total outstanding Leverage limit for multiple SBICs under common control shall be the amount set forth in the Investing Act (*i.e.,* $475,000,000 for SBICs that issue standard Debentures), while the total outstanding Leverage limit for other types of SBICs, including Accrual SBICs that are under common control with other Leveraged Licensees, will remain the amount set forth in sec. 303(b)(2)(B)(ii) of the SBIC Act (*i.e.,* $350,000,000).

Finally, SBA is revising § 107.1150(d) by removing provisions that referred to outdated Leverage maximums (*i.e.,* $150 million) and replacing that language with the appropriate procedures for SBICs to apply for additional ''bonus'' Leverage in connection with investments made in covered technology areas, small manufacturers, low-income geographic areas, and/or rural areas. SBA is also removing the sentence set forth in current § 107.1150(d) stating that any investment that an SBIC uses as a basis for seeking additional Leverage under § 107.1150(d) may not be used as a basis for seeking additional Leverage under § 107.1150(e). As a result, an SBIC that makes an investment that would qualify for both Leverage ''bonuses'' identified in §§ 107.1150(d) and 107.1150(e) may apply the full cost basis of the qualifying investment (subject to the applicable limits specified in each section) to each of §§ 107.1150(d) and 107.1150(e) for purposes of determining bonus Leverage eligibility. SBA believes that removing this sentence will incentivize investment into these critical areas while maintaining appropriate credit protection under the program.

IV. Compliance With Executive Orders 12866, 12988, 13132, 13563, and 14192; the Paperwork Reduction Act (44 U.S.C. 3501–3520); the Congressional Review Act (5 U.S.C. 801–808); and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (''OMB'') has determined that this rule is a significant regulatory action under section 3(f)(1) of Executive Order 12866. SBA has prepared the below Regulatory Impact Analysis.

Regulatory Impact Analysis

1. Need for this Regulatory Action

This interim final rule makes non-discretionary modifications to part 107 to incorporate the provisions of the Investing Act. The current provisions of 13 CFR part 107 reference outdated statutory Leverage maxima, do not permit ''bonus'' Leverage for qualifying investments under the Investing Act, and include an outdated definition of private capital (as amended by the Investing Act). Without this rule, SBICs (and their limited partners) will not have certainty into what constitutes private capital (given the conflicting definition between the Investing Act and 13 CFR part 107) and will not have access to ''bonus'' Leverage as contemplated by the Investing Act. In addition, SBA would lack a regulatory basis for processing ''bonus'' Leverage requests without this rulemaking.

2. Baseline and Proposed Changes

This rule incorporates programmatic changes implemented by the Investing Act, which is the baseline that necessitated this update to the regulations. The regulations are being updated to reflect changes to the Small Business Investment Act of 1958, as amended by the Investing Act. These primary changes include the following:

- The Investing Act increases the individual Leverage maximum from $175 million to $250 million for eligible SBICs issuing standard Debentures and the common control Leverage maximum from $350 million to $475 million for eligible SBICs issuing standard Debentures. This rule clarifies that the SBICs currently licensed in the program will be eligible to apply for this additional Leverage amount. SBA estimates that of the approximately 368 active SBIC licensed funds, 72 SBIC licensees are potentially eligible to increase their Leverage limit. Currently, SBA has already received approximately 60 requests from SBICs to increase SBA guaranteed Leverage.
- The Investing Act also clarifies that the maximum amount of Leverage that an SBIC may have outstanding at any time may not exceed 200% of its private capital, bringing the statute in line with current practices of the SBIC program. This rule conforms the provisions of part 107 to the Investing Act. As this provision of the Investing Act is already consistent with existing SBA practices, this change will not have any adverse impact on SBICs.
- The Investing Act expands the definition of ''private capital'' to include certain governmental funds (including public university and college foundations, trusts, and endowments) that were previously subject to limitations and restrictions for inclusion as private capital. This rule updates the definition of private capital by codifying the text of the Investing Act expanding the definition of private capital.
- The Investing Act authorizes additional ''bonus'' Leverage for SBICs in connection with investments made in

covered technology areas, small manufacturers, low-income geographic areas, and/or rural areas. This rule incorporates the ''bonus'' Leverage provisions of the Investing Act and provides eligibility for this bonus Leverage for investments made after May 19, 2026, by existing or future SBICs.

3. Benefits and Costs of the Rule

The Investing Act increases the limit on Leverage provided by SBA funds, expands the definition of private capital and authorizes additional ''bonus'' Leverage for eligible SBICs investing in covered technology areas, small manufacturers, low-income geographic areas, and/or rural areas. SBA anticipates that these regulations, which directly implement statutory provisions of the Investing Act, will result in approximately $815.7 million of average annual additional capital available for investment in the U.S. economy in eligible small businesses. In order to determine this amount, SBA first calculated the aggregate amount of additional Leverage anticipated to be available to SBICs under the provisions of the Investing Act increasing the Leverage threshold applicable to SBICs issuing standard Debentures. Based on Leverage increase requests already received by SBA, SBA estimates that approximately $3.297 billion will be made available across approximately sixty (60) SBICs over a five-year period. Additionally, SBA estimated the anticipated amount of Leverage expected to be made available to SBICs pursuant to the provisions of the Investing Act permitting access to ''bonus'' Leverage for investments in low-income or rural areas, covered technology categories, and small manufacturers, subject to an aggregate cap of the lesser of 50 percent of private capital or $125 million. SBA conducted a review of anticipated ''bonus'' Leverage availability based on a review of its current portfolio for SBICs in their current investment period that would also be eligible for Leverage based on their current private capital ratios (for SBICs with Leverage, SBA anticipates that 60 percent of the investments made by critical technology SBICs will qualify for bonus Leverage, whereas 20 percent of the investments made by other Leveraged licensees will qualify for bonus Leverage availability). As a result of its analysis, SBA estimates that approximately $2.141 billion in ''bonus'' Leverage would be made available across approximately forty (40) SBICs over a five-year period. SBA then reduced the aggregate additional Leverage amounts (*i.e.,* increased Leverage and ''bonus'' Leverage) by 25 percent to account for funds that may not avail themselves of the available additional Leverage and anticipated operating expenses of SBIC licensees, which would total $4.079 billion. This amount is estimated to be invested over a five-year time horizon, equaling approximately $815.7 million, on average, invested in small businesses annually. Therefore, based on these assumptions, SBA estimates that this interim final rule will result in just over $815.7 million in average annual additional capital being invested into small businesses.

The rule imposes no compliance costs to the public. It creates no new information collection within the meaning of the Paperwork Reduction Act, and this rulemaking neither imposes new recordkeeping or reporting requirements nor mandates any action by any Licensees, applicants, investors, or small business concerns. Participation is entirely voluntary, and a Licensee seeking additional Leverage does so at its own election. Further, implementing the Investing Act will not have an effect on direct spending or revenues,[1] and the Committee Report applicable to this legislation indicated that Congress does not believe that there will be any new or increased costs attributable to the Investing Act.[2] In addition, this rule will result in a minimal increase in administrative costs. SBA anticipates that the annual average cost to the U.S. government of analyzing requests for additional Leverage will be $29,442, based on a GS–12, Step 1 located at SBA's Washington, DC headquarters, working approximately two (2) hours per Leverage request, which would take 600 hours based on an estimated 300 requests. This rulemaking is expected to support, on average, approximately $815.7 million annually in additional investments to small businesses as a result the increased Leverage available to SBICs and a total average administrative cost of $29,442 annually for SBA to grant these additional Leverage requests.

4. Alternatives Considered

This IFR implements changes made by the Investing Act. There were no feasible alternatives available.

[1] Congressional Budget Office, Legislation Considered Under Suspension of the Rules, U.S. House of Representatives, Week of December 1, 2025 (November 25, 2025), *https://www.cbo.gov/system/files/2025-11/suspensions_week_of_12_1_2025_1.pdf.*

[2] H.R. Rep. No. 119–227 (2025).

B. Executive Order 14192

This interim final rule is not an Executive Order 14192 regulatory action, because it does not impose any more than de minimis regulatory costs. This interim final rule implements the provisions of the Investing Act. Specifically, the defined terms changes set forth in 13 CFR 107.50 and 107.230 codify exactly the definitions outlined in the Investing Act. The changes to 13 CFR 107.1120 codify the Investing Act's changes to common control Leverage maxima, and the changes to § 107.1150 codify the increase to maximum Leverage for individual SBICs and permits and outline the applicable limitations of the Investing Act relating to ''bonus'' Leverage. SBA notes that it made a minor change not directly expressed in the Investing Act by removing a sentence in current § 107.1150(d) stating that any investment used as a basis for seeking additional Leverage under § 107.1150(d) may not be used to seek additional Leverage under § 107.1150(e); however, SBA notes that the removal of this language removes an unnecessary regulatory restraint on an SBIC's access to capital and is consistent with both the Investing Act and the SBIC Act.

Accordingly, this interim final rule does not impose any additional obligations or operational constraints beyond those specified in the Investing Act, does not create any new reporting or recordkeeping requirements, and does not impose any additional mandatory obligations on SBICs participating in the program. Requests for ''bonus'' Leverage under this interim final rulemaking are purely voluntary, and there are not any budgetary impacts attributable to this rulemaking. Any costs attributable to this interim final rule are purely administrative in nature and as noted above, are expected to be de minimis costs of processing additional Leverage.

C. Executive Order 12988

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

D. Executive Order 13132

This interim final rule does not have federalism implications as defined in Executive Order 13132. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in the Executive Order. As such it does not warrant the preparation of a Federalism Assessment. Additionally, the rule will not require new compliance activities or reporting by state, local, or tribal governments.

E. Paperwork Reduction Act, 44 U.S.C. 3501–3520

SBA has determined that this interim final rule does not affect any existing collection of information and does not propose any new collection of information.

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

Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801 *et seq.,* provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. SBA will submit a report containing this rulemaking and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this is a major rule under 5 U.S.C. 804. If a rule is deemed major, the CRA generally provides that the rule may not take effect until at least 60 days following its publication unless the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 808(2). As this IFR amends regulations concerning loan guarantees, it is exempt from the notice-and-comment and effective date delay requirements in the Administrative Procedure Act, thereby rendering notice and public procedure unnecessary. *See* 5 U.S.C. 553(a)(2). In addition, this IFR is narrowly tailored to implement the Investing Act, including provisions which are already in effect. For these reasons, SBA for good cause finds that notice and public procedure is unnecessary, and in accordance with 5 U.S.C. 808(2), this IFR will be effective upon publication.

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

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small nonprofit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, the RFA requires such analysis only where notice and comment rulemaking is required. As discussed above, SBA is not required to publish a general notice of proposed rulemaking pursuant to the Administrative Procedure Act. Accordingly, SBA is not required to conduct a regulatory flexibility analysis.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR part 107 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 661 note, 662, 681–687, 687b–h, 687k–m.

■ 2. Amend § 107.50 by adding in alphabetical order the definitions of ''Covered Technology Category'', ''Low-Income Geographic Area'', ''Rural Area'', and ''Small Manufacturer'' to read as follows:

§ 107.50 Definition of terms.

* * * * *

Covered Technology Category has the meaning set forth in 10 U.S.C. 149(h).

* * * * *

Low-Income Geographic Area has the meaning set forth in section 351 of the Act.

* * * * *

Rural Area has the meaning set forth in section 343(a)(13) of the Agricultural Act of 1961 (7 U.S.C. 1991(a)(13)).

* * * * *

Small Manufacturer has the meaning set forth in section 501(e)(6) of the Act.

* * * * *

■ 3. Amend § 107.230 by revising paragraphs (b)(3)(i) through (iii) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(b) * * *

(3) * * *

(i) Funds invested by an employee welfare benefit plan, pension plan, foundation, endowment, or trust of any college or university;

(ii) Funds obtained from the business revenues (excluding any governmental appropriation) of any federally chartered or government-sponsored corporation; and

(iii) ''Qualified Non-private Funds'' as defined in paragraph (d) of this section.

* * * * *

■ 4. Amend § 107.1120 by revising paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(d) Provide the following certification, as appropriate:

(1) *If all SBICs under Common Control with you are issuing standard Debentures.* For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of the amount permitted under section 303(b)(2)(A)(ii) of the Act, certify that none of the Licensees has a condition of Capital Impairment.

(2) *If any SBIC(s) under Common Control with you are issuing Accrual Debentures.* For any Leverage draw that would cause you and any other Licensees under Common Control to have aggregate outstanding Leverage in excess of the amount permitted under section 303(b)(2)(A)(ii)(II) of the Act, certify that none of the Licensees has a condition of Capital Impairment.

* * * * *

■ 5. Amend § 107.1150 by revising the introductory text and paragraphs (a), (b), and (d) to read as follows:

§ 107.1150 Maximum amount of Leverage.

A Leveraged Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a), (b), (d), and (e) of this section. An Early Stage SBIC may have maximum outstanding Leverage as set forth in paragraph (c) of this section.

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Leveraged Licensee and not an Accrual SBIC or Reinvestor SBIC, the maximum amount of Leverage you may have outstanding at any time is the Individual Maximum. If you are an Accrual SBIC or Reinvestor SBIC, the maximum amount of Leverage and accrued interest you may have outstanding at any time is the Individual Maximum. The Individual Maximum means the lesser of:

(1) 200 percent of your Leverageable Capital;

(2) 100 percent of your Leverageable Capital if you have less than $5 million in Regulatory Capital and you were Licensed because you are headquartered in an Underlicensed State; or

(3) The maximum Leverage available to a single Licensee under section 303(b)

of the Act, as applicable to you at the time of licensure. Following an increase to the amount of Leverage available under section 303(b) of the Act, SBA may approve a Licensee's request to draw up to the increased amount upon presentation of an up-to-date business plan that reflects continuation of the Licensee's successful investment strategy and demonstrates the Licensee's ability to pay all SBA obligations in accordance with their terms.

(b) *Multiple Licensees Under Common Control.* Subject to SBA's credit policies, two or more Licensees under Common Control may have maximum aggregate outstanding Leverage as permitted under the Act, provided, however, that if you are an Accrual SBIC, the maximum outstanding Leverage which you and other Licensees under Common Control may have may not exceed the amount specified in section 303(b)(2)(B)(ii) of the Act. For any Accrual SBIC or Reinvestor SBIC under Common Control, the aggregate accrued interest associated with Accrual Debentures will be included in determining whether this maximum has been exceeded.

* * * * *

(d) *Additional Leverage Based on Investments in Covered Technology Categories, Small Manufacturers, Low-Income Geographic Areas, and Rural Areas.* You may submit a request for one or more additional Leverage commitments, in excess of the amounts otherwise available under paragraphs (a)(3) and (b) of this section, and, upon SBA's approval of such additional Leverage commitment(s), a request to draw such additional Leverage, for an investment made after May 19, 2026, in a Small Business which is located in either a Low-Income Geographic Area or a Rural Area, is a Small Manufacturer, or operates primarily in a Covered Technology Category in the amount specified in paragraphs (d)(1) and (2) of this section.

(1) Subject to SBA's credit policies, you may have outstanding Leverage in excess of the amounts permitted by paragraph (a)(3) of this section in an amount equal to the lesser of paragraphs (d)(1)(i), (ii), (iii), and (iv) of this section, where:

(i) The amount determined under paragraph (a)(1) of this section (as set forth in your Total Intended Leverage Commitment, as applicable) minus the amount determined under paragraph (a)(3) of this section;

(ii) The total cost basis, as reported on your most recent filing of SBA Form 468, of any investments made on or after May 19, 2026, in any Small Business which is located in either a Low-Income Geographic Area or a Rural Area, is a Small Manufacturer, or operates primarily in a Covered Technology Category;

(iii) 50 percent of your Private Capital; and

(iv) $125,000,000.

(2) Subject to SBA's credit policies, you and other Licensees under Common Control may have outstanding Leverage in excess of the amount otherwise available under paragraph (b) of this section in an amount equal to the lesser of paragraphs (d)(2)(i), (ii), and (iii) of this section, where:

(i) The total cost basis, as reported on the most recently filed SBA Forms 468, of any investments made on or after May 19, 2026, by you and by other Licensees under Common Control in any Small Business which is located in a Low-Income Geographic Area or a Rural Area, which is a Small Manufacturer, or which operates primarily in a Covered Technology Category;

(ii) The amount that equals 50 percent of the sum of your Private Capital and the Private Capital of all Licensees that are under Common Control with you; and

(iii) $125,000,000.

(3) The amount calculated in paragraph (d)(2) of this section equals the additional Leverage availability for you and other Licensees under Common Control under paragraph (b) of this section, provided, however, that additional Leverage made available under paragraph (d)(2) of this section may not:

(i) Cause your total drawn and committed Leverage to exceed 200 percent of your Leverageable Capital or any lower amount or ratio approved by SBA at licensure; or

(ii) Exceed the lesser of:

(A) 50 percent of the total Private Capital of the Licensees under Common Control; or

(B) $125,000,000.

* * * * *

Kelly Loeffler,

Administrator.

[FR Doc. 2026–23358 Filed 11–16–26; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2026–1407]

RIN 1625–AA00

Safety Zone; Monongahela River, Pittsburgh, PA

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters on the Monongahela River from Mile Marker 15 to Mile Marker 16. This safety zone is necessary to protect personnel and vessels from potential hazards on navigable waters during an operation to install aerial transverse wirelines. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Marine Safety Unit Pittsburgh or their designated representative or their designated representative.

DATES: This rule is effective without actual notice from November 17, 2026 through November 19, 2026. For the purposes of enforcement, actual notice will be used from November 16, 2026, through November 17, 2026. The temporary safety zone will be enforced from 7 a.m. to 5 p.m. each day during this period.

ADDRESSES: To view available documents go to *https://www.regulations.gov* and search for USCG–2026–1407.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, contact LT Lionel Babin, MSU Pittsburgh Waterways Management Division, U.S. Coast Guard; telephone 206–815–6224, or email *lionel.t.babin@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background and Authority

On October 19, 2026 an organization notified the Coast Guard that it will be installing aerial transverse wirelines over the Monongahela River from Mile Marker 15 to Mile Marker 16 from

November 16, 2026 until November 19, 2026. The installation will take place from 7 a.m. to 5 p.m. each day with periods of time to allow traffic to transit. Hazards associated with this work include the use of heavy equipment which will obstruct vessel traffic. The Captain of the Port (COTP) Pittsburgh has determined that potential hazards associated with this work are a safety concern for anyone in this area of the Monongahela River. The COTP is issuing this rule under the authority in 46 U.S.C. 70034, which is needed to protect personnel and vessels in the navigable waters within the safety zone.

Because of these potential hazards, the Coast Guard is issuing this rule without prior notice and comment. As is authorized by 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard was notified of this event on October 19, 2026, but we must establish this safety zone by November 16, 2026, to protect personnel and vessels. Therefore, we do not have enough time to solicit and respond to comments.

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

III. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 7 a.m. to 5 p.m. on each day from November 16, 2026 through November 19, 2026. The safety zone will cover the navigable water in the Monongahela River at Mile Marker 15 to Mile Marker 16. Vessels and persons will not be allowed to enter the zone during this time, unless authorized by the Captain of the Port.

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.

The National Ombudsman resolves concerns of uneven or excessive federal regulatory enforcement. Reviews are confidential and do not waive the right to pursue administrative appeals or any other legal action. Contact 1–888–REG–FAIR (1–888–734–3247) or *Ombudsman@SBA.gov*.

B. Collection of Information

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

C. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

D. Unfunded Mandates Reform Act

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

E. Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–1407 to read as follows:

§ 165.T08–1407 Safety Zone; Monongahela River, Pittsburgh, PA.

(a) *Location.* The following area is a temporary safety zone: All waters of the Monongahela River from Mile Marker 15 to Mile Marker 16, near Pittsburgh, PA.

(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 Pittsburgh (COTP) in the enforcement of the safety zone.

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

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

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 5 p.m. each day from November 16, 2026, to November 19, 2026.

Michael W. Metz,

CDR, U.S. Coast Guard, Captain of the Port MSU Pittsburgh.

[FR Doc. 2026–23405 Filed 11–16–26; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2025–3324; FRL–13373–02–OLEM]

Louisiana: Approval of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final decision.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is approving the Louisiana coal combustion residuals (CCR) permit program under the Resource Conservation and Recovery Act (RCRA). After reviewing the CCR permit program application submitted by the Louisiana Department of Environmental Quality (LDEQ), EPA has determined that Louisiana's partial CCR permit program meets the standard for approval under RCRA. Louisiana's CCR permit program will operate in lieu of the Federal CCR program with the exception of the specific provisions noted below.

DATES: This action is effective on December 17, 2026.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2025–3324. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Michelle Lloyd, Office of Resource Conservation and Recovery, Waste Identification Notice and Generators Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–0560; email address: *lloyd.michelle@epa.gov.* For more information on this document please visit *https://www.epa.gov/coal-combustion-residuals.*

SUPPLEMENTARY INFORMATION:

List of Acronyms

CBI Confidential Business Information
CCR coal combustion residuals
CFR Code of Federal Regulations
CINWL Commercial industrial nonhazardous waste landfill
EDMS Louisiana Electronic Database Management System
EPA Environmental Protection Agency
FR Federal Register
La.R.S. Louisiana Revised Statutes
LAC Louisiana Administrative Code
LDEQ Louisiana Department of Environmental Quality
MCL maximum contaminant level
MSWLF municipal solid waste landfill
NOV notice of violation
NPDES National Pollutant Discharge Elimination System
OLEM Office of Land and Emergency Management
RCRA Resource Conservation and Recovery Act
SHWD Solid and Hazardous Waste Division
SOP Standard Operating Procedures
STAG State and Tribal Assistance Grant
TSD Technical Support Document
USACE U.S. Army Corps of Engineers
USWAG Utility Solid Waste Activities Group
WIIN Water Infrastructure Improvements for the Nation
WPD Louisiana Waste Permits Division

I. General Information

A. Summary of Final Action

EPA is taking final action to approve of Louisiana's partial CCR permit program because the Agency finds that the State's program requires each CCR unit in the State to achieve compliance with the minimum requirements in the Federal CCR regulations or with alternative requirements that EPA has determined to be at least as protective as the requirements of the Federal CCR regulations in 40 CFR part 257, subpart D, for the reasons set forth in the Proposed Approval (91 FR 34189, June 5, 2026) and this final action. See, 42 U.S.C. 6945(d)(1)(B).

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous coal, subbituminous coal, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR can be sent offsite for disposal or beneficial use or disposed of in on-site landfills or surface impoundments.

On April 17, 2015, EPA published a final rule adding 40 CFR part 257, subpart D, which established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302). The rule created a self-implementing program that regulates the location, design, operating criteria, and groundwater monitoring and corrective action for CCR units, as well as the closure and post-closure care of CCR units. It also requires recordkeeping and notifications for CCR units. EPA has since amended 40 CFR part 257, subpart D on August 5, 2016 (81 FR 51802), July 30, 2018 (83 FR 36435), August 28, 2020 (85 FR 53516), November 12, 2020 (85 FR 72506), May 8, 2024 (89 FR 38950), November 8, 2024 (89 FR 88650), and February 10, 2026 (91 FR 5806). More information on these rules is provided in the Technical Support Document in the docket for this document.

C. Statutory Authority

EPA is issuing this final action pursuant to RCRA sections 4005(d) and 7004(b)(1). See 42 U.S.C. 6945(d) and 6974(b)(1). As amended by section 2301 of the 2016 WIIN Act, RCRA section 4005(d) instructs EPA to establish a Federal permit program similar to those under RCRA subtitle C and other environmental statutes and authorizes States to develop their own CCR permitting programs that go into effect in lieu of the Federal permit program upon approval by EPA. See 42 U.S.C. 6945(d).

Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), States seeking approval of a State CCR program must submit to the Administrator ''in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under state law for regulation by the State of coal combustion residuals units that are located in the state.'' The statute provides that EPA shall approve a State CCR permit program if the Administrator determines that the State program will require each CCR unit located in the State to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) Other State criteria that the Administrator, after consultation with the State, determines to be ''at least as protective as'' the Federal requirements. 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of receiving a State's complete submittal of the information specified in RCRA section 4005(d)(1)(A).[1] 42 U.S.C. 6945(d)(1)(B). EPA may approve a State CCR permit program in whole or in part. Id. Once approved, the State permit program operates in lieu of the Federal requirements. 42 U.S.C. 6945(d)(1)(A).

[1] USEPA 2017. Coal Combustion Residuals State Permit Program Guidance Document; Interim Final. Office of Land and Emergency Management, Washington, DC 20460. August. (providing that the 180-day deadline does not start until EPA determines the application is complete).

In a State with a partial program, only the State requirements that have been approved by EPA operate in lieu of the Federal requirements, and facilities remain responsible for compliance with all remaining Federal requirements in 40 CFR part 257.

As noted above, the Federal CCR regulations are self-implementing, meaning that CCR landfills and surface impoundments must comply with the terms of the regulations prior to obtaining a Federal permit or a permit issued by an approved State. Noncompliance with the Federal CCR regulations can be the subject of an enforcement action brought directly against the facility. Once a final CCR permit is issued by an approved State or pursuant to a Federal CCR permit program, however, the terms of the permit apply in lieu of the terms of the Federal CCR regulations and/or requirements in an approved State program, and RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal or State CCR regulations (meaning the permit's terms become the enforceable requirements for the permittee).

RCRA section 7004(b), which applies to all RCRA programs, directs that ''public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.'' 42 U.S.C. 6974(b)(1). Accordingly, EPA considers permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings in evaluating State CCR permit program applications.

Once a State CCR permit program is approved, the Administrator must review the approved program no less frequently than every 12 years, no later than three years after a revision to an applicable section of 40 CFR part 257, subpart D, and no later than one year after any unauthorized significant release from a CCR unit located in the State. EPA also must review an approved State CCR permit program at the request of another State alleging that the soil, groundwater, or surface water of the requesting State is or is likely to be adversely affected by a release from a CCR unit in the approved State. See 42 U.S.C. 6945(d)(1)(D)(i)(I) through (IV).

In a State with an approved State CCR permit program, EPA may commence administrative or judicial enforcement actions under RCRA section 3008, 42 U.S.C. 6928, if the State requests assistance or if EPA determines that an EPA enforcement action is likely to be necessary to ensure that a CCR unit is operating in accordance with the criteria of the State's permit program. 42 U.S.C. 6945(d)(4). EPA can enforce any Federal requirements that remain in effect (*i.e.,* those for which there is no corresponding approved State provision). EPA may also exercise its inspection and information gathering authorities under RCRA section 3007 in a State with an approved program. 42 U.S.C. 6927.

II. The Louisiana Application

EPA began working with LDEQ in June 2017 as the State developed its application for the State's partial CCR permit program. As it has with other States, EPA discussed with LDEQ the process for EPA to review and approve the State's CCR permit program, LDEQ's anticipated timeline for submitting a CCR permit program application to EPA, and LDEQ's regulations for issuing permits. In addition, LDEQ and EPA discussed site-specific issues and potential differences between the State and Federal programs as LDEQ developed its CCR regulations at Louisiana Administrative Code (LAC) 33:VII.Chapter 10. Specifically, EPA and LDEQ discussed the differences between the ''uppermost aquifer'' requirements of the Federal CCR regulations and the ''uppermost permeable zone'' requirements of the State solid waste regulations to determine if the State provisions would be at least as protective as the Federal regulations. EPA and LDEQ also discussed groundwater protection standards, public participation requirements, and permitting procedures.

On May 20, 2025, LDEQ submitted its CCR permit program application to EPA Region 6 requesting approval of the State's partial CCR permit program. On September 12, 2025, EPA sent questions to LDEQ to supplement the application. On December 16, 2025, LDEQ sent a draft application to EPA for review that incorporated responses to EPA's questions. On February 2, 2026, EPA sent additional comments to LDEQ. LDEQ responded with proposed revisions on February 13, 2026. On February 20, 2026, EPA sent limited comments to LDEQ on remaining recommendations. LDEQ responded with a proposed revision on February 23, 2026. On March 2, 2026, and March 19, 2026, LDEQ submitted a revised application to EPA Region 6.[2] On June 5, 2026, EPA proposed to approve the Louisiana CCR permit program (Proposed Action) (91 FR 34189).

III. EPA Analysis of the Louisiana Application-Basis for Approval

RCRA section 4005(d) requires EPA to evaluate two components of a State CCR permitting program to determine whether it meets the standard for approval: the program itself, and the technical criteria that will be included in each permit issued under the State program. This Unit of this document discusses EPA's review of both requirements under RCRA section 4005(d) and the criteria EPA uses to conduct this review.

First, EPA must evaluate the permit program itself (or other system of prior approval and conditions). See 42 U.S.C. 6945(d)(1)(A) through (B). RCRA section 4005(d)(1)(A) directs the State to provide evidence of a State permit program's compliance with RCRA requirements in such form as determined by the Administrator. In turn, RCRA section 4005(d)(1)(B) directs EPA to approve the State program based upon a determination that the program ''requires each coal combustion residuals unit located in the state to achieve compliance with the applicable [Federal or State] criteria.'' In other words, the statute directs EPA to determine that the State has sufficient authority to require compliance at all CCR units located within the State. See also 42 U.S.C. 6945(d)(1)(D)(ii)(I). To make this determination, EPA evaluates the State's authority to issue permits and impose conditions in those permits, as well as the State's authority to conduct compliance monitoring and enforcement.

During this review of the State permit program, EPA also determines whether the program contains procedures consistent with the public participation directive in RCRA section 7004(b). RCRA section 7004(b), which applies to all RCRA programs, directs that ''public participation in the development, revision, implementation, and enforcement of any . . . program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.'' 42 U.S.C. 6974(b)(1). To make this determination, EPA evaluates the State's public participation procedures for issuing permits and for intervention in civil enforcement proceedings.

[2] The revised Narrative Description, from March 19, 2026, was substituted for the original Narrative Description, from May 2025, as well as the 40 CFR part 257 Checklist, and copies of the Louisiana Statutes, Regulations, and Guidance. All other documents submitted as part of the original May 20, 2025 application remained unchanged and are available in the docket supporting this action.

Although 40 CFR part 239 applies to the approval of State Municipal Solid Waste Landfill (MSWLF) programs under RCRA section 4005(c)(1) rather than EPA's evaluation of CCR permit programs under RCRA section 4005(d), the specific criteria outlined in that regulation provide a helpful framework to examine the relevant aspects of a State's CCR permit program. States are familiar with these criteria because all States have MSWLF programs that have been approved pursuant to these regulations, and the regulations are generally regarded as protective and appropriate.

Consequently, EPA relied on the four categories of criteria outlined in 40 CFR part 239 as guidelines to evaluate the Louisiana CCR permit program: permitting requirements, requirements for compliance monitoring authority, requirements for enforcement authority, and requirements for intervention in civil enforcement proceedings.

Second, EPA must evaluate the technical criteria that will be included in each permit issued under the State CCR permit program to determine whether they are the same as the Federal criteria, or to the extent they differ, whether the modified criteria are ''at least as protective as'' the Federal requirements. See 42 U.S.C. 6945(d)(1)(B). Only if both components meet the statutory requirements may EPA approve the program. See 42 U.S.C. 6945(d)(1). EPA makes this determination by comparing the State's technical criteria to the corresponding Federal criteria and, where necessary, evaluating whether different State criteria are at least as protective as the Federal criteria.

Upon careful review, and as discussed in more detail below, EPA has determined that Louisiana's partial CCR permit program includes all the elements of an adequate State CCR permit program. It also contains all the technical criteria in 40 CFR part 257, subpart D, except for the provisions specifically discussed below that Louisiana has not included in its partial CCR permit program. Consequently, EPA is approving the majority of Louisiana's partial CCR permit program application. The State's CCR permit program does not encompass the full scope of Federal CCR requirements as presently constituted, and the provisions of the Federal CCR regulations that are not part of Louisiana's approved CCR permit program will remain directly applicable to affected CCR units. 42 U.S.C. 6945(d)(1)(B).

EPA's full analysis of the Louisiana CCR permit program, and how the Louisiana regulations differ from the Federal requirements, can be found in the Technical Support Document. EPA determined that the Louisiana CCR permit program application was complete and notified Louisiana of its determination by letter.[3]

A. Adequacy of the Louisiana Permit Program

Section 4005(d)(1)(A) of RCRA, 42 U.S.C. 6945(d)(1)(A), requires a State seeking State CCR permit program approval to submit to EPA, ''in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.'' Although the statute directs EPA to establish the form of such evidence, the statute does not require EPA to promulgate regulations governing the process or standard for determining the adequacy of such State programs. EPA, therefore, developed the Coal Combustion Residuals State Permit Program Guidance Document; Interim Final (82 FR 38685, August 15, 2017) (the ''Guidance Document''). The Guidance Document provides recommendations on a process and standards that States may choose to use to apply for EPA approval of its CCR permit programs, based on the standards in RCRA section 4005(d), existing regulations at 40 CFR part 239, and the Agency's experience in reviewing and approving State programs.

EPA evaluated the Louisiana CCR permit program using the process and statutory and regulatory standards discussed in Units II.C. and IV.A. of this preamble. EPA's findings are summarized below and provided in more detail in the Technical Support Document located in the docket supporting this final determination.

1. Guidelines for Permitting

In EPA's judgment, an adequate State CCR permit program must ensure that: (1) Existing and new facilities are permitted or otherwise approved and in compliance with either 40 CFR part 257 or other State criteria; (2) The State has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements; and (3) The State has the authority to impose requirements for CCR units adequate to ensure compliance with either 40 CFR part 257, subpart D, or such other State criteria that have been determined and approved by the Administrator to be at least as protective as 40 CFR part 257, subpart D.

a. Permit Required

A State permit is required for CCR units under LAC 33:VII.1003.B, which requires CCR facilities with an existing CCR landfill, or an existing or inactive CCR surface impoundment, to obtain a solid waste permit in accordance with LAC 33:VII.Chapter 5. The requirements and procedures for solid waste facilities to obtain permits can be found in LAC 33:VII.509.A.1. CCR facilities will be required to submit an application to the LDEQ Office of Environmental Services for a new solid waste permit or a modification to an existing solid waste permit, as applicable, within 365 days of the date of the approval of the State's CCR permitting program. Under LAC 33:VII.1003.C, the disposal or management of CCR in a new or lateral expansion of a CCR landfill or surface impoundment is prohibited unless such activity is authorized by a permit issued in accordance with LAC 33:VII.509, 513, and 517.

b. Permitting Authority

LAC 33:VII.1003.A–D and 1004.A–L have provisions imposing requirements for CCR permits, permit terms and conditions, permit issuance and duration, permit renewals, permit modifications, and changes in ownership.

LDEQ has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements. The provisions at LAC 33:VII.1004.A through J address requirements for CCR permit application contents and information requirements to ensure that a permit application includes sufficient information and reports to characterize the geology at the facility; demonstrate compliance with: land use and location restrictions, design criteria, groundwater monitoring zone and unit siting, groundwater monitoring and corrective action, groundwater monitoring parameters, operating criteria; other requirements involving certification of all technical reports by an engineer licensed in the State of Louisiana; closure and post-closure cost estimates; recordkeeping; and submission of records to LDEQ for review.

LAC 33:VII.1004.B.1 requires CCR permit and permit modification applications to contain information required by prescribed application forms from the State, and information

[3] Completeness Letter for the Louisiana CCR Permit program, signed June 2, 2026. EPA–HQ–OLEM–2025–3324–0044.

required by 40 CFR part 257, subpart D, which the State incorporates by reference at LAC 33:VII.1003.A. Under LAC 33:VII.1004.B.2, a new permit application or permit renewal application must include all information included in LAC 33:VII.519 (Permit application forms) and LAC 33:VII.709.A–D (Standards Governing Type I and II Solid Waste Disposal Facilities). Under LAC 33:VII.519.D, incomplete applications not containing the information required by LAC 33:VII.519.B and LAC 33:VII.1004.A and .B, are not accepted for review and LDEQ must notify the applicant when a permit application is determined to be incomplete. If the applicant elects to continue with the permit application process, the applicant must follow the requirements provided in the notice. The notice may require the applicant to submit additional information in addendum or to submit a new application. Further, LAC 33:VII.519.G and LAC 33:VII.1004.A2 require the applicant to submit any additional information that LDEQ has determined is necessary for making a decision on the application, including information needed to prepare a draft or final permit decision.

c. Permit Requirements and Permitting Process

Before submitting its permit application, a prospective applicant must coordinate with local, State, and Federal agencies. More details on the required consultations are found in the Technical Support Document.

After the public notice period has ended and after LDEQ has reviewed and considered public comments received during the comment period, LDEQ must issue a final decision on the permit. LAC 33:VII.1006.A.4.e, LAC 33:VII.1006.B.1. No more than 20 days after LDEQ has issued a final permit decision it must publish a notice of final permit decision on the LDEQ website. LAC 33:VII.1006.A.5.b. The regulations also require the notice of final decision to be sent to people who commented on the draft permit and to people who requested written notice. LAC 33:VII.1006.A.5.b–c.

LAC 33:VII.1004.A.3.a requires that once a permit has been issued for a facility, a renewal application must be submitted no later than 365 days prior to expiration of the permit. Each facility processing and/or disposing of CCR subject to the permitting requirements must operate under a permit for the active life of the facility and duration of post-closure care, until such time LDEQ deems closure and post-closure complete and terminates permit coverage. LAC 33:VII.1004.A.4.

LDEQ may review a permit at any time. LAC 33:VII:1004.A and LAC 33:VII.509.G. After review of a permit, LDEQ may, for cause, suspend, revoke, or modify a permit in accordance with the procedures outlined in the Louisiana Administrative Procedure Act, Louisiana Revised Statutes (La. R.S.) 49:950 *et seq.* LAC 33:VII.1004.A.5 requires the owner or operator of a facility to obtain a permit modification, in accordance with LAC 33:VII.517, prior to making a change in a CCR unit or initiating any change that is a deviation from the specifications in 40 CFR part 257, subpart D, or the existing permit. Pursuant to LAC 33:VII.1004.A.7, proposed changes in ownership must comply with LAC 33:I.Chapter 19.

Louisiana requires CCR permit holders to comply with the permit modification requirements in LAC 33:VII:1004.A.5 and LAC33:VII.517. Owners and operators must submit an application to incorporate any changes to ensure compliance with the CCR requirements.

Facilities must also submit an application for a minor or major modification of the permit. LAC 33:VII.1004.A.5 requires that ''The owner or operator shall obtain a permit modification in accordance with LAC 33:VII.517 prior to making a change in a CCR unit, or initiating any change that is a deviation from the specifications in 40 CFR part 257, subpart D and/or the existing permit.'' At LAC 33:VII.1002.A, Louisiana defines a minor modification as ''any modification that does not meet the criteria for a major modification.'' Louisiana defines major modifications as ''any change in a site, facility, process or disposal method, or operation that substantially deviates from the permit or tends to substantially increase the impact of the site, facility, process or disposal method, or operation on the environment.''

The items listed in LAC 33:VII.517.B.1.a through i are major modifications, as defined in LAC 33:VII.1002.A. See the Technical Support Document for details.

d. Duration of Permits

The regulations provide that permits for CCR units are to be issued for a maximum of 10 years and may be issued for a period of less than 10 years, under LAC 33:VII.1003.D and 1004.A.3, in compliance with the requirements of LAC 33:VII.509.D.2.

EPA has determined that the Louisiana approach to CCR permit applications and approvals is adequate. The program meets the criteria listed at the beginning of this Unit of this document. The Louisiana requirements described above require existing and new facilities to be permitted or otherwise approved and in compliance with either 40 CFR part 257 or other State criteria. The requirements described above show that Louisiana has the authority to collect all information necessary to issue permits that are adequate to ensure compliance with relevant 40 CFR part 257, subpart D requirements, or other State criteria. Finally, Louisiana has the authority to impose requirements for CCR units adequate to ensure compliance with either 40 CFR part 257, subpart D, or such other State criteria that have been determined and approved by the Administrator to be at least as protective as 40 CFR part 257, subpart D.

EPA has determined that the Louisiana approach to CCR permit applications and approvals is adequate, and that this aspect of the Louisiana CCR permit program meets the standard for program approval.

2. Guidelines for Public Participation

Based on RCRA section 7004, 42 U.S.C. 6974, it is EPA's judgment that an adequate State CCR permit program will ensure that: (1) Documents for permit determinations are made available for public review and comment; (2) Final determinations on permit applications are made known to the public; and (3) Public comments on permit determinations are considered and significant comments are responded to in the permit record. EPA's review of Louisiana's CCR permit program indicates that the State has adopted public participation procedures that allow interested parties to talk openly and frankly about permit issues and search for mutually agreeable solutions to differences in views. An overview of Louisiana's public participation provisions is provided below.

a. Public Notice and Participation in the CCR Permit Application Process

Louisiana provides public participation opportunities throughout the State's CCR permitting process, including pre-application and post-application public notices, public participation procedures for draft and final permits, the opportunity for the public to comment, and opportunities for the public to request public hearings. LDEQ also maintains an electronic document management system (EDMS) where all documents submitted by a facility and all responses from LDEQ are available for public review. These accessible documents include

permitting documents, correspondence, approvals and groundwater reports. Under LAC 33:VII.513.C.2.f, permit applications are available for public review as soon as practicable subject to confidentiality of the provisions of LAC 33:I.Chapter 5.

The Louisiana public notice requirements apply to applications for initial permits, permit renewals, and major modifications of CCR landfills and surface impoundments. Louisiana requires public notice during the pre-application and post-application periods, as well as for draft permits and final permit decisions. See LAC 33:VII.1006.A.1.

The applicant for a CCR permit must publish a public notice of intent to submit a permit application within 45 days before submitting the application. LAC 33:VII.1006.A.2. Prospective applicants for solid waste permits, including initial permits, permit, and major modifications, must publish a notice of their intent to submit a permit application and provide the opportunity for public comments. LAC 33:VII.513.B.7. The notice must be published within 45 days prior to submission of the application to the Office of Environmental Services. Under LAC 33:VII.1006.A.3, Louisiana requires all CCR applicants to publish a notice of application submittal within 45 days after submitting the application to the Office of Environmental Services. LAC 33:VII.513.B.8. Once an application is deemed technically complete and a draft permit has been prepared, the draft permit must be submitted for public notice. LAC 33:VII.513.G, LAC 33:VII.1006.A.4. The Office of Environmental Services must publish a notice of the draft permit decision and solicit comments from interested individuals and groups. LAC 33:VII.513.G.3.

Under LAC 33:VII.513.B.7, LAC 33:VII.513.B.8, and LAC 33:VII.513.G.3, public notices for pre-permit application, post-permit application, and draft permit decisions must be published one time as a single classified advertisement in (1) The legal or public notices section of the official journal of the State; and (2) A major local newspaper of general circulation in the area where the facility is located. However, if the facility is in the same parish or area as the official journal of the State, then a single classified advertisement in the legal or public notices section of the official journal of the State is the only public notice required.

An example of a public notice to be placed in the local newspaper for intention to submit a permit application to the Office of Environmental Services for existing/proposed solid waste facilities is provided in LAC 33:VII.3001. An example of a public notice to be placed in the local newspaper after submittal of a permit application is provided in LAC 33:VII.3003. Both notices must include the physical location of the proposed facility and the address where comments concerning the facility may be filed.

LAC 33:VII.1006.A.4.b requires Louisiana to send a copy of the draft permit to the local public library in the parish where the facility is located, LDEQ regional offices, and/or governing authority for public review. The draft permit must also be made available for public review in the EDMS. LAC 33:VII.1006.A.4.c. Under LAC 33:VII.513.G.4 and G.5, the Office of Environmental Services must send a copy of the draft permit decision to the parish library where the facility is located and to the appropriate regional office for public review. The State must also send a copy of the draft permit decision to the parish governing authority where the facility is located. LAC 33:VII.513.G.6. Under LAC 33:VII.1006.A.4.e, the Office of Environmental Services must review all comments received within the timeframe specified in the public notice prior to the preparation of a final permit decision.

LAC 33:VII.1006.A.5 requires public notices for final permit decisions to comply with the requirements at LAC 33:VII.513.H and 513.I. Pursuant to LAC 33:VII.513.H, the administrative authority must issue a standard permit or a standard permit denial, including reasons for the denial, after the public notice period has ended. The administrative authority may also issue a closure permit to allow closure activities to be accomplished at a facility that has been issued a standard permit denial but has previously accepted waste under a prior permit or an order. Under LAC 33:VII.513.I, the administrative authority is required to publish a notice of the final permit decision on LDEQ's website no later than 20 days following the issuance of a final permit decision. The State sends the notice only to persons who commented on the draft permit decision and to those persons who have requested to be provided written notice.

Pursuant to LAC 33:VII.1006.A.4.d, Louisiana requires a public comment period of a minimum of 30 days for permit applications and major modifications. The public comment period may be extended to 45 or 60 days at the discretion of LDEQ Secretary. Under LAC 33:VII.513.G.3, LDEQ must publish a notice of the draft permit decision that solicits comments from interested individuals and groups. LDEQ must review and consider all public comments received during the public comment period prior to making a final decision on a permit. LAC 33:VII.1006.A.4.e and LAC 33:VII.513.G.3. LDEQ must draft a document addressing public comments received during the public comment period. The Response to Comments document must be included with LDEQ's final decision on the permit application and must be made available to the public on the State's EDMS.

LAC 33:VII.1006.B.1 requires opportunities for public hearing to be conducted. LAC 33:VII.509.E. Under LAC 33:VII.509.E.1 through 4, LDEQ, at its discretion, may hold public hearings concerning CCR permits and major modifications of CCR permits.

LAC 33:VII.1006.B.1 and LAC 33:VII.509.E.4 require LDEQ to hold a public hearing for any CCR facility permit if LDEQ determines, on the basis of comments received and other information, that a hearing is necessary or appropriate. LAC 33:VII.1006.B.3 also provides LDEQ with the authority to hold a public hearing on any permit application that does not require a public hearing. Pursuant to LAC 33:VII.509.E.4, public hearings must be conducted in accordance with the State's Environmental Quality Act (La. R.S.30:2001 *et seq.*) for fact finding hearings or other hearing procedures by the Administrative Procedure Act (La. R.S. 49:950 *et seq.*). Under LAC 33:VII.1006.B.2, the proceedings of all public hearings must be recorded and a copy of the recording or a verbatim transcript recording must be filed in the record of the hearing.

LAC 33:VII.509.E.5 provides the public with the opportunity to request a hearing. Within 30 days after the date of publication of the draft permit decision in a newspaper notice pursuant to LAC 33:VII.513.G.3, any person may request that LDEQ consider whether a public hearing is necessary. If LDEQ determines that the requests warrant it, a public hearing will be scheduled. If LDEQ determines that the requests do not raise genuine and pertinent issues, the Office of Environmental Services is required to send the requestor of the hearing written notification of the determination. All requests for a hearing must be in writing and must contain the name and affiliation of requestor and the comments in support of or in objection to the issuance of a permit.

Public notice of a public hearing is required under LAC 33:VII.1006.B.4 and

LAC 33:VII.509.E.6 if LDEQ determines that a hearing is necessary. The notice must be published at least 20 days before a hearing. The publication of the public notice for a hearing follows the same procedure as described for pre-permit application, post-permit application and draft permit decisions. Those persons on the Office of Environmental Services mailing list for hearings must be mailed notice of the hearing at least 20 days before a public hearing. Louisiana also requires that a notice be published at least 20 days before a public hearing in the departmental bulletin, if available, or on LDEQ's website in the public notices section.

The Office of Environmental Services reviews comments received within 30 days after the date of a public hearing. LAC 33:VII.509.E.7.

b. Challenges to Permit Decisions

Permit decisions can be challenged. Permit applicants can request that LDEQ hold an adjudicatory hearing and can appeal the final determination to the 19th Judicial District Court. La. R.S. 30:2024. Citizens can appeal final permit actions to the 19th Judicial District Court. La. R.S. 30:2050.21. Following the issuance or denial of a permit, under La. R.S. 49:978.1, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review whether or not he has applied to the agency for rehearing. La. R.S. 30:2050.21.A, La. R.S. 30:2050.31. Louisiana also allows an aggrieved person to appeal a final permit action, a final enforcement action, or a declaratory ruling only to the 19th Judicial District Court. A petition for review must be filed in the district court within 30 days after notice of the action or ruling being appealed has been given. Under La. R.S. 49:979, an aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal.

EPA has determined that the Louisiana approach to public participation requirements provides adequate opportunities for public participation in the permitting process sufficient to meet the standard for program approval. The provisions described above meet the three criteria listed at the beginning of this Unit of this document by providing several means by which documents for draft and final permit determinations are made available for public review and comment, as well as ensuring that public comments on permit determinations are considered and significant comments are responded to in the permit record.

3. Guidelines for Compliance Monitoring Authority

An adequate permit program must provide the State with the authority to gather information about compliance, perform inspections, and ensure that the information it gathers is suitable for enforcement.

La. R.S. 30:2011.D(2) provides the Secretary of LDEQ the general power to require such conditions as necessary to assure compliance with applicable Federal and State laws. LAC 33:VII.903.A provides the State with the authority to undertake investigations to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the persons or parties involved, and to provide the results of an investigation to any complainant who provided the information prompting the investigation, upon written request. LAC 33:VII.529.A.8 also provides LDEQ with the authority to enter a permit holder's premises; have access to and copy any records kept under the conditions of its permit; inspect any facilities, equipment practices, or operations regulated or required under its permit; and sample or monitor any substances or parameters at any location for the purposes of assuring permit compliance.

The State has authorities and guidelines for inspections, analysis, and monitoring, which allow the State to: (1) Verify the accuracy of information submitted by owners or operators of the CCR unit; (2) Verify the adequacy of methods (including sampling) used by owners or operators in developing that information; (3) Produce evidence admissible in an enforcement proceeding; and (4) Receive and ensure proper consideration of information submitted by the public.

Per LAC 33:VII.407.C, every permitted facility in Louisiana is inspected prior to waste acceptance as a start-up inspection. In addition, LAC 33:VII.407.B requires LDEQ to perform periodic inspections and LDEQ performs yearly groundwater monitoring system inspections and yearly compliance inspections. In addition to the inspections by LDEQ, CCR facilities are also required to submit a detailed annual certification of compliance in accordance with LAC 33:VII.525 to certify whether the facility is in compliance with the terms of the permit and to identify any deviations.

All CCR facilities are required to have a groundwater monitoring program and submit the results semiannually to LDEQ for evaluation. LAC 33:VII.1004.G.3 and LAC 33:VII.1005. CCR facilities are also required to submit an annual certification of compliance to certify whether the facility is in compliance with the terms of the permit and to identify any deviations. LAC 33:VII.525. All certifications and verifications executed by a licensed professional engineer in an application must be accompanied by all material technical reports relied upon by the professional engineer licensed in the State of Louisiana for certification. LAC 33:VII.1004.B.4.

The Secretary of LDEQ has the authority to conduct inquiries and develop facts in investigations by staff investigatory procedures or formal investigations and may conduct inspections and examinations of facilities and records. La. R.S. 30:2011.D(5), La. R.S. 30:2016, and LAC 33:VII.905.A. The Secretary may also hold public hearings and/or issue subpoenas pursuant to La. R.S. 30:2025(I). La. R.S. 30:2011.D(5) also requires the Secretary to hold no less than three public fact-finding hearings to investigate issues concerning environmental equity in the administration of department programs with respect to resident populations who do not have the economic resources to participate in the environmental decision making affecting their area. Other types of hearing (*e.g.,* a hearing on a proposed rule) may be held in any locality. La. R.S. 30:2016.

When a hearing is an ''investigation or inquiry'' into a specific activity, it must be held in the parish where the activity took place. *Id.* At the conclusion of the investigation, all facts and information concerning the alleged violation are compiled by LDEQ staff and a report of the investigation is presented to the administrative authority for use in possible enforcement proceedings. Any complainant who provided the information prompting the investigation is notified of its results. LAC 33:VII.905.A.

Complaints can be submitted by any member of the public in various ways: via telephone at 225–219–3640, via email at *SPOC@la.gov,* in writing, or online through the online citizen complaint form. Once a complaint is received by LDEQ, it is forwarded to the Surveillance Division and assigned a team leader to investigate; then the assigned team leader investigates the complaint. Citizens may submit a complaint anonymously via email or telephone. Once a complaint is investigated, the citizen is notified of the results of the investigation.

Accordingly, EPA has determined that these compliance monitoring authorities are adequate, and that this aspect of the Louisiana CCR permit program meets the standard for program approval.

4. Guidelines for Enforcement Authority

An adequate State CCR permit program must provide the State with adequate enforcement authority to administer its State CCR permit program, including the authority to: (1) Restrain any person from engaging in activity which may damage human health or the environment, (2) Sue to enjoin prohibited activity, and (3) Sue to recover civil penalties for prohibited activity.

LDEQ has adequate enforcement authority for its existing programs. LAC 33:VII.907, La. R.S. 30:2025, and La. R.S. 30:2050. LDEQ is authorized to initiate action under La. R.S. 30:2025 if a determination is made that a violation of the terms and conditions of a permit has occurred or is about to occur. La. R.S. 30:2025 authorizes LDEQ to take civil action to enforce the provisions of the subtitle, including civil actions to recover damages and penalties. La. R.S. 30:2050 further delineates the enforcement procedures and process for judicial review that would apply to a permitted facility.

Under LAC 33:VII.1008.A, the failure of any person to comply with the State's CCR regulations or the terms and conditions of any permit granted or order issued thereunder is a violation of the Louisiana Environmental Quality Act (La. R.S. 30:2001 *et seq.*). LAC 33:VII.907 authorizes LDEQ to initiate enforcement action against any facility that fails to comply with the regulations, terms, and conditions of any permit granted, or any order issued. When a violation occurs, LDEQ may initiate one or more actions. La. R.S. 30:2025. Specifically, La. R.S. 30:2025.C(1) and (2) and La. R.S. 30:2050.8.A give LDEQ the authority to bring a civil suit, issue a compliance order, an emergency cease and desist order, or enter into a cooperative agreement. The Secretary may issue an emergency cease and desist order if a violation occurs or is about to occur that endangers or is causing damage to the public health or the environment. As a result of enforcement findings, LDEQ may also require modifications for permits. LDEQ may review a permit at any time. LAC 33:VII.509.G. After review of a permit, LDEQ may, for cause, suspend, revoke, or modify a permit in accordance with the procedures outlined in the Louisiana Administrative Procedure Act, La. R.S. 49:950 *et seq.*

La. R.S. 30:2050.8.E specifically provides the Secretary the authority to file an action in a district court for injunctive relief at the expiration of the cease and desist order. The Secretary is required to establish that a violation is occurring or is about to occur and that the violation is endangering or causing significant damage to public health or the environment.

La. R.S. 30:2025.B authorizes LDEQ to bring civil suits to recover any damages or penalties resulting from violation of any requirement of the Louisiana Environmental Quality Act (La. R.S. 30:2001 *et seq.*) or permitting requirement. La. R.S. 30:2025.B(1)(a) and La. R.S. 30:2025.B(1)(d) specifically address the authority of the attorney general and the procedures for bringing civil suits in a district court. If the court determines a violation has occurred, then the penalty must take into consideration the cost of restoring the affected area to its previous condition and its present market value and include any reasonable costs made by the State in connection with the violation. The court may also award actual damages to the prevailing plaintiff.

The State's authority to recover civil penalties is provided by La. R.S. 30:2025.E and La. R.S. 30:2026.A. Under La. R.S. 30:2025.E(1)(a), any person found to be in violation of any requirement of the Act may be liable for a civil penalty of not more than the cost to the State of any response action made necessary by such violation and a penalty of not more than $32,500 for each day of violation. Under La. R.S. 30:2025.E(2), any person to whom a compliance order or a cease and desist order is issued, who fails to take corrective action within the time specified in the order, is liable for a civil penalty of not more than $50,000 for each day of continued violation or noncompliance.

Based on the foregoing, EPA has determined that this aspect of the Louisiana CCR permit program meets the standard for program approval.

5. Intervention in Civil Enforcement Proceedings

Based on RCRA section 7004, an adequate CCR State permit program must provide an opportunity for citizen intervention in civil enforcement proceedings. Specifically, the State must either: (1) Provide for citizen intervention as a matter of right; or (2) Have in place a process to: (a) Provide notice and opportunity for public involvement in civil enforcement actions, (b) Investigate and provide responses to citizen complaints about violations, and (c) Not oppose citizen intervention when permissive intervention is allowed by statute, rule, or regulation.

The Louisiana statutes and Code of Civil Procedure provide the opportunity for the public to intervene and participate in the State's civil enforcement process. La. R.S. 30:2050.10.A authorizes the Secretary of LDEQ to adopt procedures for the issuance of declaratory rulings on significant matters, including providing aggrieved persons the right of intervention. La. R.S.30:2050.10.A(7). Article 1091 of the Louisiana Code of Civil Procedure allows a third person having an interest to intervene in a pending action to enforce a right related to or connected with the object of the pending action against one or more of the parties.

La. R.S. 30:2050.1.B.(1) requires the Secretary to maintain a list of all notices of violations, compliance orders, and penalty assessments issued in the preceding three months. The list must be updated monthly. La. R.S. 30:2050.1.B.(2)(a). On a periodic basis, the Secretary must mail a copy of the list, either separately or as part of a LDEQ publication, to persons who ask to be placed on the mailing list.

Pursuant to La. R.S. 30:2050.6.B.(4), the Secretary has the authority to provide opportunity for members of the public to file written comments regarding a contested order or assessment and to attend the informal hearing if one is held. La. R.S. 30:2050.7.B requires that before signing a settlement or compromise, the Secretary must invite and receive written public comment on the proposed settlement agreement or compromise during the 45 days following notice to the attorney general.

Under La. R.S. 30:2050.7.C, the Secretary must give notice of a proposed settlement or compromise to a person who has requested notice and must require the respondent to publish a notice in the official journal of the parish governing authority for the parish in which the violation that gives rise to the order or assessment occurred. The Secretary may also require the respondent to publish the notice in any other newspaper of general circulation.

The Secretary may hold a public hearing regarding a proposed settlement or compromise under La. R.S. 30:2050.7.D when either of the following conditions is satisfied: (1) A written request for a public hearing has been filed by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members who reside in the parish in

which the facility is located; or (2) The Secretary finds a significant degree of public interest in the settlement or compromise.

La. R.S. 30:2026.A(1) allows any person having an interest, which is or may be adversely affected, to commence a civil action on his own behalf against any person whom he alleges to be in violation of the Act or of the regulations. The action must be brought either in the district court in the parish in which the violation or alleged violation occurs or in the district court of the domicile of the alleged violator, and must be afforded preferential hearing by the court. La. R.S. 30:2026.C specifies that nothing in La. R.S. 30:2026 shall be construed to limit or deny any person's right to injunctive or other extraordinary and ordinary relief provided the requirements of La. R.S. 30:2026 are followed. La. R.S. 30:2026.A(3) allows the court to award costs of court including reasonable attorneys and expert witness fees to the prevailing party.

EPA has determined that these authorities provide for an adequate level of citizen involvement in the enforcement process, and that this aspect of the Louisiana CCR permit program meets the standard for program approval.

B. Adequacy of Technical Criteria

EPA conducted an analysis of the Louisiana CCR permit program application, including a thorough analysis of Louisiana statutory authorities at La. R.S. 30:2001 *et seq.* for the CCR program, as well as its regulations at LAC 33:VII.Chapter 10. As noted above, Louisiana has requested approval of a partial CCR permit program.

1. Louisiana CCR Units and Resources

LDEQ has identified 9 CCR units (3 landfills and 6 surface impoundments) at 4 facilities in Louisiana.[4] LDEQ demonstrated that it has the personnel to administer a permit program that is at least as protective as the Federal requirements.[5] LDEQ indicates that the State program is funded by fees and fines collected as part of the solid waste, hazardous waste, water, air, and remediation programs. La. R.S. 30:2014. As the CCR facilities are solid waste facilities, fees from these facilities, including solid waste permit application review fees, permit modification review fees, annual fees, closure plan review fees, annual groundwater monitoring and maintenance fees, and enforcement fines, would directly contribute to LDEQ funding. In addition, LDEQ applied for EPA State and Tribal Assistance Grants (STAG) funding for Fiscal Years 2023 through 2026. In total, LDEQ has received $1,069,479 in funding to develop its CCR permit program. If EPA receives future appropriations, if approved, LDEQ can continue to apply and receive funds for implementation of its CCR permit program. EPA has determined that LDEQ staffing and funding are adequate for LDEQ to administer the CCR permit program.

EPA has determined that the LDEQ staffing and funding are adequate for LDEQ to administer the CCR permit program.

2. Louisiana CCR Regulations

EPA has determined that the portions of the Louisiana CCR permit program that were submitted for approval meet the standard for approval under RCRA section 4005(d)(1)(B)(i), 42 U.S.C. 6945(d)(1)(B)(i). To make this determination, EPA compared the technical requirements in the Louisiana CCR regulations at LAC 33:VII.Chapter 10 to the Federal CCR regulations at 40 CFR part 257 to determine whether they differed from the Federal requirements, and if so, whether those differences met the standard in RCRA sections 4005(d)(1)(B)(ii) and (C), 42 U.S.C. 6945(d)(1)(B)(ii) and (C).

The Louisiana Environmental Quality Act (La. R.S. 30:2001 *et seq.*) establishes authority and procedures for LDEQ to carry out the purposes of the Act. LDEQ has jurisdiction over all aspects of management of industrial solid waste, including the regulation of CCR material.

Act 449 of 1979 established State Authority to develop and implement a regulatory control and management program for solid wastes consistent with the requirements of RCRA. This Act and Act 507 of 1980 have resulted in the incorporation of the objectives and elements of the RCRA subtitle D State Solid Waste Plan into State law. LDEQ has enforced these regulations since 1989 and has ensured that all facilities that process, manage, store, and/or dispose of solid waste in Louisiana operate in a manner protective of human health and the environment. The solid waste rules and regulations were developed under the authority of the Secretary of LDEQ, as mandated by the Louisiana Solid Waste Management and Resource Recovery Law (La. R.S. 30:2151 *et seq.*).

In 1983, Act 449 was renamed the Environmental Quality Act, and Act 97 provided for the creation of LDEQ. These changes affected only the structure and organization of the agency; the purposes and policies of environmental protection in the State remained unchanged, and the charge to adopt and promulgate rules and regulations and to develop standards was directed to the Secretary of LDEQ. In 1991, Act 735 mandated that LDEQ publish the Environmental Regulatory Code and update the code quarterly. LAC 33:VII, ''Solid Waste Regulations'' was prepared and published according to La. R.S. 49:950. The second edition of the Environmental Regulatory Code was published pursuant to La. R.S. 49:963.1 and included all policies and procedures adopted by LDEQ on February 20, 1993. LDEQ regulations give LDEQ the authority to implement permitting regulations, groundwater regulations, enforcement regulations, and financial assurance requirements.

Louisiana's authority to incorporate the Federal CCR regulations by reference is based on La. R.S. 30:2180(A)(3) which provides LDEQ the authority to exercise all incidental powers necessary to assure that the State program is consistent with any Federal laws or regulations. On October 20, 2024, LDEQ adopted rules in the Louisiana Register Volume 50, Number 10, to adopt the requirements of the 40 CFR part 257, subpart D Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. At LAC 33:VII.1003.A, Louisiana largely adopted by reference 40 CFR part 257, subpart D as amended through December 14, 2020, except for 40 CFR 257.50(e), 257.51, and all amendments made to the Federal CCR regulations by the July 30, 2018 Final Rule (83 FR 36435), the May 8, 2024 Final Rule (89 FR 38950), the Legacy Technical Corrections Final Rule (89 FR 88650, November 8, 2024), and the February 10, 2026 final rule (91 FR 5806). With these exceptions, the technical requirements are identical to, or equivalent to, the Federal CCR regulations.

In addition, LDEQ adopted certain additional State-specific provisions. With these exceptions, LDEQ states that the technical requirements are identical to the Federal CCR regulations.

3. Louisiana Partial Program

LDEQ is seeking approval of its partial CCR permit program pursuant to RCRA section 4005(d). Louisiana's CCR

[4] For more information on the specific facilities covered by the Louisiana CCR Permit Program, see pages 14–15 of the Narrative, which is included in the docket for this action.

[5] The discussion on State personnel is included on pages 15–17 of the Narrative, which is included in the docket for this action, and is described further in the Technical Support Document.

regulations reflect 40 CFR part 257, subpart D, as amended through December 14, 2020, except for certain provisions of the July 2018 Final Rule (83 FR 36435, July 30, 2018); however, the Federal CCR regulations have changed since then as a result of litigation and the Legacy CCR surface impoundments and CCR management units final rule (89 FR 38985, May 8, 2024) (the 2024 Legacy Rule), and the CCR Management Unit Deadline Extension Rule (91 FR 5806, February 10, 2026). LDEQ has not adopted regulations reflecting certain 2018, 2024, or February 2026 changes. Therefore, LDEQ has not sought approval of any State regulations that would operate in lieu of these amendments. EPA is approving only those aspects of Louisiana's CCR program that were submitted for approval.

In the 2024 Legacy Rule, EPA amended certain terms and provisions that apply to all CCR units. It is EPA's understanding that LDEQ interprets the provisions in LAC 33:VII.Chapter 10 in the same way that EPA interprets those in 40 CFR part 257, subpart D. Therefore, EPA is approving the State's version of these requirements:

1. Throughout 40 CFR part 257, subpart D, the regulations were amended by removing the phrase ''website'' and adding in its place the word ''website'' wherever it appears.

2. 40 CFR 257.50(c); this amendment revises the scope of applicability to specify that it includes inactive CCR surface impoundments at utilities or power producers regardless of how electricity is currently being produced at the facility.

3. 40 CFR 257.51; this section was reserved, as the effective date of 40 CFR part 257, subpart D, October 19, 2015, has passed.

4. 40 CFR 257.52; this amendment clarifies that all CCR units are subject to the requirement to comply with all other Federal, State, Tribal, or local laws or other requirements. In addition, all CCR units continue to be subject to 40 CFR 257.3–1, 257.3–2, and 257.3–3.

5. ''Active facility or active electric utilities or independent power producers''; this amendment to 40 CFR 257.53 clarifies that the relevant operational date for any active facility or active electric utilities or independent power producers is on or after October 19, 2015.

6. ''CCR landfill or landfill''; this amendment to 40 CFR 257.53 clarifies that a CCR landfill means an area of land or an excavation that ''contains'', rather than ''receives'', CCR, and meets the other criteria of the definition.

7. ''CCR surface impoundment or impoundment''; this amendment to 40 CFR 257.53 deleted the words ''which is''.

8. ''CCR unit''; this amendment to 40 CFR 257.53 clarifies that this term includes legacy CCR surface impoundments and CCRMU.

9. ''Contains both CCR and liquids''; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions as this term used in the closure performance standard in 40 CFR 257.102(d)(2)(i) for CCR surface impoundments.

10. ''Inactive CCR surface impoundment''; this amendment to 40 CFR 257.53 clarifies that this term is applicable to such CCR surface impoundments ''located at an active facility.''

11. ''Infiltration''; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions to assist in the application of closure performance standards for CCR units.

12. ''Liquids''; this additional definition in 40 CFR 257.53 is consistent with the term's plain meaning and dictionary definitions to assist in the applicability for CCR surface impoundments and the application of closure performance standards for CCR units.

13. ''State Director''; this amendment to 40 CFR 257.53 clarifies that the State director is the chief administrative officer of the lead State agency responsible for implementing the State program regulating disposal in all CCR units.

14. ''Technically feasible or feasible''; this amendment to 40 CFR 257.53 clarifies that certain requirements of 40 CFR part 257, subpart D refer only to feasible rather than technically feasible. The amendment ensures that these terms are interpreted in the same way.

15. ''Technically infeasible or infeasible''; this amendment to 40 CFR 257.53 clarifies that certain requirements of 40 CFR part 257, subpart D refer only to infeasible rather than technically infeasible. The amendment ensures that these terms are interpreted in the same way.

16. 40 CFR 257.61(a); this amendment updates a reference to 40 CFR 230.41(a), as the previously referenced provision has since been amended.

17. 40 CFR 257.80(a); this amendment clarifies that all CCR units are subject to the fugitive dust requirements.

18. 40 CFR 257.90(a); this amendment clarifies that all CCR units are subject to the groundwater monitoring and corrective action requirements. In addition, it corrects a typographical error.

19. 40 CFR 257.100(a)(1); this amendment clarifies that inactive CCR surface impoundments, regardless of how the facility produces electricity, are subject to the same compliance deadlines applicable to existing CCR surface impoundments, subject to certain requirements.

20. 40 CFR 257.104(a); this amendment clarifies that all owners or operators of CCR units that are subject to 40 CFR 257.102 are subject to the post-closure care requirements, except for those owners and operators of a CCR unit that elect to close the CCR unit by removing CCR.

First, LDEQ is not seeking approval of the following provisions of the State regulations:

1. A portion of LAC 33:VII.1003.A: The State adopted requirements from 40 CFR 257.73(a)(4), 257.73(d)(1)(iv), 257.74(a)(4), and 257.74(d)(1)(iv) for vegetative cover for slope stability, but is not seeking approval because the Federal provision has been challenged and is under reconsideration.

2. A portion of LAC 33:VII.1003.A: The State has adopted the groundwater protection standards for cobalt, lead, lithium, and molybdenum found at 40 CFR 257.95(h)(2), but is not seeking approval because the Federal provision has been challenged and is under reconsideration.

3. The variance and exemption provisions in LAC 33:I.Chapter 18, LAC 33:VII:307, and La. R.S. 30:2014, 2014.1: LDEQ may grant or approve variances or exemptions for permitted solid waste facilities that differ from the regulations. However, as written, it would be difficult for EPA to establish a record to support finding that this variance process would meet the RCRA section 4005(d) approval standard. As a result, LDEQ is not seeking approval for the variance and exemption provisions.

Second, the following list identifies amendments to the requirements in 40 CFR part 257, subpart D that were not included in Louisiana's application. These provisions will continue to apply directly to, and remain Federally enforceable for, each CCR unit in Louisiana. Meaning, the requirements in LAC 33:VII.1003.A that do not meet the standard for approval as of the date of the Final Approval, as enumerated below, are not being approved:

1. 40 CFR 257.90(g) for suspension of groundwater monitoring;

2. 40 CFR 257.103(f) for alternative closure demonstrations;

Third, EPA amended certain provisions of the Federal CCR regulations in the 2024 Legacy Rule that

apply to all CCR units and are more prescriptive than the requirements in the 2015 CCR Rule. LDEQ did not adopt these amendments and did not seek approval of these provisions. Thus, the following Federal provisions will be applicable to CCR units in Louisiana:

1. ''Operator''; this amendment to 40 CFR 257.53 specifies the definition of operator to include certain other person(s) including those responsible for disposal or otherwise actively engaged in the solid waste management of CCR and person(s) responsible for directing or overseeing groundwater monitoring, closure or post-closure activities at a CCR unit.

2. ''Owner''; this amendment to 40 CFR 257.53 broadened the definition of owner to include person(s) who own a facility, whether in full or in part.

3. 40 CFR 257.80(b)(6); this amendment specifies that the owner or operator must amend the written fugitive dust control plan no later than 30 days after whenever there are certain changes in condition.

4. 40 CFR 257.102(c)(2); this amendment specifies the criteria for complete removal and decontamination activities during the active life and post-closure care period of a CCR unit.

5. 40 CFR 257.102(d)(2); this amendment specifies that the closure performance standards for drainage and stabilization of a unit when leaving CCR in place apply to all CCR units, including CCR management units (CCRMU) and CCR landfills, where free liquids remain in the unit.

6. 40 CFR 257.102(f)(2)(ii)(C) and (D); these amendments specify that CCR landfills that intersect with groundwater are eligible for the closure time extensions available to CCR surface impoundments, subject to certain requirements.

7. 40 CFR 257.104(a)(2), (c)(1) and (3); these amendments specify that an owner or operator closing a CCR unit pursuant to the closure by removal and decontamination standards during the active life and post-closure care period, 40 CFR 257.102(c)(2), must complete groundwater corrective action.

8. 40 CFR 257.104(g); this amendment specifies that a deed notation, required pursuant to 40 CFR 257.102(i), may be removed after the owner or operator demonstrates that groundwater monitoring concentrations no longer exceed any protection standard (*i.e.,* the unit must be in detection monitoring) and certain notifications of completion of post-closure care are completed.

9. 40 CFR 257.105(a); this amendment specifies that each file in the operating record must indicate the date the file was placed in the record.

10. 40 CFR 257.105(e); (f)(1) through (14); (f)(19); (g); (h)(1) through (4); (h)(10) and (11); (h)(13) and (14); (i)(4) through (20); these amendments extend the retention times for certain documents maintained in the operating record.

11. 40 CFR 257.107(b); this amendment specifies that owners and operators using one website to meet the requirements of multiple environmental rules must delineate the postings for each regulatory program under a separate heading on the combined website.

12. 40 CFR 257.107(e); (f)(1) through (4); (f)(6) through (13); (f)(18); (g); (h)(1) through (3); (h)(8); (h)(10) through (11); (i)(4) through (20); these amendments extend the retention times for certain documents maintained on the facility's CCR website.

Fourth, in the 2024 Legacy Rule, EPA added requirements for legacy CCR surface impoundments. LDEQ did not adopt these amendments. Thus, any legacy CCR surface impoundments in Louisiana will remain subject to the following Federal CCR regulations:

1. 40 CFR 257.50(e); this amended provision specifies that 40 CFR part 257, subpart D applies to electric utilities or independent power producers that ceased producing electricity prior to October 19, 2015 and have a legacy CCR surface impoundment onsite.

2. ''Inactive facility or inactive electric utility or independent power producer''; this added definition to 40 CFR 257.53 specifies the facility where legacy CCR surface impoundments are located.

3. ''Legacy CCR surface impoundment''; this added definition to 40 CFR 257.53 specifies a new type of CCR unit that meets certain criteria.

4. 40 CFR 257.100(a)(2); EPA amended 40 CFR 257.100(a) to add paragraph (2), which specifies that legacy CCR surface impoundments are subject to all of the requirements applicable to existing CCR surface impoundments, except for the requirements in 40 CFR 257.60 through 257.64 and 257.71.

5. 40 CFR 257.100(f) through (j); these additional provisions include reporting and technical requirements for legacy CCR surface impoundments.

6. 40 CFR 257.101(e); this added provision specifies the deadlines when owners or operators of legacy CCR surface impoundments must initiate closure.

7. 40 CFR 257.101(g); this added provision specifies requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority.

8. 40 CFR 257.105(k), 257.106(k), and 257.107(k); these added provisions specify recordkeeping, notification, and CCR website posting requirements for legacy CCR surface impoundments.

Fifth, in the 2024 Legacy Rule, EPA also added requirements for CCR management units. LDEQ did not adopt these provisions. Thus, any CCR management units in Louisiana will remain subject to the following Federal CCR regulations:

1. 40 CFR 257.50(d); this amended provision specifies the scope of CCRMU requirements.

2. ''CCR management unit''; this additional definition in 40 CFR 257.53 is for a new type of CCR unit.

3. ''Closed prior to October 19, 2015''; this additional definition in 40 CFR 257.53 specifies the applicability of CCR landfills or surface impoundments that completed closure of the unit in accordance with State law prior to October 19, 2015.

4. ''Critical infrastructure''; this additional definition in 40 CFR 257.53 specifies infrastructure, large buildings, or other structures vital to the success or continuation of current site operations or activities for the public welfare. Under the Federal CCR regulations, CCRMU located under critical infrastructure have the option to defer certain requirements to permitting.

5. ''Inactive CCR landfill''; this additional definition in 40 CFR 257.53 is for a new type of CCR unit related to CCRMU.

6. ''Regulated CCR unit''; this additional definition in 40 CFR 257.53 is a conforming change, which means any new CCR landfill, existing CCR landfill, new CCR surface impoundment, existing CCR surface impoundment, inactive CCR surface impoundment, or legacy CCR surface impoundment. This term specifies that CCRMU are not considered regulated CCR units.

7. 40 CFR 257.75; this additional section includes requirements for identifying CCRMU.

8. 40 CFR 257.90(b)(3); this additional provision specifies a deadline for the owners and operators of CCRMU to comply with certain groundwater monitoring requirements.

9. 40 CFR 257.90(e); EPA amended one sentence in this provision to add an annual groundwater monitoring and corrective action report deadline for CCRMU. LDEQ has not adopted this amendment, *see* LAC 33:VII.1003.A. Therefore, the majority of this provision, as adopted by LDEQ based on the December 14, 2020 version of 40 CFR 257.90(e), is approved for LDEQ to administer, but the added deadline for

CCRMU will remain the applicable criteria for CCRMU in Louisiana and any CCRMU in Louisiana will remain subject to the Federal CCR regulations.

10. 40 CFR 257.95(b); this amended provision adds a deadline for CCRMU to sample and analyze the groundwater for all constituents in 40 CFR part 257, appendix IV.

11. 40 CFR 257.101(f); this additional provision specifies the deadlines when CCRMU must initiate closure.

12. 40 CFR 257.101(g) and (h); these include additional requirements for deferral to permitting for closures conducted under substantially equivalent regulatory authority and under critical infrastructure.

13. 40 CFR 257.102(b)(2)(iii) and (v); these amended provisions renumber paragraphs (b)(2)(iii) to (iv) and add new paragraphs (b)(2)(iii) and (v). The added provisions are only applicable to CCRMU.

14. 40 CFR 257.102(f)(1)(iii); this additional provision specifies when CCR management units must complete closure activities.

15. 40 CFR 257.102(f)(2)(ii)(E) and (F); these additional provisions specify when CCR management units may extend the complete closure activities.

16. 40 CFR 257.104(d)(2)(iii); these amended provisions renumber paragraph (d)(2)(iii) to (iv) and add a new paragraph (d)(2)(iii). This added provision is only applicable to CCRMU.

17. 40 CFR 257.105(f)(25) and (26), 40 CFR 257.106(f)(24) and (25), 40 CFR 257.107(f)(24) and (25); these include additional recordkeeping, notification, and CCR website posting provisions for CCRMU.

Sixth, Louisiana has one exclusion in the State CCR regulations that is not being approved as EPA has determined the provision is not at least as protective as the Federal CCR regulations. At LAC 33:VII.1001.B.2, Louisiana exempts from the State's CCR regulations ''CCR surface impoundments that no longer contain water or can no longer impound liquids.'' Therefore, the Federal CCR regulations will continue to apply for this type of unit.

EPA has determined that the Louisiana CCR regulations contain all of the technical elements of the Federal CCR regulations, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post-closure care, recordkeeping, notification, and CCR website posting requirements. The Louisiana CCR permit program also contains State-specific language, references, definitions, and State-specific requirements that differ from the Federal CCR regulations, but which EPA has determined to be ''at least as protective as'' the Federal criteria. These State-specific requirements are also discussed further in sections III.1. and V of the Technical Support Document.

The effect of approving a State CCR permit program is that, except for the provisions for which EPA has not granted approval, the Louisiana CCR permit program will apply in lieu of the Federal CCR regulations. For the State provisions that will not be approved upon finalization, the corresponding Federal requirements will continue to apply directly to facilities, and therefore facilities must comply with both the Federal requirements and the State requirements.

IV. Louisiana CCR Permits

In accordance with LAC 33:VII.1004.A, all CCR units must be permitted in accordance with LAC 33:VII.Chapter 10. LDEQ has not issued any LAC 33:VII.Chapter 10 CCR permits. In accordance with LAC 33:VII.1004.A, owners or operators of existing CCR landfills and CCR surface impoundments must apply for a major modification or permit renewal within 365 days of the approval of the State CCR permit program for all CCR units that currently have LDEQ solid waste permits. In accordance with LAC 33:VII.1003.C, the disposal or management of CCR in a new or lateral expansion of a CCR landfill or surface impoundment is prohibited unless such activity is authorized by a permit issued in accordance with LAC 33:VII.509, 513, and 517.

Since LDEQ has not issued permits under LAC 33:VII.Chapter 10 regulations, no LDEQ permits are part of the permit program record under review. In accordance with RCRA sections 4005(d)(3)(A) and 4005(d)(6), in the absence of a permit issued under an approved State program, the owner or operator of a CCR unit must continue to comply with the Federal CCR regulations until a permit from an approved State is issued. 42 U.S.C. 6945(d)(3)(A), and (d)(6). Any permits issued after approval of the State program will be subject to program review provisions required by RCRA sections 4005(d)(1)(D)(i) and 4005(d)(1)(D)(ii). 42 U.S.C. 6945(d)(1)(D)(i), and (ii).

V. EPA Responses to Major Comments on the Proposed Determination

EPA announced its proposal to approve, in part, the Louisiana CCR permit program, and initiated a 60-day public comment period, on June 5, 2026 (91 FR 34189). EPA also held a public hearing on July 21, 2026. The public hearing provided interested persons with the opportunity to present information, views, or arguments concerning EPA's proposal. Oral comments received during the public hearing are documented in the transcript of the hearing, which, along with the written comments received during the public comment period, are included in the docket for this Action.

During the comment period, EPA received 43 written comments from members of the public, plus an additional comment from the public hearing. EPA received several comments that support approval of Louisiana's CCR permit program and LDEQ's ability to administer the program. Other commenters allege that LDEQ has demonstrated that it cannot be relied upon to adequately implement the program. These comments rely on language from the 2024 Alabama Program Denial (89 FR 48774, June 7, 2024) and judicial opinions on certain CCR court cases to support their position. The commenters provided detailed concerns about CCR facilities in Louisiana. Commenters also raised questions regarding certain definitions that are different from the Federal regulations and the adequacy of public participation. EPA also received several comments expressing concerns over CCR contamination of the environment, pertaining to concerns that LDEQ would not properly implement the program. EPA's responses to individual comments are provided in the Response to Comments document included in the docket for this Action.[6] EPA provides a response to one comment below.

Alternative Closure Demonstration Jurisdiction

Comment summary: A commenter requested clarity regarding the 40 CFR 257.103(f)(2) alternative closure demonstration requirements, which set forth the Part A demonstration and approval process finalized by EPA in 2020. The commenter asserted that, under 40 CFR 257.103(f)(2), and accordingly as incorporated by Louisiana, an unlined or clay-lined CCR surface impoundment could continue to receive CCR and non-CCR wastestreams after April 2021 if the facility submitted an application indicating its intent to cease operation of its coal-fired boiler(s) and complete closure of the impoundment within prescribed

[6] Comment Summary and Response Document. Louisiana Coal Combustion Residuals State Permit Program Approval. Docket No. EPA–HQ–OLEM–2025–3324. November 2026.

timeframes—October 2023 for units 40 acres or smaller, and October 2028 for units larger than 40 acres.

In November 2020, three CCR facilities in Louisiana (Big Cajun II Power Plant, Brame Energy Center, Dolet Hills Power Station) submitted a timely Part A demonstration under 40 CFR 257.103(f)(2), and on January 11, 2022, EPA determined that the three CCR facilities' demonstrations were complete and confirmed that the cease waste receipt deadline is tolled until EPA issues its final decision. To date, EPA has not issued a final determination on these Part A demonstrations. The commenter urges the Agency to clarify whether EPA or LDEQ will have jurisdiction over pending Part A demonstrations upon EPA's final approval of LDEQ's State CCR permit program.

LDEQ's regulations incorporate the Part A provisions at 40 CFR 257.103. Additionally, the commenter notes that LDEQ's permit program application stated that, upon EPA's approval, LDEQ would assume jurisdiction over any Part A demonstrations pending before EPA at that time, but EPA did not address this statement in its Proposed Decision.

On November 28, 2025, EPA proposed to extend the 40 CFR 257.103(f)(2) alternative closure deadlines to cease coal combustion and complete closure of the underlying impoundment by three years—from October 17, 2028 to October 17, 2031. EPA's 2026 Unified Agenda anticipated a final rule by July 2026, but the revision has not yet been finalized. Because Louisiana incorporated the Federal CCR regulations as amended through July 1, 2022, the extended 2031 deadline, once finalized, would not be automatically incorporated into LDEQ's approved CCR permit program. This creates a potential regulatory gap for facilities with pending Part A demonstrations and/or those that in the future may operate under Part A demonstrations in Louisiana.

In the event LDEQ assumes jurisdiction of the pending Part A demonstrations in the State, the commenter urges EPA and LDEQ to coordinate on providing a prompt mechanism to allow Louisiana facilities with those pending or granted demonstrations to operate under the revised 2031 deadline, if finalized. To accomplish this, the commenter requested that EPA consider the following approaches: (1) EPA reassumes authority over pending Part A determinations based on the final revisions to 40 CFR 257.103(f)(2) and the resulting gap between the State and Federal program, ensuring that facilities with pending or approved applications benefit from the extended deadline without requiring a separate State program amendment; (2) EPA and LDEQ develop a streamlined process by which LDEQ can incorporate the revised 40 CFR 257.103(f)(2) deadline into its State regulations and EPA can expeditiously approve this minor State program modification.

Comment response: On November 12, 2020, EPA received a demonstration for the Big Cajun II Power Plant requesting authorization to continue using the Bottom Ash Basin until April 1, 2025, and completing closure no later than October 17, 2028, pursuant to the alternative closure provision 40 CFR 257.103(f)(2). Similarly, on November 12, 2020, EPA received a demonstration for the Brame Energy Center requesting authorization to continue using the Bottom Ash Pond until August/September 2027 and completing closure no later than October 17, 2028, pursuant to the alternative closure provision 40 CFR 257.103(f)(2). On November 12, 2020, EPA received a demonstration for the Dolet Hills Power Station requesting authorization to use the Ash Basins Nos. 1 and 2 until December 2021 and completing closure no later than October 17, 2023, pursuant to the alternative closure provision 40 CFR 257.103(f)(2). The Dolet Hills Power Station has since withdrawn its demonstration since ceasing receipt of waste on September 1, 2022.

On January 11, 2022, EPA sent a letter to each facility to communicate EPA's determination that the submitted demonstrations contain sufficient information for EPA to evaluate the merits of its demonstrations. EPA has not made any decision on whether to approve the demonstrations. As a consequence of the submission of a complete demonstration, the deadline for the CCR unit covered by the demonstration to cease receipt of waste is tolled until EPA issues a final decision on the demonstration. 40 CFR 257.103(f)(3)(ii).

On page 15 of its Narrative Description, LDEQ stated that ''If EPA reaches a decision prior to the approval of these regulations, the facilities [Brame Energy Center, owned by Cleco Power LLC, and Big Cajun II Power Plant, owned by Point Coupee RT LLC] will be held to that decision. However, if no decision is reached before EPA approves these regulations, the LDEQ would make a decision regarding the applications. All of the surface impoundments are either lined with at least three feet of naturally occurring low permeability soils or are underlain by natural clays. In areas where the natural soils did not meet the standard of three feet of low permeability soils, recompacted clay was installed. Cleco Brame and Dolet Hills and Point Coupee RT LLC plan to close all CCR surface impoundments in Louisiana by 2026. If the facilities do not close, the impoundments will be required to be retrofitted with geosynthetic liners.''

On November 28, 2025, EPA issued a proposed rule (90 FR 54611) to extend the alternative regulatory deadline in 40 CFR 257.103(f)(2)(iv)(B) to cease coal-fired generation and complete the closure of their unlined CCR surface impoundments larger than 40 acres. The proposed alternative deadline would extend the existing deadline by three years to October 17, 2031. See 40 CFR 257.103(f)(2)(iv)(B)(*2*). Owners and operators of coal-fired boilers that do not meet the conditional requirements under 40 CFR 257.103(f)(2)(iv)(B)(*2*) would remain subject to the existing deadline to cease coal-fired generation and complete the closure of their unlined CCR surface impoundments (*i.e.,* October 17, 2028). See 40 CFR 257.103(f)(2)(iv)(B)(*1*). This rule change would provide regulatory flexibility to allow placement of CCR in the affected impoundments, and therefore coal-fired electricity generation, to continue at these facilities for up to three additional years.

On August 26, 2026, EPA and LDEQ met and discussed the Part A demonstrations and this comment.[7] LDEQ affirmed that the State adopted 40 CFR 257.103(f)(2) by reference and understood the challenges with the State CCR regulations and EPA's proposed, but not yet final, rule extending certain deadlines. EPA continues to work on the final rule.

Due to the potential rule changes, EPA seeks to ensure that facilities with pending or approved 40 CFR 257.103(f)(2) demonstrations benefit from the extended deadline without requiring a separate State program amendment. Therefore, in response to this comment, EPA is clarifying here and in the list of partial program elements that EPA will remain the regulatory authority for the 40 CFR 257.103(f)(2) alternative closure demonstrations. Louisiana will be the primary authority for most aspects of the CCR program, as enumerated in Unit III.B.3. of this preamble, but facilities subject to 40 CFR 257.103(f)(2) must continue to comply with the Federal CCR provision and associated requirements. After EPA finalizes the

[7] Memo from August 26, 2026 Meeting Between EPA HQ, EPA Region 6, and LDEQ. August 26, 2026.

amendment to the cease receipt of waste and completion of closure deadline, EPA will work to develop a streamlined process by which LDEQ can incorporate the revised 40 CFR 257.103(f)(2) deadline into its State CCR regulations and EPA can expeditiously approve this State CCR permit program revision.

VI. Approval of the Louisiana CCR Permit Program

The partial Louisiana CCR permit program, as described in its Application and Units II and III of this preamble, is approved. Because this is a partial program approval, only the State requirements that have been approved will operate in lieu of the analogous Federal requirements in RCRA section 4005(d)(3). Accordingly, owners and operators of CCR units in Louisiana will remain responsible for compliance with all applicable requirements in 40 CFR part 257 for which Louisiana did not seek approval that are listed in Unit III.B. EPA will implement these provisions under the Federal CCR program, until and unless Louisiana submits a revised CCR permit program application and receives approval for these provisions. A permit issued by a State is not a shield for noncompliance with these 40 CFR part 257 provisions. For all CCR units in the State, the Federal regulations at 40 CFR part 257 will remain in effect until such time that LDEQ permits those units under its approved CCR permit program after providing an opportunity to comment on the entire permit consistent with the process required for new permits.

RCRA section 4005(d)(1)(D) specifies that EPA will review a State CCR permit program:

- From time to time, as the Administrator determines necessary, but not less frequently than once every 12 years;
- Not later than three years after the date on which the Administrator revises the applicable criteria for CCR units under part 257 of title 40, CFR (or successor regulations promulgated pursuant to RCRA sections 1008(a)(3) and 4004(a));
- Not later than one year after the date of a significant release (as defined by the Administrator), that was not authorized at the time the release occurred, from a CCR unit located in the State; and
- At the request of any other State that asserts that the soil, groundwater, or surface water of the State is or is likely to be adversely affected by a release or potential release from a CCR unit located in the State for which the program was approved.

RCRA section 4005(d)(4)(B) also provides that in a State with an approved CCR permitting program, the Administrator may commence an administrative or judicial enforcement action under RCRA section 3008 if:

- The State requests that the Administrator provide assistance in the performance of an enforcement action; or
- After consideration of any other administrative or judicial enforcement action involving the CCR unit, the Administrator determines that an enforcement action is likely to be necessary to ensure that the CCR unit is operating in accordance with the criteria established under the State's permit program.

VII. Final Action

In accordance with 42 U.S.C. 6945(d), EPA is approving the Louisiana partial CCR permit program.

Lee Zeldin,

Administrator.

[FR Doc. 2026–23383 Filed 11–16–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 21–341; FCC 23–95; FR ID 377626]

Protecting Consumers From SIM-Swap and Port-Out Fraud

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective and compliance dates.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's rules adopted in the *SIM Swap and Port-Out Fraud Order,* FCC 23–95. This document is consistent with that *Order,* which stated that the revised rules would not become effective until OMB completed its review of any information collection requirements under the Paperwork Reduction Act and that the Bureau would announce the compliance date for the revised rules by subsequent Public Notice and cause the Commission's rules to be revised accordingly.

DATES:

Effective date: Amendatory instruction 6 (47 CFR 64.2010(h)(2) through (6) and (8)), published at 88 FR 85794, December 8, 2023, is effective on November 17, 2026. The amendments in this final rule are effective November 17, 2026.

Compliance date: Compliance with the amendments to 47 CFR 64.2010(h), published at 88 FR 85794, December 8, 2023, for covered providers is required as of December 17, 2026.

ADDRESSES: Federal Communications Commission, 45 L Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information, contact Melissa Kirkel, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7958 or *Melissa.Kirkel@fcc.gov.*

SUPPLEMENTARY INFORMATION: On January 15, 2025, OMB approved the information collection requirements relating to Customer Proprietary Network Information (CPNI) contained in the Commission's *SIM Swap and Port-Out Fraud Report and Order,* FCC 23–95, published at 88 FR 85794, December 8, 2023. The OMB Control Number is 3060–0715. The Bureau publishes this document as an announcement of the effective and compliance dates, respectively, of those rules and to make conforming changes to 47 CFR 64.2010(h)(9) to incorporate this compliance date and eliminate text referring to pending approval of information collection requirements by OMB.

On November 16, 2023, the Commission released the *SIM Swap and Port-Out Fraud Order,* FCC 23–95, published at 88 FR 85794, December 8, 2023, which adopted a baseline framework to combat SIM swap fraud by amending section 64.2010 of the CPNI rules to add paragraph (h) on Subscriber Identity Module (SIM) changes and adds new information collection requirements in paragraphs (h)(2) through (6) and (h)(8) of that rule. The Commission required covered providers to comply with the rules adopted therein within six months after the effective date of the *Order,* or after review of the rules by the Office of Management and Budget (OMB) is completed, whichever is later.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–0715, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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 and Governmental Affairs Bureau at (202) 418–0530 (voice).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on January 15, 2025 for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR 64.2010(h). These actions allow the Wireline Competition Bureau to set the effective dates for these rules and for the conforming changes to 47 CFR 64.2010(h)(9) to establish the compliance date for those revisions. It is therefore modifying the language of 47 CFR 64.2010(h)(9) to incorporate compliance dates and eliminate text referring to pending approval by OMB.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0715.

The foregoing is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13) October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0715.

OMB Approval Date: January 15, 2025.

OMB Expiration Date: January 31, 2028.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information.

Form Number: N/A.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents and Responses: 2,935 respondents; 91,735,800 responses.

Estimated Time per Response: 0.1 hour–140 hours (on average).

Frequency of Response: On occasion, annual, and one-time reporting requirements; recordkeeping; and third party disclosure requirements.

Obligation to Respond: Mandatory. Statutory authority for these collections are contained in Sections 201 and 222 of the Communications Act of 1934, as amended, 47 U.S.C. 201, 222.

Total Annual Burden: 317,534 hours.

Total Annual Cost: $15,000,000.

Needs and Uses: Section 222 of the Communications Act of 1934, as amended, 47 U.S.C. 222, establishes the duty of telecommunications carriers to protect the confidentiality of its customers' proprietary information. This proprietary information (CPNI) includes personally identifiable information derived from a customer's relationship with a provider of telecommunications services. This information collection implements the statutory obligations of Section 222. These regulations impose safeguards to protect Customer Proprietary Network Information (CPNI) and other customer proprietary information against unauthorized access and disclosure.

On November 16, 2023, the FCC released the *SIM Swap and Port-Out Fraud Order* (88 FR 85794 (December 8, 2023)), which adopted a baseline framework to combat SIM swap fraud by amending section 64.2010 of the CPNI rules to add paragraph (h) on Subscriber Identity Module (SIM) changes and adds new information collection requirements in paragraphs (h)(2) through (6) and (h)(8) of that rule. A SIM swap involves the fraudulent transfer (or ''swap'') of an account from a device associated with one SIM to a device associated with a different SIM, allowing a bad actor to control the victim's mobile account and access the victim's CPNI. The new rules establish a uniform framework that gives wireless providers flexibility to implement customer authentication and security methods to address SIM swap fraud. The *SIM Swap and Port-Out Fraud Order* modifies the existing CPNI collection requirements to require wireless providers to: (1) adopt processes for responding to failed authentication attempts in connection with a SIM change request; (2) immediately notify customers of any requests for a SIM change associated with the customer's account before the SIM change is completed; (3) offer all customers, at no cost, the option to lock or freeze their account to stop SIM change requests; (4) provide customers with advance notice of any account protection measures offered; (5) maintain a clear process for customers to report SIM fraud, promptly investigate and remediate fraud, and promptly provide customers with documentation of fraud involving their accounts; and (6) track and maintain for three years a record of SIM change requests and authentication measures used.

List of Subjects in 47 CFR Part 64

Communications, Communications common carriers, Privacy, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227a, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 301, 303, 316, 345, 403(b)(2)(B), (c), 609 note, 616, 620, 716, 1401–1473, unless otherwise noted; Div. P, sec. 503, Pub. L. 115–141, 132 Stat. 348, 1091.

■ 2. Amend § 64.2010 by revising paragraph (h)(9) to read as follows:

§ 64.2010 Safeguards on the disclosure of customer proprietary network information.

* * * * *

(h) * * *

(9) *Compliance.* Compliance with this paragraph (h) is required by December 17, 2026.

[FR Doc. 2026–23400 Filed 11–16–26; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 261112–0006]

RIN 0648–BO18

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

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

ACTION: Final rule; notice of issuance of letter of authorization.

SUMMARY: NMFS, upon request from the Washington State Parks and Recreation Commission (State Parks), issues this

final rule and associated 5-year letter of authorization (LOA) pursuant to the Marine Mammal Protection Act (MMPA) to govern the taking of marine mammals incidental to construction activities conducted in support of the Marine Facilities Replacement Program (MFRP) in North Puget Sound in Western Washington (WA) over the course of 5 years. This final rule prescribes permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat and establishes requirements for monitoring and reporting such taking.

DATES: Effective from November 17, 2026 through November 17, 2031.

ADDRESSES: Electronic copies of the LOA, application, supporting documents, and a list of the references cited in this document may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-washington-state-parks-and-recreation-commissions-marine.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Krista Graham, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the take of marine mammals, with certain exceptions. Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated and an LOA is issued or an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). If such findings are made, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (collectively referred to as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of applicable MMPA statutory terms are provided directly below or included in the relevant sections of this rule.

- *U.S. citizen*—individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13); (50 CFR 216.103);
- *Take*—to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal (16 U.S.C. 1362(13));
- *Incidental harassment, incidental taking, and incidental, but not intentional, taking*—an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable, or accidental (50 CFR 216.103);
- *Level A harassment*—any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild (16 U.S.C. 1362(18); 50 CFR 216.3); and
- *Level B harassment*—any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (16 U.S.C. 1362(18); 50 CFR 216.3).

Purpose of Regulatory Action

NMFS received an application from State Parks requesting 5-year regulations and an LOA issued thereunder to take 10 species of marine mammals, comprising 10 stocks of marine mammals, by Level A harassment and Level B harassment incidental to the State Parks' MFRP activities. No serious injury or mortality is anticipated or authorized. Please see Background for definitions of harassment.

These regulations, promulgated under the authority of the MMPA (16 U.S.C. 1361 *et seq.*), provide a framework for authorizing the take of marine mammals incidental to construction activities associated with the MFRP project, including vibratory, impact, and rock drilling pile driving. These regulations include mitigation, monitoring, and reporting requirements. These requirements, proposed by State Parks, are expected to minimize the number and/or intensity of marine mammal take incidents, provide information to better understand the impacts of the action, and document compliance. State Parks has agreed that all the mitigation measures are practicable. As required by the MMPA, NMFS concurred that these measures are sufficient to achieve the least practicable adverse impact on the affected marine mammal species or stocks and their habitat.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and promulgates regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule, which contains 5-year regulations.

Summary of Major Provisions Within the Rule

The following is a summary of the major provisions of this rule regarding State Parks' MFRP activities. These measures include:

- Prescribing permissible methods of taking small numbers of marine mammals by Level A harassment and/or Level B harassment incidental to the MFRP project;
- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Establishment of shutdown zones;
- Bubble curtains required for impact driving of steel piles;
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power; and
- Submittal of monitoring reports, including a summary of marine mammal species and behavioral observations, construction shutdowns or delays, and construction work completed.

Through adaptive management, the regulations allow NMFS' Office of Protected Resources to modify (*e.g.,* remove, revise, or add to) the existing mitigation, monitoring, or reporting measures summarized above and required by the LOA.

Summary of Request

On April 30, 2025, NMFS received an application from State Parks requesting authorization to take marine mammals incidental to the MFRP (*e.g.,* for the repair and improvement of six marine facilities in four State Parks within North Puget Sound, WA). Following NMFS' review of the application, State Parks submitted a revised application on July 25, 2025. Following additional communication with the applicant, NMFS was notified that State Parks was substantially modifying its application. State Parks submitted a revised application on March 23, 2026, that we deemed adequate and complete on March 24, 2026.

On March 30, 2026, NMFS published a notice of receipt of application in the **Federal Register** (91 FR 15597), requesting comments and information during a 30-day public comment period related to State Parks' request. No comments were received.

On August 11, 2026, NMFS published a proposed rule and request for comments in the **Federal Register** (91 FR 51884), which was open through September 10, 2026. A summary of public comments received is described in the Comments and Responses section of this final rule; full public comments may be viewed at *https://www.regulations.gov/docket/NOAA-NMFS-2026-1255.*

Description of the Specified Activities

Overview

The State Parks' MFRP project will remove, replace, and improve six marine facilities at four State Parks in North Puget Sound, WA. This includes Reid and Prevost Harbors at Stuart Island Marine State Park (MSP), Fossil Bay at Sucia Island MSP, Bowman Bay and Rosario Pier at Deception Pass State Park, and Olga Pier at Olga State Park. These improvements will make the facilities more accessible to visitors while minimizing environmental impacts. In-water construction activities include removing and/or replacing degraded and unsafe timber piles, piers, ramps, and float assemblages. Replaced facilities will include galvanized steel piles and added aluminum components (*e.g.,* platforms, walkways, a gangway, and floats). Construction methods include pile driving (vibratory, impact, rock drilling, and down-the-hole (DTH) drilling) and pile removal (pulling with a crane or, potentially, a vibratory extractor). Of these activities, only pile removal and installation are anticipated to result in take by Level A harassment or Level B harassment due to elevated underwater noise.

Dates and Duration

State Parks anticipates that in-water construction activities associated with the MFRP project will occur at each location within the annual in-water work windows established by the Washington Department of Fish and Wildlife to protect various fish species. Activities are planned to occur at Reid Harbor and Bowman Bay beginning in fall 2026 (upon LOA issuance) through February 15, 2027 (Year 1); at Prevost Harbor and Fossil Bay sometime between September 1, 2027, and February 15, 2028 (Year 2); at Rosario Pier sometime between August 1, 2028, and February 15, 2030 (Years 3 or 4); and finally, at Olga Pier sometime between September 1, 2030, and February 15, 2031 (Year 5) (table 1). In-water construction delays may occur due to several factors, including project funding, permitting requirements, equipment and/or material availability, weather-related delays, equipment maintenance and/or repair, and other contingencies.

TABLE 1—SUMMARY OF ESTIMATED DATES, DURATION, AND RELEVANT SEASONAL ISSUES FOR PROJECTS WITHIN THE MFRP

Project	In-water work window	Projected year of in-water construction	Project duration of in-water construction [1]	Important seasonal issues
Stuart Island MSP				
Reid Harbor	Sept 1–Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	None.
Prevost Harbor	Sept 1–Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None.
Sucia Island MSP				
Fossil Bay	Sept 1–Feb 15	LOA Year 2 (2027–2028)	Up to 30 days	None.
Deception Pass State Park				
Bowman Bay	Sept 1–Feb 15	LOA Year 1 (2026–2027)	Up to 30 days	—Northern elephant seal pupping—Jan–Feb. —Northern elephant seal haul-out (single animals)—Jan–June.
Rosario Pier	Aug 1–Feb 15	LOA Years 3 or 4 (2028–2030) [2].	Up to 10 days	—Northern elephant seal pupping—Jan–Feb. —Northern elephant seal haul-out (single animals)—Jan–June.
Olga State Park				
Olga Pier	Sept 1–Feb 15	LOA Year 5 (2030–2031)	Up to 30 days	None.

[1] The project dates and duration reflect the total estimated duration of the in-water work portions of the project (*e.g.,* in addition to pile driving or removal, in-water work may include moving equipment around the site, floating in new floats, or direct pulling of piles with a crane).
[2] Because the timing of construction is uncertain, estimated exposures would occur either during Year 3 or Year 4.

Specific Geographical Region

The MFRP activities are in bays and harbors around North Puget Sound, specifically in Reid Harbor and Prevost Harbor in Stuart Island MSP, Fossil Bay in Sucia Island MSP, Bowman Bay and Rosario Pier in Deception Pass State Park, and Olga Pier in Olga State Park. These four state parks are located within

a group of islands known as the San Juan Islands and Deception Pass in San Juan, Skagit, and Island Counties in Western Washington (figures 1 and 2).

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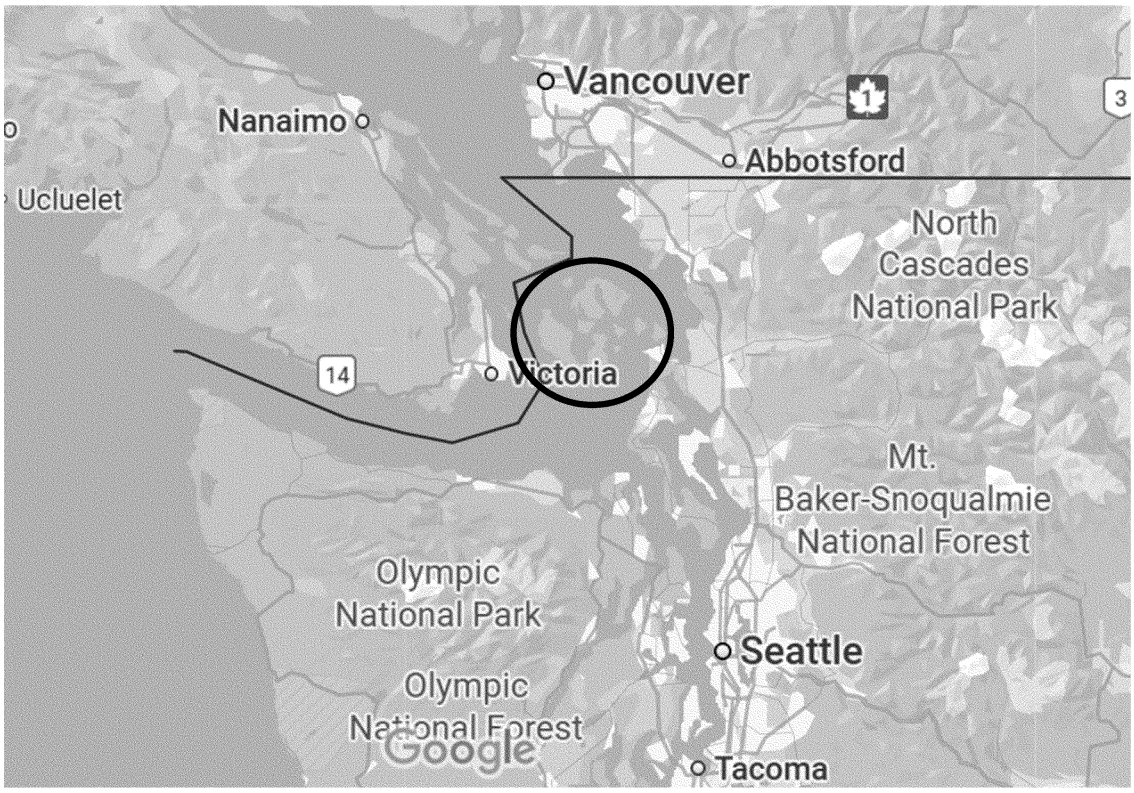


Figure 1 -- MFRP activities in the North Puget Sound, WA, project area are denoted by a circle

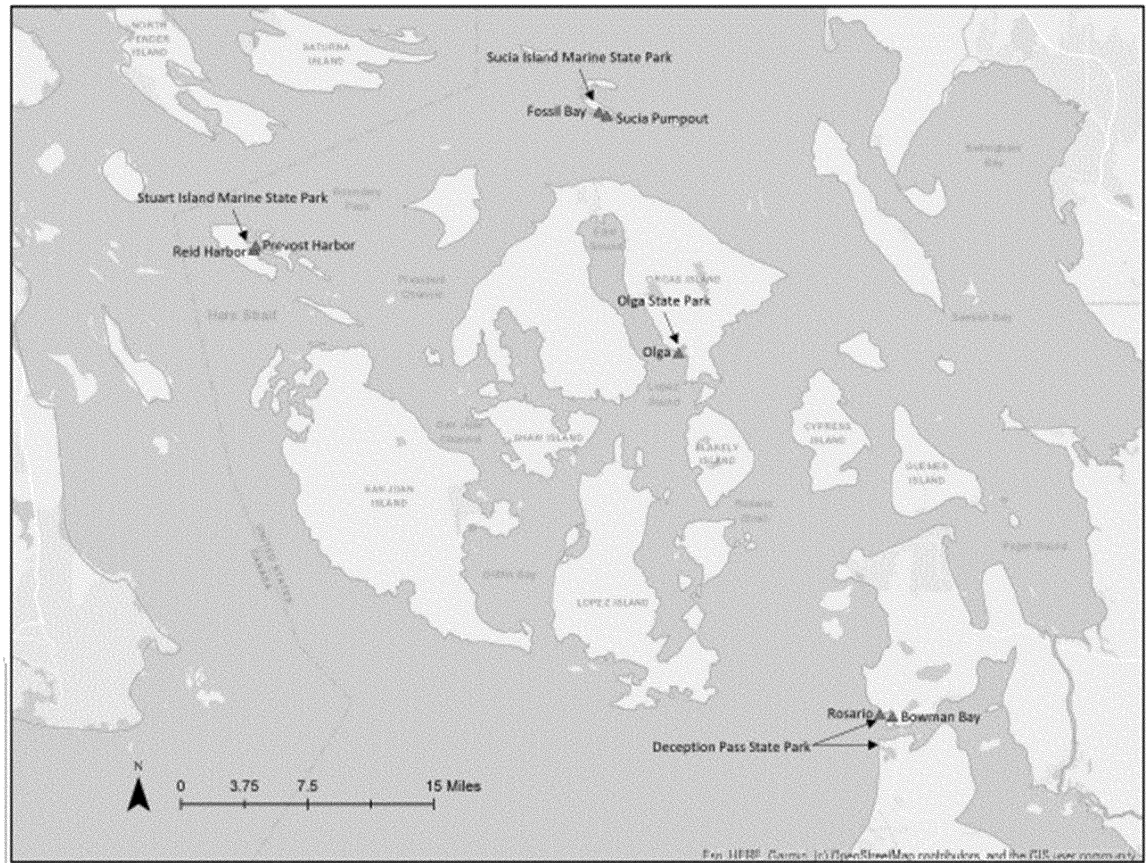


Figure 2 -- Zoomed-in vicinity map of State Parks' project sites in North Puget Sound, WA

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Detailed Description of the Specified Activity

A detailed description of State Parks' planned activities is provided in the proposed rule (91 FR 51884). Since publication of the proposed rule, State Parks has not modified its activities; therefore, we direct the reader to the proposed rule for a detailed description.

Comments and Responses

NMFS published the proposed rule (91 FR 51884) on August 11, 2026, with a 30-day comment period. NMFS received five comments, all from the general public. Some commenters supported physically replacing aging park infrastructure, while others expressed general support for marine mammal conservation. As these comments did not provide information specific to NMFS' proposed action, we do not address them further. Two commenters noted minor inconsistencies, *e.g.,* with the Fossil Bay project schedule and the number of species for which take would be authorized; we have corrected these inconsistencies in this final rule. Relevant comments and NMFS' responses are provided below.

Comment 1: Two commenters expressed concern about the increase in authorized take by Level A harassment relative to calculated exposures for harbor seals and harbor porpoises. In the proposed rule, State Parks' exposure calculations yielded zero exposures exceeding Level A harassment criteria for harbor seals and four exposures exceeding Level A harassment for harbor porpoises, over 5 years. Yet State Parks requested, and NMFS proposed, authorizing Level A harassment takes of 20 for harbor seals and 25 for harbor porpoises.

Response 1: The MMPA ITA process necessitates estimating the number of takes, by species or stock, that are likely to occur because of a specified activity. As with most models or estimates of biological outcomes, the result is a well-informed approximation, and we considered the best available information to further inform our analyses and findings. While we did not use a specific quantitative formula or upper-limit constraint when deciding whether and how to refine the number of takes (*i.e.,* from 0 to 20 Level A harassment takes for harbor seals and from 4 to 25 Level A harassment takes for harbor porpoises), we did consider qualitative factors such as group size of harbor seals (1–500 at haul outs (Jefferies *et al.,* 2000)) and harbor porpoises (1.9; Suryan and Harvey, 2012), their low profile and detectability, historical sightings data, and seasonal patterns. We also considered other information, such as the applicant's site-specific knowledge of species in the project area. For the State Parks' MFRP project, these biological factors led us to slightly increase the proposed authorized Level A harassment takes for both harbor seals and harbor porpoises. The commenter does not provide information supporting a position that the authorized takes are not likely to occur.

Comment 2: Two commenters noted that State Parks proposed, and NMFS concurred, in excluding humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalis*), and Southern Resident killer whales (SRKW) (*Orcinus orca*) from take authorization

because they are highly conspicuous and trackable through the Orca Network, a volunteer public sightings forum. The rule separately directs Protected Species Observers (PSOs) to contact that same Orca Network before pile-driving activities begin for daily updates on killer whale and large-cetacean sightings. The commenters suggest that, because the volunteer resource underlies both the exclusion determination for an Endangered Species Act (ESA)-listed stock and the day-to-day operational monitoring protocol, NMFS should formalize standard, agency-enforced backup protocols if Orca Network activity degrades or ceases.

Response 2: While the mitigation requirements direct PSOs to contact the Orca Network by phone or via social media (*e.g.,* its Facebook page) before any pile-driving activities to receive a daily update on killer whale and large cetacean sightings, as the commenters noted, it was not the sole reason for excluding take for these species. We also considered their frequency and their likelihood of occurrence in the project area. We also considered the site-specific density and nearby survey information reported by the U.S. Navy (U.S. Department of the Navy, 2019). Based on the best available information and the mitigation and monitoring that will be implemented, incidental take is unlikely for these species, especially with mitigation. Moreover, this real-time sighting network has been available since 2001, and we do not anticipate a lack of real-time sighting reports.

Comment 3: One commenter stated that a 5-year multi-site industrial pile-driving program across six island locations in North Puget Sound creates extraordinary circumstances, meaning the action has the potential for significant environmental effects, including impacts on sensitive species and cumulative environmental effects, and NMFS must, therefore, prepare an environmental assessment (EA) or environmental impact statement to evaluate regional acoustic footprints.

Response 3: Where, as here, NMFS finds that its action falls within an established categorical exclusion, we must also evaluate whether extraordinary circumstances have the potential to create circumstances in which a normally excluded action would have significant environmental effects. That evaluation is limited to the decision NMFS is responsible for, which is the issuance of an ITA (NMFS' action). While the underlying action (*i.e.,* removing derelict wooden piles, piers, and docks and replacing them with steel and aluminum structures) may have environmental effects such as increased turbidity, sedimentation, and sound, the potential effects of NMFS' action are limited to those that would result from authorizing incidental take of marine mammals. NMFS prepared numerous EAs analyzing the environmental impacts of the categories of activities encompassed by Categorical Exclusion B4, resulting in Findings of No Significant Impact. These EAs showed that issuing an ITA for these categories of activities (*i.e.,* routine in-water construction) did not result in significant impacts on the human or physical environment, as NMFS' action affects only the marine mammals subject to the ITA. These EAs demonstrate that issuing ITAs for the categories of activities encompassed by CE B4 does not significantly affect the human or physical environment. Moreover, these routine construction projects will remove small-scale, decrepit floating timber moorage facilities and replace them with small-scale steel and aluminum components, allowing for safer moorage of vessels. Additionally, the mitigation measures implemented will provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance. That is, the mitigation measures in this final rule include soft starts to notify species of impending louder sounds, and bubble curtain use during impact pile driving to dampen sound, as well as standard shutdown zones to avoid physical interaction of marine mammals and construction equipment. Therefore, NMFS has determined that the construction activities at issue in this final rule do not meet the definition of extraordinary circumstances, meaning the action does not have the potential for significant environmental effects.

Comment 4: One commenter requested that NMFS consult under ESA section 7 to specifically evaluate the indirect acoustic impacts on Chinook salmon (*Oncorhynchus tshawytscha*) prey availability for SRKWs.

Response 4: As discussed in the proposed rule as well as in response to Comment 2, no incidental take of ESA-listed species was proposed for authorization or expected to result from the proposed MFRP projects, nor will the proposed action destroy or adversely modify any designated critical habitat. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action. Additionally, any potential effects on prey are expected to be short-term and not likely to cause significant or long-term effects on individuals or adversely affect their populations.

Changes From the Proposed Rule to Final Rule

This final rule includes minor changes from the proposed rule. First, in determining the Level A harassment zones and ensonified areas for rock drilling, we misinterpreted the applicant's request and the results of Dazey *et al.* (2012). The application used a maximum rock drilling source level of 183 decibels (dB) root-mean-square (rms) at 1 meter (m). This source level equates to 168 dBrms at 10 m (based on 15logR). Additionally, a weighting factor adjustment of 2 instead of 2.5 is appropriate, and we adopt in this final rule NMFS' recommendations (NMFS, 2022) related to DTH, *i.e.,* sound exposure level of a single strike (SELss) of 146 dB and a strike rate of 13 strikes per minute (standard for 18-inch piles). Therefore, we slightly adjust the calculated Level A harassment zones and ensonified areas for rock drilling for each marine mammal hearing group. The Level B harassment zone for rock drilling, however, remains unchanged for all hearing groups.

Second, we correct a minor transcription error for the number of takes of minke and gray whales. In the proposed rule, NMFS calculated six total Level B harassment exposures for minke whales (distributed as zero, two, zero, and four Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). This final rule authorizes six total Level B harassment takes of minke whales across all 5 years (again, distributed as zero, two, zero, and four Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). For gray whales, in the proposed rule NMFS calculated five total Level B harassment exposures (distributed as zero, two, zero, and three Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively). This final rule authorizes five total Level B harassment takes of gray whales across all 5 years (again, distributed as zero, two, zero, and three Level B harassment exposures across Year 1, Year 2, Years 3 or 4, and Year 5, respectively) (see the Estimated Take of Marine Mammals section).

Description of Marine Mammals in the Area of Specified Activities

Ten species of marine mammals, comprising 10 stocks, may be taken by harassment incidental to State Parks' specified activities. A complete description of the marine mammals'

status and trends, life history, habitat uses, and threats is included in State Parks' application and NMFS' proposed rule (91 FR 51884). NMFS is not aware of any new relevant information since publication of the proposed rule. Please refer to the proposed rule for detailed descriptions of marine mammals in the project area.

Table 2 lists all species or stocks for which take is expected and has been authorized by NMFS for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' stock assessment reports). All values presented in table 2 are the most recent available at the time of publication (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES WITH ESTIMATED TAKE FROM THE SPECIFIED ACTIVITIES

Common name [1]	Scientific name	MMPA stock	ESA/ MMPA status; Strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae: (rorquals)						
Minke whale	*Balaenoptera acutorostrata*.	CA/OR/WA	-,-,N	915 (0.792, 509, 2018)	4.1	≥0.19
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-,-,N	25,960 (0.05, 25,849, 2016).	801	131
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Orca or killer whale	*Orcinus orca*	West Coast Transient	-,-,N	[5] 349 (N/A, 349, 2018)	3.5	0.4
Pacific white-sided dolphin.	*Aethalodelphis obliquidens*.	CA/OR/WA	-,-,N	34,999 (0.222, 29,090, 2018).	279	7
Family Phocoenidae (porpoises):						
Dall's porpoise	*Phocoenoides dalli*	CA/OR/WA	-,-,N	16,498 (0.61, 10,286, 2018).	99	≥0.66
Harbor porpoise	*Phocoena phocoena*	WA Inland Waters	-,-,N	11,233 (0.37, 8,308, 2015).	66	≥7.2
Order Carnivora—Pinnipedia						
Family Phocidae (earless seals):						
Northern elephant seal.	*Mirounga angustirostris*.	California Breeding	-,-,N	194,907 (N/A, 88,794, 2023).	5,328	11.2
Harbor seal	*Phoca vitulina*	WA Northern Inland Waters.	-,-,N	[6] 15,898	UND	9.8
Family Otariidae (eared seals and sea lions):						
Steller sea lion	*Eumetopias jubatus*	Eastern U.S.	-,-,N	[7] 36,308 (N/A, 36,308, 2022).	2,178	92.3
California sea lion	*Zalophus californianus*	U.S.	-,-,N	257,606 (N/A, 233,515, 2014).	14,011	>321

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] Endangered Species Act (ESA) status: Endangered (E), Threatened (T); MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is the coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, a CV is not applicable. N/A indicates data are unknown. UND (undetermined) PBR indicates that data are available to calculate a PBR level, but a determination has been made that calculating a PBR level using those data is inappropriate (see the SAR for details).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strikes). Annual mortality and serious injury (M/SI) is often not precisely determined and is sometimes presented as a minimum value or range.

[5] N_{est} is based on the count of individuals identified from photo-ID catalogs in the analysis of a subset of data from 1958 to 2018.

[6] Abundance estimates are greater than 8 years old, so stock abundance is considered unknown in the most recent SAR. However, Pearson *et al.* (2024) report the peak abundance estimate as 15,898.

[7] Nest is the best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from the State Parks' construction activities have the potential to result in harassment of marine mammals in North Puget Sound, WA. We refer to the proposed rule (91 FR 51884) for a full discussion of the effects of anthropogenic noise on marine mammals in general and the potential effects of the specified activities on marine mammals and their habitat. There is no newly available relevant information that would change our analysis or the results thereof.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes that may be authorized under this final rule, which will inform both NMFS' consideration of small numbers and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA (16 U.S.C. 1362(18)) defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily occur through Level B harassment, as acoustic sources (*i.e.,* pile-driving activities) can potentially disrupt behavioral patterns in individual marine mammals. There is also some potential for auditory injury (AUD INJ; Level A harassment) to occur for two species—the harbor porpoise and the harbor seal. The required mitigation and monitoring measures are expected to minimize the potential for take and, if take were to occur, the severity of the taking to the extent practicable. As previously described, no mortality or serious injury is anticipated or authorized for these MFRP projects.

This final rule incorporates the harassment thresholds used in the proposed rule to estimate the manner and number of takes analyzed in this final rule and LOA. In summary, State Parks' proposed activity includes the use of continuous (vibratory pile driving and extraction, rock drilling) and impulsive (impact pile driving, DTH drilling) sources, and therefore the SPLrms thresholds of 120 and 160 dB re 1 µPa are applicable. NMFS also applied the Updated Acoustic Technical Guidance (NMFS, 2024) to determine the potential for Level A harassment, as described in the proposed rule. Additionally, this final rule includes the updated calculated Level A harassment and Level B harassment isopleths and ensonified areas (table 3).

TABLE 3—UPDATED CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS (m) AND ENSONIFIED AREAS (km^2)

Pile size/type	Level A harassment zone (m/km^2)					Level B harassment zone (m/km^2) (all hearing groups)
	LFC	HFC	VHFC	Phocids	Otariids	
Reid Harbor						
Vib removal 14″ timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.79]
Vib install 16″ steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [1.39]
Impact 16″ steel	191 [0.06]	24 [0.00]	295 [0.15]	169 [0.05]	63 [0.01]	48 [0.01]
Rock drilling (max) 16″ steel[a]	177 {108} [0.03]	23 {42} [0.01]	271 {88} [0.02]	157 {139} [0.04]	58 {47} [0.00]	15,849 [2.53]
Prevost Harbor						
Vib removal 14″ timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.89]
Vib install 16″ steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [3.79]
Impact 16″ steel	191 [0.07]	24 [0.00]	295 [0.14]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16″ steel[a]	177 {108} [0.03]	23 {42} [0.01]	271 {88} [0.02]	157 {139} [0.04]	58 {47} [0.00]	15,849 [4.85]
Fossil Bay						
Vib removal 16″ timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [0.71]
Vib install 16″ steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [9.58]
Impact 16″ steel	191 [0.09]	24 [0.00]	295 [0.15]	169 [0.07]	63 [0.01]	48 [0.01]
Rock drilling (max) 16″ steel[a]	177 {108} [0.03]	23 {42} [0.01]	271 {88} [0.02]	157 {139} [0.04]	58 {47} [0.00]	15,849 [4.85]
Olga Pier						
Vib removal 16″ timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [2.46]
Vib install 16″ steel	36 [0.00]	14 [0.00]	29 [0.00]	46 [0.01]	15 [0.00]	6,310 [21.24]
Impact 16″ steel	191 [0.08]	24 [0.00]	295 [0.16]	169 [0.06]	63 [0.01]	48 [0.01]
Rock drilling (max) 16″ steel[a]	177 {108} [0.03]	23 {42} [0.01]	271 {88} [0.02]	157 {139} [0.04]	58 {47} [0.00]	15,849 [4.85]

TABLE 3—UPDATED CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS (m) AND ENSONIFIED AREAS (km²)—Continued

Pile size/type	Level A harassment zone (m/km²)					Level B harassment zone (m/km²) (all hearing groups)
	LFC	HFC	VHFC	Phocids	Otariids	
Bowman Bay						
Vib removal 12″ (18″ proxy) timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.06]
Rosario Pier						
Vib removal 14″ timber	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	10 [0.00]	1,585 [1.36]

Note: For all Level A harassment isopleths <10 m, a 10 m physical interaction radius has been applied. Standard rounding has been applied. The ensonified area (km²) is in brackets.

a—Updated Level A harassment zones in bold, with the original Level A harassment zone distance from the proposed rule in curly braces.

Take Estimation

The proposed rule (91 FR 51884) included a detailed description of the methodology State Parks used to estimate exposures from the specified activities. We summarize that information here.

The number of marine mammals that may be exposed to noise exceeding harassment thresholds was determined by calculating the ensonified area for each source, pile type, and pile size within each marine mammal hearing group at each of the six project locations.

The potential for Level A harassment and Level B harassment exposures was calculated by using the following equation:

Exposure estimate = density × ensonified area (km²) × days of pile removal/installation (per activity and at each location)

Standard rounding was applied at the end to all calculations.

As shown in table 4, State Parks calculated exposure estimates for Level A harassment and Level B harassment for all 10 species for each year of the MFRP, and NMFS agrees with these estimates. Not all animals passing through any of the six project areas are expected to be exposed to noise levels equivalent to Level A harassment or Level B harassment. When considering species density within the San Juan Islands and Deception Pass, multiplied by the Level A harassment ensonified area, and further multiplied by the number of in-water days for each potential pile driving or removal activity at each site, the calculated Level A harassment exposures were determined to be zero for all species except the harbor porpoise (four Level A harassment exposures calculated across all 5 years), which has the highest density of any species that are likely to occur in any of the project areas. Level B harassment exposures were similarly calculated for all 10 species and are included in table 4.

TABLE 4—CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT EXPOSURE ESTIMATES BY SPECIES AND BY YEAR

Common name	Stock	Calculated Level A harassment exposures					Calculated Level B harassment exposures				
		Yr 1	Yr 2	Yrs 3 or 4 [1]	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4 [1]	Yr 5	Total
Minke whale	Eastern N Pacific	0	0	0	0	0	0	2	0	4	6
Gray whale	Eastern N Pacific	0	0	0	0	0	0	2	0	3	5
Killer whale	Transient	0	0	0	0	0	0	1	0	1	2
Pacific white-sided dolphin	CA/OR/WA	0	0	0	0	0	4	29	0	33	66
Dall's porpoise	CA/OR/WA	0	0	0	0	0	3	21	0	25	49
Harbor porpoise	WA Inland Waters	1	2	0	1	4	79	525	6	620	1,230
Northern elephant seal	California Breeding	0	0	0	0	0	0	1	0	1	2
Harbor seal	WA Northern Inland Waters	0	0	0	0	0	29	187	3	219	438
Steller sea lion	Eastern U.S.	0	0	0	0	0	0	0	0	1	1
California sea lion	U.S.	0	0	0	0	0	0	6	0	8	14

[1] Because the timing of construction is uncertain, estimated exposures would occur either during Years 3 or 4 of the project.

Using the calculated Level A harassment and Level B harassment exposure estimates as a basis (table 4), State Parks then considered animal size, species frequency, and likelihood of occurrence in the project areas and the monitoring zones for each project location. Additionally, State Parks considered the proximity of pinniped haulouts to certain sites, the potential for large group sizes of certain species, and the cryptic nature of both harbor porpoises and harbor seals, which affects their detectability. Based on these factors, State Parks modified its take requests for most species in most MFRP years. For example, State Parks increased its request for Level A harassment takes for harbor porpoises and added a request for Level A harassment takes for harbor seals, although it originally calculated no takes for harbor seals (table 5). State Parks also considered the aforementioned factors and, for all species except minke whales and gray whales, increased its request for Level B harassment takes (table 5).

Based on the best available science, NMFS finds that State Parks' estimates of the types and amounts of take for each species and each project site are a reasonable representation of the amount of take that could occur from the six projects. Table 6 below summarizes the number of authorized takes by Level A

harassment and/or Level B harassment, and the maximum annual authorized takes as a percentage of stock abundance.

TABLE 5—AUTHORIZED INCIDENTAL TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT BY SPECIES AND BY YEAR

Common name	Stock	Level A harassment authorized takes					Level B harassment authorized takes				
		Yr 1	Yr 2	Yrs 3 or 4 [1]	Yr 5	Total	Yr 1	Yr 2	Yrs 3 or 4 [1]	Yr 5	Total
Minke whale	Eastern N Pacific	0	0	0	0	0	0	2	0	4	6
Gray whale	Eastern N Pacific	0	0	0	0	0	0	2	0	3	5
Killer whale	Transient	0	0	0	0	0	0	30	0	30	60
Pacific white-sided dolphin.	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Dall's porpoise	CA/OR/WA	0	0	0	0	0	20	50	0	50	120
Harbor porpoise	WA Inland Waters	5	10	0	10	25	250	550	10	650	1,460
Northern elephant seal.	California Breeding	0	0	0	0	0	20	5	5	5	35
Harbor seal	WA Northern Inland Waters.	5	10	0	5	20	150	250	10	300	710
Steller sea lion	Eastern U.S	0	0	0	0	0	0	0	0	10	10
California sea lion	U.S	0	0	0	0	0	10	10	0	15	35

[1] Because the timing of construction is uncertain, estimated exposures would occur either during Years 3 or 4 of the project.

TABLE 6—TOTAL AUTHORIZED INCIDENTAL TAKES BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT FOR THE 5-YEAR EFFECTIVE PERIOD OF THIS LOA, AND AS A MAXIMUM ANNUAL PERCENTAGE OF STOCK ABUNDANCE

Species	Stock	Total Level A harassment takes	Total Level B harassment takes	Total Level A + Level B harassment takes	Maximum annual percent of stock abundance
Minke whale	Eastern N Pacific	0	6	6	0.00
Gray whale	Eastern N Pacific	0	5	5	0.00
Killer whale	Transient	0	60	60	0.09
Pacific white-sided dolphin	CA/OR/WA	0	120	120	0.00
Dall's porpoise	CA/OR/WA	0	120	120	0.00
Harbor porpoise	WA Inland Waters	25	1,460	1,485	0.06
Northern elephant seal	California Breeding	0	35	35	0.00
Harbor seal	WA Northern Inland Waters	20	710	730	0.02
Steller sea lion	Eastern U.S	0	10	10	0.00
California sea lion	U.S	0	35	35	0.00

Mitigation

In order to promulgate a rulemaking under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (the latter is not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and the manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts on marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure would be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

This final rule incorporates all mitigation measures contained within the proposed rule without change. We refer the reader to the proposed rule (91 FR 51884) on those measures and the expected benefit to marine mammals. In summary, the mitigation measures in this final rule include soft starts and bubble curtain use during impact pile driving, as well as standard shutdown zones to avoid physical interaction of marine mammals and construction equipment. State Parks will use NMFS-approved PSOs during all activities that have the potential to result in take. As fully described in the proposed rule, NMFS has determined that the mitigation measures proposed by State Parks and contained within this final rule result in the least practicable adverse impact on marine mammals.

Establishment of Shutdown Zones

State Parks will establish shutdown zones with radial distances as identified in table 7 for all in-water construction activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area) to minimize potential instances of AUD INJ and more severe behavioral disturbances by delaying the start of an activity if marine mammals are near the activity.

If a marine mammal is observed entering or within the shutdown zones indicated in table 7, pile driving activity must be delayed or halted. If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left the area and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

Pile-driving supervisors and crews, PSOs, and relevant State Parks staff must avoid direct physical interaction with marine mammals during construction activities. If a marine mammal comes within 10 m of such activity, operations must cease, and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

Based on the revised NMFS User Spreadsheet inputs (see Changes from the Proposed Rule to Final Rule), table 7 lists the updated shutdown zones and Level B harassment zones (denoted in bold and in the footnote) as follows:

TABLE 7—UPDATED SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Site, activity, pile size/type	Minimum shutdown zones (m)					Level B harassment zones (m) (all hearing groups)
	LFC Minke, Gray	HFC Transient, PWSD	VHFC Dall's, Harbor porpoise	PW NOES, Harbor seal	OW Steller, CASL	
Reid Harbor						
Vib removal 12″–16″ timber	10	10	10	10	10	1,590
Vib install 16″, 18″ steel	40	20	30	50	20	6,310
Impact 16″, 18″ steel	200	30	300	170	70	50
Rock drilling (max) 16″, 18″ steel[a]	180	30	280	160	60	15,850
Prevost Harbor						
Vib removal 12″–16″ timber	10	10	10	10	10	1,590
Vib install 16″, 18″ steel	40	20	30	50	20	6,310
Impact 16″, 18″ steel	200	30	300	170	70	50
Rock drilling (max) 16″, 18″ steel[a]	180	30	280	160	60	15,850
Fossil Bay						
Vib removal 12″–16″ timber	10	10	10	10	10	1,590
Vib install 16″, 18″ steel	40	20	30	50	20	6,310
Impact 16″, 18″ steel	200	30	300	170	70	50
Rock drilling (max) 16″, 18″ steel[a]	180	30	280	160	60	15,850
Olga Pier						
Vib removal 12″–16″ timber	10	10	10	10	10	1,590
Vib install 16″, 18″ steel	40	20	30	50	20	6,310
Impact 16″, 18″ steel	200	30	300	170	70	50
Rock drilling (max) 16″, 18″ steel[a]	180	30	280	160	60	15,850
Bowman Bay						
Vib removal 12″ timber	10	10	10	10	10	1,590
Rosario Pier						
Vib removal 14″ timber	10	10	10	10	10	1,590

Note: LFC = low-frequency cetacean; HFC = high-frequency cetacean; VHFC = very high-frequency cetacean; PW = phocid (in-water); OW = otariid (in-water); Transient = Transient killer whale; PWSD = Pacific white-sided dolphin; NOES = Northern elephant seal; CASL = California sea lion.

a—Updated shutdown zones in bold. (No changes from the proposed rule have been made to Level B harassment zones.)

Pre- and Post-Activity Marine Mammal Monitoring

State Parks will employ PSOs and establish monitoring locations as described in the Monitoring Plans and LOA. Monitoring of pile-driving activities (conducted only during daylight hours) will take place from 30 minutes prior to the initiation of pile-driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile-driving activity. Additionally, monitoring will be conducted for 30 minutes whenever a break in the specified activity (*i.e.,* vibratory pile driving/removal, impact pile driving, rock drilling, or DTH drilling) occurs for 30 minutes or longer. Pre-start clearance monitoring will be conducted during periods of sufficient visibility for the lead PSO to determine that the shutdown zones indicated in table 7 are clear of marine mammals.

Soft Start

State Parks will use soft-start techniques when using impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent sets of reduced energy strikes. A soft start will be implemented at the start of each day's impact pile driving and at any time after it ceases for 30 minutes or longer. Soft-start procedures provide additional protection for marine mammals by giving them a warning and/or a chance to leave the area before the hammer operates at full capacity.

Noise Attenuation System

State Parks must use a bubble curtain during impact pile driving. The bubble curtain must be operated as necessary to achieve optimal performance. At a minimum, the bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column; the lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact. In addition, airflow to the bubblers must be balanced around the pile's circumference.

In summary, NMFS has determined that the mitigation measures contained within this final rule will provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) require that requests for authorizations include the suggested means of accomplishing the necessary monitoring and reporting that result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical to both compliance and ensuring the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise), (2) affected species (*e.g.,* life history, dive patterns), (3) co-occurrence of marine mammal species with the activity, or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

State Parks will abide by all monitoring and reporting measures contained within this final rule and LOA and a NMFS-approved Marine Mammal Monitoring and Mitigation Plan (Monitoring Plan). This final rule incorporates all monitoring measures contained within the proposed rule (91 FR 51884), without change. We refer the reader to the proposed rule for details regarding those measures.

In summary, State Parks will use PSOs at least 30 minutes prior to, during, and 30 minutes after all activities that may result in take of marine mammals. Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

- PSOs must be independent from State Parks and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued ITA or letter of concurrence;
- Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to an ITA issued by NMFS;
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to an ITA or Letter of Concurrence issued by NMFS; and
- PSOs must be approved by NMFS prior to beginning any activity subject to the LOA.

State Parks will establish monitoring locations as described in State Parks' Monitoring Plan (see Appendix C of State Parks' application and the monitoring plans for each of the six project locations), in accordance with the following conditions:

- For all pile-driving activities, a minimum of one PSO must be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones;
- Three PSOs must be assigned to each active vibratory pile-driving location;
- Four PSOs must be assigned to each active rock drilling and DTH drilling location;
- PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in any issued LOA; and
- PSOs must contact the Orca Network by phone or via social media (*e.g.,* its Facebook page) before any pile-driving activities to receive a daily update on killer whale and large cetacean sightings.

Reporting

This final rule incorporates all reporting measures contained within the proposed rule (91 FR 51884) without change. State Parks must submit an annual draft summary report on all construction activities and marine mammal monitoring results to NMFS within 90 calendar days following the end of monitoring for all in-water construction, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. The draft comprehensive 5-year summary report must also be submitted to NMFS within 90 calendar days of the end of Year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding

marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

- Dates and times (beginning and end) of all marine mammal monitoring;
- Activities occurring during each daily observation period, including: (a) the number and type of piles that were driven or removed and the method (*i.e.,* impact, vibratory, rock drilling, and DTH drilling) and (b) the total duration of driving time for each pile and/or number of strikes for each pile;
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at the beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions, including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following minimum information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;
- Time of the sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (*e.g.,* adults, juveniles, neonates, group composition);
- Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the estimated harassment zones, by species; and
- Summary information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days after the submission of the draft report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final report addressing NMFS' comments must be submitted within 30 days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

Reporting Injured or Dead Marine Mammals

As described in the proposed rule (91 FR 51884), in the event that personnel involved in State Parks' activities discover an injured or dead marine mammal, State Parks must report the incident to the NMFS Office of Protected Resources and to the NMFS West Coast regional stranding network as soon as feasible. If the specified activity clearly caused the death or injury, State Parks must immediately cease the specified activities until NMFS is able to review the circumstances of the incident. State Parks must not resume their activities until notified by NMFS. The report must include the information contained within the final rule and the LOA:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- Photographs or video footage of the animal(s) (if equipment is available); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual recruitment or survival rates (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information upon which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

As described in the proposed rule (91 FR 51884), several key factors help assess whether potential impacts associated with a specified activity should be considered negligible. These include, but are not limited to, the type and magnitude of taking, the amount and importance of the available habitat for the species or stock that is affected, the duration of the anticipated effect on the species or stock, and the status of the species or stock.

As described in the Changes from the Proposed Rule to Final Rule section and the Mitigation section of this final rule, NMFS identified a minor adjustment to a proxy source level assumption and methodology that resulted in small increases (and one decrease) to the Level A harassment zones and shutdown zones. However, there was no associated change to the proposed amount of take by Level A harassment for any species anticipated to occur incidentally to the specified activities. Given these limited, minor adjustments, NMFS has determined that this new information does not change any of the preliminary analyses, conclusions, or determinations in the proposed rule. Therefore, the preliminary analyses, conclusions, and determinations included in the proposed rule for all species and stocks are considered final. The expected effects of the taking allowed for in this final rule, the primary factors considered, and those findings are described below.

Pile driving associated with State Parks' MFRP, as outlined previously, has the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take in the form of Level B harassment and, for harbor porpoises and harbor seals, Level A harassment, from underwater pile-driving sounds. Potential takes could

occur if marine mammals are present in zones ensonified above the thresholds for Level A harassment or Level B harassment, identified above, during these activities.

No serious injury or mortality is expected over the 5-year LOA period, even without required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for 8 of the 10 marine mammal species due to the rarity of the species near the project area and/or the application of mitigation measures, such as shutdown zones that encompass the Level A harassment zones for these species (see Mitigation section).

Level A harassment takes have been authorized for two species (harbor porpoise and harbor seal) that may occur in the project area. These takes account for the possibility that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for long enough to be taken by Level A harassment. Additionally, in some cases, the authorized Level A harassment takes would account for the possibility that an animal could enter a shutdown zone without detection, given the various obstructions along the shoreline, and remain in the Level A harassment zone long enough to be taken by Level A harassment before being observed and a shutdown occurring. That said, any take by Level A harassment is expected to arise from, at most, a small degree of AUD INJ (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving, not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity). Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here to incur any more than a small degree of AUD INJ.

Additionally, the amount of take authorized by Level A harassment is low. As stated above, for 8 of the 10 marine mammal species, NMFS anticipates no take by Level A harassment over the duration of State Parks' planned activities; NMFS expects no more than 25 takes by Level A harassment for the harbor porpoise and 20 takes by Level A harassment for harbor seals. However, in both species, if hearing impairment occurs, the affected animal is most likely to lose only a few dB in hearing sensitivity. Because the anticipated degree is small, any AUD INJ potentially incurred would not be expected to affect the reproductive success or survival of any individual, much less result in adverse impacts on the species or stock.

Additionally, some individuals that are behaviorally harassed could also simultaneously incur some small degree of temporary threshold shift (TTS) for a short duration of time. However, because the hearing sensitivity of those that incur TTS is expected to fully recover within minutes to hours, the brief hearing impairment is unlikely to affect their long-term ability to forage and communicate with conspecifics. Therefore, it is unlikely to affect the reproduction or survival of any marine mammal nor the recruitment or survival rates of the species or stock.

Effects on individuals taken by Level B harassment in the form of behavioral disruption are expected to be mild, short-term, and temporary. Based on reports in the literature and monitoring of similar activities, effects would likely be limited to reactions such as avoidance, increased swimming speeds, increased surface time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006). Most likely, individuals would move away from the sound source and temporarily avoid the area where pile driving is occurring. We expect that any avoidance of the project areas by marine mammals will be temporary and that any marine mammals that avoid the project areas during construction will not be permanently displaced. Short-term avoidance of the project areas and the energetic impacts of interrupted foraging or other important behaviors are unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals are not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock.

The mitigation measures minimize the potential for harassment. During all impact driving, soft-start procedures and monitoring of established shutdown zones are required, significantly reducing the possibility of injury. Given sufficient notice through soft start (for impact driving), marine mammals are expected to move away from an irritating sound source before it becomes potentially injurious. To reduce in-water noise, vibratory pile driving would be the primary installation method for the project, and impact hammers would be used only to seat pile tips into fractured bedrock ahead of hammering or drilling operations or if the material is too dense to penetrate with a vibratory hammer.

The project is also not expected to have significant adverse effects on affected marine mammal habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause a low level of turbidity in the water column, and some fish may leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected (with no known particular importance to marine mammals), the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

A biologically important area for feeding gray whales overlaps with the project area, but it is active from February to June (Calambokidis *et al.,* 2024) and overlaps only minimally with the planned annual project periods. This indicates that the projects' impact on gray whales would be minimal or nonexistent and therefore would not affect their reproduction or survival.

Finally, minor noise effects in small, localized areas of habitat are unlikely to significantly affect the reproduction or survival of individual animals, let alone the annual recruitment or survival rates of these species or stocks. Taken together, we believe that these factors, along with available evidence from similar activities, indicate that the potential effects of the specified activities would be only minor and short-term for individuals. The specified activities are not expected to impact recruitment or survival rates and therefore will not cause population-level impacts.

In summary, as discussed above, the following factors support our negligible impact determinations that the impacts from these MFRP activities are unlikely to adversely affect any species or stocks through effects on annual recruitment or survival rates:

- No take by mortality or serious injury is anticipated or authorized;
- No take by Level A harassment is anticipated or authorized for 8 of the 10 species;
- Take by Level A harassment for two species is expected to be very small amounts and be of low severity;
- Take by Level B harassment is expected to be primarily in the form of behavioral disturbance, leading to avoidance of the project areas around where pile driving is occurring, with some low-level TTS that may limit the detection of acoustic cues for relatively brief amounts of time in relatively confined footprints affecting their populations;

- There is a lack of anticipated significant or long-term negative effects on marine mammal habitat;
- Effects on species that serve as prey for marine mammals from the activities are expected to be short-term, and, therefore, any associated impacts on marine mammal feeding are not likely to cause significant or long-term effects on individuals or lead to adverse impacts on their populations;
- The ensonified areas are small relative to the overall habitat ranges of all species and stocks and overlap with known areas of important habitat is minimal; and
- State Parks will implement mitigation measures, including soft starts, visual monitoring, bubble curtains, and shutdown zones, to minimize the number of marine mammals exposed to injurious levels of sound.

Based on the analysis contained herein of the likely effects of the specified MFRP activities on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activities will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under section 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers, so, in practice, when estimated numbers are available, NMFS compares the maximum number of individuals taken in any year to the most appropriate abundance estimate for the relevant species or stock to determine whether an authorization is limited to small numbers of marine mammals. When the predicted maximum annual number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers (see 86 FR 5322, January 19, 2021). Additionally, the analysis may consider other qualitative factors, such as the temporal or spatial scale of the activities.

As in the proposed rule, the maximum annual amount of take allowed under the final rule is less than one-third of the population abundance estimates for all stocks (see table 6). The number of animals authorized to be taken is small relative to the relevant species or stock abundances even if each estimated take occurred to a new individual, and even if all take accrued to a single stock.

Because there is no substantive change to the small numbers analysis described in the proposed rule, it is incorporated herein. Based on the analysis contained herein of the MFRP activities (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Adaptive Management

The regulations governing the take of marine mammals incidental to the State Parks' construction activities contain an adaptive management component. The reporting requirements associated with this final rule are designed to provide NMFS with monitoring data from completed projects to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the State Parks regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or LOAs issued pursuant to these regulations.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance when issuing incidental take authorizations, NMFS consults internally whenever we propose to authorize the take of ESA-listed species.

No incidental take of ESA-listed species is authorized or expected to result from the MFRP activities, nor will the action destroy or adversely modify any designated critical habitat. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate the proposed action (*i.e.,* promulgation of regulations and subsequent issuance of a 5-year LOA) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (ITAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that issuance of the final rule and LOA qualifies to be categorically excluded from further NEPA review.

Promulgation

As a result of these determinations, NMFS is promulgating these regulations that (1) allow for take of 10 marine mammal species, comprising 10 stocks, by Level A harassment and/or Level B harassment, incidental to construction activities associated with the State Parks' MFRP project for a 5-year period from the LOA issuance date through September 30, 2031, and (2) prescribe mitigation, monitoring, and reporting measures.

Classification

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Executive Order 14192

This rule is considered an Executive Order 14192 deregulatory action.

Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. State Parks is a state governmental program focused on improving state parks throughout Washington. State Parks is the only entity subject to the requirements in the proposed rule, and State Parks is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA, because it is a department of the state government. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act (PRA)

This final rule contains a collection-of-information requirement subject to the provisions of the PRA. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

List of Subjects in 50 CFR Part 217

Administrative practice and procedure, Endangered and threatened species, Fish, Fisheries, Marine mammals, Reporting and recordkeeping requirements, Wildlife.

Dated: November 12, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, NMFS amends 50 CFR part 217 as follows:

PART 217–REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.,* unless otherwise noted.

■ 2. Add subpart AAA, consisting of §§ 217.520 through 217.528, to read as follows:

Subpart AAA—Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

Sec.

217.520 Specified activity and specified geographical region.
217.521 Effective dates.
217.522 Permissible methods of taking.
217.523 Prohibitions.
217.524 Mitigation requirements.
217.525 Requirements for monitoring and reporting.
217.526 Letters of Authorization.
217.527 Renewals and Modifications of Letters of Authorization.
217.528 [Reserved]

Subpart AAA—Taking Marine Mammals Incidental to the Washington State Parks and Recreation Commission's Marine Facilities Replacement Program in North Puget Sound, Washington

§ 217.520 Specified activity and specified geographical region.

(a) The incidental taking of marine mammals by the Washington State Parks and Recreation Commission's (State Parks) Marine Facilities Replacement Program (MFRP) may be authorized in a letter of authorization (LOA) only if it occurs at or around the specified State parks in North Puget Sound, WA, including Stuart Island Marine State Park, Sucia Island Marine State Park, Deception Pass State Park, and Olga State Park, incidental to the specified activities outlined in paragraph (b) of this section. Requirements imposed on State Parks in this subpart must be implemented by those persons it authorizes or funds to conduct activities on its behalf.

(b) The specified activities are in-water construction activities associated with the MFRP at six marine facilities at four State parks in North Puget Sound, WA.

§ 217.521 Effective dates.

Effective from November 17, 2026 through November 17, 2031.

§ 217.522 Permissible methods of taking.

Under an LOA issued pursuant to § 216.106 of this chapter, State Parks and those persons it authorizes or funds to conduct activities on its behalf may incidentally, but not intentionally, take marine mammals within the specified geographical region by harassment associated with the specified activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the applicable LOA.

§ 217.523 Prohibitions.

(a) Except for the takings permitted in § 217.522 and authorized by an LOA issued under § 216.106 of this chapter, it is unlawful for any person to do any of the following in connection with the specified activities:

(1) Violate or fail to comply with the terms, conditions, and requirements of this subpart or an LOA issued under this subpart;

(2) Take any marine mammal not specified in such LOA;

(3) Take any marine mammal specified in such LOA in any manner other than as specified;

(4) Take a marine mammal specified in such LOA after NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(5) Take a marine mammal specified in such LOA after NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

(b) [Reserved]

§ 217.524 Mitigation requirements.

(a) When conducting the specified activities identified in § 217.520(b), the mitigation measures contained in this section and any LOA issued under this subpart must be implemented.

(1) A copy of any issued LOA must be in the possession of State Parks, its designees, and work crew personnel operating under the authority of this LOA.

(2) State Parks must ensure that construction supervisors and crews, the monitoring team, and relevant State Parks staff are trained prior to the start of activities subject to the LOA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.

(3) State Parks must employ Protected Species Observers (PSOs) and establish monitoring locations as described in any issued LOA and the relevant Marine Mammal Monitoring Plan (Monitoring Plan). State Parks must monitor the project area to the maximum extent possible based on the required number of PSOs, the required monitoring locations, and environmental conditions.

(4) Monitoring must take place from 30 minutes prior to initiation of pile

driving activity (*i.e.,* pre-start clearance monitoring) through 30 minutes post-completion of pile-driving activity.

(5) Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in the LOA are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals.

(6) If a marine mammal is observed entering or within the shutdown zones indicated in the LOA, pile driving activity must be delayed or halted. Pile driving must be commenced or resumed as described in any issued LOA.

(7) If pile driving is delayed or halted due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone indicated in the LOA or 15 minutes have passed without re-detection of the animal.

(8) State Parks must use soft start techniques when impact pile driving. Soft start requires contractors to provide an initial set of three strikes at reduced energy, followed by a 30-second waiting period, then two subsequent sets of reduced energy strikes. A soft start must be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

(9) State Parks must use a bubble curtain during impact pile driving. The bubble curtain must be operated as necessary to achieve optimal performance. At a minimum, State Parks must adhere to the following performance standards:

(i) The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column.

(ii) The lowest bubble ring must be in contact with the substrate for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent substrate contact. No parts of the ring or other objects shall prevent full substrate contact.

(iii) Air flow to the bubblers must be balanced around the circumference of the pile.

(10) Pile driving activity must be halted (as described in any issued LOA) upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized, but the authorized number of takes has been met, entering or within the harassment zone (as shown in the LOA).

(11) State Parks, construction supervisors and crews, PSOs, and relevant State Parks staff must avoid direct physical interaction with marine mammals during construction activity. If a marine mammal comes within 10 meters of such activity, operations must cease, and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions, as necessary to avoid direct physical interaction.

(b) [Reserved]

§ 217.525 Requirements for monitoring and reporting.

(a) State Parks must submit a Monitoring Plan to NMFS for approval at least 90 calendar days before the start of construction and abide by the Plan, if approved.

(b) Monitoring must be conducted by qualified, NMFS-approved PSOs, in accordance with the following conditions:

(1) PSOs must be independent from State Parks and have no other assigned tasks during monitoring duties.

(2) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization or letter of concurrence.

(3) Other PSOs may substitute relevant experience, education (a degree in biological science or a related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to an incidental take authorization issued by NMFS.

(4) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to an incidental take authorization or Letter of Concurrence issued by NMFS.

(5) PSOs must be approved by NMFS prior to beginning any activity subject to the LOA.

(c) State Parks must establish monitoring locations as described in the Monitoring Plan. For all pile-driving activities, a minimum of one PSO must be assigned to each active vibratory pile removal and impact pile-driving location to monitor the shutdown zones; three PSOs must be assigned to each active vibratory pile-driving location; and four PSOs must be assigned to each active rock drilling and DTH drilling location.

(d) PSOs must record all observations of marine mammals, regardless of distance from the pile being driven, as well as the additional data indicated in any issued LOA.

(e) PSOs must contact the Orca Network before any pile-driving activities to get a daily update on the latest killer whale and large cetacean sightings.

(f) State Parks must submit a draft annual summary monitoring report on all monitoring conducted during each project year within 90 calendar days of the completion of marine mammal monitoring, or 90 calendar days prior to a requested date of issuance of any future incidental take authorization for projects at the same location, whichever comes first. A draft comprehensive 5-year summary report must also be submitted to NMFS within 90 calendar days of the end of Year 5 of the project. The reports must detail the monitoring protocol and summarize the data recorded during monitoring, including an overall description of construction work completed, a narrative regarding marine mammal sightings, and associated raw PSO data sheets (in electronic spreadsheet format). Specifically, the report must include at a minimum:

(1) Dates and times (beginning and end) of all marine mammal monitoring;

(2) Activities occurring during each daily observation period, including:

(i) the number and type of piles that were driven or removed and the method (*i.e.,* impact, vibratory, rock drilling, and DTH drilling); and

(ii) the total duration of driving time for each pile and/or number of strikes for each pile;

(3) PSO locations during marine mammal monitoring; and

(4) Environmental conditions during monitoring periods (at the beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions, including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

(g) Upon observation of a marine mammal, the following minimum information must be reported:

(1) Name of PSO who sighted the animal(s) and PSO location and activity at the time of the sighting;

(2) Time of the sighting;

(3) Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;

(4) Distance and bearing of each observed marine mammal relative to the pile being driven or removed for each sighting;

(5) Estimated number of animals (min/max/best estimate);

(6) Estimated number of animals by cohort (*e.g.,* adults, juveniles, neonates, group composition);

(7) Animal's closest point of approach and estimated time spent within the estimated harassment zone(s);

(8) Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);

(9) Number of marine mammals detected within the estimated harassment zones, by species; and

(10) Summary information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in the behavior of the animal(s), if any.

(h) If no comments are received from NMFS within 30 calendar days after submission of the draft summary report, the draft report will constitute the final report. If State Parks receives comments from NMFS, a final summary report addressing NMFS' comments must be submitted within 30 calendar days after receipt of the comments. The reports must contain the data as specified in the issued LOA.

(i) State Parks must submit all PSO data electronically in a format that can be queried, such as a spreadsheet or database (*i.e.,* digital images of data sheets are not sufficient).

(j) Reporting injured or dead marine mammals:

(1) In the event that personnel involved in the construction activities discover an injured or dead marine mammal, State Parks must report the incident to the NMFS Office of Protected Resources (OPR) and to the NMFS West Coast regional stranding coordinator (1–866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, State Parks must immediately cease the specified activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the LOA. State Parks must not resume their activities until notified by NMFS.

(2) The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the first discovery (and updated location if known and applicable;

(ii) Species identification (if known) or description of the animal(s) involved;

(iii) Condition of the animal(s) (including carcass condition if the animal is dead);

(iv) Observed behaviors of the animal(s), if alive;

(v) If available, photographs or video footage of the animal(s); and

(vi) General circumstances under which the animal was discovered.

§ 217.526 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, State Parks must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the effective dates of this subpart.

(c) If an LOA expires prior to the end of the effective dates of this subpart, State Parks may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, State Parks must apply for and obtain a modification of the LOA as described in § 217.527.

(e) The LOA must set forth the following information:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA must be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under this subpart.

(g) Notice of issuance or denial of an LOA must be published in the **Federal Register** within 30 days of a determination.

§ 217.527 Renewals and Modifications of Letters of Authorization.

(a) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activities may be renewed or modified upon request by State Parks, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for this subpart; and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA were implemented.

(b) For LOA modification or renewal requests by State Parks that include changes to the activities or the mitigation, monitoring, or reporting measures that do not change the findings made for the regulations in this subpart or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under § 216.106 of this chapter and § 217.526 for the specified activities may be modified by NMFS under the following circumstances:

(1) NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures, after consulting with State Parks regarding the practicability of the modifications, if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring measures set forth in the preamble of these regulations;

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA include, but are not limited to:

(A) Results from State Parks' monitoring;

(B) Results from other marine mammal and/or sound research or studies; and

(C) Any information that reveals marine mammals may have been taken in a manner, extent, or number not authorized by this subpart or subsequent LOAs; and

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS shall publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in an LOA issued pursuant to § 216.106 of this chapter and § 217.526, an LOA may be modified without prior notice or opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 217.528 [Reserved]

[FR Doc. 2026–23365 Filed 11–16–26; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 91, No. 220
Tuesday, November 17, 2026

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 50, 52, 53 and 54

[NRC–2025–0974]

RIN 3150–AL43

Advisory Committee on Reactor Safeguards Functions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations in response to Section 4.(b) of Executive Order (E.O.) 14300, ''Ordering the Reform of the Nuclear Regulatory Commission.'' Specifically, this proposed rule revises the NRC's regulations to reduce the personnel and functions of the Advisory Committee on Reactor Safeguards (ACRS) to the minimum necessary to fulfill the ACRS's statutory obligations.

DATES: Comments must be submitted using *https://www.regulations.gov* by 11:59 p.m. eastern time on December 17, 2026. Please include Docket ID NRC–2025–0974 in your comment submission.

ADDRESSES: Submit your comments, identified by Docket ID NRC–2025–0974, at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

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

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

You can read a plain language description of this direct final rule at *https://www.regulations.gov/docket/NRC-2025-0974.* For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Denise Edwards, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–7204, email: *Denise.Edwards@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2025–0974 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2025–0974.
- *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.*
- *NRC's PDR:* The NRC Public Document Room (PDR), where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

Comments must be submitted electronically using *https://www.regulations.gov* no later than 11:59 p.m. eastern time on December 17, 2026. Please include Docket ID NRC–2025–0974 in your comment submission.

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

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Rulemaking Procedure

Because the NRC considers this action to be non-controversial, the NRC is publishing this proposed rule concurrently with a direct final rule in the Rules and Regulations section of this issue of the **Federal Register**. The direct final rule will become effective on February 1, 2027. However, if the NRC receives significant adverse comments by December 17, 2026, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or

unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

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

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC to make a change (other than editorial) to the rule.

For procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Background

The ACRS was established by a 1957 amendment to the AEA as a statutory committee with an independent advisory role and focus to advise the Atomic Energy Commission. Following the enactment of the Energy Reorganization Act of 1974, the ACRS was assigned to the NRC with its statutory requirements intact. The ACRS assists the Commission's review and resolution of certain technical safety issues associated with the licensing of nuclear power plants and the establishment of NRC reactor safety regulations.

The ACRS's minimum statutory obligations are specified in sections 29 and 182b. of the AEA. 42 U.S.C. 2039, 2232. Since its formation, the ACRS has provided independent reactor safety advice to the Commission in the review of safety issues associated with regulation of nuclear power plants. Since 1975, the Commission has codified minimum statutory obligations and referred additional duties to the ACRS, as authorized by the AEA, in the NRC's regulations in title 10 of the Code of Federal Regulations (10 CFR) parts 1, ''Statement of Organization and General Information,'' 2, ''Agency Rules of Practice and Procedure,'' 50, ''Domestic Licensing of Production and Utilization Facilities,'' 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants, 53, ''Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors,'' and 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants.'' Over time, the depth of ACRS review increased beyond its statutorily required functions, for the additional duties referred to it by the Commission, and for additional reviews assumed by the ACRS without any Commission referrals. While ACRS recently began making certain improvements to perform more focused and efficient reviews, this rulemaking codifies those improvements and further redefines the scope of the ACRS reviews to ensure that the size and duties of the ACRS are consistent with the statutorily required functions and support timely and efficient licensing and rulemaking while maintaining its ability to conduct independent safety analyses.

IV. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this proposed rule with respect to clarity and effectiveness of the language used.

V. Paperwork Reduction Act

This proposed rule does not contain any new or amended collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing collections of information were approved by the Office of Management and Budget, approval numbers 3150–0011, 3150–0151, 3150–0274, and 3150–0155.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the document requesting or requiring the collection displays a currently valid OMB control number.

VI. Executive Orders

The following are Executive Orders that are related to this proposed rule:

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

The Office of Information and Regulatory Affairs (OIRA) within the OMB has determined that this proposed rule is a significant regulatory action under section 3(f) of E.O. 12866; though not economically significant under section 3(f)(1). Accordingly, the NRC submitted this proposed rule to OIRA for review. The NRC is required to conduct an economic analysis in accordance with section 6(a)(3)(B) of E.O. 12866. However, the NRC expects the costs of this rule to be minimal.

B. Executive Order 14154: Unleashing American Energy

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

C. Executive Order 14192: Unleashing Prosperity Through Deregulation

This proposed rule is a deregulatory action as defined by E.O. 14192.

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

E.O. 14270, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' requires the NRC to insert a conditional sunset date into all new or amended NRC regulations provided the regulations are (1) promulgated under the AEA, the Energy Reorganization Act of 1974, as amended (ERA), or the Nuclear Waste Policy Act of 1982, as amended (NWPA); (2) not statutorily required; and (3) not part of the NRC's permitting regime. The NRC determined that the regulatory changes proposed in this rule are part of the NRC's regulatory permitting scheme authorized by the AEA, ERA, or NWPA. Therefore, the NRC views this rulemaking to be outside the scope of E.O. 14270 and did not insert conditional sunset dates for the regulatory changes in this proposed rule.

VII. Availability of Documents

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

Document	ADAMS accession No./ **Federal Register** citation
Executive Order 12866, ''Regulatory Planning and Review,'' October 4, 1993	58 FR 51735
Executive Order 14154, ''Unleashing American Energy,'' January 29, 2025	90 FR 8353
Executive Order 14192, ''Unleashing Prosperity Through Deregulation,'' February 6, 2025	90 FR 9065
Executive Order 14215, ''Ensuring Accountability for All Agencies,'' February 24, 2025	90 FR 10447
Executive Order, ''Zero-Based Regulatory Budgeting to Unleash American Energy,'' April 15, 2025	90 FR 15643
Executive Order 14300, ''Ordering the Reform of the Nuclear Regulatory Commission,'' May 29, 2025	90 FR 22587
Presidential Memorandum, ''Plain Language in Government Writing,'' June 10, 1998	63 FR 31885

The NRC may post materials related to this document, including public comments, on the Federal Rulemaking website at *https://www.regulations.gov* under Docket ID NRC–2025–0974.

Dated: November 12, 2026.

For the Nuclear Regulatory Commission.

Jody Martin,

Secretary of the Commission.

[FR Doc. 2026–23342 Filed 11–16–26; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 13, 47, 49, 61, 63, 65, 187, and 406

[Docket No. FAA–2026–3538; Notice No. 27–01]

RIN 2120–AM16

Modernizing to Electronic Payments

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FAA proposes to modernize its payment systems to require electronic payments and eliminate the option to pay by paper payment methods such as cash, money orders, and paper checks. This proposal complies with Executive Order 14247 titled ''Modernizing Payments To and From America's Bank Account,'' which seeks to increase the efficiency of the Federal Government by phasing out paper receipts and mandating electronic payments to and from agencies.

DATES: Send comments on or before January 4, 2027.

ADDRESSES: Send comments identified by docket number FAA–2026–3538 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, U.S. Department of Transportation (DOT), 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 20590 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 the Docket Operations in Room W58–213 of the West Building 5th Floor at 1200 New Jersey Avenue SE, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sierra Elam, Office of Rulemaking, ARM–200, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; (202) 267–7627; *sierra.e.elam@faa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Overview of Proposed Rule

In accordance with Executive Order (E.O.) 14247 titled ''Modernizing Payments To and From America's Bank Account'',[1] FAA proposes to amend its regulations to stop accepting paper payments, such as cash, money orders, and paper checks, and require electronic payments instead. FAA proposes to amend payment provisions located in Title 14 of the Code of Federal Regulations (14 CFR) parts 13, 47, 49, 61, 63, 65, 187, and 406. These payment provisions cover aviation and commercial space transportation-related civil penalties, aircraft registration fees, fees for aircraft recording, duplicate airmen and medical certificates, duplicate knowledge test reports, overflight fees, and FAA services performed outside of the United States.

Sections 47.17, 49.15, 61.29, 63.16, 65.16, and 406.9 only list the option to pay fees by paper payment methods. However, §§ 13.15, 13.16, 13.18, and 187.15 allow for both electronic and paper payment options. FAA proposes to amend these sections to require electronic payments and eliminate the use of paper payment methods.

E.O. 14247 directs the Secretary of the Treasury to review and revise procedures for granting limited exceptions where electronic methods are not feasible. Consistent with E.O. 14247, FAA proposes to allow another payment method in circumstances where another method is otherwise authorized by law.

FAA also proposes to revise the following guidance documents to remove references to paper payment methods: Advisory Circular (AC) Form 8050–1B; AC Form 8050–5; and AC Form 8060–56. FAA will post the drafts of these guidance document revisions to this NPRM's docket for public comment.

B. Statement of the Problem

FAA currently processes paper and electronic payment methods, where applicable. Section 3(c) of E.O. 14247 requires all payments made to agencies to be processed electronically, eliminating the need for processing paper payments by phasing out paper disbursements and receipts. Title 14 of the CFR does not mention paper disbursements issued by FAA, and FAA generally does not issue them. In limited circumstances, however, FAA has issued paper checks, such as for witness fees during litigation, if the witness requests a paper payment. In current practice, FAA requests customers use the United States Treasury Department's website, *Pay.gov,* to pay the fees and penalties listed in §§ 13.15, 13.16, 13.18, 47.17, 49.15, 61.29, 63.16, 65.16, 187.15, and 406.9. Although FAA requests customers use *Pay.gov* for the fees and penalties described in this NPRM, the regulatory text in 14 CFR diverges from this current practice.

[1] 90 FR 14001 (March 25, 2025).

As a result, FAA proposes to amend its regulations to accept and process electronic payment methods only for all fees and penalties under 14 CFR. FAA also proposes to revise its guidance documents to direct the use of electronic payment methods rather than paper payment methods. These amendments and revisions would standardize FAA's regulations with current practice and guidance. Consistent with E.O. 14247, this proposal is intended to increase government efficiency and reduce the burdens of processing paper payments for the regulatory community.

C. Summary of the Costs and Benefits

The proposed rule would result in annual cost savings of $99,815 for FAA by eliminating the need to process paper payments. Over five years, these savings sum to $457,125 at three percent discounting, or $409,262 at seven percent discounting, or annualized value of $99,815 (regardless of discounting). The proposed rule would result in $1,425,933 in cost savings in perpetuity.

FAA expects the costs to customers to be de minimis to transition from paper to electronic payments.

II. Authority for This Rulemaking

FAA's authority to issue rules regarding aviation safety, including those governing charging and receiving fees for certain services provided by FAA, is found in title 49 of the United States Code. Subtitle I, Chapter 1, 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 issued under the authority described in Subtitle VII, Part A—Air Commerce and Safety, Chapter 441—Registration and Recordation of Aircraft, Sections 44101—44106, Section 44107, Recordation of conveyances, leases, and security instruments, Chapter 445—Facilities, Personnel, and Research, Section 44506, Air traffic controllers, Chapter 447—Safety Regulation, Section 44702, Issuance of certificates, Section 44703, Airman Certificates, Section 44728, Flight attendant certification, Section 44748, Aircraft dispatching, Chapter 453—Fees, and Chapter 463—Penalties, Section 46301, Civil penalties. Under those statutory provisions, FAA is charged with prescribing regulations to promote safety in civil air commerce, issuing certificates, charging and receiving fees for such services, and assessing civil penalties. This regulation addresses matters within the scope of that authority.

The Commercial Space Launch Act of 1984, as amended and codified at 51 U.S.C. 50901–50924 (the Act), authorizes the Secretary of Transportation (Secretary) to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites within the U.S. or as carried out by U.S. citizens. Section 50905 directs the Secretary to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. In addition, section 50903 requires the Secretary to encourage, facilitate, and promote commercial space launches and reentries by the private sector. Section 50917 provides the Secretary with civil penalty authority for violations falling under Section 50917(a). As codified in 49 CFR 1.83(b), the Secretary has delegated authority to the Administrator to carry out these functions.

III. Background

A. History of Payments to FAA

FAA has collected payments for a variety of services since its inception. Historically, these payments have been made by paper methods to FAA. In 1997, FAA began accepting payments electronically for air traffic services for certain flights operating through the National Airspace System (NAS),[2] by amending § 187.15(d). Since 1997, FAA's regulations have only been amended twice to accept electronic payments. In 2007, FAA amended § 187.15(a) to allow the use of credit card to pay fees for certification services performed outside the United States.[3] This action standardized the authorized payment methods for services in part 187. In 2021, FAA amended §§ 13.15(c), 13.16(l), and 13.18(j) to accept electronic payments for civil penalties.[4] In current practice, FAA accepts payments for these services and penalties through *Pay.gov*. FAA also accepts electronic payments for fees listed in §§ 47.17, 49.15, 61.29, 63.16, 65.16, and 406.9, even though the regulatory language for each section does not mention the ability to pay by electronic methods.

[2] Interim final rule, *Fees for Air Traffic Services for Certain Flights Through the U.S.-Controlled Airspace,* 62 FR 13496 (March 20, 1997).

[3] Direct final rule, *Fees for Certification Services and Approvals Performed Outside the United States,* 72 FR 18556 (April 12, 2007).

[4] Final rule, *Update to Investigate and Enforcement Procedures,* 86 FR 54514 (October 1, 2021).

IV. Discussion of the Proposal

This rulemaking proposes to conform FAA's regulations to the directive in E.O. 14247 to phase out paper check disbursements and receipts. FAA regulations do not include paper check disbursements, so this rule updates regulations related to paper receipts. The proposed amendments described in this section would require payments made to FAA to be collected and processed electronically [5] and eliminate the use of paper payment methods unless an exception applies as specified in section 4 of E.O. 14247. This section of the NPRM also describes the proposed revisions to guidance documents associated with the proposed regulatory amendments.

A. Proposed Amendments to Investigative and Enforcement Procedures in Part 13

Part 13 contains procedures for compromising some civil penalties before referring them to the United States Attorney General for prosecution, as well as for assessing other civil penalties administratively, depending on the amount of the civil penalty. FAA currently collects payments for these civil penalties through electronic and paper payment methods. The methods for paying civil penalties are located in §§ 13.15(c)(2)(i), 13.16(l)(1)(i) and (ii), and 13.18(j)(1)(i) and (ii). FAA proposes to streamline these conditions by requiring electronic payments and eliminating the option to pay by paper methods, unless another payment method is otherwise authorized by law.

1. Proposed § 13.15, Civil Penalties Other Than by Administrative Assessment

Civil penalties under § 13.15 pertain to those FAA may settle before referring them to the United States Attorney General for prosecution. These civil penalties are in an amount that exceeds FAA's statutory authority to assess (see 49 U.S.C. 46301(d)(4)). Section 13.15(c)(2)(i) states that persons cited with an alleged violation may respond to a proposed civil penalty by submitting an electronic payment, certified check, or money order. The person who paid the civil penalty will then be sent a letter from an FAA

[5] FAA currently provides electronic payment instructions for fees and penalties through FAA web pages, the CARES portal, the Registry's Airmen Services website, guidance, and follow-up communications. These informational sources route persons to *Pay.gov* to pay the appropriate fee. Once the proposal is finalized, FAA expects to provide to the public the same payment instructions from its informational sources and collect electronic payments through *Pay.gov*.

attorney stating the payment settles the action the person was cited with.

FAA proposes to amend § 13.15(c)(2)(i) to remove the option to pay by certified check or money order. Proposed paragraph (2)(i) would require persons to pay civil penalties under this section by electronic payment unless another payment method is otherwise authorized by law.

2. Proposed § 13.16, Civil Penalties Against Miscellaneous Persons and All Persons for Hazardous Materials Violations

Section 13.16 pertains to civil penalties for all violations, including hazardous materials violations, assessed to persons other than individuals acting as a pilot, flight engineer, mechanic, or repairman. Section 13.16(l)(1)(i) and (ii) describe the options for how to pay these civil penalties. Paragraph (l)(1)(i) lists the option to pay penalties by paper payment and paragraph (l)(1)(ii) lists the option to pay by electronic payment. Both paragraphs direct persons paying a civil penalty under § 13.16 to follow the directions listed in the notice of proposed civil penalty, final notice of proposed civil penalty, or the order assessing civil penalty.

FAA proposes to remove paragraphs (l)(1)(i) and (ii) from § 13.16 and revise paragraph (l)(1) to require electronic payments when a person pays a civil penalty unless another payment method is otherwise authorized by law. This proposed change would eliminate the option to pay civil penalties under § 13.16 by paper payment. FAA also proposes to add ''compromise order'' to the regulatory text in proposed § 13.16(l)(1) because compromise orders are another type of document that involve a civil penalty payment under § 13.16. In addition, the proposed § 13.16(l)(1) text would replace the word ''in'' with ''for'' when referencing the directions specified for the notice of proposed civil penalty, final notice of proposed civil penalty, order assessing civil penalty, or compromise order. Civil penalty payment instructions are not necessarily in these documents and might be provided separately by FAA.

3. Proposed § 13.18, Civil Penalties Against Pilots, Flight Engineers, Mechanics, or Repairmen

Civil penalties under § 13.18 pertain to those assessed for violations listed under 49 U.S.C. 46301(d)(2) made by individuals acting as pilots, flight engineers, mechanics, or repairmen. Section 13.18(j)(1)(i) and (ii) contain the details on how to pay these civil penalties. Both paragraphs refer the cited person to the order of assessment for details and directions on how to pay the penalty. Section 13.18(j)(1)(i) lists the option to pay via paper payment and § 13.18(j)(1)(ii) lists the option to pay by electronic payment. Similar to the proposed changes in § 13.16, FAA proposes to remove § 13.18(j)(1)(i) and (ii) and revise § 13.18(j)(1) to require electronic payments to be made based on the directions specified in the notice of proposed assessment, the order of assessment, or the compromise order, unless another payment method is otherwise authorized by law. FAA proposes to add ''notice of proposed assessment'' and ''compromise order'' to the regulatory text in § 13.18(j)(1) because these documents can also involve civil penalty payments under § 13.18. In addition, proposed § 13.18(j)(1) would replace the word ''in'' with ''for'' when referencing the directions specified for the notice of proposed assessment, order of assessment, or compromise order. Civil penalty payment instructions are not necessarily in these documents and might be provided separately by FAA. This proposed change would eliminate the option to pay § 13.18 civil penalties by paper payment.

B. Proposed § 47.17, Aircraft Registration Fees

The FAA Registry (Registry) collects fees for a variety of services in § 47.17(a). These services include applications for: certificate of aircraft registration; dealer's aircraft registration certificate; additional dealer's aircraft registration certificate issued to the same dealer; special registration number; changing, reassigning, or reserving a special registration number; replacement certificate of aircraft registration; and renewal certificate of aircraft registration. Section 47.17(b) requires applications for any of the previously listed services be accompanied by a check or money order. Despite the regulatory text at § 47.17, the Registry currently accepts electronic payments for aircraft registration services through its online portal, Civil Aircraft Registry Electronic Services (CARES), and *Pay.gov*.

FAA proposes to remove the phrase ''check and money order'' in § 47.17(b) and insert the phrase ''electronic payment'' in its place. This revision would eliminate the requirement to pay aircraft registration fees by paper payment unless such payment methods are otherwise authorized by law and would codify current electronic payment practices into 14 CFR.

C. Proposed § 49.15, Fees for Recording Aircraft Titles and Security Documents

FAA collects fees for recording conveyances of aircraft, aircraft engines, and propellers under part 49. Depending on the conveyance, FAA requests persons send in FAA Form AC 8050–98 or their original claim of lien, accompanied by check or money order. Similar to the current practice for § 47.17, the Registry instructs persons pay § 49.15 fees by electronic methods by navigating to the CARES portal, which then directs them to *Pay.gov*. FAA proposes to revise § 49.15 to require electronic payments for fees for recording aircraft conveyances unless another payment method is otherwise authorized by law. This revision would eliminate the requirement to pay by paper methods.

D. Proposed § 61.29, Replacement Airman or Medical Certificates or Knowledge Test Reports for Pilots, Flight, and Ground Instructors

Under part 61, FAA collects fees for replacement certificates for pilots, flight instructors, and ground instructors. These replacements include duplicate airmen certificates, medical certificates, and knowledge test reports. The Registry and the Aerospace Medical Certification Division (AMCD) are responsible for collecting these fees. In current practice, the Registry allows electronic payments for duplicate certificates or knowledge test reports [6] while AMCD allows electronic payments for duplicate certificates.[7] Section 61.29(a) through (c) lists the directions for requesting a replacement certificate or knowledge test report.

1. Replacement Airman Certificates

Section 61.29(a) pertains to lost or destroyed airman certificates. Paragraphs (a)(1) and (2) contain the directions for submitting a request and the appropriate fee for a replacement certificate. A person submitting a request under § 61.29(a) can mail a written request to the Airmen Certification's Post Office Box (P.O. Box), along with the required paper payment for the appropriate fee. Alternatively, a person can make a request in any other appropriate manner

[6] The Registry requests persons use its Airmen Services website to request duplicate certificates or knowledge test reports, as well as to pay the fees for these services. *https://amsrvs.registry.faa.gov/amsrvs/*.

[7] AMCD requests that persons requesting a duplicate medical certificate mail AC Form 8060–56 to the Aerospace Medical Certification Division in Oklahoma City, Oklahoma and pay the fee at *Pay.gov*. *https://www.faa.gov/pilots/medical_certification/request_copy*.

approved by the Administrator including online to Airmen Services at *www.faa.gov.* A request made online to Airmen Services must be accompanied by the appropriate fee. However, paragraph (a)(2) does not specify how to locate the Airmen Services payment option on *www.faa.gov*, which is the main FAA web page.

FAA proposes to amend § 61.29(a)(1) and (2) by eliminating the option to pay by paper methods for a replacement airmen certificate. FAA proposes to remove from § 61.29(a)(1) the option to pay the fee by check or money order and revise § 61.29(a)(1) to require the fee be paid electronically unless another payment method is otherwise authorized by law. Although the proposed rule would require that the fee be paid electronically, FAA would retain the language in paragraph (a)(1) to permit requests for a replacement to be mailed in. Section 61.29(a)(2) would be revised to clarify that a fee must be paid electronically if a request is submitted through an Administrator-approved method, including online.

FAA proposes to update the web address in § 61.29(a)(2) from ''*www.faa.gov*'' to ''*amsrvs.registry.faa.gov/amsrvs*,'' providing a direct link to the Airmen Services website. These changes aim to provide clarity and ease of access for anyone submitting a request for a replacement airman certificate.

2. Replacement Medical Certificates

Section 61.29(b) pertains to lost or destroyed medical certificates. Paragraphs (b)(1) and (2) describe the options for submitting a replacement medical certificate request. Section 61.29(b)(1) directs requests and the appropriate fee be mailed to AMCD at the AMCD P.O. Box. Section 61.29(b)(2) alternatively allows replacement medical certificate requests to be made by any other method approved by the Administrator if the appropriate fee accompanies the request.

Currently, FAA asks persons to request a replacement medical certificate by mailing AC Form 8060–65 to AMCD and paying the appropriate fee on Pay.gov, according to FAA's web page titled, ''Request a Copy of Your Medical Certificate.'' [8] However, the regulatory text at § 61.29(b)(1) and (2) does not list the option to pay electronically via *Pay.gov.*

FAA proposes to amend § 61.29(b)(1) and (2) to remove the option to submit paper payments for replacement medical certificates and revise both paragraphs to require electronic payments unless another payment method is otherwise authorized by law. FAA proposes to revise § 61.29(b)(1) to update the P.O. Box number from ''26200'' to ''25082,'' because the address has changed. FAA also proposes to replace the option to pay via check or money order in § 61.29(b)(1) with a requirement to pay via electronic payment. FAA proposes to revise § 61.29(b)(2) to clarify an electronic payment must be made when a replacement medical certificate is requested by any other Administrator-approved manner.

3. Replacement Knowledge Test Reports

The Airmen Certification Branch issues replacement knowledge test reports to airmen who may have lost or had their original copy destroyed. Section 61.29(c) lists the options for requesting a replacement copy. Similar to § 61.29(a), § 61.29(c) gives persons the option to request a replacement knowledge test report by mailing in a request to the Airmen Certification Branch's P.O. Box or submitting a request by using any other method approved by the Administrator. The appropriate fee for a replacement knowledge test report must also accompany the request.

For § 61.29(c)(1) and (2), FAA proposes to make the same changes as § 61.29(a)(1) and (2). FAA proposes to revise § 61.29(c)(1) and (2) to eliminate the option to send in a paper payment and require the use of electronic payments when requesting a replacement knowledge test unless another payment method is otherwise authorized by law. FAA also proposes to revise § 61.29(c)(2) to require electronic payments when a request is submitted in any other Administrator-approved method.

E. Proposed § 63.16, Replacement Airman and Medical Certificates for Flight Crewmembers Other Than Pilots

Under part 63, FAA collects fees for replacement airman and medical certificates for flight crewmembers other than pilots. According to § 63.1, these flight crewmembers are flight engineers and flight navigators. The Registry and AMCD collect these fees and process the requests. The parameters for how to request a replacement airman or medical certificate are located in § 63.16(b) through (d).

1. Replacement Airman Certificates

The Registry's Airmen Certification Branch processes requests for replacement airman certificates for flight engineers and flight navigators and collects the appropriate fee for this request. Similar to § 61.29(a), a request for a replacement airman certificate can be made two ways. Section 63.16(b)(1) allows a request to be mailed to the Airmen Certification Branch's P.O. Box, accompanied by a check or money order for the appropriate fee. Section 63.16(b)(2) allows a request to be made by any other Administrator-approved method, including through the Airman Services web page at *faa.gov*.

FAA proposes to amend § 63.16(b)(1) and (2) to eliminate the option to pay fees by paper methods and require the use of electronic payments unless another payment method is otherwise authorized by law. FAA proposes to change the Registry's web address in § 63.16(b)(2) from ''*faa.gov*'' to the Registry's Airmen Services web address. FAA proposes to revise § 63.16(b)(2) to require an electronic payment be made to accompany a request sent in by mail.

2. Replacement Medical Certificates

AMCD accepts and processes requests for replacement medical certificates for flight crewmembers other than pilots. Section 63.16(c) directs flight crewmembers to submit a request for replacement certificates and payment by mail or any other method approved by the Administrator. Section 63.16(c)(1) and (2) direct individuals to pay the appropriate fee for a replacement medical certificate by check, money order, or an acceptable form of payment.

FAA proposes to revise § 63.16(c)(1) and (2) to eliminate the option to pay by paper methods and require the use of electronic payments unless another payment method is otherwise authorized by law. FAA proposes to update the P.O. Box number in § 63.16(c)(1) from ''26200'' to ''25082'' and revise § 63.16(c)(2) to require an electronic payment be made for any other Administrator-approved method used to request a replacement certificate.

3. Replacement Knowledge Test Reports

The Airmen Certification Branch accepts and processes requests for replacement knowledge test reports for flight crewmembers other than pilots. Section 63.16(d) allows requests to be sent in by mail, to the Airmen Certification Branch's P.O. Box, or by any other Administrator-approved method. A request must be accompanied by the appropriate fee made by check, money order, or an acceptable form of payment.

FAA proposes to revise § 63.16(d)(1) and (2) to eliminate the option to pay via paper methods for a replacement knowledge test report and require an

[8] *https://www.faa.gov/pilots/medical_certification/request_copy.*

electronic payment unless another payment method is otherwise authorized by law.

F. Proposed § 65.16, Replacement Certificates for Airmen Other Than Flight Crewmembers

Under part 65, FAA collects fees for replacement certificates for airmen other than flight crewmembers. According to § 65.1, these airmen include air-traffic control-tower operators, aircraft dispatchers, mechanics, repairmen, and parachute riggers. The parameters for requesting a replacement airman or medical certificate can be found in § 65.16(b)(1), (2), and (c). Section 65.16 directs airmen other than flight crewmembers to mail in their request to either the Airmen Certification Branch's P.O. Box (for an airmen certificate) or AMCD's P.O. Box (for a medical certificate), along with $2, made by check or money order.

FAA proposes to revise § 65.16(b)(2) and (c) to require electronic payments be made and to eliminate the option to pay using paper methods unless another payment method is otherwise authorized by law. FAA also proposes to change the P.O. Box number in § 65.16(c) from ''26200'' to ''25082'' because the address has changed.

G. Proposed § 187.15, Payment of Overflight Fees and FAA Services Performed Outside of the United States

Under part 187, FAA collects fees for services performed outside of the U.S. and for overflight fees.

FAA provides services such as certification actions, certification approvals, and production certification-related services for persons outside the United States. These actions and approvals include airmen certifications and repair station certifications performed by FAA inspectors.

Appendix A of part 187 contains the fee computation methodology for certification services outside of the U.S. Section 187.15(a) directs persons to pay fees for certification services outside of the U.S. by check, money order, wire transfers, draft payable in U.S. currency and drawn on a U.S. bank, or credit card payable in U.S. currency. Individuals paying for these certification services must also pay any bank processing fees collected under part 187.

FAA proposes to amend § 187.15(a) to remove all paper payment options and instead require electronic payments unless another payment method is otherwise authorized by law. Although § 187.15(a) accepts wire transfers and credit card payments for the payment of fees under part 187, including those for certification services performed outside the U.S., replacing this language with ''electronic payments'' would standardize this proposed change with the other proposals in this NPRM.

Overflight fees are billed to users via an invoice from FAA, which must be paid using one of the methods described in § 187.15.[9] These methods include electronic funds transfer (EFT), draft, wire transfer, credit card, money order, and check. If the fees assessed are greater than $1,000, then the payment must be made by EFT. If the fees assessed are less than $1,000, then the payment must be made by EFT, check, money order, credit card, or draft.

FAA imposes overflight fees for services to aircraft transiting through U.S.-controlled airspace,[10] which do not take off from or land in the United States. These services include air traffic management, communications, navigation, radar surveillance including separation services, flight information services, procedural control, and emergency services and training. Section 187.51(c) states that fees are not assessed for any military or civilian overflight operated by the U.S. Government or by any foreign government. Section 187.15(d) contains payment procedures for overflight fees described in appendix B of part 187. However, appendix B is currently reserved and lacks regulatory text.[11]

FAA proposes to amend § 187.15(d) to correct the CFR location of the description of overflight fees to read as ''§ 187.51'' instead of appendix B in part 187. FAA also proposes to amend § 187.15(d) to eliminate the option to pay overflight fees by check or money order and instead require these fees to be paid by electronic payment unless another payment method is otherwise authorized by law.

H. Proposed § 406.9, Commercial Space Transportation Investigation and Enforcement Civil Penalties

Under the procedures in § 406.9, FAA assesses civil penalties under its statutory authority in 51 U.S.C. 50917(c) for commercial space violations. When a respondent pays a commercial space civil penalty, the respondent must pay the penalty by one of the payment methods listed in § 406.9(h)—check or money order. Although § 406.9(h) only lists check and money order as the payment options for commercial space civil penalties, FAA has a *Pay.gov* portal to pay FAA civil penalties, which includes § 406.9 commercial space civil penalties.

FAA proposes to amend § 406.9(h) to eliminate the option to pay by paper methods and require the use of electronic payments unless another payment method is otherwise authorized by law. The term ''electronic payment'' would be added in place of ''check or money order.'' This change would standardize FAA's payment practices and reduce the burdens of payment processing on the regulatory community.

I. Proposed Revisions to Guidance Documents

In addition to the above proposed changes to 14 CFR, FAA is proposing to revise the following guidance documents: AC Form 8050–1B: Aircraft Registration Renewal Application; AC Form 8050–5: Dealer's Aircraft Registration Certificate; and AC Form 8060–56: Application for Replacement of Lost, Destroyed, or Paper Airman Certificate. These proposed revisions are minimal and would remove and replace any mention of paper payment methods with electronic payment directions. FAA will post the drafts of these revised guidance documents in the docket of this NPRM for public comment.

V. Regulatory Notices and Analyses

A. Regulatory Impact Analysis

E.O. 12866 (''Regulatory Planning and Review'') and E.O. 13563 (''Improving Regulation and Regulatory Review'') require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' The Office of Management and Budget (OMB) has determined that this proposed rule is not a significant regulatory action as defined in section 3(f) of E.O. 12866.

Currently, FAA regulations allow payments to FAA by means including cash, check, or money order,[12] hereafter referred to as paper payments. The proposed rule would remove these options and require electronic payments, unless otherwise permitted

[9] See 14 CFR 187.55.

[10] See 14 CFR 187.3. *U.S.-controlled airspace* means airspace over the territory of the United States, extending 12 nautical miles from the coastline of U.S. territory; any airspace delegated to the United States for U.S. control by other countries or under a regional air navigation agreement; or any international airspace, or airspace of undetermined sovereignty, for which the United States has accepted responsibility for providing air traffic control services.

[11] Final rule, *Update of Overflight Rates,* 81 FR 8543 (November 29, 2016). Appendix B of part 187 was removed and reserved through this final rule. The information from appendix B was moved to new § 187.51.

[12] Certain provisions specifically permit bank drafts, and many provisions refer to any payment in a form acceptable to the administrator.

by law.[13] This change would affect customers who make paper payments under 14 CFR parts 13, 47, 49, 61, 63, 65, 187, and 406.

FAA used internal payment data to determine that in Fiscal Years 2023 through 2025, FAA processed an average of 3,168 paper payments each year,[14] requiring an average of 2,173 administrative hours yearly.[15] FAA assumes this data accurately represents future time spent by FAA processing these payments. The 3,168 payments are processed by FAA Financial Administration employees at a hourly rate of $33.71 per hour.[16] Benefits are valued at 36.25 percent of nominal wage,[17] making the fully burdened wage rage $45.93 per hour.[18] The proposed rule would eliminate these processing costs, resulting in annual cost savings of $99,815. Over five years, these savings sum to $457,125 at three percent discounting, $409,262 at seven percent discounting, or an annualized value of $99,815. The proposed rule would result in $1,425,933 in cost savings in perpetuity.

FAA also expects the cost of adjusting to the electronic system would be de minimis for FAA and the subset of customers who have previously chosen to make paper payments. Processing fees are small or, in the case of Pay.gov, nonexistent, and so customers have an option to pay with no increase in costs.[19] FAA expects no increase in costs, as FAA has existing systems in place to process electronic payments, and would not need to acquire any new systems. The increase in electronic payment volume is likewise small; between Fiscal Year 2023 and Fiscal Year 2025, paper payment customers accounted for less than three percent of all payments received. FAA requests comments and supporting data on the estimates and assumptions used in this analysis.

[13] The United States Treasury Department has not yet established exceptions where electronic payment and collection methods are not feasible, consistent with section 4 of E.O.14247, but it may do so in the future.

[14] The number of paper payments for 2023, 2024, and 2025 are 3,679, 3,227, and 2,598 respectively.

[15] The 2023, 2024, and 2025 total time spent processing paper payments was provided by FAA finance office and is 2,158, 2,182, and 2,153 hours respectively.

[16] FAA Core Compensation Salary Table, Grade F, *https://www.faa.gov/jobs/working_here/benefits/pay/core_salary_with_conversion.xlsx.*

[17] *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2008/m08-13.pdf,* MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES, Office of Management and Budget, March 11, 2008.

[18] $33.71 × (1 + 0.3625) = $45.93.

[19] *https://www.pay.gov/public/help/faqs.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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.

Between Fiscal Years 2023 and 2025 there were an average of 3,168 paper payments, which account for less than three percent of all annual payments made to FAA. FAA expects the cost of transitioning to the electronic system for this subset of consumers who rely on paper payments to be de minimis, resulting in no significant economic impact.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) and based on the foregoing, the Administrator certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities. FAA requests comments on this proposed certification and the assumptions of the impact of the proposed rule.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, they be the basis for U.S. standards.

FAA has assessed the potential effect of this proposed rule and determined it ensures the safety of the American public and does not exclude imports that meet this objective. As a result, FAA does not consider this proposed rule as creating an unnecessary obstacle to foreign commerce.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or Tribal Government or the private sector to incur direct costs without the Federal Government having first provided the funds to pay those costs. FAA determined the proposed rule would not result in the expenditure of $193,000,000 or more ($100,000,000 adjusted for inflation using the most current Implicit Price Deflator for the Gross Domestic Product) by State, local, or Tribal Governments, in the aggregate, or the private sector, in any one year.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number.

FAA has determined there would be no new information collection associated with the proposed requirement to remove paper payment options to FAA and instead require electronic payments. This proposed requirement would update the payment instructions for AC Form 8050–1B and AC Form 8050–5. The instructions and the fillable sections of the forms would not require respondents to disclose payment information. Approval to collect such information previously was approved by OMB under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and was assigned OMB Control Number 2120–0024 and OMB Control Number 2120–0042. Following the publication of the final rule associated with this rulemaking, FAA will submit a non-substantive change to OMB for both AC Forms. The draft changes for AC Form 8050–1B and AC Form 8050–5 are available in this NPRM's docket for comment.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

The Department has analyzed the environmental impacts of this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*). FAA has determined that this rule is categorically excluded pursuant to FAA Order 1050.1G. Categorical exclusions are categories of actions FAA has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).[20] In analyzing the applicability of a categorical exclusion, FAA must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.[21] This rulemaking, which proposes to require electronic payments and eliminate paper payments to FAA, is categorically excluded pursuant to FAA Order 1050.1G, Appendix B, Paragraph B–2.6(f), which categorically excludes issuance of regulatory documents. FAA does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

VI. Executive Order Determinations

A. Executive Order 13132, Federalism

FAA has analyzed this proposed rule under the principles and criteria of E.O. 13132, Federalism. FAA has determined this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

B. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Consistent with E.O. 13175, Consultation and Coordination with Indian Tribal Governments,[22] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[23] FAA ensures Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. FAA has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this proposed rule.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

FAA analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, and has determined it would not be a ''significant energy action'' under the E.O. and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation

E.O. 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to (1) meet shared challenges involving health, safety, labor, security, environmental, and other issues and (2) to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. FAA has analyzed this action under the policies and agency responsibilities of E.O. 13609 and has determined this action would have no effect on international regulatory cooperation.

E. Executive Order 14192, Unleashing Prosperity Through Deregulation

E.O. 14192, Unleashing Prosperity through Deregulation, instructs agencies to ''alleviate unnecessary regulatory burdens.'' FAA expects this proposed rule, if finalized as proposed, to be an E.O. 14192 deregulatory action.

VII. Privacy

Although this rulemaking is expected to generate an increase in personally identifiable information (PII) collected through payment systems such as *Pay.gov*, FAA has determined that there would be no privacy impacts as a result of this rulemaking under section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002).

With regard to the information persons may submit in accordance with this proposed rule's requirements, FAA has determined the only PII collected through *Pay.gov* would be payment information and billing information. FAA would not record or retain this information. FAA also examined and evaluated protections and alternative information-handling processes in developing the proposed rule to mitigate potential privacy risks.

VIII. Additional Information

A. Comments Invited

FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. 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.

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 rule. Before acting on this proposal, FAA will consider all comments it receives on or before the closing date for comments. FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. 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 inform its rulemaking process better. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act

[20] See DOT Order 5610.1D § 9.

[21] Id. § 9(b).

[22] 65 FR 67249 (Nov. 6, 2000).

[23] FAA Order No. 1210.20 (Jan.28, 2004), available at *www.faa.gov/documentLibrary/media/1210.pdf.*

(FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and is relevant or responsive to this NPRM, it is important you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this NPRM, all comments received, any final rule, and all background material may be viewed online at *www.regulations.gov* using the docket number listed above. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *www.federalregister.gov* and the Government Publishing Office's website at *www.govinfo.gov.* A copy may also be found at FAA's Regulations and Policies website at *www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Requests must identify the docket or notice number of this rulemaking.

All documents FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996), requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 13

Administrative practice and procedure, Air transportation, Aviation safety, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

14 CFR Parts 47 and 49

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 63

Aircraft, Airman, Alcohol abuse, Aviation safety, Drug abuse, Navigation (air), Reporting and recordkeeping requirements, Security measures.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Alcohol abuse, Aviation safety, Drug abuse, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 187

Administrative practice and procedure, Air transportation.

14 CFR Part 406

Administrative practice and procedure, Confidential business information, Investigations, Law enforcement, Penalties, Space transportation and exploration.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend chapters I and III of title 14, Code of Federal Regulations as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 13 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 note; 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44701–44704, 44709–44710, 44713, 44725, 44742, 44802 (note), 46101–46111, 46301, 46302 (for a violation of 49 U.S.C. 46504), 46304–46316, 46318–46320, 46501–46502, 46504, 46507, 47106, 47107, 47111, 47122, 47306, 47531–47532; 49 CFR 1.83.

■ 2. Amend § 13.15 by revising paragraph (c)(2)(i) to read as follows:

§ 13.15 Civil penalties: Other than by administrative assessment.

* * * * *

(c) * * *

(2) * * *

(i) Submitting electronic payment in the amount offered by the Administrator in the civil penalty letter, unless another payment method is otherwise authorized by law. The agency attorney will send a letter to the person charged with the violation stating that payment is accepted in full settlement of the civil penalty action; or

* * * * *

■ 3. Amend § 13.16 by removing paragraphs (l)(1)(i) and (ii) and revising paragraph (l)(1) to read as follows:

§ 13.16 Civil penalties: Administrative assessment against a person other than an individual acting as a pilot, flight engineer, mechanic, or repairmen; administrative assessment against all other persons for hazardous materials violations.

* * * * *

(l) *Payment.* (1) A person must pay a civil penalty by making an electronic payment according to the directions specified for the notice of proposed civil penalty, the final notice of proposed penalty, the order assessing civil penalty, or the compromise order, unless another payment method is otherwise authorized by law.

* * * * *

■ 4. Amend § 13.18 by removing paragraphs (j)(1)(i) and (ii) and revising paragraph (j)(1) to read as follows:

§ 13.18 Civil penalties: Administrative assessment against an individual acting as a pilot, flight engineer, mechanic, or repairman.

* * * * *

(j) *Payment.* (1) An individual must pay a civil penalty by making an electronic payment according to the directions specified for the notice of proposed assessment, the order of assessment, or the compromise order, unless another payment method is otherwise authorized by law.

* * * * *

PART 47—AIRCRAFT REGISTRATION

■ 5. The authority citation for part 47 continues to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 115–254, Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 40113–40114, 44101–44108, 44110–44113, 44701, 44703–44704, 44713, 45302, 46104, 46301.

■ 6. Amend § 47.17 by revising paragraph (b) to read as follows:

§ 47.17 Fees.

* * * * *

(b) Each application must be accompanied by the proper fee, that must be paid by submitting an electronic payment to the Federal Aviation Administration, unless another payment method is otherwise authorized by law.

* * * * *

PART 49— RECORDING OF AIRCRAFT TITLES AND SECURITY DOCUMENTS

■ 7. The authority citation for part 49 continues to read as follows:

Authority: 4 U.S.T. 1830; Pub. L. 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 40113–40114, 44101–44108, 44110–44113, 44701, 44704, 44713, 45302, 46104, 46301.

■ 8. Amend § 49.15 by revising paragraph (c) to read as follows:

§ 49.15 Fees for recording.

* * * * *

(c) Each conveyance must be accompanied by the proper fee, that must be paid by submitting an electronic payment to the Federal Aviation Administration, unless another payment method is otherwise authorized by law.

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 9. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 10. Amend § 61.29 by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), and (c)(2) to read as follows:

§ 61.29 Replacement of a lost or destroyed airman or medical certificate or knowledge test report.

(a) * * *

(1) By letter to the U.S. Department of Transportation, FAA, Airmen Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any manner and form approved by the Administrator including a request online to Airmen Services at *amsrvs.registry.faa.gov/amsrvs,* and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

(b) * * *

(1) By letter to the U.S. Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any manner and form approved by the Administrator and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

(c) * * *

(1) By letter to the U.S. Department of Transportation, FAA, Airmen Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any manner and form approved by the Administrator and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

* * * * *

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

■ 11. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 12. Amend § 63.16 by revising paragraphs (b)(1), (b)(2), (c)(1), (c)(2), (d)(1), and (d)(2) to read as follows:

§ 63.16 Change of name; replacement of lost or destroyed certificate.

* * * * *

(b) * * *

(1) By letter to the U.S. Department of Transportation, Federal Aviation Administration, Airmen Certification Branch, Post Office Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any form and manner approved by the Administrator including a request to Airman Services at *amsrvs.registry.faa.gov/amsrvs,* and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

(c) * * *

(1) By letter to the U.S. Department of Transportation, FAA, Aerospace Medical Certification Division, P.O. Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any manner and form approved by the Administrator and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

(d) * * *

(1) By letter to the U.S. Department of Transportation, FAA, Airmen Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by electronic payment to the FAA, unless another payment method is otherwise authorized by law; or

(2) In any manner and form approved by the Administrator and must be accompanied by an electronic payment for the appropriate fee, unless another payment method is otherwise authorized by law.

* * * * *

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 13. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(f), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 14. Amend § 65.16 by revising paragraphs (b)(2) and (c) to read as follows:

§ 65.16 Change of name: Replacement of lost or destroyed certificate.

* * * * *

(b) * * *

(1) * * *

(2) Be accompanied by an electronic payment of $2 to the Federal Aviation Administration, unless another payment method is otherwise authorized by law.

(c) An application for a replacement of a lost or destroyed medical certificate is made by letter to the U.S. Department of Transportation, Federal Aviation Administration, Aerospace Medical Certification Division, Post Office Box 25082, Oklahoma City, OK 73125, and the appropriate fee must be paid by an electronic payment of $2 to the Federal Aviation Administration, unless another payment method is otherwise authorized by law.

* * * * *

PART 187—FEES

15. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 106(l)(6), 40104–40105, 40109, 40113–40114, 44702, 45301.

■ 16. Amend § 187.15 by revising paragraphs (a) and (d) to read as follows:

§ 187.15 Payment of fees.

(a) Prior to the provision of any service under this part, the fees of this part must be paid to the Federal Aviation Administration by electronic payment, unless another payment method is otherwise authorized by law, and must be paid in U.S. currency.

(b) * * *

(c) * * *

(d) The fees described in § 187.51 are payable to the Federal Aviation Administration in U.S. currency. Fees must be paid by electronic payment, unless another payment method is otherwise authorized by law.

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 17. The authority citation for part 406 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 18. Amend § 406.9 by revising paragraph (h) to read as follows:

§ 406.9 Civil penalties.

* * * * *

(h) *Method of payment.* A respondent must pay a civil penalty by electronic payment to the Federal Aviation Administration, unless another payment method is otherwise authorized by law.

* * * * *

Issued under authority provided by 49 U.S.C. 106(f), 44101–44107, 44506, 44701(a), 44702, 44703, 44728, 44747, Chapter 453, Chapter 463, and 46301, and 51 U.S.C. 50917 in Washington, DC.

Michael J. Ciamarra,

Assistant Administrator, Office of Policy and Rulemaking.

[FR Doc. 2026–23397 Filed 11–16–26; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2026–13817; Project Identifier MCAI–2026–00492–A]

RIN 2120–AA64

Airworthiness Directives; Daher Aircraft, SAS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2015–17–10, which applies to certain SOCATA (type certificate currently held by Daher Aircraft, SAS) (Daher) Model TBM 700 airplanes. AD 2015–17–10 requires repetitively inspecting the forging body of the main landing gear (MLG) for cracks and, depending on findings, performing corrective actions. AD 2015–17–10 allows for replacement of affected MLG with a reinforced landing gear as a terminating action for repetitive inspections. Since the FAA issued AD 2015–17–10, additional MLG serviceable parts have been developed, and it has been determined that dye penetrant is no longer an authorized inspection method. This proposed AD would continue to require the actions of AD 2015–17–10, add the additional serviceable parts, and eliminate the option of using dye penetrant as an inspection method. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by January 4, 2027.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–91, West Building Fifth Floor, Room W58–213, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2026–13817; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Daher Aircraft, Daher Aerospace, Daher-Socata, or EADS-Socata TBM material identified in this proposed AD, contact Daher Aircraft, SAS, Daher Aerospace Customer Support, Airplane Business Unit, Tarbes—Cedex 9, France; phone: +1 833 826 2273; email: *tbmcare@daher.com;* website: *daher.com*.
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1100 Main, Kansas City, MO 64105. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Zakaria Abdi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4141; email: *zakaria.f.abdi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments using a method listed under **ADDRESSES**. Include ''Docket No. FAA–2026–13817; Project Identifier MCAI–2026–00492–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Zakaria Abdi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2015–17–10, Amendment 39–18243 (80 FR 51456, August 25, 2015) (AD 2015–17–10), for certain SOCATA (type certificate currently held by Daher) Model TBM 700 airplanes. AD 2015–17–10 was prompted by MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2006–0085R2, dated January 16, 2015 (EASA AD 2006–0085R2), to correct an unsafe condition identified as cracks in the MLG cylinder, which could cause the MLG to fail.

AD 2015–17–10 requires repetitively inspecting the forging body of the MLG for cracks and, depending on findings, corrective actions. AD 2015–17–10 allows for replacement of affected MLG with a reinforced landing gear as a terminating action for repetitive inspections The FAA issued AD 2015–17–10 to detect and address cracks in the MLG cylinder, which could cause the MLG to fail. Failure of the MLG cylinder could result in a collapsed MLG during takeoff or landing runs and possible reduced structural integrity of the airplane.

Actions Since AD 2015–17–10 Was Issued

Since the FAA issued AD 2015–17–10, EASA revised EASA AD 2006–0085R2 and issued EASA AD 2006–0085R3, dated December 2, 2025 (EASA AD 2006–0085R3), to more fully define affected and serviceable parts and allow for installation of additional part numbers of reinforced MLGs developed by Daher as optional terminating action for the repetitive inspections. EASA then superseded EASA AD 2006–0085R3 and issued EASA AD 2026–0076, dated April 10, 2026 (EASA AD 2026–0076) (also referred to as the MCAI). The MCAI states that the dye penetrant inspection is not authorized for accomplishing the repetitive special detail inspection. EASA AD 2026–0076 partially retains the requirements of EASA AD 2006–0085R3 and removes the dye penetrant inspection.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2026–13817.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Daher Aircraft Mandatory Service Bulletin (SB) 70–130, Revision 5, dated January 2026; and Daher Aerospace Mandatory SB 70–130, Revision 4, dated October 2025. This material specifies procedures for inspecting the forging body of the MLG for cracks and replacing any cracked part.

This proposed AD would also require Daher-Socata TBM Aircraft Mandatory SB 70–130, Revision 3, dated December 2014, which the Director of the Federal Register approved for incorporation by reference as of September 29, 2015 (80 FR 51456, dated August 25, 2015).

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

These products have been approved by the civil aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, that authority has notified the FAA of the unsafe condition described in the MCAI and material referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the material already described, except as discussed under ''Differences Between this Proposed AD and the Referenced Material.''

Differences Between This Proposed AD and the Referenced Material

Where Daher Aircraft Mandatory Service Bulletin No. SB 70–130, Revision 5, dated January 2026, provides instructions to contact Daher to obtain approved repair instructions and accomplish that repair accordingly, this AD instead requires contacting either the Manager, International Validation Branch, FAA; EASA; or Daher's EASA Design Organization Approval (DOA) for approved repair instructions and, within the compliance time specified therein, accomplish those instructions accordingly, including post-repair follow-on action(s), as applicable. If approved by the DOA, the approval must include the DOA-authorized signature.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 431 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Special detailed inspection (eddy current or fluorescent penetrant) of the MLG forging body.	4 work-hours × $85 per hour = $340 (per inspection).	$0	$340 (per inspection)	$146,540 (per inspection).

The FAA estimates the following costs to do any necessary actions that would be required based on the results of the proposed inspection. The agency has no way of determining the number of airplanes that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Fluorescent penetrant inspection of MLG forging body	8 work-hours × $85 per hour = $680	$0	$680

MLG forging bodies that are found cracked may either be repaired or replaced. The extent of repairs that may be needed could vary significantly from airplane to airplane. The FAA has no way of determining the cost to repair or

the number of airplanes that may require repair. The following presents the cost if replacement was chosen as the on-condition cost. This replacement may also be done at any time as terminating action for the repetitive inspection requirement of the proposed AD.

Action	Labor cost	Parts cost	Cost per product
MLG forging body replacement	4 work-hours × $85 per hour = $340	$6,000	$6,340

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2015–17–10, Amendment 39–18243 (80 FR 51456, August 25, 2015); and

■ b. Adding the following new airworthiness directive:

Daher Aircraft, SAS: Docket No. FAA–2026–13817; Project Identifier MCAI–2026–00492–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 4, 2027.

(b) Affected ADs

This AD replaces AD 2015–17–10, Amendment 39–18243 (80 FR 51456, August 25, 2015) (AD 2015–17–10), which superseded AD 2007–04–13, Amendment 39–14945 (72 FR 7576, February 16, 2007) (AD 2007–04–13).

(c) Applicability

This AD applies to Daher Aircraft, SAS Model TBM 700 airplanes, certificated in any category, manufacturer serial numbers 1 through 638 and 687, that have an affected part installed as defined in paragraph (f)(1) of this AD.

Note 1 to paragraph (c): Airplanes on which Daher MOD 70–0190–32 has been embodied in production are not affected by the requirements of this AD, provided that, since first flight, no ''affected part'' has been installed on that airplane.

(d) Subject

Joint Aircraft System Component (JASC) Code 3200, Landing Gear System.

(e) Unsafe Condition

This AD was prompted by cracks reported on main landing gear (MLG) cylinders in service. The FAA is issuing this AD to detect cracks on MLG cylinder. The unsafe condition, if not addressed, could result in a collapsed MLG during take-off or landing runs and reduced structural integrity of the airplane.

(f) Definitions

For the purpose of this AD:

(1) An ''affected part'' is a MLG with forging body having part number (P/N) 21236–000–00, 21236–000–01, 22609–000–00, 22609–001–00, 22611–000–00, 22611–001–00, D67685, or D67686.

(2) A ''serviceable part'' is any MLG forging body that is not an affected part.

(g) Compliance

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

(h) Required Actions

(1) Within the compliance time specified in paragraphs (h)(1)(i) through (iii) of this AD, as applicable, and thereafter at intervals not to exceed 240 landings (LDGs), accomplish a special detailed inspection (SDI) (eddy current or fluorescent penetrant) of the ''affected part'' in accordance with the Accomplishment Instructions C. of Daher Aircraft Mandatory Service Bulletin (SB) 70–130, Revision 5, dated January 2026 (Daher Mandatory SB 70–130, Revision 5).

(i) For airplanes with an ''affected part'' that was at 3,500 landings or more since the first installation on an airplane as of March 23, 2007 (the effective date retained from AD 2007–04–13), within 25 landings after March 23, 2007 (the effective date retained from AD 2007–04–13).

(ii) For airplanes with an ''affected part'' that was at 1,751 landings or more since the first installation on an airplane as of March 23, 2007 (the effective date retained from AD 2007–04–13) but less than 3,500 landings, within 100 landings after March 23, 2007 (the effective date retained from AD 2007–04–13).

(iii) For airplanes with ''an affected part'' that was either at or under 1,750 landings as of March 23, 2007 (the effective date of AD 2007–04–13): Upon or before accumulating 1,750 landings on ''affected part'' since new or within the next 100 landings after September 29, 2015 (the effective date retained from AD 2015–17–10), whichever occurs later.

(2) If, during any SDI as required by paragraph (h)(1) of this AD, any crack is suspected or confirmed, before further flight, remove the MLG leg and confirm the presence of the crack with a fluorescent penetrant inspection in accordance with the Accomplishment Instructions C. of Daher Mandatory SB 70–130, Revision 5.

(3) If, during the fluorescent penetrant inspection as required by paragraph (h)(2) of this AD, any crack is confirmed, before further flight, replace the part as specified in paragraph (i) of this AD or contact the Manager, International Validation Branch, FAA; the European Union Aviation Safety Agency (EASA); or Daher's EASA Design Organization Approval (DOA) for approved repair instructions and, within the compliance time specified therein, accomplish those instructions accordingly, including post-repair follow-on action(s), as applicable. If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Terminating Action

Modification of an airplane in service, by installation of a ''serviceable part'' as defined in paragraph (f)(2) of this AD in both left-hand and right-hand MLGs in accordance with the instructions of paragraph E of Daher-Socata TBM Aircraft Mandatory SB 70–130, Revision 3, dated December 2014; Daher Aerospace Mandatory SB 70–130, Revision 4, dated October 2025 (Daher Aerospace Mandatory SB 70–130, Revision 4); or Daher Mandatory SB 70–130, Revision 5, constitutes terminating action for the inspections required by paragraph (h)(1) of this AD.

Note 2 to paragraph (i) of this AD: Daher Component Maintenance Manuals (CMM) 32–11–01 and 32–11–02 also contain instructions on the installation of a ''serviceable part.''

(j) Calculating Unknown Number of Landings for Compliance

The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If the number of landings is unknown, hours TIS may be used by dividing the number of hours TIS by 1.35.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (h) of this AD if those actions were performed before the effective date of this AD using Daher Aerospace Mandatory SB 70–130, Revision 4; Daher-Socata TBM Aircraft Mandatory Service Bulletin No. SB 70–130, Revision 3, dated December 2014; Daher Aircraft Mandatory SB 70–130, Revision 2, dated June 2014; Daher Aircraft Mandatory SB 70–130, Revision 1, dated November 2013; or EADS-Socata TBM Aircraft Mandatory SB 70–130, dated January 2006.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(m) Additional Information

(1) For more information about this AD, contact Zakaria Abdi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (316) 946–4141; email: *zakaria.f.abdi@faa.gov.*

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (n)(4) of this AD.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Daher Aircraft Mandatory Service Bulletin (SB) 70–130, Revision 5, dated January 2026.

(ii) Daher Aerospace Mandatory SB 70–130, Revision 4, dated October 2025.

(4) The following material was approved for IBR on September 29, 2015 (80 FR 51456, dated August 25, 2015).

(i) Daher-Socata TBM Aircraft Mandatory SB 70–130, Revision 3, dated December 2014.

(ii) Reserved

(5) For Daher Aerospace, Daher Aircraft, Daher-Socata, or EADS-Socata TBM material identified in this AD, contact Daher Aircraft, SAS, Daher Aerospace Customer Support, Airplane Business Unit, Tarbes—Cedex 9, France; phone: +1 833 826 2273; email: *tbmcare@daher.com;* website: *daher.com.*

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1100 Main, Kansas City, MO 64105. For information on the availability of this material at the FAA, call (817) 222–5110.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov.*

Issued on November 13, 2026.

Steven W. Thompson,

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

[FR Doc. 2026–23372 Filed 11–16–26; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 190

[Docket No. FDA–2025–N–2699]

RIN 0910–AI91

Rulemaking To Provide That N-acetyl-L-cysteine Is Not Excluded From the Dietary Supplement Definition

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA or we) is proposing to issue a regulation finding that N-acetyl-L-cysteine (NAC) is not excluded from the dietary supplement definition in the Federal Food, Drug, and Cosmetic Act (FD&C Act). This action, if finalized, would allow products containing NAC to be lawfully marketed as dietary supplements, provided that such products are not otherwise in violation of the FD&C Act. We also propose to provide that the addition of NAC to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act.

DATES: Either electronic or written comments on the proposed rule must be submitted by January 19, 2027.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 19, 2027. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2025–N–2699 for ''Rulemaking to Provide by Regulation That N-acetyl-L-cysteine Is Not Excluded from the Dietary Supplement Definition.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket to read background documents, the plain language summary of the proposed rule of not more than 100 words as required by the ''Providing Accountability Through Transparency Act,'' or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Gerie Voss, Office of Dietary Supplement Programs, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–620–9744; or Alexandra Beliveau, Office of Regulations and International Programs, Human Foods Program, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

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I. Executive Summary

A. Purpose of the Proposed Rule

This proposed rule, if finalized, would provide by regulation that NAC is not excluded from the dietary supplement definition in the FD&C Act. This action would allow NAC-containing products to be lawfully marketed as dietary supplements, provided that such products are not otherwise in violation of the FD&C Act. Accordingly, if a product that is or contains NAC is labeled as a dietary supplement and otherwise meets the definition of a dietary supplement under section 201(ff) of the FD&C Act (21 U.S.C. 321(ff)), FDA would regulate such product as a dietary supplement. The proposed rule also would provide that the addition of NAC to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)).

B. Summary of the Proposed Rule

We are proposing to establish a regulation entitled ''Dietary Ingredients Not Excluded from the Dietary Supplement Definition'' at 21 CFR 190.1 (§ 190.1) to provide for the lawful use in dietary supplements of certain ingredients that would otherwise be excluded from the dietary supplement definition. Specifically, this proposed rule would provide that ingredients listed under this regulation are not excluded for use in or as a dietary supplement under section 201(ff)(3)(B) of the FD&C Act and that the addition of such ingredients to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act. NAC would be the first ingredient listed under this new regulation.

C. Legal Authority

We are issuing this proposed rule to establish a regulation to provide for the lawful use of certain ingredients in dietary supplements that would otherwise be excluded from the dietary supplement definition and to list NAC as the first ingredient under this new regulation, consistent with our authority in sections 201(ff)(3)(B), 301(ll)(2), and 701(a) of the FD&C Act (21 U.S.C. 321(ff)(3)(B), 331(ll)(2), and 371(a)).

D. Costs and Benefits

This proposed rule, if finalized, would provide that NAC is not excluded from the dietary supplement definition in the FD&C Act and that the addition of NAC to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act. Accordingly, if a product that is or contains NAC is labeled as a dietary supplement and otherwise meets the definition of a dietary supplement under section 201(ff) of the FD&C Act, FDA would regulate such a product as a dietary supplement.

To estimate benefits, costs, and transfers associated with the proposed rule, we assume that the appropriate baseline is the state of the world in which NAC is excluded from the dietary supplement definition but FDA exercises enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements. We then compare the likely impacts of the proposed rule against this baseline. We do not estimate benefits due to the proposed rule. It is possible that firms may react to the legal clarity of NAC dietary supplement products by introducing new products to market. To the extent that this occurs, consumers may benefit from expanding availability of products that may serve different purposes and uses than the FDA-approved NAC drug products. However, the likelihood and magnitude of such impacts are difficult to estimate.

The costs of the proposed rule are associated with costs to industry for

reading and understanding the rule. Because there are few firms operating in the NAC market, these impacts are small. When annualized over a period of 10 years, we estimate these costs range from approximately $89 to $112 at a 3 percent discount rate. At a 7 percent rate of discount, these estimates range from $109 to $136. Our primary annualized estimates are approximately $99 and $121 at 3 and 7 percent rates of discount, respectively. The primary estimate of the present value of total costs resulting from any final rule that may be issued based on the proposed rule is approximately $848.

II. Background

A. Dietary Supplement Definition

Section 201(ff) of the FD&C Act defines the term ''dietary supplement'' and establishes requirements for what dietary supplements must contain, what they must not contain, how they must be used, and how they must be labeled. A dietary supplement must be a product intended to supplement the diet that contains one or more dietary ingredients (section 201(ff)(1) of the FD&C Act). Under section 201(ff)(1) of the FD&C Act, a ''dietary ingredient'' is any one of the following: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by man to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any dietary ingredient from the preceding categories. In addition, under section 201(ff)(2) of the FD&C Act, a dietary supplement: must be intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form or comply with section 411(c)(1)(B)(ii) of the FD&C Act (21 U.S.C. 350(c)(1)(B)(ii)); must not be represented for use as a conventional food or as a sole item of a meal or the diet; and must be labeled as a dietary supplement.

Section 201(ff)(3)(A) of the FD&C Act provides that a product that otherwise meets the definition of a dietary supplement *does not* lose its status as a dietary supplement if it includes an article that is approved as a new drug under section 505 of the FD&C Act (21 U.S.C. 355) or licensed as a biologic under section 351 of the Public Health Service Act (42 U.S.C. 262), provided that the article was marketed as either a dietary supplement or as a food before it was approved as a new drug or licensed as a biologic. Section 201(ff)(3)(A) of the FD&C Act provides an exception to this general rule, authorizing the Secretary of Health and Human Services (Secretary) to issue a regulation, after notice and comment, finding that the article, when used as or in a dietary supplement under the conditions of use and dosages set forth in the labeling for such dietary supplement, is unlawful under section 402(f) of the FD&C Act.

Section 201(ff)(3)(B) of the FD&C Act (the exclusion clause) provides that a product that would otherwise meet the definition of a dietary supplement *loses* its status as a dietary supplement if the product includes certain articles. Specifically, the general rule of section 201(ff)(3)(B)(i) of the FD&C Act is that a dietary supplement cannot include an article that was approved as a new drug under section 505 of the FD&C Act, certified as an antibiotic under section 507 of the FD&C Act, or licensed as a biologic under section 351 of the Public Health Service Act before the article was marketed as a dietary supplement or as a food. The general rule of section 201(ff)(3)(B)(ii) of the FD&C is that a dietary supplement cannot include an article authorized for investigation as a new drug, antibiotic, or biological for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, unless the article was marketed as a dietary supplement or as a food before such authorization. Section 201(ff)(3)(B) of the FD&C Act provides an exception to the general rules of sections 201(ff)(3)(B)(i) and (ii) of the FD&C Act. Under this exception, the article is not excluded if the Secretary, in the Secretary's discretion, has issued a regulation, after notice and comment, finding that the article would be lawful under the FD&C Act.

This proposed rule is the first use of our rulemaking authority described in section 201(ff)(3)(B) of the FD&C Act.

B. Regulatory Status of NAC

The names for NAC include, but are not limited to, acetylcysteine; L-acetylcysteine; L-alpha-acetamido-beta-mercaptopropionic acid; N-acetyl cysteine; N-acetyl-3-mercaptoalanine; N-acetyl-L-cysteine; NAC; and mercapturic acid. These names all refer to the same article.

Because the elements of the dietary supplement definition in sections 201(ff)(1), (2), and (3) of the FD&C Act are phrased conjunctively (separated by ''and''), a product qualifies as a dietary supplement only if it satisfies the criteria in all three paragraphs (see section II.A of this document for a detailed explanation). Thus, demonstrating that a product satisfies the requirement in section 201(ff)(1) of the FD&C Act to contain a dietary ingredient does not establish that the product meets the other criteria in sections 201(ff)(2) and (ff)(3) of the FD&C Act. NAC is a dietary ingredient under section 201(ff)(1)(E) of the FD&C Act, but it also is excluded from the dietary supplement definition under section 201(ff)(3)(B)(i) of the FD&C Act, as discussed below.

NAC is a dietary ingredient under section 201(ff)(1)(E) of the FD&C Act, *i.e.,* a dietary substance for use by man to supplement the diet by increasing the total dietary intake. For example, a February 1995 advertisement in Vegetarian Times describes NAC as an ingredient in the advertised shake, a conventional food (Ref. 1).

NAC is not a ''new dietary ingredient'' under section 413(d) of the FD&C Act (21 U.S.C. 350b(d)). The term ''new dietary ingredient'' (NDI) means a dietary ingredient that was not marketed in the United States before October 15, 1994, and does not include any dietary ingredient which was marketed in the United States before October 15, 1994. We are aware of an August/September 1991 advertisement for an NAC-containing supplement (Ref. 2). Thus, NAC is not an NDI.

Although NAC is a dietary ingredient, NAC is excluded from the dietary supplement definition under section 201(ff)(3)(B)(i) of the FD&C Act because NAC was approved as a new drug before it was marketed as a dietary supplement or as a food. NAC was approved as a new drug under section 505 of the FD&C Act on September 14, 1963, under New Drug Application (NDA) 013601, Mucomyst (acetylcysteine) (see 28 FR 13509, December 13, 1963). (In accordance with then-21 CFR 130.33, we provided notice of the new drug approval in the **Federal Register** in December 1963 (28 FR 13509, December 13, 1963).) We are not aware of any evidence that NAC was marketed as a dietary supplement or as a food before September 14, 1963, but request evidence to the contrary.

FDA stated NAC's regulatory status several times over the past 25 years. For example, we stated this position in July 2001 in response to a health claim petition for a claim about an NAC-containing product, when we allowed the petition to be denied by operation of law (Ref. 3). The petition did not meet the requirements for a health claim petition as established in 21 CFR 101.70, including the requirement that the petition contain a complete explanation of how the substance that is the subject of the proposed claim conforms to the requirements of 21 CFR 101.14(b). Our response explained that the petition did not meet these requirements because, among other

things, the petitioner did not demonstrate that use of NAC in a dietary supplement was lawful. In particular, after citing the exclusion clause, we noted that NAC was approved as a new drug under section 505 of the FD&C Act on September 14, 1963, under NDA No. 013601, Mucomyst (acetylcysteine), and the petition failed to document a history of NAC having been marketed as a dietary supplement before that date (Ref. 3). Because the health claim petition was denied by operation of law, our July 2001 response was not made available to the public when it was sent to the company that submitted the petition, per section 403(r)(4)(A)(i) of the FD&C Act (21 U.S.C. 343(r)(4)(A)(i)) (Ref. 3). Consequently, this historical response has remained non-public to protect proprietary commercial information; however, a redacted copy of our July 2001 response is being placed in the public docket for this rulemaking (id.) to allow for public review and comment on FDA's administrative precedent.

In 2010, in response to an NDI notification for NAC ethyl ester, we stated that, under the exclusion clause, NAC-containing products cannot be dietary supplements (Ref. 4). In July 2020, as part of warning letters sent to companies illegally selling unapproved products that claimed to cure, treat, mitigate, or prevent hangovers while also labeling their products as dietary supplements, we stated that NAC-containing products are excluded from the definition of dietary supplement under the exclusion clause (Refs. 5 through 8).

In 2021, we received two citizen petitions requesting that we conclude that NAC is not excluded from the definition of dietary supplement under section 201(ff)(3)(B) of the FD&C Act (*https://www.regulations.gov;* Docket Nos. FDA–2021–P–0523 and FDA–2021–P–0938). One citizen petition also asked that, if FDA did not change our position that products containing NAC are excluded from the definition of a dietary supplement under section 201(ff)(3)(B) of the FD&C Act, we recommend that the Secretary issue a regulation, after notice-and-comment rulemaking, finding that NAC would be lawful under the FD&C Act (see Docket No. FDA–2021–P–0938). On March 31, 2022, we issued a joint final response to both petitions, denying one petition in its entirety and denying the other petition in part. We stated our conclusion that NAC is excluded from the dietary supplement definition under section 201(ff)(3)(B)(i) of the FD&C Act, as described above. In addition, we explained that we had not yet reached a final decision on the request to initiate rulemaking and that we were considering initiating rulemaking under section 201(ff)(3)(B) of the FD&C Act to permit the use of NAC in or as a dietary supplement. We acknowledged that, although NAC-containing products labeled as dietary supplements have been sold in the United States for over 30 years, and consumers continue to seek access to such products, we needed additional time to complete our review, including a full safety review of NAC, before responding to the remaining request.

In the **Federal Register** of August 2, 2022 (87 FR 47220), we announced the availability of a final guidance for industry entitled ''Policy Regarding N-acetyl-L-cysteine: Guidance for Industry'' (enforcement discretion guidance), which announced our intent to exercise temporary enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements until either of the following occurs: we complete notice-and-comment rulemaking to allow the use of NAC in or as a dietary supplement, or we deny the citizen petition's request for rulemaking. The enforcement discretion guidance explained our determination that NAC is excluded from the dietary supplement definition because NAC was approved as a new drug before it was marketed as a dietary supplement or as a food (Ref. 9). We stated that, while FDA's full safety review of NAC remained ongoing, our initial review did not reveal safety concerns with respect to the use of NAC in or as a dietary supplement (id.). The enforcement discretion policy applies to products that would be lawfully marketed dietary supplements if NAC were not excluded from the dietary supplement definition and that are not otherwise in violation of the FD&C Act (id.). If this proposed rule is finalized, FDA intends to withdraw this enforcement discretion guidance.

III. Legal Authority

As discussed in section II.A of this document, section 201(ff)(3)(B) of the FD&C Act excludes certain articles from the definition of dietary supplement. Our discussion focuses primarily on the mention of new drug approval in section 201(ff)(3)(B) of the FD&C Act, as that is at issue for NAC; however, the same logic would apply to other articles described in clauses (i) and (ii) of section 201(ff)(3)(B) of the FD&C Act.

The general rule of section 201(ff)(3)(B) of the FD&C Act is if an article is approved as a new drug under section 505 of the FD&C Act, then that article is outside the dietary supplement definition unless the article was marketed as a dietary supplement or a food before such approval. However, there is an exception if FDA (under authority delegated by the Secretary) issues a regulation, after notice-and-comment rulemaking, ''finding that the article would be lawful under this Act'' (*i.e.,* the FD&C Act). In this context (the dietary supplement definition), we interpret this phrase to mean a regulation providing that the article is not excluded from the dietary supplement definition. In other words, because the regulation provides that the article is not excluded from the dietary supplement definition, such article may be lawfully marketed in or as a dietary supplement under the FD&C Act, provided that such product is not otherwise in violation of the FD&C Act.

Congress included section 201(ff)(3)(B) of the FD&C Act in the dietary supplement definition for two main reasons. The first reason is to prevent manufacturers from escaping appropriate safety and efficacy review and FDA oversight for drugs by classifying these products as dietary supplements. See, *e.g.,* Statement of Sen. Kennedy (''There continue to be differences among us as to how to achieve these goals most effectively. For example, the Hatch legislation offers a definition of dietary supplements that many feel is too broad. It will allow certain products which are treated as prescription drugs in other countries, or as unapproved drugs in this country, to be treated as dietary supplements and therefore subjected to inadequate safeguards.'') (Ref. 10); Statement of Sen. Harkin (''[T]he [Hatch-Harkin] compromise assures that prescription drugs cannot escape appropriate review and oversight by being classified as dietary supplements. This concern was raised by a number of Senators and the legislation before us addresses it in a sensible manner.'') (Ref. 11); Ref. 12, at V § 3 (''During consideration of S. 784, concerns were expressed that manufacturers or importers of drugs could avoid the drug approval process by marketing drug products as dietary supplements. Although current authorities should be adequate to deal with such potential problems, the committee is sensitive to those concerns. Accordingly, Senators Harkin and Hatch agreed to formulate additional language prior to consideration of S. 784 in the Senate.''). The second reason is to protect the incentives for new drug development. Section 201(ff)(3)(B)(ii) of the FD&C Act provides that the term dietary

supplement does not include an article authorized for investigation as a new drug, antibiotic, or biological for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public, unless certain criteria are met. This clause extends the scope of the drug exclusion provision beyond approved new drugs, certified antibiotics, and licensed biologics, which are covered by sections 201(ff)(3)(A) and (B)(i) of the FD&C Act. Accordingly, Congress's inclusion of this provision in addition to sections 201(ff)(3)(A) and (B)(i) of the FD&C Act demonstrates that Congress sought to protect investigational new drugs, antibiotics, and biologics that are not yet approved, certified, or licensed. In other words, one of the overarching purposes of section 201(ff)(3)(B)(ii) of the FD&C Act is to protect the incentives for new drug development.

Congress chose to accomplish these goals by establishing a general framework under which a substance is excluded from the dietary supplement definition if its approval as a new drug (or its authorization for investigation as a new drug) preceded its marketing as a dietary supplement or a food. However, recognizing that applying this general framework would not always further these goals, Congress delegated authority to FDA to make exceptions in limited circumstances, through notice-and-comment rulemaking, so that a substance could be used in or as a dietary supplement even though it was approved as a new drug (or authorized for investigation as a new drug) before it was marketed as a dietary supplement or a food. Accordingly, through the statutory structure, purpose, and legislative history of section 201(ff)(3)(B) of the FD&C Act, Congress limited FDA's authority to provide an exception for a substance that otherwise would be excluded from dietary supplements to situations where both of the following conditions are satisfied:

1. There would be adequate safeguards if the substance were regulated as a dietary supplement—*i.e.,* regulation as a dietary supplement would provide appropriate review and oversight of the substance; and

2. Allowing use of the substance in or as a dietary supplement would be unlikely to impede new drug development.

Further, because Congress defined ''dietary supplement'' in section 201(ff) of the FD&C Act, this restricts FDA's rulemaking authority under section 201(ff)(3)(B) of the FD&C Act to articles that are capable of meeting the definition of dietary supplement. Thus, if an article is not a dietary ingredient as described in section 201(ff)(1) of the FD&C Act, that article itself is not capable of meeting the definition of dietary supplement, even if such article is not excluded from the dietary supplement definition under section 201(ff)(3)(B) of the FD&C Act. Accordingly, if an article is not a dietary ingredient, FDA cannot use its rulemaking authority under section 201(ff)(3)(B) of the FD&C Act to provide that such article may be a dietary supplement. Moreover, when FDA uses its rulemaking authority in section 201(ff)(3)(B) of the FD&C Act, the article that is the subject of the rule (*e.g.,* NAC) becomes eligible to be used in or as a dietary supplement. In turn, a dietary supplement that is or contains such article would be deemed a food under section 201(ff) of the FD&C Act and subject to all applicable requirements for food as well as those requirements specific to dietary supplements under the FD&C Act and FDA regulations.

One consequence of a dietary supplement being deemed a food is that section 301(ll) of the FD&C Act, which applies to food, would apply to the dietary supplement. Section 301(ll) of the FD&C Act makes it a prohibited act to introduce or deliver for introduction into interstate commerce any food to which has been added a drug approved under section 505 of the FD&C Act, a biological product licensed under section 351 of the Public Health Service Act, or a drug or a biological product for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public unless an exception applies. One exception is if we have issued a regulation, after notice-and-comment rulemaking, approving the use of the drug or biological product in the food (section 301(ll)(2) of the FD&C Act).

Given the statutory language and structure of sections 201(ff) and 301(ll) of the FD&C Act, with respect to dietary supplements, the rulemaking authority provided by section 301(ll)(2) of the FD&C Act is inextricably linked with the rulemaking authority provided by section 201(ff)(3)(B) of the FD&C Act. That is, if we use our rulemaking authority under section 201(ff)(3)(B) of the FD&C Act to provide that an article is not excluded from the dietary supplement definition, that article would be eligible for use in or as a dietary supplement, and a dietary supplement that is or contains such article would be deemed a food under section 201(ff) of the FD&C Act and, thus, would be subject to section 301(ll) of the FD&C Act. However, if we do not simultaneously use our rulemaking authority under section 301(ll)(2) of the FD&C Act to provide that the addition of such article to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act, this would lead to an illogical result. Specifically, the rule would make the article eligible for use in or as a dietary supplement and also bring that product within the scope of section 301(ll) of the FD&C Act, thereby making it a prohibited act under section 301(ll) of the FD&C Act to add the article to a dietary supplement. Accordingly, if we exercise our rulemaking authority under section 201(ff)(3)(B) of the FD&C Act to provide that an article is not excluded from the definition of dietary supplement, we would necessarily exercise our rulemaking authority under section 301(ll)(2) of the FD&C Act to provide that the addition of such article to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act. Thus, in addition to the authority specified in section 201(ff)(3)(B) of the FD&C Act, section 301(ll)(2) of the FD&C Act provides authority to issue this proposed regulation.

In addition to the authority specified in sections 201(ff)(3)(B) and 301(ll)(2) of the FD&C Act to issue this proposed regulation, section 701(a) of the FD&C Act gives us the authority to promulgate regulations for the efficient enforcement of the FD&C Act.

IV. Application of Rulemaking Authority to NAC

We are aware that, for more than 30 years, NAC has been available for sale in the United States both as FDA-approved drugs and as products improperly labeled as dietary supplements. As discussed above, FDA may use its rulemaking authority under section 201(ff)(3)(B) of the FD&C Act to remove an ingredient from the dietary supplement exclusion and regulate such ingredient as a dietary supplement when such ingredient can be appropriately regulated as a dietary supplement and such removal would be unlikely to negatively impact drug development. We are proposing to apply this rulemaking authority to NAC based on its safety profile and the minimal, if any, impact this rule is likely to have on NAC drug development.

A. Safety Assessment of NAC in or as a Dietary Supplement

To help inform the decision of whether to exercise FDA's rulemaking authority for NAC, FDA reviewed published information on the use and safety of NAC. Safety determinations related to the FDA drug approval for

NAC are not directly applicable to the safety assessment of NAC as a dietary supplement, because drug safety review relies on a risk/benefit paradigm, whereas a safety assessment for a dietary supplement generally considers only risk. Therefore, to support the safety assessment of NAC as a dietary supplement, we collected safety endpoints from published studies using NAC in a variety of clinical contexts, largely outside its approved drug use. Specifically, we conducted a systematic review of studies of orally administered (*i.e.,* ingested) NAC to assess the adverse events (AEs) associated with NAC use in order to demonstrate an expectation of safety for NAC in or as a dietary supplement (Ref. 13). The protocol, results analysis, and conclusions underwent external peer review, as indicated on FDA's Peer Review of Scientific Information and Assessments web page (id.).

The systematic review identified 41 studies of high confidence, which were used for conclusions on AEs and NAC exposure (id.). One study identified a significant increase in nausea among NAC-treated patients, but most other studies reported no AEs or AEs that were not significantly different from non-NAC-treated comparators (id.). Studies included high NAC doses (up to 9000 milligrams (mg) per day (d)) and long durations (up to 3 years), which did not demonstrate an increase in AE reporting (id.). Doses used in the NAC clinical studies were comparable to the recommended serving of available NAC-containing products labeled as dietary supplements, demonstrating similarity of NAC exposure and, therefore, a similar safety profile (id.).

This systematic review evaluated the NAC literature on studies of orally administered (*i.e.,* ingested) NAC in healthy and patient populations to estimate a qualitative Level of Concern (LoC) for the known AEs related to NAC, then translated that LoC conclusion to an expectation of safety for NAC in or as a dietary supplement (id.). A ''minimal'' LoC was concluded based on the consistent reporting of no AEs or statistical conclusion that reported AEs were not attributed to NAC. The concern level was selected from the 5-point scale developed by the National Toxicology Program to provide a standardized summary of risk concern levels (Ref. 14). The reported AEs were found across disparate populations (*e.g.,* from healthy individuals to patients with end-stage renal disease) and varied exposure conditions (*e.g.,* 200 mg/d to 9000 mg/d, for durations 5 days to 3 years); the noted exception is a singular report of non-serious nausea, which would be expected with ingestion of a sulfurous compound (Ref. 13). The commonly reported AEs in the NAC clinical data set are gastrointestinal (GI) pain/discomfort, nausea, vomiting, and rash, and suggest that these non-serious GI-related symptoms may occur in relation to NAC exposure, although only statistically proven in one study reviewed (id.).

NAC exposure from commercially available products labeled as dietary supplements based on the labeled serving size was compared to the doses reported in the collective NAC clinical data. There was significant overlap of the recommended servings of NAC in products labeled as dietary supplements with the doses of the NAC clinical studies. NAC-containing products labeled as dietary supplements recommend a serving of 600 mg/d, 1000 mg/d, or 1200 mg/d more frequently than other serving sizes, similar to the multiple studies that investigated a 1200 mg/d NAC dose. Based on the overlapping exposure to NAC, the conclusions of the systematic review derived from the study groups are relevant to the demonstration of an expectation of safety for NAC in or as a dietary supplement (id.).

Accordingly, we concluded a minimal LoC for the reports of GI-related AEs associated with NAC administration (id.). The studied doses were inclusive of the recommended servings of commercially available NAC-containing products labeled as dietary supplements (id.). As such, the minimal concern can be directly translated to a reasonable expectation of safety for the use of NAC in or as a dietary supplement based on the systematic review of clinical NAC studies (id.).

B. Impact on Drug Development

As stated previously, we first approved NAC as a new drug under NDA 013601 for oral inhalation under the brand name ''Mucomyst'' in 1963 (see 28 FR 13509, December 13, 1963). NDA 013601 was withdrawn in 2009 at the sponsor's request for reasons other than safety or effectiveness (see 78 FR 67365, November 12, 2013). In addition, Cumberland Pharmaceuticals Inc. received approval for acetylcysteine (injectable) under brand name Acetadote on January 23, 2004, under NDA 021539. Acetadote is an antidote for acetaminophen overdose indicated to prevent or lessen hepatic injury after ingestion of a potentially hepatotoxic quantity of acetaminophen in adults and pediatric patients who weigh 5 kilograms or greater with acute ingestion or from repeated supratherapeutic ingestion. We are aware of at least 19 Abbreviated New Drug Applications (ANDAs) for the active ingredient acetylcysteine (as of April 2, 2026, a search of the term ''acetylcysteine'' in the Orange Book: Approved Drug Products with Therapeutic Equivalence Evaluations identified 19 current ANDAs (see *https://www.accessdata.fda.gov/scripts/cder/ob/index.cfm*). Most of these ANDAs received approval after 1991, the first-known marketing of NAC in or as a dietary supplement. For example, Hospira Inc. received approval for ANDA 073664 and ANDA 074037 on August 30, 1994. Luitpold Pharmaceuticals Inc. (now American Regent, Inc.) also received approval for ANDA 072489 and ANDA 072547 on July 28, 1995. As a drug product, acetylcysteine is approved for the indication described above (*i.e.,* prevent or lessen hepatic injury after ingestion of a potentially hepatotoxic quantity of acetaminophen) as well as an adjuvant therapy for patients with abnormal, viscid, or inspissated mucous secretions in certain conditions, such as chronic bronchopulmonary disease. Thus, NAC is currently approved as a new drug under section 505 of the FD&C Act and has been continuously approved as a new drug under section 505 of the FD&C Act since September 14, 1963. Since at least August/September 1991, NAC has been available for sale in the United States both as FDA-approved drugs and as products labeled as dietary supplements.

Similarly, a search to identify the number of clinical trials for NAC, some of which correspond to Investigational New Drug applications (INDs), revealed 832 different trials regarding the use of NAC as a drug (see Ref. 15). This illustrates the fact that researchers continue to study NAC, including for use as a drug, even though NAC-containing products labeled as dietary supplements have been sold in the United States for more than 30 years.

NAC-containing products improperly labeled as dietary supplements have been sold in the United States since at least August/September 1991 (Ref. 2). When Congress defined the term ''dietary supplement'' in 1994, NAC became ineligible to be lawfully sold as a dietary supplement in the United States, but firms illegally continued to sell NAC-containing products labeled as dietary supplements in the United States. During a period of more than 30 years, the sale of NAC-containing products improperly labeled as dietary supplements in the United States does not appear to have negatively impacted NAC drug development.

Given the existence, study, and development of NAC-containing drug products for over 30 years despite the continued sale of NAC-containing products improperly labeled as dietary supplements, we have no reason to believe that removing the dietary supplement exclusion for NAC-containing products and allowing for their sale and regulation as dietary supplements will have an impact on any current or future development of NAC-containing drug products. We invite comment on whether the sale of NAC-containing products labeled as dietary supplements in the United States has negatively impacted NAC drug development or is anticipated to in the future.

We also note that in the notice announcing the availability of the draft enforcement discretion guidance (see 87 FR 24170, April 22, 2022), we stated that we were considering initiating rulemaking under section 201(ff)(3)(B) of the FD&C Act to allow the use of NAC in or as a dietary supplement and, if, among other considerations, we did not identify safety-related concerns as we continued to review the available data and information, we were likely to propose a rule providing that NAC is not excluded from the dietary supplement definition (id. at 24171). We provided a 30-day comment period for the guidance; although, as is the case for all FDA guidance documents, parties may ask that we revise or withdraw an existing guidance document at any time (21 CFR 10.115(f)(4)). To date, we have not received any comments expressing concern or providing data to demonstrate that allowing the sale of NAC in or as a dietary supplement would impact drug development or identifying any other concerns.

V. Description of the Proposed Rule

Section 201(ff)(3)(B) of the FD&C Act authorizes FDA to issue a regulation, after notice-and-comment rulemaking, finding that an article previously excluded from the dietary supplement definition would no longer be excluded and, therefore, would be lawful under the FD&C Act for sale as a dietary supplement, provided that such product is not otherwise in violation of the FD&C Act. This proposed rule, if finalized, would remove the exclusion of NAC from the dietary supplement definition.

We propose to provide that certain ingredients are not excluded for use in or as a dietary supplement under section 201(ff)(3)(B) of the FD&C Act and that the addition of such ingredients to a dietary supplement is not a prohibited act under section 301(ll) of the FD&C Act (see proposed § 190.1). Specifically, proposed § 190.1 would list ''N-acetyl-L-cysteine'' as the sole ingredient under proposed § 190.1(a), and we would reserve a new paragraph (b) to allow for additional ingredients to be added in the future. Thus, under proposed § 190.1(a), NAC would be allowed in or as a dietary supplement, provided that the NAC-containing product otherwise meets the dietary supplement definition under section 201(ff) of the FD&C Act. Such NAC-containing products would, therefore, be subject to the requirements that apply to dietary supplements under the FD&C Act and FDA's implementing regulations. Any adulterated or misbranded dietary supplement product may be subject to compliance or enforcement action. For example, if a dietary supplement has been prepared, packed, or held under conditions that do not meet current good manufacturing practice regulations (section 402(g)(1) of the FD&C Act (21 U.S.C. 342(g)(1)); 21 CFR part 111), it may be subject to compliance or enforcement action.

VI. Proposed Effective Date

We propose that any final rule resulting from this rulemaking become effective immediately upon publication of the final rule. As this rule would relieve a restriction, it can take effect sooner than 30 days after publication in the **Federal Register** (see 5 U.S.C. 553(d)(1)). We request comment on this proposed effective date.

VII. Preliminary Economic Analysis of Impacts

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs (OIRA) has determined that this proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866.

Executive Order 14192 requires that any new incremental costs associated with certain significant regulatory actions ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations.'' This proposed rule, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action because it is an enabling regulatory action that may expand production options.

The Regulatory Flexibility Act requires us to consider the impact of regulatory proposals on small entities. While we do not anticipate that the proposed rule would significantly increase costs to manufacturers, we have prepared an Initial Regulatory Flexibility Analysis for the purpose of providing information and soliciting comment.

The Unfunded Mandates Reform Act of 1995 (Section 202(a)) requires us to prepare a written statement, which includes estimates of anticipated impacts, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $187 million, using the most current (2024) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in an expenditure in any year that meets or exceeds this amount.

To estimate benefits, costs, and transfers associated with the proposed rule, we assume that the appropriate baseline is the state of the world in which NAC is excluded from the dietary supplement definition but FDA exercises enforcement discretion with respect to the sale and distribution of certain products that contain NAC and are labeled as dietary supplements. We then compare the likely impacts of the proposed rule against this baseline. We do not estimate benefits due to the proposed rule. It is possible that firms may react to the legal clarity of NAC dietary supplement products by introducing new products to market. To the extent that this occurs, consumers may benefit from expanding availability of products that may serve different purposes and uses than the FDA-approved NAC drug products. However, the likelihood and magnitude of such impacts are difficult to estimate.

The costs of the proposed rule are associated with costs to industry for reading and understanding the rule. Because there are few firms operating in the NAC market, these impacts are small. When annualized over a period of 10 years, we estimate these costs range from approximately $89 to $112 at a 3 percent discount rate. At a 7 percent rate of discount, these estimates range from $109 to $136. Our primary annualized estimates are approximately $99 and $121 at 3 and 7 percent rates of discount, respectively. The primary estimates of the present value of total

costs resulting from any final rule that may be issued based on the proposed rule is approximately $848. The annualized values are summarized in Table 1. Note that the values are scaled down to zero because they are so small.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE PROPOSED RULE

[Millions of 2024 dollars]

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered (years)	
Benefits:							
Annualized Monetized $millions/year				2024	7 10	10 10	
Annualized Quantified							
Qualitative							
Costs:							
Annualized Monetized $millions/year	$0.00 0.00	$0.00 0.00	$0.00 0.00	2024	7 3	10 10	
Annualized Quantified							
Qualitative							
Transfers:							
Federal Annualized Monetized $millions/year							
From/To	From:			To:			
Other Annualized Monetized $millions/year							
From/To	From:			To:			

Effects:
State, Local or Tribal Government: None.
Small Business: None.
Wages:
Growth:

There is the potential for this rule to generate additional costs, which we do not estimate in this analysis. Because the rule may result in product innovation and market entry, some consumers may use dietary supplements containing NAC rather than an FDA-approved NAC drug product. Any potential impacts from this behavior change for either industry or consumers are uncertain and difficult to predict; though, for the reasons discussed elsewhere in this document, FDA expects this rule is unlikely to negatively impact NAC drug development.

In line with Executive Order 14192, in Table 2 we estimate present and annualized values of costs, cost savings, and net costs over a perpetual time horizon. Note that the values are scaled down to zero because they are so small. The proposed rule may lead to new products, which could increase consumer choice and expand production options for industry. The impacts from these options are left unquantified in this analysis. Because the proposed rule is deregulatory in nature, any eventual final rule based on this proposed rule is expected to be an Executive Order 14192 deregulatory action despite these unquantified impacts.

TABLE 2—EXECUTIVE ORDER 14192 SUMMARY TABLE

[Millions of 2024 dollars, discounted over a perpetual time horizon relative to year 2024 at a 7 percent discount rate]

	Primary estimate	Low estimate	High estimate
Present Value of Costs	$0.0		
Present Value of Cost Savings	Not quantified		
Present Value of Net Costs	N/A		
Annualized Costs	$0.0		
Annualized Cost Savings	Not quantified		
Annualized Net Costs	N/A		

Note: Values in parentheses denote net negative costs (*i.e.,* net cost savings).

We request comment on our estimates of benefits, costs, and transfers of this proposed rule.

We have developed a full Preliminary Economic Analysis of Impacts that assesses the impacts of the proposed rule. The full preliminary analysis of economic impacts is available in the docket for this proposed rule (Ref. 16) and at *https://www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria*.

VIII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Federalism

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. We have determined that this proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

XI. Consultation and Coordination With Indian Tribal Governments

We have analyzed this proposed rule in accordance with the principles set forth in Executive Order 13175. We have tentatively determined that the rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, 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. FDA invites comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

XII. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov*. References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. Although FDA verified the website addresses in this document, please note that websites are subject to change over time.

1. Oxy-Nectar, Advertisement, Vegetarian Times, February 1995.
2. Townsend Letter for Doctors, Advertisement, August/September 1991, at p. 638.
* 3. U.S. Food and Drug Administration. Letter from Lynn A. Larsen, Ph.D., Director, Division of Nutrition Science and Policy, Office of Nutritional Products, Labeling and Dietary Supplements to [Redacted], July 19, 2001. Accessed January 23, 2025. Available at *https://www.regulations.gov/document/FDA-2021-P-0938-0032*.
* 4. U.S. Food and Drug Administration. Letter from Dan D. Levy, Ph.D., Microbiologist, Supervisor, New Dietary Ingredient Review Team, Division of Dietary Supplement Programs, Office of Nutrition, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, to Tiara Pharmaceuticals, October 21, 2010. Accessed January 23, 2025. Available at *https://www.regulations.gov/document/FDA-2010-S-0665-0004*.
* 5. Center for Food Safety and Applied Nutrition. Warning Letter from William A. Correll, Jr., Director, Office of Compliance, Center for Food Safety and Applied Nutrition, to Jason Burke, MD, President, Vita Heaven, LLC dba Hangover Heaven, July 23, 2020. Accessed January 23, 2025. Available at *https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/vita-heaven-llc-dba-hangover-heaven-593765-07232020*.
*6. Center for Food Safety and Applied Nutrition. Warning Letter from William A. Correll, Jr., Director, Office of Compliance, Center for Food Safety and Applied Nutrition, to Ben Shaw, Owner/President, Happy Hour Vitamins, July 23, 2020. Accessed January 23, 2025. Available at *https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/happy-hour-vitamins-593770-07232020.*
*7. Center for Food Safety and Applied Nutrition. Warning Letter from William A. Correll, Jr., Director, Office of Compliance, Center for Food Safety and Applied Nutrition, to John Heathco, CEO, LES Labs, July 23, 2020. Accessed January 23, 2025. Available at *https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/les-labs-593764-07232020.*
*8. Center for Food Safety and Applied Nutrition. Warning Letter from William A. Correll, Jr., Director, Office of Compliance, Center for Food Safety and Applied Nutrition, to Monir Elias, CEO, Purple Biosciences, LLC, July 23, 2020. Accessed January 23, 2025. Available at *https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/purple-biosciences-llc-593772-07232020.*
*9. U.S. Food and Drug Administration. ''Guidance for Industry: Policy Regarding N-acetyl-L-cysteine, August 2022.'' Accessed January 23, 2025. Available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-policy-regarding-n-acetyl-l-cysteine.*
*10. U.S. Congress. Senate. Congressional Record, Proceedings and Debates of the 103rd Congress, Second Session. Vol 140, Part 16. 103rd Cong., 2nd sess., August 13, 1994. p. 22413. Accessed September 9, 2025. Available at: *https://www.govinfo.gov/app/details/GPO-CRECB-1994-pt16/*.
*11. U.S. Congress. Senate. 140 Cong. Rec. 23036, 103rd Cong., 2nd sess., August 18, 1994. Accessed September 9, 2025. Available at: *https://www.congress.gov/bound-congressional-record/1994/08/18/140/senate-section/article/22926-23067?s=2&r=28*.
*12. U.S. Congress. Senate. Committee on Labor and Human Resources. *Conference Report to accompany S. 784.* Senate Report No. 103–410, 103rd Cong., 2nd sess., October 8, 1994.
*13. U.S. Food and Drug Administration. Safety Assessment for Ingested N-acetylcysteine Exposure: A Systematic Review. November 2026. Available at: *https://www.fda.gov/science-research/peer-review-scientific-information-and-assessments/completed-peer-reviews.*
*14. Jahnke, G.D., A. Iannucci, A. Scialli, et al. ''Center for the Evaluation of Risks to Human Reproduction—The First Five Years.'' Birth Defects Research (Part B): Developmental and Reproductive Toxicology 74: 1–8. Wiley-Liss, Inc., February 2005. Accessed January 23, 2025. Available at *https://doi.org/10.1002/bdrb.20028*.
*15. National Library of Medicine. ''*ClinicalTrials.gov;* Search term: NAC.'' *ClinicalTrials.gov*. Accessed February 10, 2026. Available at *https://clinicaltrials.gov/search?intr=NAC.*
*16. U.S. Food and Drug Administration, ''Rulemaking to Permit the Lawful Use of N-acetyl-L-cysteine in or as a Dietary Supplement; Preliminary Regulatory Impact Analysis.'' Available at *https://*

www.fda.gov/about-fda/economics-staff/regulatory-impact-analyses-ria.

List of Subjects in 21 CFR Part 190

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, we propose that 21 CFR part 190 be amended as follows:

PART 190—DIETARY SUPPLEMENTS

■ 1. The authority citation for part 190 continues to read as follows:

Authority: Secs. 201(ff), 301, 402, 413, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(ff), 331, 342, 350b, 371).

■ 2. Add subpart A, consisting of § 190.1, to read as follows:

Subpart A—Dietary Supplement Ingredients

§ 190.1 Dietary ingredients not excluded from the dietary supplement definition.

The following ingredients, which would otherwise be excluded from the dietary supplement definition, are not excluded for use in or as a dietary supplement under section 201(ff)(3)(B) of the Federal Food, Drug, and Cosmetic Act (the Act) and the addition of such ingredients to a dietary supplement is not a prohibited act under section 301(ll) of the Act:

(a) N-acetyl-L-cysteine.

(b) [Reserved]

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–23351 Filed 11–16–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 71

[Docket No. MSHA–2026–0200]

RIN 1219–AC22

Respirable Crystalline Silica and Respiratory Protection

AGENCY: Mine Safety and Health Administration (MSHA), Department of Labor.

ACTION: Proposed rule; correction.

SUMMARY: The Mine Safety and Health Administration (MSHA) is correcting an error in the ''Respirable Crystalline Silica and Respiratory Protection'' proposed rule that was published in the **Federal Register** on November 12, 2026. The proposed rule clarifies and modifies provisions of MSHA's respirable crystalline silica and respiratory protection standards.

DATES: This correction is effective November 17, 2026.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances, MSHA at *MSHARulemaking@dol.gov* (email) or 202–693–9440 (voice). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In a proposed rule published on November 12, 2026, at 91 FR 73062, MSHA proposed to clarify and modify provisions of the respirable crystalline silica and respiratory protection standards in 30 CFR part 60. The proposal included conforming amendments in 30 CFR parts 56, 57, 71, and 72. The proposed conforming amendment in 30 CFR 71.700(a) removes an outdated reference to respirable dust containing quartz and replaces it with respirable crystalline silica. This document corrects the proposed revision to the regulatory text in 30 CFR 71.700(a).

Correction

In FR Doc. 2026–23048 appearing in the first column on page 73132 in the issue of November 12, 2026 (91 FR 73062), paragraph (a) of § 71.700 is corrected to read as follows:

§ 71.700 Inhalation hazards; threshold limit values for gases, dust, fumes, mists, and vapors. [Corrected]

(a) No operator of an underground coal mine and no operator of a surface coal mine may permit any person working at a surface installation or surface worksite to be exposed to airborne contaminants (other than respirable coal mine dust, respirable crystalline silica, and asbestos dust) in excess of, on the basis of a time-weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists in ''Threshold Limit Values of Airborne Contaminants'' (1972), which is hereby incorporated by reference and made a part hereof. Excursions above the listed threshold limit values shall not be of greater magnitude than is characterized as permissible by the conference. This paragraph does not apply to airborne contaminants given a ''C'' designation by the conference in the document. This document is available for examination at MSHA's Office of Standards, Regulations, and Variances, 200 Constitution Avenue NW, Washington, DC 20210; 202–693–9440; and at every Mine Safety and Health Enforcement District Office. Copies of the document may be purchased from the American Conference of Governmental Industrial Hygienists, 1330 Kemper Meadow Drive, Attn: Customer Service, Cincinnati, OH 45240; 513–742–2020; *http://www.acgih.org.*

* * * * *

Wayne D. Palmer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 2026–23390 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 8

[Docket No. VA–2026–VBA–0430]

RIN 2900–AS98

Discontinuing Premium Collection From Policyholders on Certain National Service Life Insurance Policies

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its National Service Life Insurance (NSLI) regulations to cease collecting premiums from veterans with NSLI policies identified by the prefixes ''V,'' ''J,'' and ''JR.'' VA has determined there are sufficient financial resources to cover the remaining active policies, enabling veterans to benefit from continued coverage without having to pay future premiums. These programs cover predominantly World War II-era veterans.

DATES: Comments must be received by December 17, 2026.

ADDRESSES: You may submit comments through *www.regulations.gov* under RIN 2900–AS98. That website includes a plain language summary of this rulemaking. Comments will be posted for viewing by the public on *www.regulations.gov,* including any personally identifiable information (*e.g.,* a social security number or address) within a comment and its supporting materials. However, VA retains discretion to redact personal or sensitive information, including but not limited to personal or sensitive information pertaining to third parties. Additionally, VA will not post public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. Instructions for accessing

agency documents, submitting comments, and viewing the rulemaking docket, are available on *www.regulations.gov* under ''FAQ.'' Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Ethan Parker, Supervisory Insurance Specialist, Veterans Benefits Administration, *ethan.parker2@va.gov*.

SUPPLEMENTARY INFORMATION: NSLI was created by Congress on October 8, 1940, to handle the insurance needs of World War II service personnel. National Life Insurance Act of 1940, 54 Stat. 1008 (1940) (currently located at 38 U.S.C. 1901 *et seq.*). Policies were issued from 1940 until April 24, 1951, under a variety of plans and as renewable term insurance, including policies issued under the ''V'' prefix (hereinafter, NSLI–V). Congress later authorized a limited reopening of NSLI to certain eligible World War II and Korean War veterans under Public Law (Pub. L.) 88–664, 78 Stat. 1094, 1096 (1964) (currently located at 38 U.S.C. 1925). During this time, policies were issued under the ''J,'' ''JR,'' and ''JS'' prefixes and are collectively referred to as the Veterans' Reopened Insurance (VRI) program. There are no longer any active reopened policies with the prefix ''JS.''

VA has determined that it is no longer necessary to collect premiums from veterans for NSLI–V policies and the VRI–J and VRI–JR policies. These policies cover predominantly World War II-era veterans and have been closed to new issues for decades. There are approximately 16,000 current policyholders under NSLI–V, VRI–J, and VRI–JR, ranging in age from 87 to 101 years. The funds that cover these policies are in strong financial position, and VA concludes there are sufficient financial resources to cover future liabilities and cost, while providing adequate margin to guard against adverse experience and allow for the payment of dividends.

The NSLI–V, VRI–J, and VRI–JR programs are self-supporting (that is, operating without any appropriations). They are supported exclusively by premium income, accumulated reserves, and investment income generated within their dedicated insurance funds. As noted above, these programs are in a strong financial position and possess sufficient resources to meet all projected future liabilities. Because no appropriated dollars are used to administer or sustain these programs, placing NSLI–V, VRI–J, and VRI–JR premium paying policies into paid-up status would not result in any cost to the Federal Government. Rather, this proposed rule would adjust the internal operation of a mature, closed insurance program whose financial condition would allow VA to discontinue premium collection while continuing to honor all policy obligations without taxpayer funding.

VA notes that declaring an insurance program paid-up when there are sufficient financial resources to cover the remaining active policies is consistent with past VA action. In 1983, VA previously declared the United States Government Life Insurance (USGLI) program paid-up via regulatory revisions. See 48 FR 1959 (Jan. 17, 1983). A paid-up declaration for NSLI–V, VRI–J, and VRI–JR would benefit veteran policyholders in multiple ways. First, approximately 65% of current policyholders are required to pay premiums and a paid-up declaration would discontinue premium obligations for eligible veterans. Additionally, because premium obligations would cease prospectively, policyholders would no longer face potential lapses for nonpayment or a need to establish good health to reinstate a lapsed policy. VA and the veteran policyholders VA serves would also benefit from this rule inasmuch as VA projects administrative savings due to reduced billing, check collections, dividends, and lapse-related activities.

I. Authority To Regulate

NSLI is established under chapter 19 of title 38, United States Code (U.S.C.), and implemented in part 8 of title 38, Code of Federal Regulations (CFR). Sections 1906 and 1908 authorize the Secretary to prescribe regulations regarding premium payments and general program policy provisions. Additionally, under 38 U.S.C. 501, ''[t]he Secretary has authority to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department.'' Based on these authorities, VA is proposing to amend 38 CFR part 8 to establish paid-up status for NSLI policies with certain prefixes, which would cease premium payment collections for existing veteran policyholders of such policies.

II. Discussion of Proposed Changes

A. New § 8.37

VA proposes to add a new 38 CFR 8.37, titled ''Paid-up status of National Service Life Insurance.'' Paragraph (a) of this new section, under the paragraph heading ''Paid-up declaration and effective date,'' would provide that effective 30 days after publication of a final rule, all NSLI–V, VRI–J, and VRI–JR policies that are not already paid-up, terminated, or in force under the extended term insurance provision would be considered paid-up such that no further premiums would be required to maintain these policies in force.

Under proposed paragraph (a), VA would include in its paid-up declaration NSLI–V, VRI–J, and VRI–JR policies for which premium payments may be outstanding but for which VA has not completed the final lapse action to extend the plan as term insurance pursuant to 38 CFR 8.14. In such cases, these veterans would not have to repay the missed premiums, and their insurance policies would continue without interruption. VA considered several factors in deciding to include these policies in the paid-up declaration: these late-payment cases are less than 3% of all current policies, the average amount owed is less than $60 per policy, these veterans are advanced in age, the fund is in strong financial health, and collecting these small payments would cost both the veterans and VA more time and money than what is owed. Allowing these policies to remain in force and declared paid-up without requiring payment of a limited number of overdue premiums is therefore considered the most compassionate and cost-effective approach.

For any lapsed policy for which VA has taken final action, VA notes that such policy could be declared paid-up under this proposed rule if the veteran applies and is approved for policy reinstatement within the eligibility period provided by 38 CFR 8.7.

Proposed paragraph (b) would include the heading ''Continuation of policy provisions'' and would specify that policies described in paragraph (a) would remain in effect subject to all contract provisions and applicable regulations, despite VA not collecting premiums from policyholders.

Proposed paragraph (c) would state, under the paragraph heading ''Advance premiums,'' that any premiums paid in advance for months subsequent to the effective month of the paid-up declaration shall be held on deposit on the policy to accrue interest until the insured requests a refund. VA considered automatically refunding any advance premiums to the veteran but opted to let the veteran decide due to potential unforeseen consequences associated with a lump-sum refund. VA would further outline in paragraph (c) that in the event a refund is requested, VA would remit to the veteran the

advance premiums and any accrued interest.

Proposed paragraph (d) would outline, under the paragraph heading ''Effect of paid-up status on other provisions,'' how other provisions within part 8 would or would not apply as a result of VA's paid-up declaration. Because multiple sections within part 8 refer to or assume ongoing premium obligations, this paragraph would assist readers in understanding how a paid-up declaration affects those sections.

VA proposes to clarify in paragraph (d)(1) that VA would not bill, collect, remit, deduct, or otherwise require premiums for policies described in § 8.37(a). As previously discussed, this would include policies for which premiums may be owed but VA has not completed the final lapse action to extend the plan as term insurance pursuant to § 8.14. For example, consider a policy for which a premium is due on June 1, but the veteran does not pay the premium during the 31-day grace period, which expires on July 2. Under current § 8.2(d)(2), VA would treat a premium paid after the 31-day grace period as timely if the veteran pays the premium within 61 days of its due date and the veteran is alive when the payment is mailed. In this case, because the 61-day period extends through July 31, the policy is outside the grace period but still within the period during which a late premium would still be considered timely. Also, VA would not have taken final lapse action and placed the policy on extended term insurance until after expiration of the 61-day period. If the paid-up declaration becomes effective July 10, the policy would qualify for the paid-up declaration under proposed § 8.37(a). Further, under proposed § 8.37(d)(1), VA would not require payment of the unpaid June premium, the policy would remain in force and paid-up as of July 10, and no further premiums would be billed or collected. The unpaid June premium becomes irrelevant with respect to maintaining coverage.

VA proposes to clarify in paragraph (d)(2) that the paid-up declaration does not alter, forgive, or extinguish any policy loans (see § 8.13) or lien amounts (see §§ 8.3(a)(6) and (b)(2) and 8.13) that arose prior to the paid-up declaration effective date. Such indebtedness would remain fully enforceable in accordance with the policy contract and applicable regulations.

Veterans would continue to be eligible to earn annual dividends based on the program's investment performance and experience. Because the declaration of paid-up status would mean that premiums would no longer be due after the effective date, certain dividend options—namely those that involve applying dividends to reduce or pay future premiums—would no longer function in practice because no premiums would exist to be reduced or offset. To provide clarity for veterans, proposed paragraph (d)(3) would specify that dividends would be held on deposit to accrue interest unless the insured elects an option available under § 8.10(e) through (g).

Finally, veterans are able to pay premiums through pre-authorized debit, allotment, or other deduction authorization. See, *e.g.,* 38 CFR 8.4 and 8.5. Proposed paragraph (d)(4) would specify that any such preauthorization related to premium payment would automatically terminate on the paid-up declaration effective date, ensuring that VA does not collect premiums that are no longer owed. This would include authorizations associated with policies that were not actively premium-paying at the time of the declaration but for which a deduction arrangement remains on file. It would not affect any authorizations for payment of any outstanding policy loans or liens, as described in proposed paragraph (d)(2).

B. Technical and Other Amendments

In addition to proposed new § 8.37, VA proposes to amend 38 CFR 8.2, which discusses payment of premiums, by adding a new paragraph (f), under the heading ''What effect does a paid-up declaration have upon the payment of premiums?'' This paragraph would state that, notwithstanding paragraphs (a) through (e) of this section, no premiums would be due or payable for any policy described in § 8.37 on or after the effective date specified therein. While proposed § 8.37(d)(1) would state that premiums would not be required for policies VA has declared as paid-up, VA believes amending § 8.2 would provide additional clarity to readers looking for information about whether premiums would be owed on an NSLI policy.

Lastly, VA proposes to insert the undesignated heading ''Other Provisions'' before 38 CFR 8.31. Part 8 includes undesignated headings to assist readers in finding relevant sections. Newer provisions have been added to the end of part 8 under the undesignated heading ''Appeals'' despite not being related to such topic. With the proposed addition of new § 8.37, VA is proposing a technical amendment to organize §§ 8.31 through 8.37 under this general heading to avoid confusion.

III. Explanation of Comment Period

VA is issuing this proposed rule with a 30-day comment period. The Administrative Procedure Act (APA) does not specify the length of the comment period, requiring only that an agency give the public an ''opportunity to participate.'' Agencies commonly allow 30 to 60 days for comment on a proposed rule. VA is limiting the comment period to 30 days because this rule would financially benefit an aged veteran population and, based on public feedback on past paid-up declarations via regulation, VA believes that a 30-day public comment period is sufficient to ensure VA can gather input from interested parties while accelerating the process toward a final rule to assist affected veterans.

Executive Orders 12866, 13563, and 14192

VA examined the impact of this rulemaking as required by Executive Orders 12866 (Sept. 30, 1993) and 13563 (Jan. 18, 2011), which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs has determined that this rulemaking is a significant regulatory action under section 3(f) of Executive Order 12866. This proposed rule is expected to be a deregulatory action under Executive Order 14192 because this rule produces measurable savings by eliminating both Federal administrative activities and recurring burdens on insured veterans. These savings are outlined in the regulatory impact analysis associated with this rulemaking, which can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This certification is based on the fact that this rule would affect insured individuals and VA's administration of its insurance programs; it would impose no obligations on or impact small entities. Therefore, under 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

This proposed rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or

by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

List of Subjects in 38 CFR Part 8

Insurance; Veterans.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on November 10, 2026, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Gabriela DeCuir,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 8 as set forth below:

PART 8—NATIONAL SERVICE LIFE INSURANCE

■ 1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901–1929, 1981–1988, unless otherwise noted.

■ 2. In § 8.2, add paragraph (f) to read as follows:

§ 8.2 Payment of premiums.

* * * * *

(f) *What effect does a paid-up declaration have upon the payment of premiums?* Notwithstanding paragraphs (a) through (e) of this section, no premiums shall be due or payable for any policy described in § 8.37 on and after the effective date specified therein.

■ 3. Add the undesignated center heading ''Other Provisions'' immediately before § 8.31.

■ 4. Add § 8.37 to read as follows:

§ 8.37 Paid-up status of National Service Life Insurance.

(a) *Paid-up declaration and effective date.* Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], all National Service Life Insurance policies issued under 38 U.S.C. 1904 with policy prefix V and policies issued under 38 U.S.C. 1925 with policy prefixes J and JR that are not paid-up, terminated, or in force under the extended term insurance provision (§ 8.14) are considered paid-up and no further premiums are required to maintain such policies in force. A policy that is in force under extended term insurance as of the paid-up declaration effective date and is later approved for reinstatement under § 8.7 shall be considered paid-up as of the paid-up declaration effective date, and no premiums shall be required to maintain such policy in force for any period beginning on or after that date.

(b) *Continuation of policy provisions.* Upon entering into non-premium-paying status following the paid-up declaration under paragraph (a), such policies shall remain in effect subject to all contract provisions and applicable regulations except for the premium-payment requirements.

(c) *Advance premiums.* Any premiums paid in advance but not yet applied as of the paid-up declaration effective date shall be held on deposit on the policy of the insured to accrue interest until the insured requests a refund or until the policy matures. If the insured requests a refund, or if the policy matures before the insured requests a refund, VA will remit the advance premiums plus any accrued interest.

(d) *Effect of paid-up status on other provisions.* Notwithstanding any other provision of this part, for any policy described in § 8.37(a):

(1) No premiums may be billed, collected, remitted, deducted, or otherwise required under §§ 8.2 through 8.5 as of the paid-up declaration date.

(2) Any lien or policy loan existing on a policy as of the paid-up declaration date shall remain in effect and shall continue to be subject to the terms of the policy and to §§ 8.11 through 8.15, as applicable. Nothing in this section shall be construed to cancel, forgive, or otherwise alter any such indebtedness or lien.

(3) Dividends shall be held on deposit on the policy of the insured to accrue interest in accordance with § 8.10(g), unless the insured elects another option under § 8.10(e)–(g).

(4) Any pre-authorized debit, allotment, or deduction authorization related to premium payment shall automatically terminate on the paid-up declaration effective date.

[FR Doc. 2026–23364 Filed 11–16–26; 8:45 am]

BILLING CODE 8320–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2027–3; Order No. 9796]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent Postal Service filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: Comments are due November 27, 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:

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I. Introduction

On November 6, 2026, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to the Postal Service's Priority Mail transportation model.[1] The Petition proposes replacing sample data from the Origin-Destination Information System—Revenue, Pieces, and Weight (ODIS–RPW) with Product Tracking and Reporting (PTR)[2] data to measure

[1] Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles, November 6, 2026 (Petition). The proposed change is attached to the Petition (Proposal).

[2] PTR stores tracking data for all barcoded packages and extra services, delivering real-time updates to customers. PTR captures tracking events continuously from label creation to final delivery, aggregating data from a variety of sources including mailer data, handheld scanners, retail terminals, and mail processing equipment. United States Postal Service, PostalPro, Product Tracking and Reporting (PTR), *https://postalpro.usps.com/product-tracking-and-reporting.*

Priority Mail weight and volume by origin-destination ZIP Code pair. Petition, Proposal at 1. The Postal Service states that it is not seeking to change the underlying conceptual methodology of the current Priority Mail model but only looking to change one data source. *Id.*

The Postal Service also filed a supporting folder under seal containing model outputs and the proposed change's effect on unit costs by zone.[3] The Postal Service states that the folder contains commercially sensitive information similar to information reported in Library Reference USPS–LR–NP27 in its *Annual Compliance Report.* Petition at 1. The Postal Service therefore adopts by reference its application for non-public treatment filed in Docket No. ACR2025.[4]

II. Proposal

Background. The Postal Service contends that PTR should replace ODIS–RPW because PTR provides more complete data, considering the ODIS–RPW sample reduction approved in Commission Order No. 9449 took effect in FY 2026, Quarter 4.[5] The Postal Service notes that, in Docket No. RM2021–3, it identified PTR as a potential alternative source for determining the percentages of mail transported by air ''to and from the offshore location.''[6] Following approval of the changes proposed in that docket, the Postal Service now considers it appropriate to use PTR for the relevant portions of the Priority Mail transportation model.'' Petition, Proposal at 4.

The current model uses ODIS–RPW sample data for two principal purposes.[7] First, it distributes Alaska, Hawaii, and Air Taxi costs by zone. Second, it estimates the portions of Priority Mail involving ground-air or air-ground connections and the portion of Zone 1 mail classified as Intra-SCF. Petition, Proposal at 2. The Postal Service states that the current model pulls ODIS–RPW data from the origin-destination ZIP (ODZIP) file which identifies the origin-destination ZIP3 pairs in the sample and reports the corresponding Priority Mail weight and volume for the fiscal year. *Id.* Although the Postal Service considers the existing sample large, it states that reducing the sample size will increase statistical variance. *Id.*

Proposal and rationale. The Postal Service proposes replacing the ODIS–RPW-based ODZIP dataset with a more complete PTR dataset because PTR covers the relevant population-level census data, rather than a statistical sample, thereby eliminating sampling variance in the reported weights and volumes. *Id.* at 3. The Postal Service asserts that PTR data will be more representative of all Priority Mail, providing mail piece data for more ODZIP3 pairs. *Id.*

Impact. The Postal Service asserts that it sees changes in the weights by zone for Alaska, Hawaii, and Air Taxi networks because they rely on inputs from the ODIS–RPW sample data. *Id.* at 4. For highway-related inputs to the Transportation Cost Model workbook, the Postal Service reports a 0.87-percentage-point increase in the share of distance-related ground transportation costs associated with ground-to-air or air-to-ground connections. *Id.* It also reports a 7.41-percentage-point increase in the share of Local and Zone 1 weight attributable to Intra-SCF mail.[8] The Postal Service asserts that ''[t]hese shifts are a result of the PTR data having more complete coverage of all ZIP3 combinations relative to the ODIS–RPW sample data.'' Petition, Proposal at 4.

The Postal Service concludes that replacing ODIS–RPW sample data with census data from PTR results in an improvement in the quality, accuracy, and completeness of the Priority Mail transportation model and has minimal impact on the final unit cost by zone. *Id.* at 5.

III. Notice and Comment

The Commission establishes Docket No. RM2027–3 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *https://www.prc.gov.* Interested persons may submit comments on the Petition and the Proposal no later than November 27, 2026. Pursuant to 39 U.S.C. 505, Annette Morin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. 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.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2027–3 for consideration of the matters raised by the Petition of the United States Postal Service to Initiate a Proceeding to Change Analytical Principles, filed November 6, 2026.

2. Comments by interested persons in this proceeding are due no later than November 27, 2026.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Annette Morin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. This Order, or abstract thereof, will be published in the **Federal Register**.

By the Commission.

Danielle LeFlore,

Legal Assistant.

[FR Doc. 2026–23363 Filed 11–16–26; 8:45 am]

BILLING CODE 7710–FW–P

[3] *See id.;* Library Reference USPS–RM2027–3–NP1, November 6, 2026.

[4] *See* Docket No. ACR2025, United States Postal Service, FY 2025 *Annual Compliance Report,* December 29, 2025, Attachment 2.

[5] *See* Petition, Proposal at 1; Docket No. RM2021–3, Order on Analytical Principles Used for Periodic Reports Concerning Revenue, Pieces, and Weight Methodology, February 9, 2026 (Order No. 9449).

[6] *See* Petition, Proposal at 2; Docket No. RM2021–3, Responses of the United States Postal Service to Questions 1–7 of Chairman's Information Request No. 2, April 19, 2021, question 4.d.

[7] Docket No. ACR2025, Library Reference USPS–FY25–NP27, December 29, 2025, Excel file ''FY2025 PMTransportationCostModel.xlsx.''

[8] *Id.;* Library Reference USPS–RM2027–3–NP1, Excel file ''PMail Model Output Comparison.xlsx.''

Notices

Federal Register
Vol. 91, No. 220
Tuesday, November 17, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: The Assembly of the Administrative Conference of the United States (ACUS) will meet during a one-day hybrid plenary session to consider four proposed recommendations and to conduct other business. Written comments may be submitted in advance, and the meeting will be accessible to the public.

DATES: The meeting will take place on Thursday, December 10, 2026, from 9:30 a.m.–4:30 p.m. (ET). The meeting may adjourn early if all business is finished.

ADDRESSES: For those attending in person, the meeting will be held at The George Washington University State Room, 1957 E Street NW, Washington, DC 20052. There will be a virtual attendance option. Information on how the public can access the meeting will be available on the agency's website prior to the meeting at *https://www.acus.gov/event/86th-plenary-session.* ACUS members will receive member-only access information separately.

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036; Telephone 202–480–2080; email *smcgibbon@acus.gov.*

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to federal agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: Four proposed recommendations will be considered by the Assembly. In addition, there will be updates on past, current, and pending Conference initiatives, as well as other business. Summaries of the recommendations appear below:

Improving Transparency in the Review of Applications for Licenses and Permits. This proposed recommendation addresses what information about pending license and permit applications agencies make publicly available and how they do so. It identifies best practices to help agencies collect, analyze, and disclose information about their license programs and pending applications. It also addresses best practices for documenting license processes and identifying core milestones; communicating with applicants more effectively, including through the use of automation; and providing useful information to applicants and the general public in a timely and useful format.

General Permits and Permits by Rule. This proposed recommendation addresses agencies' use of general permits and other standardized approaches to permitting. It identifies best practices to help agencies improve fairness, accuracy, efficiency, and timeliness, and transparency in the granting of permission to undertake regulated activities.

Regulatory Warnings. This proposed recommendation provides best practices for determining whether federal agencies should issue regulatory warnings and ensuring that agencies provide recipients with the opportunity to respond to such warnings. It also addresses how agencies should manage regulatory warnings, when and how agencies should make regulatory warnings publicly available, and how agencies can use regulatory warnings in support of rulemaking to clarify legal requirements.

Frontline Decision Making in the Adjudication of Applications. This proposed recommendation identifies best practices for frontline decision making in the adjudication of benefits, loans, grants, licenses, patents, and other applications in which there is a later opportunity for an evidentiary hearing. It addresses how agencies can improve the management of frontline decision making and communication with applicants and representatives at the frontline level. It also encourages agencies to facilitate the ongoing mutual exchange of information between frontline components and other agency components.

Additional information about the proposals and the agenda, as well as any changes or updates to the same, can be found at the 86th Plenary Session page on ACUS's website prior to the start of the meeting: *https://www.acus.gov/event/86th-plenary-session.*

Public Participation: The Conference welcomes the virtual attendance of the public at the meeting. Members of the public wishing to view the meeting are asked to RSVP online at the 86th Plenary Session web page shown above no later than two days before the meeting to ensure adequate bandwidth. A livestream of the meeting will be posted the morning of the meeting on the 86th Plenary Session web page. A video recording of the meeting will be available on the Conference's website shortly after the conclusion of the event at *https://youtube.com/@AdministrativeConference.*

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either by email to *info@acus.gov* with ''December 2026 Plenary Session Comments'' in the subject line of the email, or by U.S. Mail addressed to: December 2026 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW, Washington, DC 20036. Written submissions must be received no later than 10:00 a.m. (ET), Friday, December 4, 2026, to ensure consideration by the Assembly.

(Authority: 5 U.S.C. 595)

Dated: November 12, 2026.

Shawne McGibbon,

General Counsel.

[FR Doc. 2026–23345 Filed 11–16–26; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Tribal Advisory Committee

AGENCY: Office of Tribal Relations, USDA.

ACTION: Notice of public, hybrid meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Department of Agriculture (USDA) and the Federal Advisory Committee Act (FACA), the Office of Tribal Relations is announcing a meeting of the Tribal Advisory Committee. The committee is authorized under the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to provide advice and guidance to USDA on matters related to Tribal and Indian affairs.

DATES: An in-person meeting with a virtual webinar with a call-in option will be held on Monday, December 7, 2026, from 9:00 a.m. to approximately 5:00 p.m. Pacific Time (PT). The meeting will be held during the Intertribal Agriculture Council's Annual Conference at the Virgin Hotels; 4455 Paradise Rd., Las Vegas, NV 89169. Updates to the location, such as the meeting room, will be published on the Tribal Advisory Committee web page at *https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations/tribal-advisory-committee.*

Webinar Participation Information: Registration to attend this meeting, including to provide oral public comments, is available at *https://www.zoomgov.com/webinar/register/WN_l7clY6nWSNmO1uh3LXaOCA#/registration.*

Public Comments: The public may file written comments to the Tribal Advisory Committee by Thursday, December 3, 2026, at 11:59 p.m. ET via email at *Tribal.Relations@usda.gov.* These comments will be included in the public record.

Members of the public are invited to join the Tribal Advisory Committee meeting to listen to deliberations each day and will be invited to give oral comments to the Committee from 2:00–3:30 p.m. PT on December 7, 2026. Members of the public who request to give oral comments must arrive by 2:00 p.m. PT and will be given no more than five (5) minutes to provide their comment.

Register for the Meeting: Registrants attending virtually must provide your name; title or position; Tribe or organization represented; whether you intend to provide public comment; and whether you require special accommodations.

Registration for virtual attendance can be found at *https://www.zoomgov.com/webinar/register/WN_l7clY6nWSNmO1uh3LXaOCA#/registration.*

FOR FURTHER INFORMATION CONTACT: General information about the committee can also be found at *https://www.usda.gov/tribalrelations/advisory-committee.* Questions may be directed to Josiah Griffin, Designated Federal Officer, by phone at 202–205–2249 or via email at *Tribal.Relations@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: An agenda and more information for this meeting will be available at *https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations/tribal-advisory-committee.* The Secretary established the Committee pursuant to Section 12303 of the Agriculture Improvement Act of 2018 (7 U.S.C. 6921(b)) and will be managed in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. 10.

Meeting Agenda: Agenda items discussed may include, but are not limited to, welcome and introductions; administrative matters; administration priorities; and member deliberation on recommendations. The full agenda will be posted on the Tribal Advisory Committee web page (*https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations/tribal-advisory-committee*) at least 48 hours in advance of this meeting.

Availability of Materials for the Meeting: All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit *https://www.usda.gov/about-usda/general-information/staff-offices/office-tribal-relations/tribal-advisory-committee* to learn more about the agenda for or reports resulting from this meeting. Please be advised that anyone calling into the Zoom teleconference system or participating in-person that is interested in providing public comment will be asked to provide their names, their title, and their tribal or organizational affiliations. Callers can expect to incur charges for calls they initiate over wireless lines, and the USDA will not refund any incurred charges.

Equal opportunity practices, in accordance with USDA policies, will be followed in all membership appointments to the Committee.

In accordance with Federal civil rights law and U.S. Department of Agriculture (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 for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET center at (202) 720–2600 (voice and TDD) or the State or local Agency that administers the program.

Dated: November 10, 2026.

Egypt Simon,

Acting USDA Committee Management Officer.

[FR Doc. 2026–23356 Filed 11–16–26; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–117]

Wood Mouldings and Millwork Products From the People's Republic of China: 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 Fujian Hongjia Craft Products Co., Ltd. (Hongjia), and Nanping Huatai Wood & Bamboo Co., Ltd. (Nanping Huatai), exporters of wood mouldings and millwork products (millwork products) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal

value during the period of review (POR) February 01, 2024, through January 31, 2025.

DATES: Applicable November 17, 2026.

FOR FURTHER INFORMATION CONTACT: Hannah Lee, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1216.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 2026, Commerce published in the **Federal Register** the *Preliminary Results* of this administrative review and invited parties to comment.[1] On August 13, 2026, Commerce extended the deadline for these final results by 53 days.[2] On November 2, 2026, Commerce extended the deadline for these final results by an additional seven days.[3] The deadline for these final results is November 9, 2026.

For details of events subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[4] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/frnotices.*

Scope of the Order [5]

The products covered by the *Order* are millwork products from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Verification

As provided in section 782(i) of the Act, in the *Preliminary Results* Commerce informed interested parties that it intended to verify the information relied upon in the final results of review. Accordingly, Commerce notified the mandatory respondents in this review of the dates and locations where Commerce intended to conduct verification of the information submitted by the mandatory respondents.[6] However, Commerce was unable to conduct verification because both mandatory respondents withdrew their participation from verification.[7]

Analysis of Comments Received

All issues raised by interested parties in case and rebuttal briefs are addressed in the Issues and Decision Memorandum. For a list of the issues addressed in the Issues and Decision Memorandum, *see* Appendix I to this notice.

Changes Since the Preliminary Results

Based on review of the record and comments received from interested parties, we made changes to the *Preliminary Results.* Because Hongjia and Nanping Huatai refused to allow verification of their information submitted in this segment of the proceeding, we determine that Hongjia's and Nanping Huatai's data could not be verified pursuant to section 776(a)(2)(D) of the Act. Further, due to Hongjia's and Nanping Huatai's failure to cooperate by not acting to the best of their ability to comply with a request for information, we find that the application of facts available with an adverse inference (AFA) is warranted, pursuant to sections 776(a) and 776(b)(1)(A) of the Act. Accordingly, as Commerce determines that Hongjia's and Nanping Huatai's responses in this proceeding are unverifiable, and the application of AFA is appropriate, we conclude that the respondents did not demonstrate eligibility for a separate rate in this review and, thus, are considered part of the China-wide entity for these final results. For further details on the changes since the *Preliminary Results, see* the Issues and Decision Memorandum.

In the *Preliminary Results,* Commerce also assigned a weighted-average of the mandatory respondents' rates to the non-selected separate rate companies. For these final results, because the information provided by the mandatory companies has not been verified and we are applying AFA, we are assigning a separate rate calculated in the most recently completed review of the *Order. See* the Issues and Decision Memorandum for further discussion.

Separate Rates

In the *Preliminary Results,* we preliminarily granted a separate rate to both mandatory respondents. However, because we were unable to verify information submitted by the two mandatory respondents, Hongjia and Nanping Huatai, regarding their eligibility for a separate rate, we find this information unreliable. Therefore, we determine that Hongjia and Nanping Huatai are not eligible for a separate rate and find them to be part of the China-Wide entity.

For the companies eligible for a separate rate in this review, we relied on the weighted-average dumping margin calculated for non-examined separate rate companies in the previous administrative review of the *Order* (*i.e.,* 37.24 percent *ad valorem*).[8] *See* the Issues and Decision Memorandum for further discussion.

In the *Preliminary Results,* Commerce granted separate rate status to Bel Trade Wood Industrial Co., Ltd. Youxi Fujian and Tim Feng Manufacturing Co., Ltd. No parties commented on Commerce's preliminary separate rate determinations for these companies, and they are unchanged in these final results of review.

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[9] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review and the dumping margin assigned to the China-wide entity, *i.e.,* 220.87 percent,[10] is not subject to change as a result of this administrative review.

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[1] *See Wood Mouldings and Millwork Products from the People's Republic of China: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2024–2025,* 91 FR 26999 (May 13, 2026) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated August 13, 2026.

[3] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated November 2, 2026.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Wood Mouldings and Millwork Products from the People's Republic of China; 2024–2025,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] *See Wood Mouldings and Millwork Products from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 9486 (February 16, 2021) (*Order*).

[6] *See* Memorandum, ''Verification Schedule,'' dated May 21, 2026 (Verification Schedule).

[7] *See* Hongjia's Letter, ''Notification of Action,'' dated June 26, 2026 (Hongjia's Withdrawal of Participation); *see also* Nanping Huatai's Letter, ''Notification of Action,'' dated June 26, 2026 (Nanping Huatai's Withdrawal of Participation).

[8] *See Wood Mouldings and Millwork Products from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2023–2024,* 91 FR 8823 (February 24, 2026) (*Millwork Products AR3*).

[9] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[10] *See Order,* 86 FR at 9488.

Commerce preliminarily found Putian Yihong Wood Industry Co., Ltd. (Putian Yihong) is not eligible for a separate rate.[11] On May 29, 2026, Commerce placed on the record entry documents pertaining to Putian Yihong.[12] No parties commented on the Putian Yihong Entry Documents Memorandum. Therefore, we continue to find that Putian Yihong is not eligible for a separate rate, and is part of China-wide entity.[13]

Final Results of Administrative Review

For the companies subject to this review that are eligible for a separate rate, Commerce determines that the following estimated weighted-average dumping margins exist for the period February 1, 2024, through January 31, 2025:

Exporter	Weighted-average dumping margin (percent)
Bel Trade Wood Industrial Co., Ltd. Youxi Fujian	37.24
Tim Feng Manufacturing Co., Ltd.	37.24

Disclosure

Normally, Commerce discloses to interested parties 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 with 19 CFR 351.224(b). However, because we determine that Hongjia and Nanping Huatai to be part of the China-Wide entity and subject to the China-wide entity rate which is not subject to change, 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 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. For the companies listed above, which have been assigned a weighted-average dumping margin that is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to assess antidumping duties on all appropriate entries of subject merchandise at a rate equal to the weighted-average dumping margin assigned to the companies. The companies eligible for a separate rate have been assigned a rate of 37.24 percent, which is the non-selected separate rate from *Millworks AR3.*[14] Additionally, we will instruct CBP to apply the China-wide entity rate of 220.87 percent to all POR entries of subject merchandise exported by the China-wide entity.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication in the **Federal Register** of these final results. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) for the companies eligible for a separate rate identified in the table above, the cash deposit rate will be equal to the weighted-average dumping margin listed in the table above; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 220.87 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

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 and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 6, 2026.

Steven Presing,

Executive Director for Policy and Negotiations.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Changes Since the *Preliminary Results*
V. Discussion of the Issues
  Comment 1: Whether to Apply Adverse Facts Available to the Mandatory Respondents
  Comment 2: Whether to Use the Expected Method in Assigning a Separate Rate to the Non-Selected Respondents
  Comment 3: Whether the Excessive Fines Clause of the Eighth Amendment Applies to Commerce's Facts Available Provisions
VI. Recommendation

Appendix II

Companies Considered To Be Part of the China-Wide Entity

1. Fujian Hongjia Craft Products Co., Ltd.
2. Fujian Jinquan Trade Co., Ltd.
3. Fujian Wangbin Decorative Material Co., Ltd.
4. Fujian Yinfeng Imp & Exp Trading Co., Ltd/Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.
5. Nanping Huatai Wood & Bamboo Co., Ltd.
6. Putian Yihong Wood Industry Co., Ltd.
7. Shenzhen Xinjintai Industrial Co., Ltd.

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[11] *See Preliminary Results* at Appendix V and accompanying PDM at 11.

[12] *See* Memorandum, ''Placing U.S. Customs and Border Protection Entry Documents on the Record,'' dated May 29, 2026 (Putian Yihong Entry Documents Memorandum).

[13] *See* Appendix II to this notice.

[14] *See MillworkProducts AR3,* 91 FR at 8824.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–212, C–560–845, C–552–852]

Hardwood and Decorative Plywood From the People's Republic of China, Indonesia, and the Socialist Republic of Vietnam: Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing countervailing duty (CVD) orders on hardwood and decorative plywood from the People's Republic of China (China), Indonesia, and the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable November 17, 2026.

FOR FURTHER INFORMATION CONTACT: Rebecca Janz (China), Samuel Evans (Indonesia), and Katherine Smith (Vietnam), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2972, (202) 482–2420, or (202) 482–0557, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2026, Commerce published in the **Federal Register** its affirmative final determinations in the CVD investigations of hardwood and decorative plywood from China, Indonesia, and Vietnam in accordance with sections 705(d) and 777(i) of the Tariff Act of 1930, as amended (the Act).[1]

The scope of the investigations in Commerce's final determinations covered hardwood and decorative plywood and certain veneered panels.[2] As discussed below, the ITC found three domestic like products: hardwood and decorative plywood, stamped and certified softwood structural plywood, and softwood structural plywood downfall. On September 4, 2026, the ITC notified Commerce of its final determinations, pursuant to section 705(d) of the Act, that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of subject merchandise from China, Indonesia, and Vietnam.[3] Additionally, the ITC found that imports of stamped and certified softwood structural plywood and of softwood structural plywood downfall are negligible and, therefore, terminated the CVD investigations for these products.[4]

On September 17, 2026, Commerce released draft revised scope language for comment by parties.[5] On September 23, 2026, we received comments from the Coalition for Fair Trade in Hardwood Plywood (the petitioner) and certain importers and exporters of the merchandise under investigation.[6] Based on these comments, we released a second version of the draft revised scope language, which included a certification program, for comment on October 8, 2026.[7] On October 14, 2026, we received comments on the second draft scope language from the petitioner and certain importers and exporters of the merchandise under investigation.[8]

Scope of the Orders

The products covered by these orders are hardwood and decorative plywood from China, Indonesia, and Vietnam. For a complete description of the scope of the orders, *see* the appendix to this notice.

Scope Comments

As stated above, subsequent to the *ITC Final Determination,* we released draft revised scope language and received comments on these drafts from the petitioner and certain importers and exporters of the merchandise under investigation.[9] For a summary of the scope comments submitted by interested parties, and accompanying discussion and analysis of all comments timely received, *see* the Order Scope Memorandum, issued concurrently with these orders.[10] We note that several parties commented on whether to implement a certification program for certain modifications made to the scope based on the *ITC Final Determination.* Commerce intends address those comments in a changed circumstances review under section 751(b) of the Act and 19 CFR 351.216 at a later date.

CVD Orders

On September 4, 2026, in accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of subsidized imports of hardwood and decorative plywood from China, Indonesia, and Vietnam.[11] As a result, and in accordance with sections 705(c)(2) and 706 of the Act, Commerce is issuing these CVD orders. As noted above, in its determinations, the ITC found three domestic like products: hardwood and decorative plywood, stamped and certified softwood structural plywood, and softwood structural plywood downfall. The ITC found that imports of stamped and certified softwood structural plywood and of softwood structural plywood downfall are negligible. The ITC made an affirmative determination with respect to hardwood and decorative plywood from China, Indonesia, and Vietnam. Because the ITC made distinct and different injury determinations for separate domestic like products, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess

[1] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 91 FR 45766 (July 21, 2026); *see also Hardwood and Decorative Plywood from Indonesia: Final Affirmative Countervailing Duty Determination,* 91 FR 45788 (July 21, 2026); and *Hardwood and Decorative Plywood from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part,* 91 FR 45770 (July 21, 2026).

[2] *Id.*

[3] *See* ITC's Letter, Investigation Nos. 701–TA–764–766 and 731–TA–1747–1749 (Final), dated September 4, 2026 (ITC Letter); *see also Hardwood and Decorative Plywood from China, Indonesia, and Vietnam; Determinations,* 91 FR 57383 (September 9, 2026) (*ITC Final Determinations*); and *Hardwood and Decorative Plywood from China, Indonesia, and Vietnam,* Inv. Nos. 701–TA–764–766 and 731–TA–1747–1749 (Final), USITC Pub. 5784 (September 2026) (ITC Final Publication).

[4] *See* ITC Final Publication at 1.

[5] *See* Memorandum, ''Comments on the Scope of the Orders,'' dated September 17, 2026.

[6] *See* Petitioner's Letter, ''Comments on Proposed Scope Revisions,'' dated September 23, 2026; *see also* M&G Respondent's Letter, ''Comments on the Scope of the Orders,'' dated September 23, 2026. The M&G Respondents are Affiliated Resources, LLC; Argo Fine Imports LLC; Buckeye Pacific, LLC; Cabinetworks Group; Canusa Wood Products Limited; Far East American, Inc.; MBCI dba Masterbrand Cabinets LLC; Marine Lumber Company; McCorry & Company Limited; Northwest Hardwoods, Inc.; Principal Trading LLC; Richmond International Forest Products, LLC; TaracaPacific Inc.; Viking Forest Products LLC; and PT Wijaya Cahaya Timber Tbk (collectively, First Party Scope Comments).

[7] *See* Memoranda, ''Second Request for Comments on the Scope of the Orders,'' dated October 8, 2026, and ''Request for Comments on Certification,'' dated October 9, 2026.

[8] *See* Petitioner's Letter, ''Comments on Second Proposed Scope Revisions and Comments on Certification,'' dated October 14, 2026; *see also* M&G Respondents' Letter, ''Comments on the Scope of the Orders and Proposed Certification Language,'' dated October 14, 2026 (collectively, Second Party Scope Comments).

[9] *See* First Party Scope Comments; *see also* Second Party Scope Comments.

[10] *See* Memorandum, ''Scope of the Orders Decision Memorandum,'' dated concurrently with this notice.

[11] *See* ITC Letter.

countervailing duties on entries of hardwood and decorative plywood (subject merchandise) from China, Indonesia, and Vietnam, and not on entries of stamped and certified softwood structural plywood or softwood structural plywood downfall from China, Indonesia, and Vietnam.

Hardwood and Decorative Plywood

The ITC describes hardwood and decorative plywood as a plywood product in which at least either the face or back veneer is composed of one or more species of hardwood and/or softwood. Because the ITC determined that imports of hardwood and decorative plywood from China, Indonesia, and Vietnam are materially injuring a U.S. industry,[12] Commerce will direct CBP that all unliquidated entries of hardwood and decorative plywood from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, are subject to the assessment of countervailing duties pursuant to section 706 of the Act. Specifically, as a result of the *ITC Final Determinations,* in accordance with section 706(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of hardwood and decorative plywood from China, Indonesia, and Vietnam. Countervailing duties will be assessed on unliquidated entries of hardwood and decorative plywood from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, for consumption on or after January 22, 2026, the date of publication of the *Preliminary Determinations,* but will not include entries occurring after the expiration of the provisional measures period and before the publication of the *ITC Final Determinations,* under section 705(b) of the Act, as further described in the ''Provisional Measures'' section of this notice.[13]

Stamped and Certified Softwood Structural Plywood

The ITC describes stamped and certified softwood structural plywood as all stamped and certified softwood structural plywood regardless of core composition.[14] Because the ITC determined that all imports of stamped and certified softwood structural plywood from China, Indonesia, and Vietnam are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of stamped and certified softwood structural plywood from China, Indonesia, and Vietnam that were not previously excluded from the scope of the investigations. Specifically, Commerce will instruct CBP to terminate the suspension of liquidation of entries of stamped and certified softwood structural plywood that is certified, manufactured, and stamped to meet U.S. Products Standard PS–1–22 or PS 2–18 for Structural Plywood (including any revisions to those standards, or to a foreign structural plywood standard that Commerce has determined, in a scope ruling or other proceeding, to be substantially equivalent to PS–1–22 or PS 2–18) from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, on or after January 22, 2026 (the date of the *Preliminary Determination*), and refund all cash deposits with respect to those entries pursuant to section 705(c)(2) of the Act.

Softwood Structural Plywood Downfall

The ITC describes softwood structural plywood downfall as plywood that was intended to be stamped and certified softwood structural plywood but did not obtain certification due to manufacturing defects.[15] Because the ITC determined that imports of softwood structural plywood downfall from China, Indonesia, and Vietnam are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of softwood structural plywood downfall from China, Indonesia, and Vietnam. Specifically, Commerce will instruct CBP to terminate the suspension of liquidation of entries of plywood panels manufactured at a facility certified to produce structural plywood to PS 1–22 or PS 2–18 standards (or a Commerce-determined equivalent foreign standard), where the specific panels at issue were produced as part of a production run intended to meet such standards but did not receive the certifying agency's stamp or mark because they failed to meet the applicable bond performance, veneer grade, or other qualifying criteria of that standard from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, on or after January 22, 2026 (the date of the *Preliminary Determination*), and to refund all cash deposits with respect to these entries pursuant to section 705(c)(2) of the Act.

Critical Circumstances

In addition, the ITC found that critical circumstances do not exist with respect to imports of merchandise subject to this investigation from China and Vietnam. As a result, we have instructed CBP to lift the suspension of liquidation and to refund all cash deposits for estimated countervailing duties with respect to entries of merchandise suspended by reason of our affirmative critical circumstances determinations that were entered, or withdrawn from warehouse, for consumption on or after October 24, 2025, (*i.e.,* 90 days prior to the date of publication of the affirmative *China Preliminary Determination* and *Vietnam Preliminary Determination*), but before January 22, 2026 (*i.e.,* the date of publication of the *China Preliminary Determination* and *Vietnam Preliminary Determination*).

Suspension of Liquidation and Cash Deposits

In accordance with section 706 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of all relevant entries of subject merchandise from China, Indonesia, and Vietnam, effective the date of publication of the *ITC Final Determinations* in the **Federal Register**, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the *ITC's Final Determinations* in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate. These instructions suspending liquidation and requiring cash deposits will remain in effect until further notice.

Estimated Countervailable Subsidy Rates

The estimated countervailable duty subsidy rates are as follows; the all-

[12] *Id.*

[13] *See Hardwood and Decorative Plywood from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 91 FR 2727 (January 22, 2026) (*China Preliminary Determination*); *see also Hardwood and Decorative Plywood from Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 91 FR 2730 (January 22, 2026); and *Hardwood and Decorative Plywood from the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Determination of Critical Circumstances, and Alignment of Final Determination with Final Antidumping Duty Determination,* 91 FR 2741 (January 22, 2026) (*Vietnam Preliminary Determination*) (collectively, *Preliminary Determinations*).

[14] *See* ITC Final Publication at 18 n.47.

[15] *Id.* at 22.

others rate applies to all producers or exporters not specifically listed below:

CHINA

Company	Subsidy rate (percent *ad valorem*)
Xuzhou Shelter Import and Export Co., Ltd	*88.96
Linyi Evergreen Wood Co., Ltd	*88.96
Bergey (Tianjin) International	*88.96
Larkcop International Co., Ltd	*88.96
Linyi Dongstar Import & Export Co., Ltd	*88.96
Linyi Jiahe Wood Industry Co. Ltd	*88.96
Linyi Ocean International Trading Co	*88.96
Xuzhou Edlon Wood Products Co., Ltd	*88.96
Xuzhou New Defu Wood International	*88.96
Xuzhou Tianshan Wood Co., Ltd	*88.96
Yishui Win-Win Wood Co., Ltd	*88.96
All Others	*88.96

*Rate is based on facts available with adverse inferences.

INDONESIA

Company	Subsidy rate (percent *ad valorem*)
PT. Mustika Buana Sejahtera	*128.66
PT. Sengon Indah Mas	4.22
PT. Wijaya Cahaya Timber Tbk	58.39
All Others	40.87

*Rate is based on facts available with adverse inferences.

VIETNAM

Company	Subsidy rate (percent *ad valorem*)
Junma Phu Tho Co., Ltd	*165.39
Trieu Thai Son Co., Ltd; Nhat Duy Production and Trading Co., Ltd	47.68
All Others	47.68

*Rate is based on facts available with adverse inferences.

Provisional Measures

Section 703(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *Preliminary Determinations* on January 22, 2026.[16] Therefore, entries of hardwood and decorative plywood from China, Indonesia, and Vietnam made on or after May 21, 2026, and prior to the date of publication of the *ITC Final Determinations,* are not subject to the assessment of countervailing duties due to Commerce's discontinuation of the suspension of liquidation.

In accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of hardwood and decorative plywood from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, for consumption after May 21, 2026, the final day on which the provisional measures were in effect, through the day preceding the date of publication of the *ITC's Final Determinations* in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the *ITC's Final Determinations* in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[17] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[18] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[19]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available *at https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.''[20]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [21] Accordingly, as stated above, the petitioner and the Governments of China, Indonesia, and Vietnam should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry

[16] *See Preliminary Determinations.*

[17] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[18] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[19] *Id.*

[20] This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[21] *See Final Rule,* 86 FR at 52335.

service list. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Governments of China, Indonesia, and Vietnam will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Governments of China, Indonesia, and Vietnam are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the CVD orders with respect to hardwood and decorative plywood from China, Indonesia, and Vietnam pursuant to section 706(a) of the Act. Interested parties can find a list of antidumping and CVD orders currently in effect at *https://www.trade.gov/data-visualization/adcvd-proceedings.*

These orders are issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: November 12, 2026.

Steven Presing,

Executive Director for AD/CVD Policy and Negotiations.

Appendix

Scope of the Orders

The merchandise covered by these orders is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of these orders, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers in combination with a core or without a core. The veneers and, if present, the core are glued or otherwise bonded together. A hardwood and decorative plywood panel must have at least either the face or back veneer composed of one or more species of hardwood, softwood, or bamboo, regardless of any surface coverings. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2024 (including any revisions to that standard).

For purposes of the orders a ''veneer'' is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood irrespective of additional surface coatings or covers as described below. The core of hardwood and decorative plywood (for those products that include a core) consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium density fiberboard (MDF).

All hardwood and decorative plywood is included within the scope of the orders regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water-based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded; smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing.

All hardwood and decorative plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has undergone other forms of minor processing. All hardwood and decorative plywood is included within the scope of the orders, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches). Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope product.

The scope of the orders excludes the following items: (1) structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is certified, manufactured, and stamped to meet U.S. Products Standard PS–1–22 or PS 2–18 for Structural Plywood (including any revisions to those standards, or to a foreign structural plywood standard that Commerce has determined, in a scope ruling or other proceeding, to be substantially equivalent to PS–1–22 or PS 2–18); (2) products which have a face and back veneer of cork; (3) hardwood plywood subject to the antidumping and countervailing duty orders on hardwood plywood from China. See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 83 FR 504 (January 4, 2018); and Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order, 83 FR 513 (January 4, 2018); (4) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on multilayered wood flooring from China. See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order, 76 FR 76690 (December 8, 2011); and Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order, 76 FR 76693 (December 8, 2011), as amended by Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (5) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (6) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (7) products made entirely from bamboo and adhesives (also known as ''solid bamboo''); and (8) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an ''Exterior'' or ''Exposure 1'' bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges. Structural plywood qualifying for part (1) of the above exclusion must bear the certifying agency's stamp or mark, applied in accordance with the requirements of the applicable standard, identifying the certification agency, applicable standard or grade designation, and the mill number or other facility-identifying code assigned by the certifying agency to the producing facility.

Also excluded from the scope of the orders are softwood structural plywood ''downfall'' panels, defined as plywood panels manufactured at a facility certified to produce structural plywood to PS 1–22 or PS 2–18 standards (or a Commerce-determined equivalent foreign standard), where the specific panels at issue were produced as part of a production run intended to meet such standards but did not receive the certifying agency's stamp or mark because they failed to meet the applicable bond performance, veneer grade, or other qualifying criteria of that standard.

Also excluded from the scope of the orders are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the orders is ''ready to assemble'' (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood

components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Also excluded from the scope of the orders are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the orders are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes: (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry; (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry; and (3) instructions providing guidance on the assembly of a finished unit of cabinetry. Excluded from the scope of these orders are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing. Excluded from the scope of these orders are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Also excluded from the scope of the orders are laminated veneer lumber (LVL) door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters, (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Also excluded from the scope of these orders are certain door stiles and rails made of LVL that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters.

Also excluded from the scope of these orders are finished two-ply products that are made of one ply of wood veneer and one ply of a non-wood veneer material and the two-ply product cannot be glued or otherwise adhered to additional plies or that are made of two plies of wood veneer and have undergone staining, cutting, notching, punching, drilling, or other processing on the surface of the veneer such that the two-ply product cannot be glued or otherwise adhered to additional plies.

Imports of hardwood and decorative plywood are primarily entered under the following HTSUS numbers: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4155; 4412.31.4160; 4412.31.4165; 4412.31.4180; 4412.31.4200; 4412.31.4500; 4412.31.4850; 4412.31.4860; 4412.31.4863; 4412.31.4865; 4412.31.4866; 4412.31.4869; 4412.31.4875; 4412.31.4880; 4412.31.5130; 4412.31.5135; 4412.31.5150; 4412.31.5155; 4412.31.5160; 4412.31.5165; 4412.31.5170; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5260; 4412.31.5262; 4412.31.5264; 4412.31.5265; 4412.31.5266; 4412.31.5268; 4412.31.5270; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2520; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3130; 4412.32.3135; 4412.32.3140; 4412.32.3150; 4412.32.3155; 4412.32.3160; 4412.32.3165; 4412.32.3170; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.5700; 4412.33.0620; 4412.33.0640; 4412.33.0670; 4412.33.2630; 4412.33.3235; 4412.33.3255; 4412.33.3265; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3235; 4412.34.3255; 4412.34.3265; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5050; 4412.41.0000; 4412.42.0000; 4412.51.1030; 4412.51.1050; 4412.51.3111; 4412.51.3121; 4412.51.3141; 4412.51.3161; 4412.51.3175; 4412.51.4100; 4412.52.1030; 4412.52.1050; 4412.52.3121; 4412.52.3161; 4412.52.3175; 4412.52.4100; 4412.91.0600; 4412.91.1020; 4412.91.1030; 4412.91.1040; 4412.91.3110; 4412.91.3120; 4412.91.3130; 4412.91.3140; 4412.91.3150; 4412.91.3160; 4412.91.3170; 4412.91.4100; 4412.92.0700; 4412.92.1120; 4412.92.1130; 4412.92.1140; 4412.92.3120; 4412.92.3150; 4412.92.3160; 4412.92.3170; 4412.92.4200; 4412.94.1020; 4412.94.1030; 4412.94.1040; 4412.94.1050; 4412.94.3110; 4412.94.3111; 4412.94.3120; 4412.94.3121; 4412.94.3130; 4412.94.3131; 4412.94.3140; 4412.94.3141; 4412.94.3150; 4412.94.3160; 4412.94.3161; 4412.94.3170; 4412.94.3171; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5115; 4412.99.5701; and 4412.99.5710.

Imports of hardwood and decorative plywood may also enter under HTSUS subheadings 4412.10.9000; 4412.94.5100; 4412.94.9500; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 9403.90.7005; 9403.90.7010; and 9403.90.7080.

The HTSUS subheadings are provided for the convenience of the U.S. government and customs purposes, and do not define the scope of the orders. The written description of the merchandise is dispositive.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–211, A–560–844, A–552–851]

Hardwood and Decorative Plywood From the People's Republic of China, Indonesia, and the Socialist Republic of Vietnam: Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) orders on hardwood and decorative plywood from the People's Republic of China (China), Indonesia, and the Socialist Republic of Vietnam (Vietnam).

DATES: Applicable November 17, 2026.

FOR FURTHER INFORMATION CONTACT: Preston Cox at (240) 956–8630 (China), Joy Zhang at (202) 482–1168 (Indonesia), and Bobby Shore at (202) 482–3261 (Vietnam), AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 21, 2026, Commerce published in the **Federal Register** its affirmative final determinations in the less-than-fair-value (LTFV) investigations of hardwood and decorative plywood from China, Indonesia, and Vietnam in accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act).[1]

The scope of the investigation in Commerce's final determination covered hardwood and decorative plywood and certain veneered panels.[2] As discussed below, the ITC found three domestic like products: hardwood and decorative plywood, stamped and certified

[1] *See Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 91 FR 45778 (July 21, 2026), and accompanying Issues and Decision Memorandum (IDM); *see also Hardwood and Decorative Plywood From Indonesia: Final Affirmative Determination of Sales at Less Than Fair Value,* 91 FR 45774 (July 21, 2026), and accompanying IDM; and *Hardwood and Decorative Plywood from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 91 FR 45782 (July 21, 2026), and accompanying IDM.

[2] *Id.*

softwood structural plywood, and softwood structural plywood downfall. On September 4, 2026, the ITC notified Commerce of its final determinations, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of hardwood and decorative plywood from China, Indonesia, and Vietnam.[3] Additionally, the ITC found that imports of stamped and certified softwood structural plywood and of softwood structural plywood downfall are negligible and, therefore, terminated the LTFV investigations for these products.[4]

On September 17, 2026, Commerce released draft revised scope language for comment by parties.[5] On September 23, 2026, we received comments from the Coalition for Fair Trade in Hardwood Plywood (the petitioner) and certain importers and exporters of the merchandise under investigation.[6] Based on these comments, we released a second version of the draft revised scope language, which included a certification program, for comment on October 8, 2026.[7] On October 14, 2026, we received comments on the second draft scope language from the petitioner and certain importers and exporters of the merchandise under investigation.[8]

[3] *See* ITC's Letter, Investigation Nos. 701–TA–764–766 and 731–TA–1747–1749 (Final), dated September 4, 2026 (ITC Letter); *see also Hardwood and Decorative Plywood From China, Indonesia, and Vietnam; Determinations,* 91 FR 57383 (September 9, 2026) (ITC Final FR); and *Hardwood and Decorative Plywood from China, Indonesia, and Vietnam,* Inv. Nos. 701–TA–764–766 and 731–TA–1747–1749 (Final), USITC Pub. 5784 (September 2026) (ITC Final Publication).

[4] *See* ITC Final Publication at 1.

[5] *See* Memorandum, ''Comments on the Scope of the Orders,'' dated September 17, 2026.

[6] *See* Petitioner's Letter, ''Comments on Proposed Scope Revisions,'' dated September 23, 2026; *see also* M&G Respondent's Letter, ''Comments on the Scope of the Orders,'' dated September 23, 2026. The M&G Respondents are Affiliated Resources, LLC; Argo Fine Imports LLC; Buckeye Pacific, LLC; Cabinetworks Group; Canusa Wood Products Limited; Far East American, Inc.; MBCI dba Masterbrand Cabinets LLC; Marine Lumber Company; McCorry & Company Limited; Northwest Hardwoods, Inc.; Principal Trading LLC; Richmond International Forest Products, LLC; TaracaPacific Inc.; Viking Forest Products LLC; and PT Wijaya Cahaya Timber Tbk (collectively, First Party Scope Comments).

[7] *See* Memoranda, ''Second Request for Comments on the Scope of the Orders,'' dated October 8, 2026, and ''Request for Comments on Certification,'' dated October 9, 2026.

[8] *See* Petitioner's Letter, ''Comments on Second Proposed Scope Revisions and Comments on Certification,'' dated October 14, 2026; *see also* M&G Respondents' Letter, ''Comments on the Scope of the Orders and Proposed Certification Language,'' dated October 14, 2026 (collectively, Second Party Scope Comments).

Scope of the Orders

The products covered by these orders are hardwood and decorative plywood from China, Indonesia, and Vietnam. For a complete description of the scope of the orders, *see* the appendix to this notice.

Scope Comments

As stated above, subsequent to the *ITC Final Determination,* we released draft revised scope language and received comments on these drafts from the petitioner and certain importers and exporters of the merchandise under investigation.[9] For a summary of the scope comments submitted by interested parties, and accompanying discussion and analysis of all comments timely received, *see* the Order Scope Memorandum, issued concurrently with these orders.[10] We note that several parties commented on whether to implement a certification program for certain modifications made to the scope based on the *ITC Final Determination.* Commerce intends address those comments in a changed circumstances review under section 751(b) of the Act and 19 CFR 351.216 at a later date.

Antidumping Duty Orders

On September 4, 2026, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determinations that an industry in the United States is materially injured by reason of LTFV imports of hardwood and decorative plywood from China, Indonesia, and Vietnam.[11] As a result, and in accordance with section 735(c)(2) and 736 of the Act, Commerce is issuing these AD orders. As noted above, the ITC found three domestic like products: hardwood and decorative plywood, stamped and certified softwood structural plywood, and softwood structural plywood downfall. The ITC found that imports of softwood structural plywood downfall and stamped and certified softwood structural plywood are negligible. The ITC made an affirmative determination with respect to hardwood and decorative plywood from China, Indonesia, and Vietnam. Because the ITC made distinct and different injury determinations for separate domestic like products, Commerce will instruct Customs and Border Protection (CBP) to assess antidumping duties on entries of hardwood and decorative plywood (subject merchandise) from China, Indonesia, and Vietnam, and not on entries of stamped and certified softwood structural plywood or softwood structural plywood downfall from China, Indonesia, and Vietnam.

Hardwood and Decorative Plywood

The ITC describes hardwood and decorative plywood as a plywood product in which at least either the face or back veneer is composed of one or more species of hardwood and/or softwood. Because the ITC determined that LTFV imports of hardwood and decorative plywood from China, Indonesia, and Vietnam are materially injuring a U.S. industry,[12] Commerce will direct CBP that all unliquidated entries of hardwood and decorative plywood from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, are subject to the assessment of antidumping duties pursuant to section 736 of the Act. Specifically, as a result of the *ITC Final Determinations,* in accordance with section 736(a) of the Act, Commerce will direct CBP to assess, upon further instruction by Commerce, antidumping duties for all relevant entries of hardwood and decorative plywood from China, Indonesia, and Vietnam. Antidumping duties will be assessed on unliquidated entries of hardwood and decorative plywood from China, Indonesia, and Vietnam entered, or withdrawn from warehouse, for consumption on or after March 2, 2026, the date of publication of the *Preliminary Determinations,* but will not include entries occurring after the expiration of the provisional measures period and before the publication of the *ITC Final Determinations,* under section 735(b) of the Act, as further described in the ''Provisional Measures'' section of this notice.[13]

[9] *See* First Party Scope Comments; *see also* Second Party Scope Comments.

[10] *See* Memorandum, ''Scope of the Orders Decision Memorandum,'' dated concurrently with this notice.

[11] *See* ITC Letter.

[12] *Id.*

[13] *See Hardwood and Decorative Plywood from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures,* 91 FR 10059 (March 2, 2026); *see also Hardwood and Decorative Plywood from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances,* 91 FR 10073 (March 2, 2026); *Hardwood and Decorative Plywood from Indonesia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 91 FR 10067 (March 2, 2026) (collectively, *Preliminary Determinations*).

Stamped and Certified Softwood Structural Plywood

The ITC describes stamped and certified softwood structural plywood as all stamped and certified softwood structural plywood regardless of core composition.[14] Because the ITC determined that all imports of stamped and certified softwood structural plywood from China, Indonesia, and Vietnam are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of stamped and certified softwood structural plywood from China, Indonesia, and Vietnam that were not previously excluded from the scope of the investigations. Specifically, Commerce will instruct CBP to terminate the suspension of liquidation of shipments of stamped and certified softwood structural plywood that is certified, manufactured, and stamped to meet U.S. Products Standard PS–1–22 or PS 2–18 for Structural Plywood (including any revisions to those standards, or to a foreign structural plywood standard that Commerce has determined, in a scope ruling or other proceeding, to be substantially equivalent to PS–1–22 or PS 2–18) from China, Indonesia, and Vietnam entered, or withdrawn from warehouse on or after March 2, 2026 (the date of the *Preliminary Determination*), and refund all cash deposits with respect to those entries pursuant to section 735(c)(2) of the Act.

Softwood Structural Plywood Downfall

The ITC describes softwood structural plywood downfall as plywood that was intended to be stamped and certified softwood structural plywood but did not obtain certification due to manufacturing defects.[15] Because the ITC determined that imports of softwood structural plywood downfall from China, Indonesia, and Vietnam are negligible, Commerce will direct CBP to terminate the suspension of liquidation for entries of softwood structural plywood downfall from China, Indonesia, and Vietnam. Specifically, Commerce will instruct CBP to terminate the suspension of liquidation of entries of plywood panels manufactured at a facility certified to produce structural plywood to PS 1–22 or PS 2–18 standards (or a Commerce-determined equivalent foreign standard), where the specific panels at issue were produced as part of a production run intended to meet such standards but did not receive the certifying agency's stamp or mark because they failed to meet the applicable bond performance, veneer grade, or other qualifying criteria of that standard from China, Indonesia, and Vietnam entered, or withdrawn from warehouse on or after March 2, 2026 (the date of the *Preliminary Determination*), and to refund all cash deposits with respect to these entries pursuant to section 735(c)(2) of the Act.

Critical Circumstances—AD

In addition, the ITC found that critical circumstances do not exist with respect to imports of merchandise subject to this investigation from China. As a result, we instructed CBP to lift the suspension of liquidation and to refund all cash deposits for estimated antidumping duties with respect to entries of merchandise suspended by reason of our affirmative critical circumstances determination that were entered, or withdrawn from warehouse, for consumption on or after December 2, 2025, (*i.e.,* 90 days prior to the date of publication of the affirmative LTFV *Preliminary Determinations*), but before March 2, 2026 (*i.e.,* the date of publication of the LTFV *Preliminary Determinations*).

Suspension of Liquidation and Cash Deposits

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 736 of the Act, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of hardwood and decorative plywood from China, Indonesia, and Vietnam, effective on the date of publication of the *ITC Final Determinations* in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

Commerce also intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins, with offsets for export subsidies where appropriate, as indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the *ITC Final Determinations,* CBP will suspend the liquidation of entries of subject merchandise, and require, at the same time that importers would normally deposit estimated duties on the merchandise, a cash deposit equal to the rates listed below. The relevant China-wide entity, Vietnam-wide entity, and all-others rates apply to all producers or exporters not specifically listed, as appropriate.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

CHINA

Producer	Exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Linyi Xinshancheng Board Factory	Linyi Hanbo Import Co., Ltd	187.27	185.96
Feixian Yukang Board Factory	Linyi Hanbo Import Co., Ltd	187.27	185.96
Feixian Jialun Board Factory	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Feixian Shuxin Board Factory	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Feixian Dongining Board Factory	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Linyi Jillklm Wood Industry Co., Ltd	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Linyi Linhai Wood Industry Co., Ltd	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Linyi Lanshan District Caihai Board Factory	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Feixian Haokai Wood Industry Co., Ltd	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Feixian Chenhui Board Factory	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Xuzhou Dingfeng Wood Industry Co., Ltd	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Fengxian Shuangxingyuan Wood Industry Co., Ltd	Shanghai Brightwood Trading Co., Ltd	187.27	185.96
Shandong Yimeijia New Materials Co., Ltd	Lianyungang Yuantai International Trade Co., Ltd	187.27	185.96
Feixian Jialun Board Factory	Lianyungang Yuantai International Trade Co., Ltd	187.27	185.96

[14] *See* ITC Final Publication at 18 n.47.

[15] *Id.* at 22.

CHINA—Continued

Producer	Exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Linyi Dongfang Fuchao Wood Industry Co., Ltd	Lianyungang Yuantai International Trade Co., Ltd	187.27	185.96
Linyi Xinshancheng Wood Co., Ltd	Linyi Vata Imp. & Exp. Co., Ltd	187.27	185.96
China-Wide Entity [16]		*187.27	185.96

*Rate based on facts available with adverse inferences.

INDONESIA

Exporter or producer	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
PT Wijaya Cahaya Timber TBK/PT Wijaya Triutama Plywood Industri	15.40	15.39
PT Sengon Indah Mas/PT Java Wood Industri	23.88	23.78
PT. Mustika Buana Sejahtera	*84.94	84.94
All Others	18.10	18.06

*Rate based on facts available with adverse inferences.

VIETNAM

Producer	Exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Junma Phu Tho Co., Ltd	Junma Phu Tho Co., Ltd	90.12	84.95
Nhat Duy Production and Trading Co., Ltd./Trieu Thai Son Co., Ltd.	Nhat Duy Production and Trading Co., Ltd./Trieu Thai Son Co., Ltd.	90.12	84.95
186 Yen Bai Producing and Trading Co., Ltd	186 Yen Bai Producing and Trading Co., Ltd	90.12	84.95
A-One Timber Co., JSC	A-One Timber Co., JSC	90.12	84.95
An An Plywood Joint Stock Company	An An Plywood Joint Stock Company	90.12	84.95
Chien Linh Ngan Trading and Manufacturing Company Limited.	An My Packaging Production Limited Liability Company.	90.12	84.95
Ly Hai Linh Company Limited	An My Packaging Production Limited Liability Company.	90.12	84.95
Benchmark Industries Company Limited	Benchmark Industries Company Limited	90.12	84.95
Bison Advance Technology Panel Joint Stock Company.	Bison Advance Technology Panel Joint Stock Company.	90.12	84.95
C-Holding Wood Company Limited	C-Holding Wood Company Limited	90.12	84.95
Country Wood Furniture Industries Co., Ltd	Country Wood Furniture Industries Co., Ltd	90.12	84.95
Phuc Khanh Construction Investment and Trading Joint Stock Company.	Dai Hong Phat International Trading Company Limited.	90.12	84.95
Shuang Yuan Plywood Manufacturing Company Limited.	Dai Hong Phat International Trading Company Limited.	90.12	84.95
Viet Phat Export Company Limited	Dai Hong Phat International Trading Company Limited.	90.12	84.95
Viet Nam Vinh Phu Wood Company Limited	Dai Hong Phat International Trading Company Limited.	90.12	84.95
Eagle Industries Company Limited	Eagle Industries Company Limited	90.12	84.95
Fulin Wood Import Export Company Limited	Fulin Wood Import Export Company Limited	90.12	84.95
Greatwood Hung Yen Joint Stock Company	Greatwood Hung Yen Joint Stock Company	90.12	84.95
Greatwood Joint Stock Company	Greatwood Joint Stock Company	90.12	84.95
Guanyue Wood Co., Ltd	Guanyue Wood Co., Ltd	90.12	84.95
Quang Minh Industrial Development Company Limited.	Hanbao Industry & Trade Co., Ltd	90.12	84.95
Viet North Import Export Trading Company Limited.	HLC Vietnam Joint Stock Company	90.12	84.95
HMTD Plywood Company Limited	HMTD Plywood Company Limited	90.12	84.95
Hoang Gia Yen Bai Company Limited	Hoang Gia Yen Bai Company Limited	90.12	84.95
Huiling Wood Products (Vietnam) Co., Ltd	Huiling Wood Products (Vietnam) Co., Ltd	90.12	84.95
Due Tri Wood Co., Ltd	Hukon International (Vietnam) Co., Ltd	90.12	84.95
Eastmark Plywood Company Limited	Hukon International (Vietnam) Co., Ltd	90.12	84.95
Greenwood Company Limited	Hukon International (Vietnam) Co., Ltd	90.12	84.95
Guan Wei Wood (Vietnam) Company Limited	Hukon International (Vietnam) Co., Ltd	90.12	84.95
Kangda Board (Vietnam) Co., Ltd	Kangda Board (Vietnam) Co., Ltd	90.12	84.95
Kim Gia Trading and Manufacturing Joint Stock Company.	KG Vina Plywood Trading and Import Export Company Limited.	90.12	84.95

[16] The China-Wide Entity includes Linyi Evergreen and Xuzhou Shelter.

VIETNAM—Continued

Producer	Exporter	Weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Minh Long DV TM Joint Stock Company	KG Vina Plywood Trading and Import Export Company Limited.	90.12	84.95
Truong Minh Dat One Member Trading Company Limited.	KG Vina Plywood Trading and Import Export Company Limited.	90.12	84.95
Lam Viet Joint Stock Company	Lam Viet Joint Stock Company	90.12	84.95
Long Viet Plywood Technology Joint Stock Company.	Long Viet Plywood Technology Joint Stock Company.	90.12	84.95
MGM Plywood Company Limited	MGM Plywood Company Limited	90.12	84.95
Dinh Ngoc Phat Joint Stock Company	Millennium Furniture Co., Ltd	90.12	84.95
Huy Khanh Co., Ltd	Millennium Furniture Co., Ltd	90.12	84.95
My Hanh Wood Processing Company Limited	Millennium Furniture Co., Ltd	90.12	84.95
Thang Long Urban Development and Construction Investment JSC.	Millennium Furniture Co., Ltd	90.12	84.95
Woodsland Joint Stock Company	Millennium Furniture Co., Ltd	90.12	84.95
Zhong Sheng Wood Company Limited	Millennium Furniture Co., Ltd	90.12	84.95
Minh Long DV TM Joint Stock Company	Minh Long DV TM Joint Stock Company	90.12	84.95
Nam Huy Trading Limited Company	Nam Huy Trading Limited Company	90.12	84.95
Nam Tien Production and Export Co., Ltd	Nam Tien Production and Export Co., Ltd	90.12	84.95
Nhung Xuong Company Limited	Nhung Xuong Company Limited	90.12	84.95
NN Co., Ltd	NN Co., Ltd	90.12	84.95
Hong Ngoc Production and Trading Company Limited.	Oilriver International Limited	90.12	84.95
Vietnam Honglin Building Materials Company Limited.	Oilriver International Limited	90.12	84.95
Phu Thai Dong Nai Company Limited	Phu Thai Dong Nai Company Limited	90.12	84.95
Phuc Khanh Construction Investment and Trading Joint Stock Company.	Phuc Khanh Construction Investment and Trading Joint Stock Company.	90.12	84.95
New Create Plywood Company Limited	Sagacity Sailing Industry Co., Ltd	90.12	84.95
Tekcom Corporation	Tekcom Corporation	90.12	84.95
Thai Hoang Trading and Construction JSC	Thai Hoang Trading and Construction JSC	90.12	84.95
Thanh An Wood Production Joint Stock Company	Thanh An Wood Production Joint Stock Company	90.12	84.95
Thanh Truc Manufacture and Trading Company Limited.	Thanh Truc Manufacture and Trading Company Limited.	90.12	84.95
Tien Dat Furniture Corporation	Tien Dat Furniture Corporation	90.12	84.95
Tinh Bao Wood Company Limited	Tinh Bao Wood Company Limited	90.12	84.95
Viet Bac Plywood Limited Liability Company	Viet Bac Plywood Limited Liability Company	90.12	84.95
Viet Genius Production Trading Company Limited	Viet Genius Production Trading Company Limited	90.12	84.95
Viet Nam My Gia Wood Company Limited	Viet Nam My Gia Wood Company Limited	90.12	84.95
Viet Nam Woodbest Company Limited	Viet Nam Woodbest Company Limited	90.12	84.95
Viet Wood Production and Trading Company Limited.	Viet Wood Production and Trading Company Limited.	90.12	84.95
Dinh Ngoc Phat Joint Stock Company	Wanek Furniture Co., Ltd	90.12	84.95
Huy Khanh Co., Ltd	Wanek Furniture Co., Ltd	90.12	84.95
My Hanh Wood Processing Company Limited	Wanek Furniture Co., Ltd	90.12	84.95
Thang Long Urban Development and Construction Investment JSC.	Wanek Furniture Co., Ltd	90.12	84.95
Woodsland Joint Stock Company	Wanek Furniture Co., Ltd	90.12	84.95
Zhong Sheng Wood Company Limited	Wanek Furniture Co., Ltd	90.12	84.95
Western Hanoi H2H Forest Products Joint Stock Company.	Western Hanoi H2H Forest Products Joint Stock Company.	90.12	84.95
Woodsland Joint Stock Company	Woodsland Joint Stock Company	90.12	84.95
Yen Bai Plywood Company Limited	Yen Bai Plywood Company Limited	90.12	84.95
Vietnam-Wide Entity		90.12	84.95

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of exports of hardwood and decorative plywood from China, Indonesia, and Vietnam, Commerce extended the four-month period to six months in these investigations. Commerce published the *Preliminary Determinations* on March 2, 2026.[17]

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determinations,* ended on August 29, 2026. Therefore, in accordance with section 733(d) of the Act, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, certain unliquidated entries of hardwood and decorative plywood from Indonesia and Vietnam entered, or withdrawn from warehouse, for consumption after

[17] *See Preliminary Determinations.*

August 28, 2026, the final day on which the provisional measures were in effect, through the day preceding the date of publication of the ITC's final determination in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC final injury determinations in the **Federal Register**.

Establishment of the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[18] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[19] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[20]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov*, within five business days of publication of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [21]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,* the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov*.

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both the petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [22] Accordingly, as stated above, the petitioner and the Governments of China, Indonesia, and Vietnam should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list for those orders for which they qualify as an interested party. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Governments of China, Indonesia, and Vietnam will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Governments of China, Indonesia, and Vietnam are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notifications to Interested Parties

This notice constitutes the AD orders with respect to hardwood and decorative plywood from China, Indonesia, and Vietnam pursuant to section 736(a) of the Act. Interested parties can find a list of AD and countervailing duty orders currently in effect at *https://www.trade.gov/data-visualization/adcvd-proceedings.*

These AD orders are published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: November 12, 2026.

Steven Presing,

Executive Director for AD/CVD Policy and Negotiations.

Appendix

Scope of the Orders

The merchandise covered by these orders is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of these orders, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers in combination with a core or without a core. The veneers and, if present, the core are glued or otherwise bonded together. A hardwood and decorative plywood panel must have at least either the face or back veneer composed of one or more species of hardwood, softwood, or bamboo, regardless of any surface coverings. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2024 (including any revisions to that standard).

For purposes of the orders a ''veneer'' is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood irrespective of additional surface coatings or covers as described below. The core of hardwood and decorative plywood (for those products that include a core) consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium density fiberboard (MDF).

All hardwood and decorative plywood is included within the scope of the orders regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water-based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay

[18] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[19] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[20] *Id.*

[21] This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[22] *See Final Rule,* 86 FR at 52335.

(MDO); and phenolic film. Additionally, the face veneer of hardwood and decorative plywood may be sanded; smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing.

All hardwood and decorative plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has undergone other forms of minor processing. All hardwood and decorative plywood is included within the scope of the orders, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches). Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the orders if performed in the country of manufacture of the in-scope product.

The scope of the orders excludes the following items: (1) structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is certified, manufactured, and stamped to meet U.S. Products Standard PS–1–22 or PS 2–18 for Structural Plywood (including any revisions to those standards, or to a foreign structural plywood standard that Commerce has determined, in a scope ruling or other proceeding, to be substantially equivalent to PS–1–22 or PS 2–18); (2) products which have a face and back veneer of cork; (3) hardwood plywood subject to the antidumping and countervailing duty orders on hardwood plywood from China. *See Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order,* 83 FR 504 (January 4, 2018); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018); (4) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on multilayered wood flooring from China. *See Multilayered Wood Flooring from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011); and *Multilayered Wood Flooring from the People's Republic of China: Countervailing Duty Order,* 76 FR 76693 (December 8, 2011), as amended by *Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Orders,* 77 FR 5484 (February 3, 2012); (5) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (6) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (7) products made entirely from bamboo and adhesives (also known as ''solid bamboo''); and (8) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an ''Exterior'' or ''Exposure 1'' bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m3 permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges. Structural plywood qualifying for part (1) of the above exclusion must bear the certifying agency's stamp or mark, applied in accordance with the requirements of the applicable standard, identifying the certification agency, applicable standard or grade designation, and the mill number or other facility-identifying code assigned by the certifying agency to the producing facility.

Also excluded from the scope of the orders are softwood structural plywood ''downfall'' panels, defined as plywood panels manufactured at a facility certified to produce structural plywood to PS 1–22 or PS 2–18 standards (or a Commerce-determined equivalent foreign standard), where the specific panels at issue were produced as part of a production run intended to meet such standards but did not receive the certifying agency's stamp or mark because they failed to meet the applicable bond performance, veneer grade, or other qualifying criteria of that standard.

Also excluded from the scope of the orders are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the orders is ''ready to assemble'' (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Also excluded from the scope of the orders are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the orders are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes: (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry; (2) all accessory parts (*e.g.,* screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry; and (3) instructions providing guidance on the assembly of a finished unit of cabinetry. Excluded from the scope of these orders are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing. Excluded from the scope of these orders are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Also excluded from the scope of the orders are laminated veneer lumber (LVL) door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters, (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Also excluded from the scope of these orders are certain door stiles and rails made of LVL that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters.

Also excluded from the scope of these orders are finished two-ply products that are made of one ply of wood veneer and one ply of a non-wood veneer material and the two-ply product cannot be glued or otherwise adhered to additional plies or that are made of two plies of wood veneer and have undergone staining, cutting, notching, punching, drilling, or other processing on the surface of the veneer such that the two-ply product cannot be glued or otherwise adhered to additional plies.

Imports of hardwood and decorative plywood are primarily entered under the following HTSUS numbers: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4155; 4412.31.4160; 4412.31.4165; 4412.31.4180; 4412.31.4200; 4412.31.4500; 4412.31.4850; 4412.31.4860; 4412.31.4863; 4412.31.4865; 4412.31.4866; 4412.31.4869; 4412.31.4875; 4412.31.4880; 4412.31.5130; 4412.31.5135; 4412.31.5150; 4412.31.5155; 4412.31.5160; 4412.31.5165; 4412.31.5170; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5260; 4412.31.5262; 4412.31.5264; 4412.31.5265; 4412.31.5266; 4412.31.5268; 4412.31.5270; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0570;

4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2520; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3130; 4412.32.3135; 4412.32.3140; 4412.32.3150; 4412.32.3155; 4412.32.3160; 4412.32.3165; 4412.32.3170; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.5700; 4412.33.0620; 4412.33.0640; 4412.33.0670; 4412.33.2630; 4412.33.3235; 4412.33.3255; 4412.33.3265; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3235; 4412.34.3255; 4412.34.3265; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5050; 4412.41.0000; 4412.42.0000; 4412.51.1030; 4412.51.1050; 4412.51.3111; 4412.51.3121; 4412.51.3141; 4412.51.3161; 4412.51.3175; 4412.51.4100; 4412.52.1030; 4412.52.1050; 4412.52.3121; 4412.52.3161; 4412.52.3175; 4412.52.4100; 4412.91.0600; 4412.91.1020; 4412.91.1030; 4412.91.1040; 4412.91.3110; 4412.91.3120; 4412.91.3130; 4412.91.3140; 4412.91.3150; 4412.91.3160; 4412.91.3170; 4412.91.4100; 4412.92.0700; 4412.92.1120; 4412.92.1130; 4412.92.1140; 4412.92.3120; 4412.92.3150; 4412.92.3160; 4412.92.3170; 4412.92.4200; 4412.94.1020; 4412.94.1030; 4412.94.1040; 4412.94.1050; 4412.94.3110; 4412.94.3111; 4412.94.3120; 4412.94.3121; 4412.94.3130; 4412.94.3131; 4412.94.3140; 4412.94.3141; 4412.94.3150; 4412.94.3160; 4412.94.3161; 4412.94.3170; 4412.94.3171; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5115; 4412.99.5701; and 4412.99.5710.

Imports of hardwood and decorative plywood may also enter under HTSUS subheadings 4412.10.9000; 4412.94.5100; 4412.94.9500; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 9403.90.7005; 9403.90.7010; and 9403.90.7080.

The HTSUS subheadings are provided for the convenience of the U.S. government and customs purposes, and do not define the scope of the orders. The written description of the merchandise is dispositive.

[FR Doc. 2026–23386 Filed 11–16–26; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–3367]

Agency Information Collection Activities; Comment Request; Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms

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 and extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 19, 2027.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2026–SCC–3367. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to Carolyn Rose, U.S. Department of Education, Federal Student Aid, 400 Maryland Avenue SW, Washington, DC 20202–1200.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Rose, (202) 453–5967.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: Federal Direct Loan Program and Federal Family Education Loan Program Teacher Loan Forgiveness Forms.

OMB Control Number: 1845–0059.

Type of Review: Extension without change of a currently approved ICR.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 8,700.

Total Estimated Number of Annual Burden Hours: 2,871.

Abstract: Sections 460 and 428J of the Higher Education Act of 1965, as amended (HEA) provide for teacher loan forgiveness in William D. Ford Federal Direct Loan (Direct Loan) Program and the Federal Family Education Loan (FFEL) Program. Borrowers who teach for five consecutive years at schools or educational service agencies serving low-income families and meet certain other requirements may receive up to $17,500 in loan forgiveness. The teacher loan forgiveness regulations at 34 CFR 685.217 (for the Direct Loan Program) and 34 CFR 682.216 (for the FFEL Program) require borrowers to provide their loan holders with documentation establishing their eligibility for teacher loan forgiveness and for teacher loan forgiveness forbearance. The U.S. Department of Education (ED) is requesting no substantive changes but is making revisions to better align the forms with other similar forms and improve the borrower experience.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–23396 Filed 11–16–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2026–SCC–3334]

Agency Information Collection Activities; Comment Request; National Assessment of Educational Progress (NAEP) 2028

AGENCY: Institute of Education Sciences (IES), 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 January 19, 2027.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2026–SCC–3334. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the National Center for Education Statistics, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 5C125, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Matt Soldner, 202–453–7441.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: National Assessment of Educational Progress (NAEP) 2028.

OMB Control Number: 1850–0928.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 1,136,015.

Total Estimated Number of Annual Burden Hours: 686,022.

Abstract: The National Assessment of Educational Progress (NAEP) is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, and civics.

NAEP is conducted by the National Center for Education Statistics (NCES) in the Institute of Education Sciences of the U.S. Department of Education. As such, NCES is responsible for designing and executing the assessment, including designing the assessment procedures and methodology, developing the assessment content, selecting the final assessment content, sampling schools and students, recruiting schools, administering the assessment, scoring student responses, determining the analysis procedures, analyzing the data, and reporting the results.

The National Assessment Governing Board (henceforth referred to as the Governing Board or NAGB), appointed by the Secretary of Education but independent of the Department, is a bipartisan group whose members include governors, state legislators, local and state school officials, educators, business representatives, and members of the general public. The Governing Board sets policy for NAEP and is responsible for developing the frameworks and test specifications that serve as the blueprint for the assessments.

NAEP consists of two assessment programs: the NAEP Long-term Trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s.

The main NAEP assessments report current achievement levels and trends in student achievement at grades 4, 8, and 12 for the nation and, for certain assessments (*e.g.,* reading and mathematics), states and select urban districts (*i.e.,* Trial Urban District Assessment, or TUDA). The main NAEP assessments provide results on subject-matter achievement, instructional experiences, and school environment for different student populations (*e.g.,* all fourth-graders) and groups within those populations (*e.g.,* sex [male and female students], race/ethnicity groups). Neither Main NAEP nor LTT provides scores for individual students or schools.

The NAEP assessments contain two different types of items: ''cognitive'' assessment items, which measure what students know and can do in an academic subject, and ''survey'' or ''non-cognitive'' items, which gather information such as demographic variables, as well as construct-related information, such as courses taken. The survey portion includes a collection of data from students, teachers, and school administrators. Since NAEP assessments are administered uniformly using the same sets of test forms across the nation, NAEP results serve as a common metric for all states and select urban districts. The assessment stays essentially the same from year to year, with only carefully documented changes. This permits NAEP to provide a clear picture of student academic progress over time.

The possible universe of student respondents for NAEP 2028 is estimated to be 12 million at grades 4, 8, and 12, attending the approximately 154,000 public and private elementary and secondary schools in 50 states and the District of Columbia, and Bureau of Indian Education and Department of War Education Activity (DoWEA) schools, as well as fourth-grade and eighth-grade public schools in Puerto Rico.

This request is to conduct NAEP in 2028, specifically in grades 4, 8, and 12 in reading and mathematics in the mainland U.S. and in grades 4 and 8 in mathematics in Puerto Rico. In addition, civics in grade 8 and a pilot mathematics assessment in grades 4 and 8 are part of the administration. Several special studies are also part of the 2028 administration including Multi-stage Testing (MST) conducted in reading and mathematics at grades 4 and 8 for the pilot assessments, National Indian Education Study (NIES) conducted in conjunction with the operational reading and mathematics assessments at grades 4 and 8, and a High School Transcript Study conducted in conjunction with the operational mathematics assessment at grade 12. NAEP will administer the assessment using school devices. For private and/or public schools that cannot meet the

minimum specification for the use of school devices, NAEP will provide Chromebooks.

This submission is the 60-day submission for the 2028 NAEP Clearance package. Examples of typical materials for the NAEP administration are available in this package. Final materials will be included in the 30-day Clearance Package and future amendments.

Ross Santy,

Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2026–23391 Filed 11–16–26; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C.552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 19, 2026, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426. Open to the public.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Debbie-Anne A. Reese, Secretary. Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed online at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1141ST—MEETING OPEN

[November 19, 2026, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD27–1–000	Agency Administrative Matters.
A–2	AD27–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD07–13–020	FY2026 Report on Enforcement.
A–4	AD06–3–000	Market Update.
	Electric	
E–1	ER20–2054–000	Central Maine Power Company, The Connecticut Light and Power Company, Fitchburg Gas and Electric Light Company, Green Mountain Power Corporation, New England Power Company, New Hampshire Transmission, LLC, NSTAR Electric Company, Public Service Company of New Hampshire, The United Illuminating Company, Unitil Energy Systems, Inc., Vermont Electric Cooperative, Inc., Vermont Transco LLC, Versant Power and ISO New England Inc.
E–2	ER20–2054–000	Central Maine Power Company, The Connecticut Light and Power Company, Fitchburg Gas and Electric Light Company, Green Mountain Power Corporation, New England Power Company, New Hampshire Transmission, LLC, NSTAR Electric Company, Public Service Company of New Hampshire, The United Illuminating Company, Unitil Energy Systems, Inc., Vermont Electric Cooperative, Inc., Vermont Transco LLC, Versant Power and ISO New England Inc.
E–3	EC26–115–000	ArcLight Capital Partners, LLC and DigitalBridge Group, Inc.
E–4	ER26–3474–000, ER26–3475–000	Northern Indiana Public Service Company LLC and NiSource Generation Company LLC.
E–5	ER26–1734–002	Kammer Juniata Transmission, LLC.
E–6	ER17–405–006	Appalachian Power Company.
	ER17–406–006	AEP Appalachian Transmission Company, Inc.
	EL26–56–001	*American Municipal Power, Inc.* v. *Appalachian Power Company et al., and AEP Appalachian Transmission Company Inc., et al.*
E–7	ER26–3348–000	The Empire District Electric Company and Southwest Power Pool, Inc.
E–8	ER26–3677–000	Jefferson Davis Electric Cooperative, Inc. and Midcontinent Independent System Operator, Inc.
E–9	TS26–10–000	City of Hastings, Nebraska d/b/a Hastings Utilities
	Miscellaneous	
M–1	RM26–13–000	Denial of Rehearing Requests by Operation of Law Under the Commission's Rules of Practice and Procedure.
	Certificates	
C–1	CP24–75–000, CP24–75–001	Sabine Pass Liquefaction, LLC, and Sabine Pass Liquefaction Stage V, LLC.
	CP25–505–000	Sabine Crossing Pipeline, LLC.
	CP25–506–000	Cheniere Creole Trail Pipeline, L.P.
C–2	CP26–14–000	Mountain Valley Pipeline, LLC.
C–3	CP26–14–001	Mountain Valley Pipeline, LLC.
C–4	CP26–20–000	Columbia Gas Transmission, LLC.
C–5	CP26–34–000	Forza Pipeline LLC.
	CP26–35–000	Bull Run Pipeline LLC.

1141ST—MEETING OPEN—Continued

[November 19, 2026, 10:00 a.m.]

Item No.	Docket No.	Company
C–6	CP26–75–000	Texas Eastern Transmission, LP.

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Commission Open Meetings are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or (202) 208–8659 (TTY) or send a fax to (202) 208–2106 with the required accommodations.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: November 12, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23359 Filed 11–13–26; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP26–585–000]

Eastern Shore Natural Gas Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Delmar Regional Enhancement Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document that will discuss the environmental impacts of the DELMAR Regional Enhancement Project involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania; Cecil County, Maryland; New Castle, Kent, and Sussex Counties, Delaware. 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 December 14, 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 September 24, 2026, you will need to file those comments in Docket No. CP26–585–000 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.

Eastern Shore 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 (CP26–585–000) 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 DELMAR Regional Enhancement Project would consist of the following facilities:

Chester County, Pennsylvania

- Construct 2.55 miles of new 24-inch-diameter natural gas transmission pipeline collocated within existing Eastern Shore pipelines (Parkesburg-Daleville Loop).[1] Associated aboveground facilities including the new Gum Tree remote monitoring valve (RMV) station and a new RMV at the existing Daleville Compressor Station.
- Abandon the existing connection between the Daleville metering and regulation (M&R) station and the 8-inch-diameter Parkesburg Line and reconfigure belowground station piping at the Daleville Compressor Station.

Cecil County, Maryland

- Construct 1.85 miles of 24-inch-diameter natural gas transmission pipeline loop collocated with existing Eastern Shore pipelines (Barksdale Loop).[2] Associated aboveground facilities including the new Telegraph Road RMV Station and the new Barksdale Road RMV Station.
- Abandon approximately 120 feet of belowground interconnect piping at the proposed Telegraph Road RMV Station.

New Castle, Kent, and Sussex Counties, Delaware

- Replace 0.32 mile of existing 6-inch-diameter natural gas transmission pipeline with 16-inch-diameter transmission pipeline (Tidewater Upgrade Segment 1).
- Replace 1.28 miles of existing 6-inch-diameter transmission pipeline with 16-inch-diameter transmission pipeline (Tidewater Upgrade Segment 2) and a new manual shutoff valve at the existing Delaware City Compressor Station.
- Abandon approximately 2.0 miles of existing 6-inch-diameter natural gas transmission pipeline and miscellaneous reconfigurations (Tidewater 6-inch Line).
- Construct 5.05 miles of new 16-inch-diameter natural gas transmission pipeline loop (16'' Harrington Loop).[3] and associated aboveground facilities including a new RMV, and a new pipeline tie-in at the existing Felton Loop South RMV Station.
- Abandon by-removal the existing North Bridgeville M&R station and construct a new M&R station adjacent to the abandoned M&R station.

The general locations of the project facilities are shown in appendix 1.[4]

The DELMAR Regional Enhancement Project would provide a total of about 15,800 dekatherms per day (Dth/d) of natural gas per day to local distribution companies servicing residential and commercial customers. According to Eastern Shore, its project would allow the shippers to connect new customers and continue to service existing customers reliably under peak demand conditions.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 135.61 acres of land for the pipelines, above-ground facilities, access roads, and temporary workspaces. Following construction, Eastern Shore would permanently maintain about 33.16 acres of land to operate the proposed facilities; the remaining acreage would be restored and revert to former uses. About 14 percent of the proposed pipeline and aboveground facilities parallels or uses existing utility easements.

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;
- visual resources;
- air quality and noise; and
- reliability and safety.

Commission staff have already identified several issues that deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Eastern Shore. This preliminary list of issues may change based on your comments and our analysis:

- agricultural land use;
- bald eagles and other birds of prey habitat;
- mature tree clearing;
- traffic; and
- existing and planned land use conflicts (residential development and recreation).

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

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] Ibid.

[3] Ibid.

[4] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary.'' For 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.

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 eLibrary [5] 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.[6] 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.[7] 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 CP26–585–000 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: November 12, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23361 Filed 11–16–26; 8:45 am]

BILLING CODE 6717–01–P

[5] For instructions on connecting to eLibrary, refer to the last page of this notice.

[6] Cooperating agency responsibilities are addressed in Section 107(a)(3) of NEPA (42 U.S.C. 4336(a)(3)).

[7] 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.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL27–14–000.

Applicants: Northeast Missouri Electric Power Cooperative v. *ITC Midwest LLC.*

Description: Complaint of Northeast Missouri Electric Power Cooperative v. *ITC Midwest LLC.*

Filed Date: 11/10/26.

Accession Number: 20261110–5163.

Comment Date: 5 p.m. ET 12/10/26.

Take notice that the Commission received the following Electric Rate filings:

Docket Numbers: ER10–2129–019; ER10–2134–017; ER10–2136–025; ER15–103–018; ER22–2144–009; ER18–140–020; ER10–2135–019.

Applicants: Spindle Hill Energy LLC, Lackawanna Energy Center LLC, Invenergy Nelson Expansion LLC, Invenergy Nelson LLC, Invenergy Cannon Falls LLC, Hardee Power Partners Limited, Grays Harbor Energy LLC.

Description: Notice of Change in Status of Grays Harbor Energy LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5421.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER10–2374–023; ER17–2059–014.

Applicants: Puget Sound Energy, Inc.

Description: Third Supplement to 06/30/2025, Updated Triennial Market

Power Analysis for Northwest Region of Puget Sound Energy, Inc.

Filed Date: 11/5/26.

Accession Number: 20261105–5226.

Comment Date: 5 p.m. ET 11/27/26.

Docket Numbers: ER10–2405–020; ER10–2414–026; ER19–1044–009.

Applicants: Telocaset Wind Power Partners, LLC, Old Trail Wind Farm, LLC, High Prairie Wind Farm II, LLC.

Description: Notice of Change in Status of High Prairie Wind Farm II, LLC, et al. under ER10–2405, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5420.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER17–194–009; ER17–380–007; ER14–2500–030; ER14–2498–022.

Applicants: Hartree-Meadowlands Newark, LLC, Newark Energy Center, LLC, NE Renewable Power LLC, Hartree Partners, LP.

Description: Notice of Change in Status of Hartree Partners, LP, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5423.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER18–126–002; ER25–2216–001; ER16–2019–009; ER15–2131–010; ER15–2130–009; ER26–2610–001.

Applicants: South Glens Falls Limited Partnership, Roosevelt Wind Project, LLC, Milo Wind Project, LLC, Five Points Solar Park LLC, Boralex Energy Trading and Marketing Inc., AL Solar A, LLC.

Description: Notice of Non-Material Change in Status of AL Solar A, LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5422.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER25–3111–004; ER25–704–008; ER25–1744–007; ER19–2373–022; ER10–2005–041; ER25–3121–004; ER23–568–013; ER22–2634–014; ER26–42–003; ER10–1841–040; ER25–1962–009; ER23–2694–011; ER20–1987–022; ER20–1769–018; ER26–678–001; ER20–122–021; ER19–2461–023; ER19–987–027; ER19–1003–027; ER21–1320–017; ER26–43–002; ER25–2210–005; ER25–1545–006; ER25–2797–004; ER26–3874–001; ER26–681–001; ER25–3119–004; ER19–2437–023; ER19–1393–027; ER19–1394–027; ER26–68–002; ER26–684–003; ER25–1338–008; ER15–1933–002; ER25–3112–004; ER26–687–003; ER25–1339–007; ER10–1907–039; ER26–689–001; ER10–1918–040; ER10–1950–040; ER26–691–001; ER25–3118–004; ER25–3114–004; ER25–3113–004; ER25–705–006; ER26–44–001; ER25–2252–005; ER26–45–002; ER21–1953–019; ER19–2398–025; ER18–2246–029; ER26–690–001; ER20–2690–021; ER25–1527–006; ER22–2536–014; ER18–1771–030; ER25–3115–004.

Applicants: Manila Solar, LLC, Langdon Renewables, LLC, Kossuth County Wind, LLC, Knox County Wind Farm LLC, Jordan Creek Wind Farm LLC, Iberville Energy Storage, LLC, Heartland Divide Wind Project, LLC, Hancock County Wind, LLC, Heartland Divide Wind II, LLC, Heartland Divide Wind Energy, LLC, Greer Solar, LLC, Greer Energy Storage, LLC, Green River Solar, LLC, Green Mallard Solar, LLC, Greenlee Solar, LLC, Garden Wind Energy, LLC, Geaux Energy Storage, LLC, Garden Wind, LLC, FPL Energy North Dakota Wind II, LLC, Forgeview Surplus Energy Storage, LLC, FPL Energy North Dakota Wind, LLC, Forgeview Solar, LLC, Forgeview Interconnection, LLC, Forest Trace Solar, LLC, Florida Power & Light Company, Flat Fork Solar, LLC, Flat Fork Interconnection, LLC, Flat Fork Energy Storage, LLC, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Emmons-Logan Wind, LLC, Emmons-Logan Energy Storage, LLC, Dunns Bridge Solar II, LLC, Duane Arnold Energy, LLC, Dodge County Wind, LLC, DG VDH BESS, LLC, Delta Bobcat Solar, LLC, Delta Bobcat Energy Storage, LLC, Crystal Lake Wind Energy III, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Crowned Ridge Wind, LLC, Crowned Ridge Interconnection, LLC, Crowned Ridge Energy Storage I, LLC, Chicot Solar, LLC, Cerro Gordo Wind, LLC, Cereal City Solar, LLC, Century Oaks Energy Storage, LLC, Butler Ridge Wind Energy Center, LLC, Butler Ridge Wind, LLC, Buffalo Ridge Wind, LLC, Big Cypress Solar, LLC, Benton Solar, LLC, Ashtabula Wind II, LLC, Ashtabula Wind I, LLC, Appleseed Solar, LLC, Amite Solar, LLC, Amite Energy Storage, LLC.

Description: Notice of Change in Status of Amite Energy Storage, LLC, et al.

Filed Date: 11/2/26.

Accession Number: 20261102–5419.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: ER26–648–001; ER26–649–001.

Applicants: Atlas Solar V, LLC, Atlas Solar VI, LLC.

Description: Response to 10/15/2026, Deficiency Letter and Amendment to Change-in-Status of Atlas Solar V, LLC, et al., under ER26–648, et al.

Filed Date: 11/10/26.

Accession Number: 20261110–5228.

Comment Date: 5 p.m. ET 12/1/26.

Take notice that the Commission received the following Qualifying Facility filings:

Docket Numbers: QF27–150–000.

Applicants: EQX009.09 PROJECTCO, LLC.

Description: Form 556 of EQX009.09 PROJECTCO, LLC.

Filed Date: 11/9/26.

Accession Number: 20261109–5232.

Comment Date: 5 p.m. ET 11/30/26.

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: November 12, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23360 Filed 11–16–26; 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 in Existing Proceedings

Docket Numbers: RP22–824–003.

Applicants: Young Gas Storage Company, Ltd.

Description: Compliance filing: Second Petition to Amend Docket No. RP22–824 Stipulation and Agreement to be effective N/A.

Filed Date: 11/12/26.

Accession Number: 20261112–5112.

Comment Date: 5 p.m. ET 11/24/26.

Docket Numbers: RP26–1215–001.

Applicants: Ruby Pipeline, L.L.C.

Description: Compliance filing: RP 2026–11–10 RP26–1215 NAESB 4.0 Modifications Amendment to be effective 1/1/2027.

Filed Date: 11/10/26.

Accession Number: 20261110–5191.

Comment Date: 5 p.m. ET 11/23/26.

Docket Numbers: RP27–134–001.

Applicants: Double E Pipeline, LLC.

Description: Tariff Amendment: Amendment to Pending Negotiated Rate Agreement Filing (RP27–134-) to be effective 11/1/2026.

Filed Date: 11/10/26.

Accession Number: 20261110–5174.

Comment Date: 5 p.m. ET 11/23/26.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern Time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, contact the Office of Public Participation at (202) 502–6595 or *OPP@ferc.gov.*

Dated: November 12, 2026.

Carlos D. Clay,

Deputy Secretary.

[FR Doc. 2026–23362 Filed 11–16–26; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–13701–01–AO]

Public Meeting of the Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB) Branch is announcing a public meeting of the Science Advisory Board. The purpose of the meeting is to receive a briefing from EPA on the Unregulated Contaminant Monitoring Rule; the Draft Guidance for Reducing Risk from Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) in Biosolids; and hear public comments.

DATES:

Public meeting: The Science Advisory Board will meet on December 7, 2026, from 11:30 a.m. to 3:30 p.m. Eastern Time.

Comments: See the section titled ''Procedures for providing public input'' under **SUPPLEMENTARY INFORMATION** for instructions and deadlines.

ADDRESSES: The December 7, 2026 meeting will be conducted virtually. Registration is required to participate in the meeting. Please refer to the Science Advisory Board website at *https://sab.epa.gov* for additional information including how to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning this document may contact Dr. Shaunta Hill-Hammond, Designated Federal Officer (DFO), via telephone at (202) 564–3343, or email *at hill-hammond.shaunta@epa.gov.* General information about the SAB, as well as any updates concerning this meeting, can be found on the SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the EPA Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S. Code 10. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the Science Advisory Board will hold a public meeting to receive a briefing from EPA on the Unregulated Contaminant Monitoring Rule; the Draft Guidance for Reducing Risk from Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS) in Biosolids; and hear public comments.

Availability of meeting materials: All meeting materials, including the agenda, will be available on the SAB web page at *https://sab.epa.gov.*

Procedures for providing public input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comments should follow the instructions below to submit comments.

Oral statements: In general, individuals or groups requesting an oral presentation at a meeting conducted virtually will be limited to three minutes. Each person making an oral statement should consider providing written comments as well as their oral statement so that the points presented orally can be expanded upon in writing. Persons interested in providing oral statements should contact the DFO, in writing (preferably via email) at the contact information noted under **FOR FURTHER INFORMATION CONTACT**, by December 1, 2026, for the December 7, 2026 meeting, to be placed on the list of registered speakers.

Written statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be submitted to the DFO by December 1, 2026, for consideration at the December 7, 2026 meeting. Written statements should be supplied to the DFO at the contact information above via email. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without the explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact the DFO, at the contact information noted above, preferably at least ten days before the meeting, to give the EPA as much time as possible to process your request.

V. Khanna Johnston,

Branch Chief, Science Advisory Board Branch.

[FR Doc. 2026–23346 Filed 11–16–26; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Information and Comment on Environmental and Disposal Liabilities

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) staff issued a request for information and comment (RFI) on environmental and disposal liabilities (E&DL).

DATES: Responses are requested by January 13, 2027.

ADDRESSES: Specific questions for consideration are detailed in the staff RFI at *https://fasab.gov/projects/active-projects/environmental-and-disposal-liabilities/*. Responses should be submitted to *EDL@fasab.gov* with ''[Agency Name]—E&DL RFI Response'' on the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Washington, DC 20548, or call (202) 512–7350.

SUPPLEMENTARY INFORMATION: Practitioner responses to this RFI will support the Board's efforts to consider ways to improve, clarify, and streamline generally accepted accounting principles for E&DL.

Authority: 31 U.S.C. 3511(d); Federal Advisory Committee Act, 5 U.S.C. 1001–1014)

Dated: November 13, 2026.

Monica R. Valentine,

Executive Director.

[FR Doc. 2026–23353 Filed 11–16–26; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1046; FR ID 377805]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before January 19, 2027. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1046.

Title: Part 64, Modernization of Payphone Compensation Rules, et al., WC Docket No. 17–141, et al.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 215 respondents; 1,467 responses.

Estimated Time per Response: 0.50–30 hours.

Frequency of Response: On occasion, one-time, and quarterly reporting requirements; third party disclosure requirements; and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 276.

Total Annual Burden: 22,606 hours.

Total Annual Cost: No cost.

Needs and Uses: Section 276 of the Communications Act, as amended (the Act), requires that the Federal Communications Commission (Commission or FCC) establish rules ensuring that payphone service providers (PSPs) are ''fairly compensated'' for each and every completed payphone-originated call. The Commission revised those rules in a 2018 Report and Order (FCC 18–21). The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid. Those rules: (1) place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers or switch-based resellers (SBRs) from whose switches such calls are completed; (2) define these responsible carriers as ''Completing Carriers'' and require them to develop their own system of tracking calls to completion; (3) require Completing Carriers to file with PSPs a quarterly report and also submit an attestation by a company official, including but not limited to the chief financial officer (CFO), that the payment amount for that quarter is accurate and is based on 100% of all completed calls; (4) require quarterly reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as ''Intermediate Carriers;'' and (5) give parties flexibility to agree to alternative compensation arrangements (ACA) so that small Completing Carriers may avoid the expense of instituting a tracking system. The revisions adopted in the 2018 Report and Order (1) eliminated the payphone call tracking system audit and associated reporting requirements; (2) permitted a company official, including but no longer limited to, the chief financial officer (CFO), to certify that a Completing Carrier's quarterly compensation payments to PSPs are accurate and complete; and (3) eliminated expired interim and intermediate per-payphone compensation rules that no longer apply to any entity. They thus significantly decreased the paperwork burden on carriers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2026–23388 Filed 11–16–26; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreement to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime

Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of General Counsel at (202) 523–5740 or *GeneralCounsel@fmc.gov*.

Agreement No.: 012370–003.

Agreement Name: Volkswagen Konzernlogistik GmbH & Co. OHG/ Hyundai Glovis Co., Ltd. Space Charter Agreement.

Parties: Hyundai Glovis Co.; and Volkswagen Konzernlogistik GmbH & Co. OHG. *Filing Party:* Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment adds a new Article 20 to clarify that the parties do not have authority to negotiate and/or contract jointly with marine terminal operators.

Proposed Effective Date: 11/9/2026.

Agreement No.: 012389–002.

Agreement Name: Grimaldi/Liberty Global Logistics LLC Space Charter Agreement.

Parties: Grimaldi Euromed S.P.A.; and Liberty Global Logistics LLC.

Filing Party: Ashley Cohen, Liberty Global Logistics LLC.

Synopsis: The amendment removes the joint contracting and procurement authority set forth in Article 5.3.

Proposed Effective Date: 11/10/2026.

Location: https://www2.fmc.gov/eAgreementsSP/Public/AgreementHistory/1005.

Dated: November 13, 2026.

Jennifer Everling,

Assistant Secretary.

[FR Doc. 2026–23371 Filed 11–16–26; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–27–0017]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Survey to Promote Resources and Opportunities for aUtistic Teens and young adults (SPROUT)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on January 27, 2026, to obtain comments from the public and affected agencies. CDC received two related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Survey to Promote Resources and Opportunities for aUtistic Teens and Young Adults (SPROUT)—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2022, an estimated one in 31 children eight years of age living in 16 communities across the United States had autism, a developmental disability that can cause significant social, communication, and behavior challenges. The Study to Explore Early Development (SEED) was implemented in 2006 to learn more about autism and other developmental disabilities in children 2–5-years of age. Extensive data, from interviews, in-person evaluations, and other sources were collected across three phases (SEED 1, 2, and 3) in eight geographic areas (California, Colorado, Georgia, Maryland, Missouri, North Carolina, Pennsylvania, and Wisconsin). SEED 1–3 collected data on 9,808 preschool-aged children with autism, another developmental delay or disability, or from the general population. To date, almost 100 analyses of SEED 1–3 data have been published in peer-reviewed journals.

To better understand transition and lifespan issues affecting people with autism as they age, caregivers of children enrolled in SEED 1 (2006–2011) were eligible to participate in a pilot follow-up survey when their child was between 12–16 years of age (2018–2021; SEED Teen). An important outcome of SEED Teen was to demonstrate that longitudinal data collection from SEED participants is feasible (*i.e.,* contact was established with approximately 97% of eligible participants and, of those, 64% enrolled in SEED Teen). SEED Follow-Up was thus initiated in 2021 to survey the broader cohort of SEED 1–3 participants on adolescent and young adult health and well-being. SEED Follow-Up is currently ongoing until June 2026.

The federal government identified a need to improve efforts to better understand lifespan issues among people with autism in the Autism CARES Act of 2024 and a report to Congress in 2017. Despite this, a recent portfolio analysis from the Interagency Autism Coordinating Committee (IACC), indicated that lifespan issues continue to receive the least amount of autism funding from federal agencies. Both the SEED Teen and SEED Follow-Up surveys helped identify healthcare needs and experiences among adolescents with autism. However, gaps in understanding remain in how we can best support adolescents and young adults with autism and their families.

Draft chapters of the 2024 IACC Strategic Plan Update emphasize the

need for data on service and support needs and conditions that commonly co-occur with autism. On behalf of the IACC, the Office of National Autism Coordination (ONAC) released a Request for Public Comment on these topics from members of the autistic community. Some identified service and support needs were provider training, more benefits and insurance coverage, and help with system navigation. Some commonly reported co-occurring conditions were sensory and motor issues, anxiety disorder, sleep problems, attention deficits, hyperactivity, gastrointestinal issues, learning and memory issues, and suicidal ideation. Other topics identified as important to the autistic community are social, education, and vocational experiences and outcomes.

The current information collection request (ICR) is designed to conduct longitudinal follow-up surveys that offer unique information about autistic adolescents and young adults, thereby addressing the priorities established in the Autism CARES Act of 2024 and draft 2024 IACC Strategic Plan. Given the size of the original SEED birth cohorts and the wealth of baseline and follow-up information collected, additional surveys of participants can help address critical information gaps. Specifically, the information collected from the Survey to Promote Resources and Opportunities for aUtistic Teens and young adults (SPROUT) will allow us to better understand: (1) the healthcare utilization of, service and support needs of, and impact of co-occurring conditions on autistic people and their families; and (2) the educational, social, and/or vocational needs and experiences of autistic adolescents and young adults.

One survey will be administered to caregivers and another is a self-report survey administered to children, adolescents and young adults age 9–27. The survey version will be based on the child participant's age and ability to self-report on healthcare utilization, service and support needs, co-occurring conditions, and healthcare transition. CDC requests OMB approval for an estimated 1,867 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Caregivers of children ages 9–17 and young adults who can't self-report.	Caregiver survey for children ages 9–17	1,400	1	30/60
Caregivers of young adults 18+	Caregiver survey for young adults 18+	1,600	1	10/60
Children and adolescents	Self-report Survey for children ages 9–17	1,000	1	15/60
Young adults who can self-report	Self-report survey for young adults 18+	1,300	1	30/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2026–23301 Filed 11–16–26; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970–0382]

Proposed Information Collection Activity; Community Services Block Grant Model State Plan Applications

AGENCY: Office of Community Services, Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Community Services (OCS), Administration for Children and Families (ACF) requests a 3-year extension of the Community Services Block Grant (CSBG) State Plan, CSBG Eligible Entity Master List, and the American Customer Survey Index (ACSI) forms (Office of Management and Budget (OMB) #: 0970–0382, expiration August 31, 2027). There are changes requested to these information collections to reduce burden.

DATES: Comments due January 19, 2027.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Section 676 of the CSBG Act requires states, including the District of Columbia and the Commonwealth of Puerto Rico, and U.S. territories applying for CSBG funds to submit an application and plan (CSBG State Plan). The CSBG State Plan must meet statutory requirements prior to OCS awarding CSBG grant recipients (states and territories) with CSBG funds. Grant recipients have the option to submit a detailed plan annually or biannually. Grant recipients that submit a biannual plan must provide an abbreviated plan the following year if substantial changes to the initial plan occur. OCS is requesting revisions to this form to reduce burden.

OCS is also requesting to extend approval of the following information collections, with minimal changes proposed:

- *CSBG Eligible Entity List.* In alignment with federal requirements, OCS requests that all grant recipients continue to keep their CSBG Eligible Entity List current, to include maintaining an accurate listing of the CSBG sub-grant recipients (CSBG eligible entities) and current Unique Entity Identifier for each recipient listed. With the revisions proposed this year, OCS is also requesting that states include satellite offices, as applicable, for all CSBG sub-grant recipients.
- *Optional survey for the sub-grant recipients (or CSBG-eligible entities).* ACSI is administered biennially. OCS uses the ACSI survey for eligible entities as part of the CSBG performance management framework. The survey focuses on the customer service that the CSBG sub-grant recipients receive from the CSBG grant recipients. The survey is optional, and this will be the eighth time that CSBG sub-grant recipients have the option to complete the survey. There were minimal revisions to the survey.

Respondents: State governments, including the District of Columbia and

the Commonwealth of Puerto Rico and U.S. territories, and local level sub-grant recipients.

ANNUAL BURDEN ESTIMATES

Information collection	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
CSBG State Plan	56	1	18	1,008
CSBG Eligible Entity List	56	1	2	112
Estimated Total Annual Burden Hours for CSBG Grant Recipients	.....	.....	.....	1,064
	1,000	0.33	0.15	16.5
Estimated Total Annual Burden Hours for CSBG sub-grant recipients	.....	.....	.....	16.5
Estimated Total Annual Burden Hours for ALL respondents	.....	.....	.....	1,136.5

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 676, Pub. L. 105–285, 112 Stat. 2735 (42 U.S.C. 9908)

Samantha L. Illangasekare,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–23369 Filed 11–16–26; 8:45 am]

BILLING CODE 4184–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Office of Management and Budget #: 0970–0152]

Proposed Information Collection Activity; Interstate Administrative Subpoena and Notice of Lien

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS), is requesting a 3-year extension of the Interstate Administrative Subpoena and Notice of Lien (Office of Management and Budget (OMB) #: 0970–0152, expiration April 30, 2027). Minor changes are proposed to the burden hours calculation for the Notice of Lien form.

DATES: Comments due January 19, 2027.

ADDRESSES: In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above. You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Administrative Subpoena is used by state child support agencies to obtain income and other financial information regarding noncustodial parents for purposes of establishing, enforcing, and modifying child support orders. The Notice of Lien imposes liens in cases with overdue support and allows a state child support agency to file liens across state lines, when it is more efficient than involving the other state's child support agency. Section 452(a)(11) of the Social Security Act requires the HHS Secretary to promulgate forms for administrative subpoenas and imposition of liens used by state child support agencies in interstate cases. Section 454(9)(E) of the Social Security Act requires each state to cooperate with any other state in using the federal forms for issuance of administrative subpoenas and imposition of liens in interstate child support cases.

Respondents: State, local, or tribal agencies administering a child support program under title IV–D of the Social Security Act.

Annual Burden Estimates: Annual burden estimates for the notice of lien have been reduced by 5 minutes since the most recent full OMB review and approval process in 2024. This reduction is due to advancements in automation and state child support system modernization. Most state child support systems now auto-populate majority of the information required for this form.

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Administrative Subpoena	54	377	.5	10,179
Notice of Lien	54	24,633	.42	558,676

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Estimated Total Annual Burden Hours				568,855

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

(Authority: 42 U.S.C. 652; 42 U.S.C. 654)

Samantha L. Illangasekare,

ACF/OPRE Certifying Officer.

[FR Doc. 2026–23347 Filed 11–16–26; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–P–2305]

Determination That M.V.I. ADULT (Multiple Vitamins for Injection) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that M.V.I. ADULT (ascorbic acid 200 milligrams (mg)/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial, for injection, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Molly Arndt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6281, Silver Spring, MD 20993–0002, *Molly.Arndt@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, is the subject of NDA 021625, held by Hospira, Inc., and initially approved on January 30, 2004. M.V.I. ADULT is indicated for prevention of vitamin deficiency in adults and pediatric patients aged 11 years and above receiving parenteral nutrition.

In a letter dated September 29, 2021, Hospira, Inc. notified FDA that M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book. In a letter dated January 17, 2025, Hospira Inc. requested withdrawal of NDA 021625 for M.V.I. ADULT (ascorbic acid; biotin; cyanocobalamin; dexpanthenol; ergocalciferol; folic acid; niacinamide; pyridoxine hydrochloride; riboflavin 5′-phosphate sodium; thiamine hydrochloride; vitamin A; vitamin E; vitamin K). In the **Federal Register** of August 4, 2025 (90 FR 36440), FDA announced that it was withdrawing approval of NDA 021625, effective September 3, 2025.

Apotex, Inc. submitted a citizen petition dated March 4, 2026 (Docket No. FDA–2026–P–2305), under 21 CFR 10.30, requesting that the Agency determine whether M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial;

niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list M.V.I. ADULT (ascorbic acid 200 mg/vial; biotin 0.06 mg/vial; cyanocobalamin 0.005 mg/vial; dexpanthenol 15 mg/vial; ergocalciferol 0.005 mg/vial; folic acid 0.6 mg/vial; niacinamide 40 mg/vial; pyridoxine hydrochloride 6 mg/vial; riboflavin 5′-phosphate sodium 3.6 mg/vial; thiamine hydrochloride 6 mg/vial; vitamin A 1 mg/vial; vitamin E 10 mg/vial; vitamin K 0.15 mg/vial), for injection, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–23366 Filed 11–16–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2026–P–2305]

Determination That M.V.I. PEDIATRIC (Multiple Vitamins for Injection) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that M.V.I. PEDIATRIC (ascorbic acid 80 milligrams (mg)/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride equivalent (EQ) 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial, for injection, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Molly Arndt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6281, Silver Spring, MD 20993–0002, *Molly.Arndt@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, is the subject of NDA 018920, held by Hospira Inc., and initially approved on April 6, 1983. M.V.I. PEDIATRIC is indicated for the prevention of vitamin deficiency in pediatric patients up to 11 years of age receiving parenteral nutrition.

In a letter dated September 29, 2021, Hospira Inc. notified FDA that M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial;

ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, was being discontinued, and FDA moved the drug product to the ''Discontinued Drug Product List'' section of the Orange Book. In a letter dated January 17, 2025, Hospira Inc. requested withdrawal of NDA 018920 for M.V.I. PEDIATRIC (ascorbic acid; biotin; cyanocobalamin; dexpanthenol; ergocalciferol; folic acid; niacinamide; phytonadione; pyridoxine hydrochloride; riboflavin 5′-phosphate sodium; thiamine hydrochloride; vitamin A; vitamin E). In the **Federal Register** of August 4, 2025 (90 FR 36440), FDA announced that it was withdrawing approval of NDA 018920, effective September 3, 2025.

Apotex, Inc. submitted a citizen petition dated March 4, 2026 (Docket No. FDA–2026–P–2305), under 21 CFR 10.30, requesting that the Agency determine whether M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that this drug product was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list M.V.I. PEDIATRIC (ascorbic acid 80 mg/vial; biotin 0.02 mg/vial; cyanocobalamin 0.001 mg/vial; dexpanthenol 5 mg/vial; ergocalciferol 0.01 mg/vial; folic acid 0.14 mg/vial; niacinamide 17 mg/vial; phytonadione 0.2 mg/vial; pyridoxine hydrochloride 1 mg/vial; riboflavin 5′-phosphate sodium 1.4 mg/vial; thiamine hydrochloride EQ 1.2 mg base/vial; vitamin A 0.7 mg/vial; vitamin E 7 mg/vial), for injection, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–23367 Filed 11–16–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Interagency Autism Coordinating Committee, November 20, 2026, 11:00 a.m. to November 20, 2026, 03:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on November 10, 2026, FR Doc. 2026–22917, 91 FR 72546.

This notice is being amended to extend the public comment period from Friday, November 13, 2026, to Monday, November 16, 2026. The meeting is open to the public.

Dated: November 12, 2026.

Rosalind M. Niamke

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23379 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Applications: Disease Treatment and Clinical Care.

Date: December 7, 2026.

Time: 9:30 a.m. to 9:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Joann Wu Shortt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–7375, *shorttjw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Basic Neuroscience.

Date: December 8, 2026.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Marta Veronica Hamity, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 451–1664, *marta.hamity@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy, Radiation

Biology, and Nanoparticle Based Therapeutics.

Date: December 8–9, 2026.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 808 K, Bethesda, MD 20892, (301) 435–0000, *byeong-chel.lee@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Basic Cancer Mechanisms and Therapeutics

Date: December 8, 2026.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, 301–402–4788, *sarita.sastry@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Health Tools and Technologies to Reduce Risk and Improve Outcomes.

Date: December 8, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Trinh T. Tran, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–5843, *trinh.tran@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Special Topics in Aging, Injury, Musculoskeletal, and Rheumatologic Disorders.

Date: December 8, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2407, *Varsha.shukla@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Viral Pathogenesis Special Emphasis Panel.

Date: December 8, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Deanna C. Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4005, *deanna.bublitz@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bacterial Virulence and Interspecies Microbial Interactions.

Date: December 8, 2026.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Alok Mulky, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4203, Bethesda, MD 20892, (301) 435–3566, *mulkya@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases and Immunology: NIH Collaborative International Research Project Applications (PF5)—Panel C.

Date: December 8–9, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mairi Noverr, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2802, *noverrmc@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Genetic Variation and Evolution.

Date: December 8, 2026.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Laureen Elizabeth Connell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 710K, Bethesda, MD 20892, (301) 480–3629, *connelle@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 10, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23377 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Partially Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, must notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: February 12, 2027.

Open: 10:00 a.m. to 3:00 p.m.

Agenda: Opening Remarks, Administrative Matters, Director's Report, Presentations, and Other Business of the Council.

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Meeting Format: Virtual Meeting.

Address: National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Kelly Y. Poe, Ph.D., Acting Director, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, 5601 Fishers Lane, Rockville, Maryland 20852, Telephone: 301–402–1366, *kelly.poe@nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NIMHD: *https://www.nimhd.nih.gov/about/advisory-council/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: November 10, 2026.

Kuleni D. Onnen,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23378 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Career Development—Neurodegeneration.

Date: December 1, 2026.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–7701, *nakhaib@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 10, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23376 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Regents of the National Library of Medicine.

The meeting will be partially open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website: *https://videocast.nih.gov/.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents, National Library of Medicine.

Date: February 9, 2027.

Closed: 11:00 a.m. to 11:45 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Address: National Institutes of Health, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Open: 1:00 p.m. to 4:00 p.m.

Agenda: Program Discussion.

Address: National Institutes of Health, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Peter J. Embi, MD, MS, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, *peter.embi@nih.gov.*

Registration is not required to attend the open portion of this meeting.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance; 93.LM4, National Library of Medicine—Training (Individual); 93.LM5, National Library of Medicine—Small Business; 93.LM3, National Library of Medicine—Training (Institutional); 93.LM2, National Library of Medicine—Other Research and Resources; 93.LM1, National Library of Medicine—Research Projects; 93.310, Trans-NIH Research Support, National Institutes of Health, HHS)

Dated: November 10, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23375 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institute of Allergy and Infectious Diseases (NIAID) of the National Institutes of Health has modified its organizational structure.

SUPPLEMENTARY INFORMATION: Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (HHS) is amended as set forth below to reflect the reorganization of the National Institute of Health, National Institute of Allergy and Infectious Diseases (NIAID), by retitling and updating the functional statement (1) the Office of the Chief of Staff for the Immediate Office of the Director to the Office of the Clinical Director within NIAID, (2) establishing the Intramural Clinical Management and Operations Branch, and the Office of Clinical Research Policy and Regulatory Operations within the Office of the Clinical Director, (3) establishing the Office of Biostatistics Research within NIAID, the Biostatistics Research Branch, and the Clinical Trials Research and Statistics Branch within the Office of Biostatistics Research, establishing the Laboratory of Viral Zoonoses and IRF-Frederick Comparative Medicine

Branch within the Division of Intramural Research of NIAID, (4) Abolishing all of the Division of Clinical Research within NIAID.

Section N, *Organization and Functions,* is amended as follows:

(1) In the *National Institute of Allergy and Infectious Diseases (NM, formerly HNM)* retitle the following:

Office of the Chief of Staff for the Immediate Office of the Director (NM1J, formerly HNM1J) to *Office of the Clinical Director (NM1J, formerly HNM1J).* (1) Develops, implements, and evaluates policies and practices related to the conduct of human subjects research within NIAID; (2) Advises the Director, NIAID, on the portfolio of clinical research conducted and sponsored by NIAID and reviews research protocols for relevance to the mission of the Institute, priority to meet the needs of the public health of the nation, ethics in human use, and appropriateness of scientific design; (3) Oversees the OCD branches; (4) Provides oversight of clinical research and all related clinical operations of intramural laboratories conducting clinical research programs; (5) Manages several clinical research projects involving national programs of clinical research in areas of the highest public health priorities; (6) Oversees Clinical Research Oversight Management (CROM) for intramural clinical research operations in NIAID including logistical and technical support for the NIAID Data and Safety Monitoring Board (DSMB); (7) Maintains regulatory surveillance over intramural clinical trials and protocols to ensure compliance with FDA regulations to establish and monitor regulatory policies for clinical trials and to monitor quality assurance standards and standard operating procedures regarding regulatory matters; (8) Provides expert policy analysis with regard to the management, coordination, and integration of all OCD programs and predicts and responds to the changing needs of a program for on-site and off-site domestic and international clinical research in developing countries and collaborative efforts with industry and international foundations; (9) Oversees design and conduct of studies in collaboration and consultation with NIAID intramural and extramural programs including data management and study coordination, analyses, and reporting of clinical, population and laboratory investigations; and (10) Supervises medical staff appointments, fellowship programs, and other clinical training programs.

(2) In the *Office of the Clinical Director (NM1J, formerly HNM1J)* establish the following:

Intramural Clinical Management and Operations Branch (NM1J2, formerly HNM1J2). (1) Provides oversight of clinical research and all related clinical operations for intramural laboratories conducting clinical research; (2) Provides oversight of: (a) inpatient units and outpatient clinics in concert with the Clinical Center; (b) clinical protocol review and approval including assurance of scientific quality; (c) the quality of care delivered to NIAID patients and the quality of professional performance of NIAID health care providers for the intramural patient population; (d) continuing medical education; and (e) graduate physician training in allergy, immunology, and infectious diseases.

Office of Clinical Research Policy and Regulatory Operations (NM1J3, formerly HNM1J3). (1) Provides support and logistical services for intramural clinical research operations in NIAID to include the provision of a protocol navigator/protocol development program; (2) Coordinates the support and logistical services for NIAID clinical research projects; (3) Maintains regulatory surveillance over DIR supported clinical trials and protocols to ensure compliance with FDA regulations; (4) Establishes and coordinates trans-NIAID clinical research policies on behalf of the NIAID Clinical Research Subcommittee and harmonizes best practices across NIAID Divisions; (5) Coordinates the development of the OCD response to inquiries from HHS, other Agencies, and NIH regarding a wide-array of legislative and policy issues pertaining to clinical research; (6) Establishes and monitors regulatory policies for DIR-conducted clinical trials and supports the NIAID Clinical Director in the harmonization of a coherent NIAID response based on input from other NIAID Divisions; (7) Establishes and monitors quality assurance standards and standard operating procedures regarding regulatory matters; (8) Coordinates with investigators on the appropriate utilization of available clinical data management systems; (9) Develops, assembles, maintains, and submits investigational new drug (IND) applications to the FDA, authorizes sites for clinical trials, reviews adverse experience reports for DIR sponsored trials, and prepares safety reports and IND interim and annual reports for the FDA; (10) Ensures that sponsor responsibilities for IND/IDE applications held by the Office are either fulfilled or that appropriate documentation transferring responsibilities of those regulatory obligations to include responsibility for maintenance and evaluation of clinical safety data; (11) Provides logistical and technical support for the NIAID intramural Data and Safety Monitoring Board; (12) Provides logistical and technical support for safety monitoring committees and independent medical monitors required for NIAID intramural clinical research; (13) Serves as liaison to the FDA, the pharmaceutical industry, the Office of Human Subjects Research Protections for regulatory issues during the initiation and conduct of clinical trials; (14) In conjunction with pharmaceutical collaborators, reviews the regulatory components of DIR Clinical Trial Agreements and Cooperative Research and Development Agreements; (15) Implements and maintains management information systems required to support regulatory and policy responsibilities; (16) Provides information and training relative to regulatory issues and logistical coordination of trials; (17) Provides consultation to NIAID officials and programs developing clinical trial protocols concerning scientific merit and protection of human subjects; and (18) Coordinates and communicates with other domestic and international government agencies and with other NIH and NIAID components to ensure accurate and timely exchange of information on regulatory issues.

(3) In the *National Institute of Allergy and Infectious Diseases (NM, formerly HNM)* establish the following:

Office of Biostatistics Research (NM1K, formerly HNM1K) (1) Provides institute-wide leadership, expertise, and strategic support in biostatistics to advance NIAID's scientific mission; (2) Advises NIAID leadership on policies and programmatic priorities to ensure statistical rigor, reproducibility, data integrity, and analytic accuracy; (3) Supports NIAID's rapid, adaptive, and data-driven response to emerging scientific and public health needs; (4) Facilitates the coordination, oversight, and administration of Data and Safety Monitoring Boards (DSMBs); and (5) Ensures the timely, accurate, and transparent communication and dissemination of research data and results.

Biostatistics Research Branch (NM1K2, formerly HNM1K2) (1) Collaborates with intramural and extramural investigators to design, analyze, and report scientifically rigorous clinical, population-based, and laboratory studies; (2) Provides statistical leadership for safety monitoring activities and research

protocol development and review; (3) Directs and conducts an independent research program focused on advancing innovative biostatistical methods; (4) Provides subject matter expertise and leadership for NIAID and cross-institutional Data and Safety Monitoring Boards; (5) Establishes program priorities and recommends funding levels within the biostatistics research portfolio; and (6) Identifies and mentors high-potential biostatisticians developing novel statistical methodologies, and supports early-career investigators in grant submissions to foster the next generation of NIAID researchers.

Clinical Trials Research and Statistics Branch (NM1K3, formerly HNM1K3) (1) Serves as the central resource for the design, coordination, and conduct of high-priority infectious disease clinical trials through innovative trial designs, advanced statistical methodologies, and robust data management and operations; (2) Functions as an operational hub that integrates and augments existing NIAID clinical research resources to enhance adaptability and responsiveness for special initiatives and rapid-response missions; and (3) Provides a turnkey clinical trials capability during outbreaks or urgent research responses, ensuring coordinated trial implementation, high-quality data management and analysis, and a flexible, nimble, and cost-effective operational model.

Laboratory of Viral Zoonoses (NM2Z13, formerly HNM2Z13)(1) Work in the Laboratory of Viral Zoonoses at the Integrated Research Facility-Frederick may include: (1) In vitro work using standard and innovative cell culture and organoid models; (2) In vivo work using conventional laboratory and unconventional exotic animal species to develop surrogate models for emerging/re-emerging zoonotic infectious diseases; (3) Use cutting edge methods and state-of-the-art technologies in high/maximum biocontainment, at field sites, and for clinical trials; (4) Evaluate medical countermeasures to prevent or treat (re)emerging infectious diseases; and (5) Establish a world-renowned training site for researchers in high/maximum biocontainment.

IRF-Frederick Comparative Medicine Branch (NM2Z14), formerly HNM2Z14) (1) Provides support to the IRF-Frederick through centralized animal care, including animal husbandry, clinical care, breeding, shipping and receiving, disease surveillance, and technical scientific support that includes performance of surgeries, experiments, administration of experimental materials, collection of tissue samples and necropsies; (2) Ensures compliance with the Animal Welfare Act, PHS and NIH Animal Care and Use Policies, DHHS Guide for the Care and Use of Laboratory Animals, and accreditation standards for the Association for Assessment and Accreditation of Laboratory Animal Care; (3) Provides training for animal care technicians, laboratory technicians, and investigators; (4) Supports high and maximum containment animal experimental protocols for DIR Principal Investigators, including special animal models of emerging and re-emerging biodefense related infectious disease agents requiring Animal Biosafety Level-3 and Animal Biosafety Level-4 containment; (5) Provides detailed summary reports of experiments; and (6) Optimizes facility resources, monitors facilities, and establishes standard operating procedures.

(4) In the *National Institute of Allergy and Infectious Diseases (NM, formerly HNM)* remove the following:

- *Division of Clinical Research (NM9, formerly HNM9)*
- *Office of Biostatistics Research (NM93, formerly HNM93)*
- *Mathematical Biology Section (NM932, formerly HNM932)*
- *Clinical Trials Research and Statistics Branch (NM933, formerly HNM933)*
- *Biostatistics Research Branch (NM934, formerly HNM934)*
- *Collaborative Clinical Research Branch (NM94, formerly HNM94)*
- *Science Section (NM942, formerly HNM942)*
- *Operations and Strategy Management Section (NM943, formerly HNM943)*
- *Intramural Clinical Management and Operations Branch (NM95, formerly HNM95)*
- *Program Planning and Analysis Branch (NM96, formerly HNM96)*
- *Office of Clinical Research Policy and Regulatory Operations (NM97, formerly HNM97)*
- *Office of the Chief Scientist for the Integrated Research Facility at Ft. Detrick (NM99, formerly HNM99)*

Authority: 42 U.S. Code 281(d)(4)

Robert F. Kennedy, Jr.,

Secretary, Department of Health and Human Services.

[FR Doc. 2026–23394 Filed 11–16–26; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft Policy Update to the NIH Policy for Data and Safety Monitoring

AGENCY: National Institutes of Health, HHS.

ACTION: Request for information.

SUMMARY: The National Institutes of Health (NIH) is committed to ensuring risk-based monitoring for participant safety and to upholding the quality and integrity of data for all NIH-supported clinical research. To further this goal, NIH is seeking public input on proposed updates to the 1998 NIH Policy for Data and Safety Monitoring and on what supplemental resources would benefit the research community.

DATES: To ensure consideration, comments must be submitted in writing by January 6, 2027.

ADDRESSES: Comments may be submitted electronically to: *https://osp.od.nih.gov/comment-fom1-draft-policy-update-to-the-nih-policy-for-data-and-safety-monitoring/*. 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., Office of Science Policy, at (301) 496–9838 or *SciencePolicy@od.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background: NIH is proposing to update its 1998 Policy for Data and Safety Monitoring. The 1998 Policy established NIH requirements for data and safety monitoring in clinical trials (as defined in Section V), including the requirement to develop and implement a data and safety monitoring plan. The draft update would expand those expectations to all NIH-supported clinical research (as defined in Section V), while using risk-based data and safety monitoring approaches to focus oversight where it is most needed, and reduce administrative burden for research with lower risk.

NIH is proposing this update because clinical research and study designs have advanced significantly since 1998. Valid scientific results are necessary to replicate and extend research findings and translate findings from clinical trials and other clinical research to health improvements. In addition, almost two thirds of NIH's clinical research portfolio is not clinical trials, and data from clinical research that are not clinical trials often support future clinical trial research. Updating the policy would promote a consistent NIH-wide approach to participant safety and the quality and integrity of data, better reflecting NIH's broad and diverse clinical research portfolio.

Key features of the draft updated policy include expanding the scope of the 1998 Policy from clinical trials to encompass all NIH-supported clinical research, clarifying the requirements that data and safety monitoring plans be based on the risk of the study and that NIH Institutes, Centers, and Offices (ICOs) approve those plans. By focusing on study-specific, risk-based monitoring, the draft updated policy would allow greater flexibility in monitoring approaches by removing the requirement for Data and Safety Monitoring Boards for all phase 3 or multi-site clinical trials.

Draft Policy Update to the NIH Policy for Data and Safety Monitoring

I. Purpose

The purpose of the updated National Institutes of Health (NIH) Policy for Data and Safety Monitoring (DSM Policy) is to establish risk-based data and safety monitoring (*i.e.,* monitoring) in all NIH-supported clinical research. This Policy establishes the requirement to develop and implement a NIH Institutes, Centers, and Offices (ICO)-approved data and safety monitoring plan (*i.e.,* monitoring plan) and Policy compliance expectations. Data and safety monitoring provides risk-based oversight of (1) the quality and integrity of data and (2) participant safety and well-being (*i.e.,* data and safety) to ensure the study is conducted ethically and progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work. Requirements of this policy are calibrated to ensure that oversight roles are non-duplicative with that of Institutional Review Boards (IRB).

II. Background

As stewards of the world's largest public investment in biomedical research, NIH is entrusted to ensure the rigor, safety, and transparency of its clinical research. NIH endeavors to ensure that studies are conducted safely, ethically, and in accordance with approved study documents. In support of this goal, NIH issued the NIH Policy for Data and Safety Monitoring (see *https://grants.nih.gov/grants/guide/notice-files/not98-084.htm1*) in 1998 (1998 Policy) to ensure clinical trials had monitoring procedures for data and safety. NIH provided Further Guidance on Data and Safety Monitoring for Phase I and Phase II Trials (see *https://grants.nih.gov/grants/guide/notice-files/not-od-00-038.html*) in 2000 (2000 Guidance). NIH continued these efforts (see *https://osp.od.nih.gov/building-better-clinical-trials-through-enhanced-stewardship-and-transparency/*) in 2016 to strengthen clinical trial stewardship, accountability, and transparency.

Significant research advancements toward increasingly data-driven, patient-centered research (*e.g.,* real-world data research, [see *https://www.fda.gov/science-research/science-and-research-special-topics/real-world-evidence*] implementation science, machine learning, genomics, point-of-care clinical studies) and more efficient, adaptive, and fit for purpose study designs (*e.g.,* decentralized, adaptive, quasi-experimental designs) have highlighted the need to continue to modernize NIH data and safety monitoring practices for all clinical research to support the ethical conduct of research and produce valid scientific data.

In-line with gold standard (see *https://www.nih.gov/sites/default/files/2025-08/2025-gss.pdf*) science at NIH, valid results are necessary to replicate and translate research findings to accelerate scientific discovery and improve American health. Almost two thirds of NIH's clinical research portfolio consist of studies that are not clinical trials. Research advancements in these areas necessitate that NIH require data and safety monitoring in all clinical research to ensure that these studies meet NIH's standards for valid scientific data (see *https://grants.nih.gov/policy/reproducibility/guidance.htm*) and ethical study conduct. Data from clinical research studies that are not clinical trials often support future clinical trial research, underscoring the need to ensure high-quality data in all research stages.

This draft updated DSM policy is distinct from, but complements, the data management and sharing practices to enable data accessibility, reuse, reproducibility and reliability of study results outlined in NIH's Data Management and Sharing Policy (see *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-21-013.html*). NIH maintains that data monitoring and management practices support improved data validity and study outcomes, including future reproducibility, replication, and sharing for the next generation of research. NIH's draft updated Data and Safety Monitoring policy ensures the clinical research data shared in accordance with the Data Management and Sharing Policy are monitored for participant safety and are of the highest quality, building trust in the research and its disseminated results.

Accordingly, NIH proposes an updated DSM Policy that expands the goals of the 1998 Policy to require all clinical research to have plans to monitor data and safety using approaches proportionate to study risk. Risk-based monitoring approaches allow for more effective mitigation of risks to participants and to the quality and integrity of the data while allowing for tiering of oversight to reduce administrative burden. Risk-based monitoring focuses on risks that are most likely to critically affect data and safety, and, in turn, enhances ethical study conduct and the validity of scientific results. The extent and nature of risk-based monitoring is proportionate to those risks. This approach also directly supports dynamic, continual improvement in study oversight, monitoring, and conduct to ensure that studies accomplish the NIH-approved scope of work. Risk-based monitoring supports rigor, transparency, and accountability, builds public trust in NIH research, and advances the NIH mission of funding studies that advance American health.

III. Policy Scope and Effective Date

The policy will be effective for applications submitted on or after 6 months from when the final policy is published. This updated DSM policy applies to the following NIH-supported clinical research:

- All competing award applications, applications for competitive revisions, proposals for contracts, and other funding agreements (*e.g.,* Other Transactions, Cooperative Agreements).
- All intramural research projects approved by an IRB.

IV. Compliance and Enforcement

All institutions conducting NIH-supported clinical research defined in Policy Scope and Effective Date, will be required to comply with this Policy, which will be included in the applicable terms and conditions of the award or agreement, or as outlined in the NIH Grants Policy Statement, or Other Transaction agreement. Compliance will be reviewed and evaluated by NIH during regular reporting intervals (*e.g.,* at the time of monitoring reports, during study progress reviews) or more frequently by the awarding NIH ICO.

Monitoring plan amendments must be reported to and approved by the awarding NIH ICO. The monitoring plan and its amendments must be consistent with Requirements.

- Changes that require prior approval, consistent with the NIH Grants Policy Statement 8.1.2 Prior Approval Requirements (see *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.l.2_prior_approval_requirements.htm?Highlight=Changes%20That%20Involve%20Human%20Subjects*) or the Terms and Conditions of the Notice of Award, and that result in amendments to the monitoring plan, require NIH ICO review of the revised monitoring plan and NIH ICO approval prior to implementation.
- Changes that don't require prior approval, but result in monitoring plan amendments, require reporting a summary of the monitoring plan amendments during regular reporting intervals.

Failure to comply may provide a basis for remedies for noncompliance (see *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_8/8.5.2_remedies_for_noncompliance_or_enforcement_actions-_suspension_termination_and_withholding_of_support.htm*), which could also result in enforcement actions, including, but not

limited to, specific award 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.

NIH IRP research subject to this policy will be addressed, as applicable within NIH IRP policies and procedures.

V. Definitions and Terminology

For the purposes of the draft updated NIH DSM Policy, terms are defined or explained as follows:

Clinical Trial

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 (for the complete definition of Clinical Trial, see *https://grants.nih.gov/grants/glossary.htm#ClinicalTrial*).

Clinical Research

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. Excluded from this definition are in vitro studies that utilize human tissues that cannot be linked to a living individual. It includes: (a) mechanisms of human disease, (b), therapeutic interventions, (c) clinical trials, or (d) development of new technologies.

(2) Epidemiological and behavioral studies.

(3) Outcomes research and health services research (see *https://grants.nih.gov/grants/glossary.htm#ClinicalRescarch*).

Data and Safety Monitoring Plan (DSMP)

A prospectively written document that describes the strategy, methods, responsibilities, and requirements for monitoring (1) quality and integrity of data and (2) participant safety and well-being.

Data and Safety Monitoring (DSM) Reports

Documentation of monitoring activities, their results, actions taken in response to monitoring results, and the outcomes of those actions. The DSM report is provided to .the individual(s) monitoring the study.

Independent Monitor

An individual, committee, or board who, based on their roles and responsibilities defined in the monitoring plan, review the monitoring plan, study data, and/or monitoring reports as the study progresses. The independent monitor provides assessments of whether the study's human subject activities should continue or be stopped (*i.e.,* suspension or discontinuation) based on data, safety, and if the study is conducted ethically and progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work. Independence means that the monitor is not directly involved in the study and real or perceived conflicts of interest are disclosed and adequately mitigated.

Monitoring (of the Study)

Monitoring (see *https://www.fda.gov/regulatory-information/search-fda-guidance-docurnents/e6r3-good-clinical-practice-gcp*) is the review of study data as the study progresses to provide appropriate oversight of the processes and procedures necessary for (1) quality and integrity of data and (2) participant safety and well-being (*i.e.,* data and safety). Monitoring includes developing and implementing a monitoring plan, along with the actions taken to identify, evaluate, mitigate, or correct risks. Data and safety are monitored to assess if the study is conducted ethically and progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work. Monitoring should be risk-based (see *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/oversight-clinical-investigations-risk-based-approach-monitoring*). Risk-based monitoring focuses on identifying and mitigating the risks that are most likely to critically affect data and safety, and, in turn, if the study is conducted ethically and produces valid results (see *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/e6r3-good-clinical-practice-gcp*). This is determined based on the study's risk assessment (*i.e.,* initial or throughout the study) and ongoing review.

The extent and nature of risk-based monitoring is proportionate to those risks. Monitoring is one aspect of quality assurance and control procedures in studies, (see *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/e6r3-good-clinical-practice-gcp*) and is distinct from the routine (*i.e.,* day-to-day) operational activities performed by the study staff for study quality assurance and control.

NIH-Supported Research

NIH supported research includes all research funded in whole or in part by NIH. This includes research conducted by the NIH intramural research program and funded or conducted by extramural grants, contracts, other transactions, or other funding agreements regardless of NIH funding level or awarding instrument.

Program Director/Principal Investigator (Hereafter Investigator)

The individual(s) designated by the applicant organization to have the appropriate level of authority and responsibility to direct the project or program to be supported by the award. (See *https://grants.nih.gov/grants/glossary.htm#ProgramDirector/Principallnvestigator(PD/PI).*

Quality and Integrity of Data

Quality and integrity of data include the degree to which the data are generated, recorded, and reported throughout the study are fit for purpose, such that the data fulfill the criteria needed for the study to be ethically conducted and produce valid scientific results.

Recipient

An entity that receives a Federal award directly from a Federal agency to carry out an activity under a Federal program. The term recipient does not include subrecipients, consortiums or individuals that are participants or beneficiaries of the award.

Risk Assessment (of the Study)

The risk assessment of the study is used to develop a monitoring approach that is proportionate in extent and nature to the study's risks. The study's risk assessment may be reviewed and amended throughout the study.

Critical risks are based on identification and evaluation of the study's risks to determine criticality based on the likelihood risks might occur or their possible impact on data and safety, and, in turn, if the study is ethically conducted and produces valid scientific results accomplishing the NIH-approved scope of work. Critical risks should be monitored, mitigated, and reported.

All studies involve some measure of risk. Risks should be interpreted broadly (evidence-based, theoretical, anticipated at the start of the study, or identified during the study), then evaluated to determine if they are critical risks, and may include factors affecting:

(1) Participant safety and well-being (including privacy and confidentiality);

(2) Quality and integrity of data (including study outcomes);

(3) Complexity, processes, and procedures (including study design, operations, systems, large language models (LLMs) or super intelligence (see *https://www.whitehouse.gov/presidential-actions/2026/09/inaugurating-the-era-ot.._super-intelligence/*), regulatory, administrative factors);

(4) NIH financial stewardship; or

(5) Other significant risks (including data security, public trust).

Sponsor

A sponsor is the person or entity who takes responsibility for and initiates a clinical trial under a Food and Drug Administration Investigational New Drug (IND) application or Investigational Device Exemption (IDE). The sponsor may be an individual, company, governmental agency, academic institution, private organization, or other organization (see *https://www.ecfr.gov/current/title-21/part-312/section-312.3#p-312.3(b)* and *https://www.ecfr.gov/current/title-21/section-812.40*).

Study Documents

Study documents include (1) NIH-approved study documents, including, but not limited to, all components of the application, any changes made to application documents or the information described within them after initial submission, the Research Performance Progress Rep01i (RPPR) or other required reporting, or any

other NIH document relevant to the study, (2) IRB approved study documents (*e.g.,* protocol), (3) study documents reviewed by other applicable authorities (*e.g.,* FDA), and (4) any other study documents needed to execute approved plans (*e.g.,* statistical analysis plan, manual of operating procedures). Together, these study documents describe the approved scope of work and timelines, as well as the plans or operational procedures required to accomplish them.

VI. Roles and Responsibilities

Recipient or Investigator Responsibilities

The recipient institution is responsible for the conduct of all research under the award (see *https://grants.nih.gov/grants/policy/nihgps/HTML5/section_4/4.1.16_human_subjects_protections.htm?Highlight=good%20clinical%20practice*), including compliance with this Policy. The recipient institution may designate the investigator(s) as responsible for carrying out these responsibilities under the oversight of the awarding NIH ICO. NIH's review and evaluation of recipient/investigator requirements does not relieve the recipient/investigator of its responsibility to satisfactorily implement requirements. The recipient/investigator is responsible for:

- Developing and receiving approval for a satisfactory monitoring plan (*i.e.,* consistent with Requirements) from the awarding NIH ICO. The initial monitoring plan must be approved p1ior to initiating human subject activities. In developing the monitoring plan, recipient(s)/investigator(s) should perform a risk assessment and propose a monitoring approach that is proportionate to the study's risk.
- Determining and adhering to the IRB review requirements for the monitoring plan. Please see NIH's Policy on single IRB (sIRB) for information on sIRB requirements (see *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-16-094.html*).
- If independent monitoring is required by the NIH ICO for the study, (1) identifying possible independent monitors for the study at NIH ICO request and (2) managing real and perceived conflicts of interest to mitigate bias.
- Implementing and adhering to the monitoring plan once human subject activities begin.
- Assessing the need for monitoring plan amendments in response to study issues or changes. This may then include amending the monitoring plan to ensure it remains satisfactory, implementing amendments, and, when required by Compliance and Enforcement, obtaining approval from the NIH ICO for amendments.
- Mitigating or resolving issues identified through monitoring reports and indicated in monitoring reports if and how issues are satisfactorily mitigated or resolved. This includes corrective and preventive action plans that mitigate issues (as defined in Section V: ''Monitoring'' and ''Risk Assessment'').
- Providing monitoring reports according to monitoring plan requirements and demonstrating if the ongoing review of study data indicates that data and safety are consistent with ethical study conduct and that progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work.
- Providing the study documents that enable monitoring or monitoring reports to the parties described in the monitoring plan (*e.g.,* the NIH ICO, independent monitor (if applicable), and regulatory authorities (*e.g.,* IRB, FDA)).

Sponsor Responsibilities

In cases where there is a regulatory sponsor for studies with an IND or IDE, the sponsor should determine which responsibilities listed under Recipient/Investigator Responsibilities are to be performed by the sponsor or the recipient/investigator (see *https://www.ecfr.gov/current/title-21/chapter-I/subchapter-D/part-312#subpart-D* and *https://www.ecfr.gov/current/title-21/part-812/subpart-C*).

Institutes, Centers, and Offices Responsibilities

The awarding NIH ICO is responsible for the oversight of the data and safety monitoring of the NIH-supported clinical research. This is distinct from the monitoring activities performed by the recipient/investigator, sponsor, or independent monitor(s). The awarding NIH ICO is responsible for:

- Requiring that the recipient/investigator provide a satisfactory monitoring plan (*i.e.,* consistent with Requirements) that is approved by the NIH ICO prior to the initiation of human subject activities. NIH ICO is responsible for reviewing and evaluating the plan to determine if the recipient/investigator has provided a satisfactory plan. The NIH ICO may require changes to the study or monitoring plan or, if applicable, assessment of the plan by an independent monitor prior to NIH ICO approval.
- Evaluating and approving the study to have independent monitoring. If independent monitoring is required, approving the independent monitor(s) roles, responsibilities, and selection.
- Establishing review and management processes to ensure disclosure and mitigation of conflicts of interest throughout the study.
- Reviewing, evaluating, and approving amendments to monitoring plans according to Compliance and Enforcement expectations and to require that the recipient/investigator maintains a satisfactory monitoring plan throughout the study.
- Reviewing and evaluating monitoring reports on the study's data and safety, including, if applicable, the independent monitor's assessment of these, to determine and approve whether the study should continue or be stopped (*i.e.,* suspension or discontinuation). This includes determining from these reports, (1) if the study is conducted ethically, (2) if study progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work; (3) if the recipient/investigator has satisfactorily mitigated identified issues; (4) compliance with the monitoring plan requirements, (5) compliance with the updated DSM Policy; and (6) compliance with applicable laws, regulations, and policies.

If the NIH ICO identifies concerns when reviewing the monitoring plan (*i.e.,* initial or amendments) or reports relevant to monitoring, the NIH ICO has the authority to require or approve actions including, but not limited to, amendments to the study or monitoring plan; increased monitoring and reporting requirements, corrective and preventive actions; suspension or discontinuation of human subject activities; suspension, withholding, or termination of funding; or special terms of award.

The NIH ICO will respond to the recipient/investigator within 30 days after receiving the NIH ICO requested plan. After 30 days, if the NIH ICO has not provided a response, the plan is deemed approved.

Independent Monitor Responsibilities

Independent monitors assist the PI with monitoring under the oversight of the NIH ICO based on their roles and responsibilities defined in the monitoring plan. The independent monitor is responsible for:

- The review and assessment of the (1) monitoring plan (*i.e.,* the initial plan and amendments), (2) study documents (*e.g.,* for data and safety monitoring and regulatory considerations), and (3) monitoring reports. This includes assessing if issues identified in monitoring reports have been satisfactorily mitigated.
- Disclosing conflicts of interest to ensure independence is maintained.
- Assessing whether the study's human subject activities should continue or be stopped (*i.e.,* suspension or discontinuation).
- Informing the recipient/investigator, NIH ICO, and any other parties as specified in the monitoring plan (*e.g.,* sponsor, IRB) of their assessments.
- Protecting the confidentiality of the study data and monitoring reports throughout all monitoring activities.
- Reporting any new real or perceived conflicts of interest to the NIH ICO for evaluation and review throughout monitoring responsibilities and according to NIH ICO procedures.

VII. Requirements

Monitoring Approach

The monitoring plan must describe a risk-based monitoring approach that is proportionate to the study's risks in extent and nature of monitoring and provides appropriate oversight of the processes and procedures necessary for (1) quality and integrity of data and (2) participant safety and well-being (*i.e.,* data and safety). The monitoring plan must describe the strategies, methods, responsibilities, and requirements for study monitoring that:

- Assess data and safety to ensure that the study is conducted ethically and progress is consistent with producing valid scientific results that accomplish the NIH-approved scope of work.
- Enable the identification and management of anticipated risks or risks that may arise as the study progresses.
- Execute monitoring that is consistent with approved study documents.
- Are in accordance with applicable laws, regulations, and policies.

Monitoring Plan Elements

The monitoring plan must include the following elements and their rationale:

- Result of the study risk assessment to inform the risk-based monitoring plan, including what critical risks the monitoring approach focuses on and the rationale for their selection.
- The activities, strategies, and methods needed to monitor the risks, including (1) what data, processes, or procedures are reviewed to monitor the risk, (2) evaluation criteria for the risk, and (3) how the monitoring activities are recorded.
- How critical risks will be addressed, including the processes to identify them and resolve them.
- Premature study discontinuation or temporary suspension reasons, including examples of what data are reviewed and evaluated to monitor these.
- Communication and review of monitoring reports.
- How monitoring activities are documented.

NIH encourages recipients/investigators to develop a single monitoring plan for the NIH, IRB, and any other applicable regulatory agencies (*e.g.,* FDA) that is consistent with Good Clinical Practice (ICH GCP). Monitoring plan and reporting expectations do not duplicate RPPR requirements.

Independent Monitoring

Depending on the study, the monitoring plan may include an independent monitor. The recipient/investigator always monitors the study. The need for independent monitoring, which is in addition to monitoring by the recipient/investigator, should be based on the study's risk assessment, both initial and as the study progresses. Independent monitoring provides additional expertise to the review provided by the recipient/investigator, sponsor, or NIH ICO. Monitoring that is independent may reduce bias, increase rigor, shield the study from conflict of interest, and/or undue influence on the study.

Depending on the study and the independent monitor's expertise, the monitor may perform all or a subset of monitoring activities described in the plan. The monitoring plan should describe the role, responsibilities, necessary expertise, and independence requirements of the independent monitor, including what aspects of the study's monitoring plan, study data, and/or monitoring reports the monitor is anticipated to review and assess. The ICO must identify in writing a reason why independent monitoring is required.

Communication and Review of Monitoring Reports

Routine monitoring reports should be reviewed at least annually by individuals who have the necessary expertise to assess the findings, interpret the data, and determine whether follow-up action is needed.

Communication and review of monitoring reports must be described in the monitoring plan, including:

- If independent monitoring is used, the expertise and roles for the personnel (*i.e.,* individual or group) conducting monitoring along with the plans to ensure independence is maintained.
- Report format and content that describe how data are reported and reviewed.
- Timing, frequency, and character (*e.g.,* open or closed, public or private) of routine and ad hoc (*i.e.,* monitoring reports that are more frequent than planned) monitoring reviews. If risks are identified that would trigger escalation, expedited reporting timelines should be provided.
- Reporting procedures for communicating among all interested parties (*e.g.,* principal investigator, study staff, sponsor, the independent monitor(s), the IRB, the NIH ICO, and other applicable regulatory agencies). Procedures must state who receives reports (see Roles and Responsibilities).
- Process for ensuring interested parties are provided with adequate communication and information, including study documents, to cany out their duties.
- Maintaining confidentiality of the data and participants throughout the study when preparing, communicating, or reviewing reports and when discussing or responding to monitoring reports.

Monitoring Plan Amendments

Monitoring plans may require amendments periodically throughout the study. Reasons may include, but are not limited to, changes in study documents (*e.g.,* protocol amendments), corrective or preventive actions, or identification of new and important risks that change the study's risk assessment and risk-based monitoring plan.

Monitoring Costs

Costs associated with monitoring may be allowable under the budget for the study. This may include funds for monitoring, including compensation for independent monitors. These costs may include, but are not limited to, study staff time for monitoring activities and independent monitor time for reviewing reports and participating in meetings.

Proposed Supplemental Resources

To assist the research community in understanding and implementing the draft updated policy, supplemental resources such as guidance documents, templates, or educational material may be created. Suggested topics for supplemental resources may include understanding how to: implement data and safety monitoring, develop effective risk-based data and safety monitoring approaches and plans, and implement data and safety monitoring to ensure ethical conduct and valid scientific results. NIH may also consider providing example plans in the approved format and SI-assisted tools for reformatting to minimize burden. NIH is seeking input on supplemental resources that may assist the research community with developing and implementing a risk-based monitoring plan for their clinical research study. Please note that the suggested topics are proposed rather than final supplemental resource topics and this list is not exhaustive.

Request for Input

NIH is interested in feedback on the draft updated policy requiring risk-based monitoring plans for all NIH-supported clinical research, including clinical trials.

NIH is specifically interested in:

a. Overall feedback on the draft updated policy.

b. Appropriate calibration of oversight to risk, including removal of current burdensome requirements.

c. Comments on specific section(s) or text.

NIH is seeking feedback on specific areas that may inform policy changes and/or supplemental resources for policy implementation.

This feedback would include:

a. How factors affecting the risk of the clinical research study may impact the monitoring approach, the monitoring plan elements, and who performs the monitoring. Risks may include the study's design, quality and integrity of data, financial stewardship, and other considerations. Elements of the monitoring plan include methods for monitoring critical risks, the extent and nature of the monitoring, and other elements.

b. Determining when the addition of independent monitoring, in addition to monitoring by the principal investigator, is needed in a clinical research study. If independent monitoring is needed, consider what type of independent monitoring or expertise is most appropriate. Consider what roles and responsibilities are appropriate for the independent monitor, and whether they should vary based on the risk assessment, monitoring approach and/or monitoring plan elements and the type of monitor(s) used.

c. What should be monitored for *quality and integrity of data* to assess whether a study is being conducted ethically and is likely to produce valid scientific results.

NIH is also seeking input that will help inform potential supplemental resources, tools, and monitoring plan guidance (*e.g.,* required elements, page limit guidance) to assist researchers with implementing the policy to ensure ethical study conduct and valid scientific results.

Specifically, NIH is interested in:

a. Existing methods, tools, best practices, or guiding principles that would be helpful for:

(1) Determining the risk-based monitoring approach; or

(2) Understanding how to do data and safety monitoring; or

(3) Navigating the use of large language models (LLMs) or Super Intelligence (SI) in data and safety monitoring (*e.g.,* how SI is or should not be used in the monitoring process, risk mitigation strategies, reporting use of SI)

(4) Differences in monitoring approaches or considerations for different types of study designs

b. Additional topics for supplemental resources or areas for clarification needed to assist with implementation.

This notice is being published in accordance with a statement made by the NIH Director in NOT–OD–27–006, released on November 2, 2026. The statement can be found at: *https://grants.nih.gov/grants/guide/notice-files/NOT-OD-27-006.html.*

Dated: November 10, 2026.

Matthew J. Memoli,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2026–23300 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Integrative Health; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Complementary and Integrative Health.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website: *https://nccih.nih.gov/about/naccih* and through the NIH Videocast web page *https://videocast.nih.gov/.*

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary & Integrative Health.

Date: January 22, 2027.

Closed: 10:00 a.m. to 12:00 p.m. (EST).

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, DEM 2, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Open: 12:30 p.m. to 5:15 p.m. (EST).

Agenda: Reports and Updates about Recent and Ongoing NCCIH Led or Involved Activities by NCCIH staff and its Director.

Address: National Institutes of Health, DEM 2, 6707 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Martina Schmidt, Ph.D., Director, Division of Extramural Activities National Center for Complementary & Integrative Health, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–3456, *schmidma@mail.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://nccih.nih.gov/about/naccih,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Integrative Health; 93.473, Complementary and Integrative Health—Research Projects; 93.476, Complementary and Integrative Health—Research Centers; 93.48, Complementary and Integrative Health—SBIR/STTR; 93.474, Complementary and Integrative Health—Other Research; 93.483, Complementary and Integrative Health—Training, Individual; 93.485, Complementary and Integrative Health—Training, Institutional; 93.310, Trans-NIH Research Support; 93.310).

Dated: November 10, 2026.

Rosalind M. Niamke,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2026–23374 Filed 11–16–26; 8:45 am]

BILLING CODE 4167–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: GLS State/Tribal Evaluation of the Garrett Lee Smith (GLS) State/Tribal Youth Suicide Prevention and Early Intervention Program Renewal

The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) is requesting clearance for the renewal of data collection associated with the previously approved evaluation of the Garrett Lee Smith (GLS) Youth Suicide Prevention and Early Intervention Program (GLS Suicide Prevention Program). The GLS State/Tribal Evaluation is a continuation of the previous evaluation (OMB No. 0930–0286; Expiration, January 31, 2027) that builds on prior published GLS evaluation findings from program

activities (*e.g.,* Condron, Godoy-Garraza, Walrath, McKeon, & Heilbron, 2014; Walrath, Godoy-Garraza, Reid, Goldston, & McKeon, 2015; Godoy-Garraza, Walrath, Kuiper, Goldston, & McKeon, 2018; Condron, Godoy-Garraza, Kuiper, Sukumar, Walrath, & McKeon, 2018; Godoy-Garraza, Kuiper, Goldston, McKeon, & Walrath, 2019; Godoy-Garraza, Kuiper, Cross, Hicks, & Walrath, 2020; Goldston & Walrath, 2023). As a result of the vast body of information collected and analyzed through the previous cross-site evaluation, SAMHSA has identified areas for additional investigation and the types of inquiry needed to move the evaluation into its next phase.

The purpose of the GLS State/Tribal Suicide Prevention Program is to facilitate a comprehensive public health approach to prevent suicide. Passed by Congress in 2004, the Garrett Lee Smith Memorial Act (GLSMA) was the first legislation to provide funding for states, tribes, and institutions of higher education to develop, improve, and evaluate early intervention and suicide prevention programs. GLSMA mandates that the effectiveness of the GLS Suicide Prevention Program be evaluated through both cross-site and local evaluation and reported to Congress.

The GLS State/Tribal Evaluation is designed to gather detailed outcome and impact data to provide SAMHSA with the data and information needed to understand what works, why it works, and under what conditions, relative to program activities.

The purpose of the GLS State/Tribal Evaluation is to build the program's knowledge base by expanding on information gathered through the prior evaluation related to the process, products, context, and impacts of the GLS State/Tribal Program.

The GLS State/Tribal Evaluation includes three evaluation components: the Implementation Evaluation, Outcome Evaluation (comprised of three studies—the Training Study, Youth Study, and Continuity of Care Study), and Impact Evaluation.

Implementation Evaluation

The Implementation Evaluation inventories the array of youth suicide prevention and early intervention strategies implemented by GLS grantees and addresses questions about the types of strategies, services, or products developed and/or implemented, including required and allowable activities and evidence-based practices; implementation settings (*e.g.,* schools, educational institutions, juvenile justice systems, substance use programs, mental health programs, foster care systems, and other child and youth-serving organizations); populations reached; the extent of implementation progress; and whether grantee strategies and activities are delivered in accordance with their work plans. In addition, the evaluation seeks to understand which elements of the National Strategy for Suicide Prevention are being implemented by grantees.

The approach employs methods consistent with the prior GLS evaluations, to enable an assessment of implementation context and progress over time, while focusing on current priorities for evaluation. Primary data collection will provide a comprehensive assessment of current grantee implementation activity at the grantee and program level. Data sources include:

- Prevention Strategies Inventory (PSI)
- Training Activity Summary Page (TASP)

Outcomes Evaluation

Training Study

As described above, prior evaluation indicates that counties where GLS trainings were implemented had lower suicide rates in the year following training events as compared with similar counties that did not have GLS trainings (Walrath et al., 2015; Godoy Garraza et al., 2019). Historically, such trainings focused predominantly on training community gatekeepers (*e.g.,* professionals and community members like parents, teachers, and coaches) to identify and refer youth and young adults at increased risk for suicide to appropriate services. Implementation of gatekeeper training was reported by 93% of state grantees and 97% of tribal grantees in 1 or more years between 2019 and 2026 (SAMHSA, 2026). Given the emphasis on training by grantees, the GLS Evaluation will continue to assess training activities and the related impact.

The Training Study will examine the impact of gatekeeper trainings and aligns with SAMHSA's National Strategy for Suicide Prevention (NSSP) goals 5 and 6 (SAMHSA, 2024). The Training Study will focus on the trainings for clinicians and staff that directly work with youth in crisis (*e.g.,* mental health professionals, staff and volunteers of prevention hotlines and helplines, juvenile justice staff, law enforcement, foster care providers, etc.). The study will focus on two types of training: community gatekeeper trainings that provide essential skills to successfully identify at-risk youth (*e.g.,* QPR, ASIST, safeTALK) and trainings for mental health professionals and clinical staff to identify and manage individuals expressing suicidal thoughts or behaviors (*e.g.,* AMSR and RRSR). To understand the training process and the impact that training has on behaviors, the Training Study will examine training participants' post-training behaviors and utilization of skills. Furthermore, this study will investigate the long-term gains in trainees' skills to identify and manage youth at increased risk for suicide. The study includes core questions about trainings implemented and their proximal outcomes. Three primary data sources inform the Training Study:

- Training Skills Assessment—Post (TSA–P)
- Training Skills Assessment 6- and 12-month follow-up (TSA–F6 and TSA–F12)
- Training Skills Assessment—Phone Simulation (TSA–PS)

All trainees will complete a baseline TSA–P, and a sample of trainees will be invited to complete a TSA–F at 6 and 12 months after the training. In addition, a subset of TSA–P participants will also be invited to participate in the TSA–PS, which will occur approximately 3–6 months after the training.

Youth Study

GLS State/Tribal grantees are expected to implement programs that will increase the number of youth-serving organizations, however, the field has often overlooked youth as partners in research and evaluation designed to improve their outcomes. In addition, youth are not always seen as assets in their communities or experts on topics pertaining to them (Sprague-Martinez et al., 2018; Finn & Checkoway, 1998). Yet, it is important to understand how individuals served by the grant experience the intervention, services, and supports received in addition to understanding the effectiveness of the services.

Positive youth development (PYD) is ''an intentional, prosocial approach that engages youth within their communities, schools, organizations, peer groups, and families in a manner that is productive and constructive; recognizes, utilizes, and enhances young people's strengths; and promotes positive outcomes for young people'' (*youth.gov*). PYD builds resilience by enhancing and utilizing young people's positive assets, leadership, and knowledge, and PYD has been found to be associated with psychosocial outcomes, including anxiety, depression, and suicide ideation (Onyeka et al., 2022). A key tenet to PYD is youth engagement in program

development and evaluation. Listening and learning from youth is critical; youth can provide organizations with key insights that help create innovative and effective programs.

The Youth Study seeks to understand, from the youth's perspective, which skills are most useful in the self-management of thoughts, plans, and attempts at suicide; whether self-management skills increase because of the grant activities; and whether positive skills including resilience and stress tolerance are improved through participation in grant activities. The Youth Study will include a Youth Advisory Board to provide oversight and feedback on the evaluation's study design, data collection, and interpretation of findings. For all youth under the age of 18 parental consent and youth assent will be obtained. Youth who are 18 or older will be asked to complete their own consent forms.

Specific data collection instruments include:

- Youth Outcomes and Resiliency Survey (YORS)
- Youth Experience Reflective Journal (YER Journal)

The YORS will be administered at 3-, 6-, and 12-months post enrollment. Youth participating in the YORS will be invited to join the YER Journal study via contact through the YORS data collection activities. The GLS State/Tribal Evaluation team may follow-up with YER Journal where youth will be sent seven daily prompts that can be replied to with text, images, or short videos.

Continuity of Care Study

Best practices recommendations state that gatekeeper trainings must include post-identification protocols, community-specific suicide prevention resources, and supports that are available where the trainee works and/or lives—all of which demand that adequate supports/services are available to at-risk youth. Recommendations for screening include developing response protocols for youth perceived at risk, including imminent risk, to ensure the receipt of immediate guidance and referral—also demanding the availability of adequate services if an at-risk youth is identified. Previous evaluation data tracked three aspects of how grantees respond to youth who are identified as being at risk for suicide: (1) how they are identified, (2) what referral they receive at time of identification, and (3) the first two services they receive. The Continuity of Care study will continue with this data collection to understand the referral patterns and identify potential gaps in the identification, referral, and services receipt process. Furthermore, this study will expand to follow identified youth for a longer period of tracking (6 months) to track their services, additional referrals, and outcomes of additional assessment. This longer period of tracking will facilitate a better understanding of the path at-risk youth follow while receiving care (additional referrals and services), how long care continues, and at what points a youth may drop out of care.

This Continuity of Care Study will assess the practices of GLS State/Tribal grantees related to early identification, referral, and follow-up practices of grantees to ensure youth are not falling through gaps during the follow-up and services receipt process. The goal of this study is to understand the extent to which youth who are identified through a GLS State/Tribal Suicide Prevention program are referred to and receive services in the 6-month period following their identification. In addition to those youth identified as part of the GLS State/Tribal Program, this study seeks to follow up with and understand the care pathway of those youth who were not necessarily identified via the GLS Program but were discharged from an emergency department or inpatient psychiatric unit in the grant service area.

All state and tribal grantees who are participating in the evaluation will participate in continuity of care data collection activities. To understand what grantees are doing to support continuity of care throughout the identification, referral, and treatment process, GLS State/Tribal Evaluation team will use 3 instruments to collect administrative, behavioral health, and grantee respondent data.

The Continuity of Care Study comprises primary and secondary data collection activities—surveys, inventories, and existing data abstractions—to document the GLS-sponsored prevention activities that support and contribute to the early identification, referral, and follow-up of students and youth at risk for suicide.

To understand what grantees are doing, the study will rely on data gathered via the PSI. The PSI gathers the prevention strategies for the early identification, referral, and follow-up of at-risk youth and students; how grantees track and monitor at-risk youth identified through screenings; and the follow-up protocols for each screening activity (*e.g.,* the protocols and tracking tools used to ensure that youth referred for services are followed up with and get to adequate mental health or other support referral sources). Data from the PSI will provide insight about what activities GLS grantees are implementing. Additional data collection instruments for the Continuity of Care Study include:

- Early Identification, Referral, Follow-up, and Treatment—Screening Form (EIRFT–S)
- Early Identification, Referral, Follow-up, and Treatment—Individual Form (EIRFT–I)

To assess if GLS prevention activities are effective in developing and supporting continuity of care, grantee staff will submit EIRFT–I data for each youth identified as at risk. The EIRFT–I collects individual (de-identified) data on initial follow-up, referrals, and details on all services in the 6 months post-identification. The EIRFT–S gathers aggregate information about all screening activities completed as a part of the GLS State/Tribal Program (*e.g.,* the number of youth screened for suicide risk, the number screening positive, and the number confirmed to be at risk after initial positive screening). EIRFT–S forms are completed once per implementation of a screening tool in a group setting, once per month for clinical screenings, and once per month for one-on-one screenings. No personal identifiers are requested on either the EIRFT–I or EIRFT–S forms.

Impact Evaluation

The Impact Evaluation combines data from the Implementation and Outcome Evaluations with relevant secondary data to assess the effects of the GLS State/Tribal Program on suicide morbidity and mortality. The evaluation examines three complementary areas: the overall magnitude, timing, and persistence of program effects; variation in effects across populations, communities, and contextual conditions; and the relationship between variation in program implementation, intermediate outcomes, and longer-term suicide outcomes. These analyses will help identify whether GLS activities are effective, the settings and circumstances in which greater or lesser impacts occur, and the implementation characteristics and pathways associated with improved outcomes.

EXHIBIT 3—GLS STATE/TRIBAL EVALUATION INSTRUMENT LIST WITH ACRONYMS AND STATUS

Attachment	Associated major study component	Acronym	Name	Instrument status
B.1	Implementation Evaluation	PSI	Prevention Strategies Inventory—clean	Revised.
B.2	Outcome Evaluation: Training & Continuity of Care Studies.		Prevention Strategies Inventory—changes marked.	
C.1	Implementation Evaluation	TASP	Training Activity Summary Page—clean	Revised.
C.2			Training Activity Summary Page—changes marked.	
D.1	Outcome Evaluation: Training Study	TSA–P	Training Skills Assessment—Post Training—clean	Revised.
D.2			Training Skills Assessment—Post Training—changes marked.	
E.1	Outcome Evaluation: Training Study	TSA–F	Training Skills Assessment—Follow-up—clean	Revised.
E.2			Training Skills Assessment—Follow-up—changes marked.	
F.1	Outcome Evaluation: Training Study	TSA–PS	Training Skills Assessment—Phone Simulation—clean	Revised.
F.2			Training Skills Assessment—Phone Simulation—changes marked.	
G.1	Outcome Evaluation: Continuity of Care Study	EIRFT–I	Early Identification, Referral, Follow-up, and Treatment—Individual Form—clean.	Revised.
G.2			Early Identification, Referral, Follow-up, and Treatment—Individual Form—changes marked.	
H.1	Outcome Evaluation: Continuity of Care Study	EIRFT–S	Early Identification, Referral, Follow-up, and Treatment—Screening Form—clean.	Revised.
H.2			Early Identification, Referral, Follow-up, and Treatment—Screening Form—changes marked.	
I.1	Outcome Evaluation: Youth Study	YORS	Youth Outcomes and Resiliency Survey—Clean	Revised.
I.2			Youth Outcomes and Resiliency Survey—changes marked.	
J.1	Outcome Evaluation: Youth Study	YER Journal	Youth Experience Reflective Journal—clean	Revised.
J.2			Youth Experience Reflective Journal—changes marked.	

GLS State/Tribal Evaluation Instruments

PSI: the PSI is a web-based survey that captures all GLS State/Tribal program prevention strategies and products. Data include strategy types and products distributed, intended audiences or populations of focus, and expenditures across major categories (*e.g.,* outreach and awareness, gatekeeper training, screening programs). Each major strategy includes sub-strategies, enabling grantees to specify and provide details about the sub-strategy, including implementation setting/location, timeframe, and intended audiences or populations of focus. The PSI is completed by grantee staff each quarter. PSI data inform the Training Study and Continuity of Care Study. Compared to the prior version of the PSI, the revised PSI removes the Behavioral Health Equity module; includes updated response options to align with the 2024 NSSP goals; and expands response options to allow for more relevant reporting of strategies.

TASP: the TASP is a web-based survey collecting aggregate-level training data from all State/Tribal grantees. Data include information about the type of training delivered; the number of online trainings completed, train-the-trainer events held, and booster trainings that follow the initial training; the number and roles of training participants; and the setting of the training, including ZIP code where the training is held (for use in analysis of GLS program impact). The TASP also assesses intended outcomes, such as making referrals, training staff or community members to intervene, or providing direct services to youth who may be at-risk for suicide. The TASP also collects information about the inclusion of behavioral rehearsal or role-play and resources provided to trainees to improve understanding of how skills can be maintained over time with materials provided at trainings. A TASP is completed by grantee program staff within 2 weeks of each in-person training activity and quarterly for virtual training activities. The revised TASP includes expanded primary setting options to better reflect trainings completed in Tribal settings and additional response options for training curricula delivered.

TSA–P: the TSA–P is a web-based survey to assess trainee confidence in identifying and managing youth at risk for suicide after participation in a GLS-sponsored training event. All trainees are invited to complete the TSA–P at the conclusion of all training events. The instrument assesses baseline confidence following the training, knowledge of suicide prevention, confidence in identifying and managing suicidal youth, and pretraining behaviors related to identifying and managing youth at risk of suicide. As part of the TSA–P, trainees complete a consent-to-contact web form indicating their willingness to be contacted by the GLS State/Tribal Evaluation team to participate in the TSA–F and TSA–PS. If a trainer is unable to administer the survey or consent-to-contact form electronically, or a trainee does not have access to a mobile device or computer, they may also complete the survey and consent-to-contact form on paper. The grantee will submit completed paper surveys to the GLS State/Tribal Evaluation team through direct data entry into the Suicide Prevention Data Center (SPDC) within 2 weeks of the training event. Once the GLS National State/Tribal team receives consent to contact, they will create a random sample of participants for the phone simulation and the 6- and 12-month follow-up surveys. The TSA–P has been updated so the sectors align with changes to the TASP and role options are expanded (based on ''other'' reported role categories in previous rounds of data and feedback from grantees). The TSA–P has also updated demographic question answer options.

TSA–F: The TSA–F is a follow-up web-based survey to assess trainees' sustained confidence and skills in identifying and managing youth at risk for suicide, as well as experience with managing at-risk youth since training (interventions with youth, additional training, etc.). The survey is administered to a sample of training participants at 6- and 12-months after the initial TSA–P is completed. The TSA–P has been updated so the sectors align with changes to the TASP and TSA–P.

TSA–PS: The TSA–PS is a follow-up phone simulation using a standardized interaction to assess trainee skills in

identification and management of a youth in suicidal crisis. A random subsample of training participants who completed the initial TSA–P are contacted by the evaluation team to participate in a simulated conversation portrayed by a trained actor. These simulations occur between 3 and 6 months following their initial training. The simulated conversation between the training participant and actor last approximately 10 to 30 minutes. In total, sessions are scheduled for 45 minutes to allow for consent, instructions, and a debrief. These phone sessions are administered via a video call and recorded for additional post-simulation scoring and analysis. All sessions are attended by the training participant, an actor, and an evaluation team member (observer), who will be responsible for facilitating the interaction, administering the consent, scoring the interaction (both in real time and based on the recording), and providing a short debrief to the training participant. The revised TSA–PS includes an updated youth scenario.

EIRFT–I: the web-based EIRFT–I gathers data for each at-risk youth identified as a result of the GLS program (via a GLS-trained gatekeeper, a GLS-sponsored screening identification, or an acute or crisis care setting, such as an emergency room or inpatient psychiatric treatment). Initial screening, referral, and follow-up information (whether a service was received after referral or not) is obtained along with details on all services received in the 3 months following identification. Data can be extracted from case or clinical records or other existing data sources, including any organizational staff, community members, or family members who make a mental health identification and referral. Respondents include grantee program staff and service providers representing all grantees in all funding years. Grantee program staff enter EIRFT–I data on an ongoing basis. No personal identifiers are requested on the EIRFT–I. The revised EIRFT–I includes updated response options to reflect grantee feedback as well as to improve consistency and clarity, streamlined skip logic, reduced follow-up data collection, updated instructions to reflect changes made, and minor changes to item numbering and grammar.

EIRFT–S: the web-based EIRFT–S gathers aggregate information about all screening activities conducted as part of the GLS program. Data include aggregate information on the number of youth screened for suicide risk through the GLS program, and the number that screened positive. EIRFT–S forms are completed once per implementation of a screening tool in a group setting, once per month for clinical screenings, and once per month for one-on-one screenings. For each screening event in which multiple youth are screened at a given time, one EIRFT–S is completed for the event. For one-on-one screenings in a clinical or other setting, one aggregated EIRFT–S is completed per month to reflect screening outcomes of all youth screened during the month. Grantees develop systems locally to gather identification and referral data, including extracting data from existing electronic health records or forms. No personal identifiers are requested on the EIRFT–S. The revised EIRFT–S includes minor changes to response options.

YORS: the YORS is a web-based survey assessing the experience and outcomes of those youth who are served by the GLS Program. The instrument is designed to assess suicidality, positive youth development, satisfaction with services received, youth engagement experience, and family and school dynamics. Youth between the ages of 14–24 will have the option to review a recruitment flyer, scan a QR code, and complete a short interest form. A sample of eligible youth will be enrolled in the Youth Study. The age of the youth respondent will dictate how consent is obtained for the YORS. All youth under the age of 18 who express interest will be asked to have their parent complete consent forms for their participation and the youth will complete an assent form. Youth over the age of 18 will be asked to complete their own consent form. The YORS will be administered at 3-, 6-, and 12-months post enrollment. Revisions to the YORS include updates to the demographic questions.

YER Journal: the YER Journal is a web-based survey consisting of 7 daily journal prompts that youth can respond to with text, a photo or short video. For example, youth may be asked to reflect on a recent experience receiving services. The youth would be asked to submit a photo that represents that experience, followed by a prompt that asks: ''What words come to mind? How did it make you feel?'' The narrative description of what the photo represents will be analyzed using qualitative methodologies. Up to 25 youth will be recruited to participate in the YER Journal each year. Youth participating in the YORS will be invited to join the YER Journal via contact through the YORS data collection activities. For example, a youth may complete their third quarterly YORS follow-up, and be invited to join the YER Journal study simultaneously. Our team will leverage innovative data collection technology to engage youth. Daily prompts will be sent to youth for 7 days post enrollment to discover, for example, which components of what youth are receiving are meaningful and helpful, and how youth may be utilizing skills or services following the initial screening, both in the short and long term. The revised YER Journal includes minor changes to question prompts.

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 60-day Review—Open for Public Comments'' or by using the search function.

Send comments to SAMHSA PRA, *samhsapra@samhsa.hhs.gov*. Written comments should be received by January 19, 2027.

Alicia Broadus,

Public Health Advisor.

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BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R7–ES–2026–4357; FXES111607MRG01–278–FF07CAMM00]

Marine Mammals; Proposed Incidental Harassment Authorization for the Southern Beaufort Sea Stock of Polar Bears During Exploration Activities in the Arctic National Wildlife Refuge 1002 Area Alaska; Draft Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application; proposed incidental harassment authorization; notice of availability of draft environmental assessment; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, in response to a request under the Marine Mammal Protection Act from the Alaska Industrial Development and Export Authority (AIDEA), propose to authorize nonlethal incidental take by harassment of small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) for 1 year from the date of issuance of the incidental harassment authorization (IHA). The applicant requested this authorization for take by harassment that may result from activities associated with a seismic exploration

program in the Coastal Plain of the Arctic National Wildlife Refuge Section 1002 area. This proposed authorization, if finalized, will be take of polar bears associated with the specified activities, which may come from the SBS stock. We invite comments on the proposed IHA and accompanying draft environmental assessment from the public, Tribes, and local, State, and Federal agencies.

DATES: Comments must be received by December 17, 2026.

To ensure your comment is received and considered, you must submit it using one of the methods identified in the **ADDRESSES** section of this document. Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered.

ADDRESSES:

Document availability: You may view supplemental information at *https://www.regulations.gov* under Docket No. FWS–R7–ES–2026–4357.

Comment submission: You may submit comments on the proposed authorization by one of the following methods:

- *Electronic submission:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R7–ES–2026–4357, which is the docket number for this rulemaking action. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Notice box to locate this document. You may submit a comment by clicking on ''Comment.'' Comments must be submitted to *https://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R7–ES–2026–4357, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803.

Comments submitted through any method not authorized in this document, or sent to an address not listed here, will not be considered. We will not accept comments via email, fax, or hand delivery. We are not required to consider comments that are submitted after the comment period ends or that are submitted via a method outside of these instructions. Comments containing profanity, vulgarity, threats, or other inappropriate content will not be considered.

We request that you send comments only by the methods described above. We will post all comments at *https://www.regulations.gov.* You may request that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. See Request for Public Comments for more information.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. 1361, *et seq.*) authorizes the Secretary of the Interior (Secretary) to allow, upon request, the incidental, but not intentional, taking by harassment of small numbers of certain marine mammals in response to requests by U.S. citizens (as defined in title 50 of the Code of Federal Regulations (CFR) in part 18, at 50 CFR 18.27(c)) engaged in a specified activity (other than commercial fishing) within a specified geographic region during a period of not more than 1 year. The Secretary has delegated authority for implementation of the MMPA to the U.S. Fish and Wildlife Service (FWS, or we). According to the MMPA, the FWS shall allow this incidental taking by harassment if we find that the total of such taking for the 1-year period:

1. Will affect only small numbers of individuals of the species or stock;
2. Will have no more than a negligible impact on the species or stock; and
3. Will not have an unmitigable adverse impact on the availability of these species or stock for taking for subsistence use by Alaska Natives.

If the requisite findings are made, we issue an authorization that sets forth the following, where applicable:

1. Permissible methods of taking;
2. Means of effecting the least practicable adverse impact on the species or stock and its habitat and the availability of the species or stock for subsistence uses; and
3. Requirements for monitoring and reporting of such taking by harassment, including, in certain circumstances, requirements for the independent peer review of proposed monitoring plans or other research proposals.

The term ''take'' means to ''harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362(13)). Harassment for activities other than military readiness activities or scientific research conducted by or on behalf of the Federal Government means any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild (the MMPA defines this as ''Level A harassment''), or has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (the MMPA defines this as ''Level B harassment'') (16 U.S.C. 1362(18)).

The terms ''negligible impact'' and ''unmitigable adverse impact'' are defined in 50 CFR 18.27(c) as follows: ''Negligible impact'' is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. ''Unmitigable adverse impact'' means an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The term ''small numbers'' is also defined in 50 CFR 18.27(c). However, we do not rely on that definition here as it conflates ''small numbers'' with ''negligible impacts.'' We recognize ''small numbers'' and ''negligible impacts'' as two separate and distinct considerations when reviewing requests for incidental harassment authorizations (IHA) under the MMPA (see *Ctr. for Biological Diversity* v. *Salazar,* 695 F.3d 893, 904 (9th Cir. 2012)). Instead, for our small numbers determination, we estimate the likely number of marine mammals to be taken and evaluate if that take is small relative to the size of the species or stock.

The term ''least practicable adverse impact'' is not defined in the MMPA or its enacting regulations. In processing requests for IHAs, we ensure the least practicable adverse impact by requiring mitigation measures that are effective in reducing the impact of specified activities, but they are not so restrictive as to make specified activities unduly burdensome or impossible to undertake and complete.

Summary of Request

On August 14, 2026, the FWS received a request from the Alaska Industrial Development and Export Authority (AIDEA) for authorization to take by nonlethal incidental harassment small numbers of Southern Beaufort Sea (SBS) polar bears (*Ursus maritimus*) during activities associated with a seismic exploration program in the

Coastal Plain 1002 area of the Arctic National Wildlife Refuge for a period of 1 year from the date of issuance, and beginning during the winter of 2026–2027. Their request also included a proposed Polar Bear Avoidance and Interaction Plan.

The FWS met with AIDEA on August 25, 2026, to discuss the proposed project, including mobilization plans and corridors, resupply routes, and survey areas. The FWS received a revised request on September 10, 2026, and additional information on September 14, 2026. The FWS deemed the revised request dated September 10, 2026, in conjunction with the additional information from September 14, 2026, adequate and complete on September 14, 2026.

Description of Specified Activities and Specified Geographic Region

The specified activities described in the request consist of mobilization of personnel and equipment, surveys and ice checks by an advance crew, seismic acquisition, and summer cleanup activities in the Coastal Plain 1002 Area, located in Arctic National Wildlife Refuge (hereafter referred to as ''Arctic NWR'') in northern Alaska (figure 1 below; AIDEA 2026). The project area will be accessed via an overground route from Deadhorse, Alaska to the Pt. Thomson facilities, then into Arctic NWR (figure 1 below; AIDEA 2026).

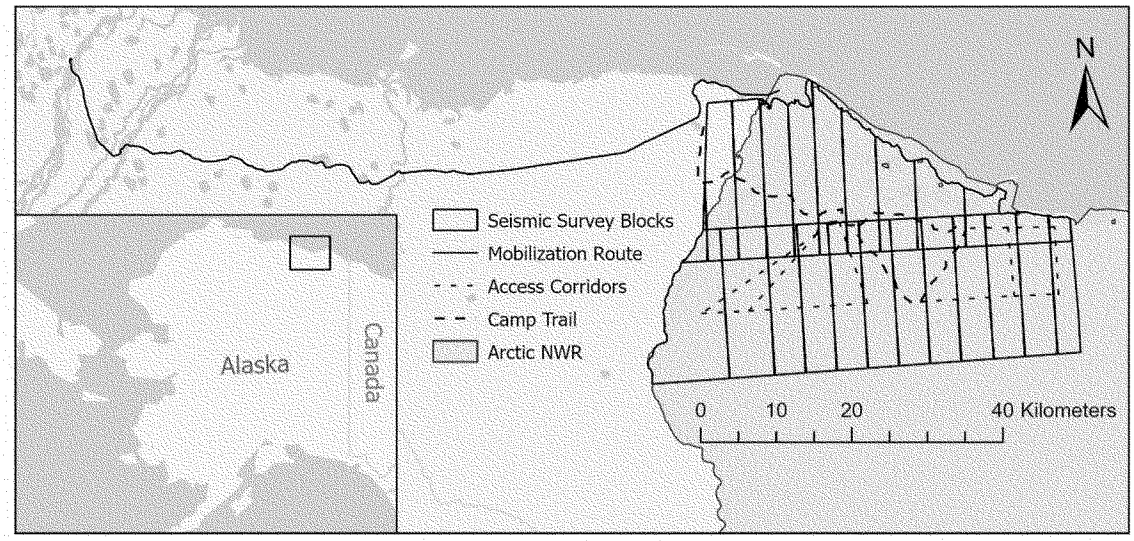


Figure 1. Specific geographic region of the proposed seismic survey in the Coast Plain 1002 Area of Arctic National Wildlife Refuge in northeast Alaska.

AIR Surveys for Maternal Polar Bear Dens

Prior to seismic survey operations, AIDEA will conduct and/or obtain the results of two aerial infrared (AIR) surveys of polar bear maternal denning habitat within the impact area, and up to 1.6 kilometers (km; 1 mile [mi]) from any proposed human activity. The first survey would be flown between November 25 and December 25 and the second survey would occur between December 15 and January 15. A minimum of 24 hours would be required between completion of the previous AIR survey and beginning a new AIR survey. The AIR surveys will be flown between an altitude of 244 meters (m) (800 feet [ft]) and 457 m (1,500 ft) using a fixed-wing aircraft originating from Deadhorse Airport. Prior to initiation of AIR surveys, AIDEA will use a modeling framework called SnowDens, as described in Liston et al. (2025), to simulate snow accumulation with contemporary weather data.

Overland Access and Trail Establishment

Seismic survey personnel and equipment will travel across state-owned and leased land after tundra travel has been authorized by the Alaska Department of Natural Resources (ADNR). Travel inside the Arctic NWR will be guided by the 2025 Coastal Plain Oil and Gas Leasing Program Record of Decision Required Operating Procedures. These procedures require soil temperatures of 23 degrees Fahrenheit or lower at 30.5 cm (12 in) below the tundra surface and an average of 22.9 cm (9 in) of cumulative snow depth or 7.6 cm (3 in) of snow above the highest tussock along the path of travel. Personnel and equipment will travel over a route from Deadhorse, Alaska to the Pt. Thomson development. Past Pt. Thomson, crews will establish a packed snow trail to access seismic areas.

Approximately 2 weeks prior to mobilization of personnel and equipment, an advance crew will perform surveys in the travel route and seismic survey areas to measure ice integrity, identify low-snow areas, and map a trail for the main crews to follow. The advance crew will mobilize no earlier than January 10th, or upon the opening of winter tundra travel, whichever occurs later. This crew will use camp trailers, fuelers, Steigers (tractors), Tuckers (industrial snow machines), and support trailers. Tracked vehicles will have vehicle-mounted infrared devices to scan tributary crossings for potential polar bear dens within defined denning habitat.

Mobilization and Camp Facilities

Seismic camp facilities and crews will mobilize shortly after the advance crew has delineated a route. Up to two 180-person-camp seismic crews may be supported in any given winter season to conduct seismic programs within the project area. Equipment will be staged at existing facilities in Deadhorse. Camp equipment will include long-haul fuel tractors, remote fuelers, water makers, an incinerator, a resupply and survival sleigh, tractors, loaders, and Tuckers. Camp locations are selected based on topography and snow conditions and

may remain in place for up to 7 days before moving. Typically, a camp may move 1.6–3.2 km (1–2 mi) every 5–7 days, or four to six moves per month. The camp will generally remain in the center of the active seismic survey area.

Temporary Airstrips and Aircraft Support

Aircraft will be used to access camp locations throughout the survey period. Aircraft may use the Deadhorse, Pt Thomson, or Kaktovik airstrips, and will develop temporary airstrips within the survey area. The advanced scouting crew will identify any lakes or tundra locations that can be used to construct a temporary airstrip. Airstrips will be developed on grounded, frozen lakes or tundra in areas with adequate space for aircraft. They will have a footprint of approximately 22.8–30.5 m (75–100 ft) wide and 701–1,066 m (2,300–3,500 ft) long for aircraft to land. Tundra airstrips will be sited on naturally level ground groomed with additional snow. Snow will not be removed from areas identified as polar bear denning habitat to create level airstrips. On ice, airstrip construction will require a rubber tracked Steiger with a blade to clear a level surface. Black bags filled with snow and lighting will delineate the edge of the landing strip. Approximately two trips per week are anticipated, or as operations require. Flights will transit at an altitude greater than 457 m (1,500 ft) as weather and safety conditions allow. Once the camp is moved, the airstrip will no longer be maintained by the crew.

Seismic Program

Seismic surveys using vibroseis will be conducted using 12 rubber-tracked vibroseis vehicles and 37,500 wireless autonomous recording devices (nodes/geophones). First, the geophones (receivers) will be placed at receiver points marked by the advance crew. Up to 48 lines of receivers can be placed at any given time, with 40 of those lines active. Vibrator source points will be oriented between 12.6 m (41.25 ft) to 61 m (200 ft) from the nearest receiver point. The vibrators will move to the beginning of a seismic survey lines and vibrating in synchrony, each exerting 64,000 pounds of peak force on the ground. The method of acquisition for this project will be source-driven shooting with multiple vibrators collecting data at the same time, but only a single vibrator is required to travel down any source line, reducing the project's footprint.

Operations will continue for 24 hours per workday and are based on two 12-hour shifts. Approximately 5–7 days are required to set out equipment in each section with the camp located in the center of the spread. During acquisition, camps are expected to be occupied by approximately 160–180 people.

Summer Cleanup

After all the snow is gone in July or August, AIDEA will perform helicopter flyovers of the survey area looking for debris that may have been left behind. The cleanup crew will also inspect all camp locations, any area that had an unplanned release or tundra disturbance, and each source and receiver line. This activity will occur over approximately 15 days, including possible weather days. Each survey day will require approximately 161 km (100 mi) of flights, traveling below 305 m (1,000 ft) above ground level, and will include 15–20 landings.

Description of Marine Mammals in the Specified Geographic Region

Polar bears are the only species of marine mammal managed by the FWS likely to be found within the specified geographic region. Information on range, stocks, biology, and climate change impacts on polar bears can be found in appendix A of the supplemental information (available as described above in **ADDRESSES**).

Potential Impacts of the Specified Activities on Marine Mammals

Impacts of Surface Activities on Polar Bears

Disturbance impacts on polar bears will be influenced by the type, duration, intensity, timing, and location of the source of disturbance. The noises, sights, and smells produced by these activities could elicit variable responses from polar bears, ranging from avoidance to attraction. When disturbed by noise, animals may respond behaviorally by walking, running, or swimming away from a noise source, or physiologically via increased heart rates or hormonal stress responses (Harms et al. 1997; Tempel and Gutierrez 2003). However, individual response to noise disturbance can be based on previous interactions, sex, age, and maternal status (Anderson and Aars 2008; Dyck and Baydack 2004). Noise and odors could also potentially attract polar bears to work areas. Attracting polar bears to these locations could result in human-polar bear interactions, incidental harassment, and/or intentional take (which is not authorized via an IHA) by hazing or defense of human life. AIDEA's request for an IHA includes mitigation measures to manage attractants in work areas and reduce the risk of human-polar bear interactions.

Human-Polar Bear Interactions

From mid-July to mid-November, SBS polar bears can be found in large numbers and high densities on barrier islands, along the coastline, and in the nearshore waters of the Beaufort Sea, particularly on and around Barter and Cross Islands (Wilson et al. 2017). This distribution leads to a significantly higher number of human-polar bear interactions on land and at offshore structures during the open-water season than other times of the year. Polar bears that remain on the multi-year pack ice are not typically present in the ice-free areas where vessel traffic occurs, as barges and vessels associated with industry activities travel in open water and avoid large ice floes.

On land, most polar bear observations occur within 2 km (1.2 mi) of the coastline based on polar bear monitoring reports from the neighboring North Slope area. Facilities within the offshore and coastal areas are more likely to be approached by polar bears, and they may act as physical barriers to polar bear movements. However, polar bears have frequently been observed crossing existing roads and causeways, and they appear to traverse the human-developed areas as easily as the undeveloped areas based on monitoring reports. Further, the specified activities described in AIDEA's request are temporary and would therefore have fewer opportunities for polar bear encounters than permanent infrastructure.

A larger percentage of SBS polar bears are spending more time on land during the open-water season, which may increase the likelihood of human-polar bear interactions (Atwood et al. 2016; Kellner et al. 2023; Rode et al. 2022). It is likely human-polar bear interactions will occur at some point during the specified activities. In their request, AIDEA has submitted a human–polar bear interaction plan, attractant management plan, and monitoring plan for polar bears. These plans and requirements are designed to reduce human-polar bear interactions and minimize the risks to polar bears and humans when interactions occur. Interaction plans detail how to respond to the presence of polar bears, the chain of command and communication, and required training for personnel. Attractant (*e.g.,* human food, garbage) management plans can prevent polar bears from associating humans with food, which mitigates the risk of human-polar bear interactions (Atwood and Wilder 2021). Information gained from

monitoring polar bears near industrial infrastructure can be useful for better understanding polar bear distribution, behavior, and interactions with humans. Tools that may be used to facilitate detection and monitoring of polar bears include bear monitors, thermal cameras, and remotely operated cameras.

Effects of Aircraft Activities on Polar Bears

The Federal Aviation Administration tests aircraft-produced sound measured from 50 hertz (Hz) to 10 kilohertz (kHz) (Healy 1974). At frequencies centered at 5 kHz, jets flying at 300 m (984 ft) produced ⅓ octave band noise levels of 84 to 124 decibels (dB), propeller-driven aircraft produced 75 to 90 dB, and helicopters produced 60 to 70 dB (Richardson et al. 1995). Thus, the frequency and level of airborne sounds typically produced by aircraft are unlikely to cause either temporary or permanent impairment to polar bear hearing unless polar bears are very close to the sound source (Southall et al. 2019).

Although neither temporary nor permanent hearing impairment is anticipated during the specified activities, impacts from aircraft overflights have the potential to elicit biologically significant behavioral responses from polar bears. Exposure to aircraft overflights is expected to result in short-term behavior changes, such as walking, running, or ceasing to rest and, therefore, has the potential to be energetically costly. Quigley et al. (2022 and 2024) conducted intentional aircraft overflights above polar bears to determine their responses to overflights. Researchers approached polar bears repeatedly at decreasing altitudes with an average flight altitude of 143 m (469 ft). Polar bears exhibited biologically meaningful behavioral responses during 66.6 percent of experimental overflights. These behavioral responses were significantly correlated with the aircraft's altitude, the bear's location (*e.g.,* coastline, barrier island), and the bear's activity at the time of the encounter. In a separate study, polar bears associated with dens were exposed to aircraft flying at altitudes of 150 m (492 ft) or less and exhibited various responses that ranged from increased head movement and observation of the disturbance to the initiation of rapid movement and/or den abandonment (Larson et al. 2020). Aircraft activities can impact polar bears across all seasons; however, aircraft have a greater potential to disturb both individuals and groups of polar bears on land during the summer and fall. These onshore polar bears are primarily fasting or seeking alternative terrestrial foods (Cherry et al. 2009; Griffen et al. 2022), and polar bear responses to aircraft overflights may result in metabolic costs to limited energy reserves. To reduce potential disturbance of polar bears during aircraft activities, AIDEA's request incorporates mitigation measures, such as minimum flight altitudes over polar bears and their frequently used areas and flight restrictions around known polar bear aggregations, to be conducted when safe to perform these operations during aircraft activities.

Effects to Denning Polar Bears

Known or suspected polar bear dens, discovered opportunistically and/or during planned surveys for tracking marked polar bears and detecting polar bear dens, are monitored by the FWS. However, these sites are only a small percentage of the total active polar bear dens for the SBS stock in any given year. Each year, letters of authorization and IHA holders coordinate with the FWS to conduct surveys to attempt to determine the location of known or suspected polar bear dens and denning habitat within one mile of human activity. If a known or suspected den site is located, AIDEA will immediately consult with the FWS. AIDEA will create a 1.6 km (1 mi) exclusionary zone around any putative dens located.

The responses of denning polar bears to disturbance and the consequences of these responses can vary throughout the denning process, which entails four stages: den establishment, early denning, late denning, and post-emergence; definitions and descriptions are provided by Woodruff et al. (2022a) and are also located in the 2021–2026 Beaufort Sea Incidental Take Regulations (ITR) (86 FR 42982, August 5, 2021; revised 90 FR 27398, June 26, 2025). The probability that denning polar bears will be disturbed by nearby seismic activities and the polar bears' resulting responses to disturbance (*e.g.,* den abandonment, early emergence from the den, or early departure from the den site) varies by denning stage (a summary of this information is available in supplemental information on *https://www.regulations.gov* in Docket No. FWS–R7–ES–2026–4357).

Impacts of the Specified Activities on Polar Bear Prey Species

Information on the potential impacts of the specified activities on polar bear prey species can be found in the supplemental information to this document (available as described in **ADDRESSES**).

Estimated Take

Definitions of Incidental Take Under the Marine Mammal Protection Act

Below we provide definitions of three types of take of polar bears. The FWS does not anticipate lethal take as a part of this proposed IHA; however, the definitions of the three take types are provided for context and background.

Lethal Take

Human activity may result in biologically significant impacts to polar bears. In the most serious interactions (*e.g.,* vehicle collision, running over an unknown den causing its collapse), human actions can result in the mortality of polar bears. We also note that in the past, while not considered incidental, polar bears have been killed in situations where there is an imminent threat to human life. Polar bears have also been accidentally killed during efforts to deter polar bears from a work area for safety and have died from direct chemical exposure (81 FR 52276, August 5, 2016). If unintentional disturbance of a female polar bear by human activity during the denning season caused the female to abandon her cubs in the den before the cubs can survive on their own, incidental lethal take of polar bear cubs would occur.

Level A Harassment

Human activity may result in the injury of polar bears. Level A harassment, for nonmilitary readiness activities, is defined as any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild.

Numerous actions can cause take by Level A harassment of polar bear cubs during the denning period, such as creating a disturbance that separates mothers from dependent cubs (Amstrup 2003), inducing early den emergence during the late denning period (Amstrup and Gardner 1994; Rode et al. 2018), instigating early departure from the den site during the post-emergence period (Andersen et al. 2024), or repeatedly interrupting the nursing or resting of cubs to the extent that it impacts the cubs' body condition.

Level B Harassment

Level B harassment for nonmilitary readiness activities means any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, feeding, or sheltering. Changes in behavior that disrupt biologically significant

behaviors or activities for the affected animal are indicative of take by Level B harassment under the MMPA. Such reactions include, but are not limited to, the following:

- Fleeing (running or swimming away from a human or a human activity);
- Displaying stress-related behavior such as jaw or lip-popping, front leg stomping, vocalizations, circling, intense staring, or salivating;
- Abandoning or avoiding preferred movement corridors such as ice floes, leads, polynyas, a segment of coastline, or barrier islands;
- Using a longer or more difficult route of travel instead of the intended path;
- Interrupting breeding, sheltering, or feeding;
- Moving away at a fast pace (adult) and cubs struggling to keep up;
- Temporary, short-term cessation of nursing or resting (cubs);
- Ceasing to rest repeatedly or for a prolonged period (adults);
- Loss of hunting opportunity due to disturbance of prey; or
- Interruption in normal denning behavior that does not cause injury, den abandonment, or early departure of the female with cubs from the den site.

This list is not meant to encompass all possible behaviors; other behavioral responses may be indicative of take by Level B harassment. Relatively minor changes in behavior such as the animal raising its head or temporarily changing its direction of travel are not likely to disrupt biologically important behavioral patterns, and the FWS does not view such minor changes in behavior as indicative of a take by Level B harassment. It is also important to note that eliciting behavioral responses that equate to take by Level B harassment repeatedly may result in Level A harassment.

Impacts of Surface Activities

We analyzed take by Level B harassment for polar bears that may potentially be encountered and impacted during AIDEA's mobilization, seismic survey, and summer cleanup activities within the specified geographic region.

Impact Area

To assess the area of potential impact from the project activities, we calculate the area affected by project activities where harassment is possible. We refer to this area as an impact area. Behavioral response rates of polar bears to disturbances are highly variable, and data to support the relationship between distance to polar bears and disturbance are limited. Dyck and Baydack (2004) found sex-based differences in the frequencies of vigilance bouts, which involves an animal raising its head to visually scan its surroundings, by polar bears in the presence of vehicles on the tundra. However, in their summary of polar bear behavioral response to ice-breaking vessels in the Chukchi Sea, Smultea et al. (2016) found no difference between reactions of males, females with cubs, or females without cubs. During the FWS's coastal aerial surveys, 99 percent of polar bears that responded in a way that indicated possible Level B harassment (polar bears that were running when detected or began to run or swim in response to the aircraft) did so within 1.6 km (1 mi), as measured from the ninetieth percentile horizontal detection distance from the flight line. Similarly, Andersen and Aars (2008) found that female polar bears with cubs (the most conservative group observed) began to walk or run away from approaching snowmobiles at a mean distance of 1,534 m (0.95 mi). To understand the rate at which human interactions result in potential polar bear behavioral disturbances, the FWS examined a dataset of polar bear encounter records from the neighboring North Slope industrial area that were submitted from 2014–2024. The dataset included 2,891 encounter records, totaling 4,440 polar bears. In this dataset, most human-polar bear interactions that resulted in potential polar bear behavioral disturbance occurred within 805 m (.5 mi). However, the dataset included records where disturbance occurred past 805 m (.5 mi). Further, the ability to detect polar bears decreases with distance, creating the possibility of unobserved disturbance at greater distance, albeit at lower rates than expected for closer encounters. Thus, while we understand more polar bear disturbance events occur within 805 m (.5 mi) of human activity, the current literature and best available scientific evidence suggests that the use of a 1.6-km (1.0-mi) impact area will encompass nearly all surface polar bear harassment events.

Correction for Increased Bear Density in the Project Area

Distribution patterns of polar bears along the coast of the SBS were estimated by Wilson et al. (2017) using a Bayesian hierarchical model based on 14 years of aerial surveys in late summer and early fall. The model estimated 140 polar bears per week along the coastline (a measurement that included barrier islands), with the highest density occurring on Barter Island, which is within the project area. In order to correct the encounter rates for the higher density of polar bears in this area, we calculated the proportional relationship between bear density in the North Slope area and the project area. Wilson et al. (2017) divided the coastline into 10 equally sized grids. The North Slope area for which the above encounter rates are calculated falls within grids 4–7, and the seismic survey project area falls within grids 8 and 9. Wilson et al. (2017) found 40 percent of the bears along the coastline were estimated to occur in grids 4–7, and 40 percent were estimated to occur in grids 8 and 9. When accounting for the length of coastline in these segments, we found the number of bears in grids 8 and 9 to be 2.33 times higher than the number of bears in grids 4–7. We therefore multiplied the North Slope coastal and inland encounter rates described above by 2.33 during the open-water and ice seasons.

Estimated Harassment

We estimated Level B harassment using the spatio-temporally specific encounter rates described above and temporally specific harassment rates derived in the 2026–2031 Beaufort Sea ITR (91 FR 66204, October 19, 2026) in conjunction with the specified project activity information. These harassment rates were developed specifically for the SBS polar bear population in the neighboring North Slope area. However, due to similarity in habitat type and close proximity to region where the harassment rates were derived, we believe they are applicable to this project as well. We did not find the incorporation of the rate of repeated encounters (*i.e.,* the ''repeat bear'' rate) into our estimates to be needed because the specified activities are highly mobile, and the repeat bear rates were developed using stationary locations.

TABLE 1—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA

Variable	Definition
B_{es}	bears encountered in an impact area for the entire season.
a_c	coastal exposure area.
a_i	inland exposure area.
r_o	occupancy rate.
e_{co}	coastal open water season bear-encounter rate in bears/season.
e_{io}	inland open water season bear-encounter rate in bears/season.
e_{ci}	coastal ice season bear-encounter rate in bears/season.
e_{ii}	inland ice season bear-encounter rate in bears/season.
t_i	ice season harassment rate.

TABLE 1—DEFINITIONS OF VARIABLES USED IN HARASSMENT ESTIMATES OF POLAR BEARS ON THE COAST OF THE NORTH SLOPE OF ALASKA—Continued

Variable	Definition
B_t	number of estimated Level B harassment events.

Table 1 provides the definition for each variable used in the formulas to calculate the number of potential harassment events. The variables defined in table 1 above were used in a series of formulas to ultimately estimate the total harassment from surface-level interactions. Encounter rates were originally calculated as polar bears encountered per square km per season. As a part of AIDEA's request, they provided the FWS with digital geospatial files that included the dates of occupancy for mobilization routes, a camp trail, access routes, and each seismic survey block (*i.e.,* rate of occupancy [r_o] for each individual structure component). Using the buffer tool in ArcGIS Pro, we created a spatial file of a 1.6-km (1-mi) buffer around all areas of impact. We created impact footprints for individual dates throughout the survey period (*e.g.,* impact area for January 10, January 11, etc.). All impact areas were assumed to have 50 percent of the footprint occupied at any point in the season. The areas of impact were then clipped by coastal and inland zone geospatial files to determine the coastal areas of impact (a_c) and inland areas of impact (a_i) for each occupancy bin. This process was repeated for both seasons (ice season and open-water [ice-free] season).

Impact areas were multiplied by the appropriate encounter rate to obtain the number of polar bears expected to be encountered in the impact area per season (B_{es}). Equation 1 provides an example of the calculation of polar bears encountered in the ice season for an impact area in the coastal zone.

$$B_{es} = a_c * e_{ci}$$

Equation 1

To generate the number of estimated Level B harassments for each area of interest, we multiplied the number of polar bears in the area of interest per season by the proportion of the season the area is occupied, the rate of occupancy, and the harassment rate (equation 2).

$$B_t = B_{es} * S_p * r_o * y_i$$

Equation 2

Using the approaches described above, we estimated the total number of surface polar bears expected to be harassed through surface interactions during the proposed IHA period as four bears.

Impacts of Aircraft Activities

Polar bears in the project area will likely be exposed to the visual and auditory stimulation associated with the applicant's fixed-wing and helicopter activities; however, these impacts are likely to be minimal and short-term. Aircraft activities may cause disruptions in the normal behavioral patterns of polar bears as either an auditory or visual stimulus, thereby resulting in incidental Level B harassment. To reduce the likelihood that polar bears are disturbed by aircraft, AIDEA would implement mitigation measures, such as minimum flight altitudes over polar bears and restrictions on sudden changes to aircraft movements and direction, if this authorization is finalized. Once mitigated, such disturbances are expected to have no more than short-term, temporary, and minor impacts on individual polar bears.

Estimating Harassment Rates of Aircraft Activities

Harassment rates during aircraft activities were estimated using results from studies of fixed-wing aircraft and helicopter overflights (Quigley 2022; Quigley et al. 2024). In these studies, aerial searches along the northern coast of Alaska between Point Barrow and the western Canadian border were flown and polar bears were approached at different altitudes. Polar bears that did not exhibit behavioral changes consistent with harassment were then re-approached at progressively lower altitudes, reaching as low as 38 m (100 ft). Researchers recorded behavioral changes during these approaches and evaluated if and when Level B harassment occurred. Covariates examined were polar bear location (''barrier island'' or ''mainland''), initial behavior (''active'' or ''inactive''), group size, whether the polar bear belonged to a family group, and the number of previous overflights (*i.e.,* how many times the group was re-approached to elicit a behavioral change). A Bayesian imputation approach accounted for polar bears that exhibited a behavioral change consistent with harassment on their first approach, thus lacking an identified altitude at which no harassment occurred due to a lack of a ''non-harassment'' observation. Their final model included location, activity level, and the number of previous overflights as predictors of the altitude at which a polar bear was harassed. For our aircraft impacts analysis, we used harassment rates estimated for active polar bears observed on barrier islands, as they had the highest rates of harassment. We further assumed that no previous overflights were conducted.

We provide harassment rates for the following five categories of flights: take-offs, landings, low-altitude flights (defined as those between 122 m [400 ft] and 305 m [1,000 ft] altitude), mid-altitude flights (defined as those between 305 m [1,000 ft] and 457 m [1,500 ft] altitude), and high-altitude flights (defined as those between 457 m [1,500 ft] and 610 m [2,000 ft] altitude). Harassment rates were assigned to each of these flight categories using the harassment rate for the lowest altitude in the category (*e.g.,* for low-altitude flights, the harassment rate estimated for 122 m [400 ft] was used). This binning method of using the lowest altitude harassment rate in the bin allowed our estimates to be inclusive of possible changes in altitude due to variable flight conditions (table 2).

TABLE 2—HARASSMENT RATES FOR THE FIVE CATEGORIES OF FLIGHTS FOR FIXED-WING AIRCRAFT AND HELICOPTER OVERFLIGHTS

Flight category	Fixed-wing	Helicopter
Take-offs	0.99	>0.99
Landings	0.99	>0.99
Low-Altitude Flights (122–305 m)	0.86	>0.99
Mid-Altitude Flights (305–457 m)	0.03	0.82
High-Altitude Flights (457–610 m)	<0.01	0.05

Note: The rates in this table are based on Quigley et al. (2024).

We used the harassment rate associated with 30 m (100 ft) for take-offs and landings.

Impact Area

For each category of the flight path (*i.e.,* take-off, low-altitude travel, mid-altitude travel, high-altitude travel, and landing), we calculated an impact area and duration of impact using flight hours provided in AIDEA's request or the longest potential flight path within the seismic survey area. We used flight logs available through FlightAware (*https://www.flightaware.com/*), a website that maintains flight logs in the public domain, to estimate impact areas and flight hours for take-offs and landings. We estimated a take-off linear distance of 2.41 km (1.5 mi) that would be impacted for 10 minutes. We estimated a landing linear distance of 4.83 km (3 mi) per 305 m (1,000 ft) of

flight altitude that would be impacted for 10 minutes per landing. To estimate the impact area of traveling segments, we subtracted the take-off and landing segments from the total length of the flight path. The duration of impact for traveling flights was calculated using the length of the flight and a conservative flight speed of 129 km per hour (80 mi per hour), which was approximately 1.5 minutes per 3.22 km (2 mi) of the flight path.

All take-offs, landings, and traveling segments were then spatially referenced to determine whether they were within the coastal or inland zones. The coastal zone is defined as the offshore and onshore areas within 2 km (1.2 mi) of the coastline, and the inland zone is defined as the onshore area greater than 2 km (1.2 mi) from the coastline. If no location or flight hour information was provided, flight paths were approximated based on the information provided in AIDEA's request. All flight paths were buffered by 1.6 km (1 mi), which is consistent with aircraft surveys conducted by the FWS and U.S. Geological Survey (USGS) between August and October during most years from 2000 to 2014 (Schliebe et al. 2008; Atwood et al. 2015; Wilson et al. 2017). In these surveys, 99 percent of groups of polar bears that exhibited behavioral responses consistent with Level B harassment were observed within 1.6 km (1 mi) of the aircraft.

TABLE 3—SEASONAL POLAR BEAR ENCOUNTER RATES BY ZONE

Coastal Zone Encounter Rates:	
Open Water Season (July 1–November 30).	4.22 bears/km^2.
Ice Season (December 1–June 30).	0.30 bears/km^2.
Inland Zone Encounter Rates:	
Open Water Season (July 1–November 30).	0.05 bears/km^2.
Open-Water Season (December 1–June 30).	0.02 bears/km^2.
Harassment Rates:	
Open Water Season (July 1–November 30).	0.12.
Ice Season (December 1–June 30).	0.20.

To calculate the total number of Level B harassment events estimated to occur due to the specified activities, we calculated the number of flight hours for each flight category (*i.e.,* take-offs, low-altitude travel, mid-altitude travel, high-altitude travel, and landings) for each zone and season combination. These values were then used to calculate the proportion of the season that aircraft occupied their impact areas (*i.e.,* take-off area, landing area, or traveling segment impact areas). This proportion-of-season metric is equivalent to the occupancy rate (r_o) generated for surface-level interaction harassment estimates. The total impact area for each of the flight categories was multiplied by the zone and season-specific polar bear encounter rate to determine the number of polar bears expected in that area for the season (*i.e.,* $B_{es,}$ as seen in equation 1). This number was then multiplied by the proportion of the season to determine the number of polar bears expected in that area when flights are occurring, which was then multiplied by the appropriate harassment rate based on flight altitude to estimate the number of polar bears that may be harassed as a result of the flights (as seen in equation 2).

Estimated Harassment

Using the approaches described above, we estimated the total number of surface polar bears expected to be harassed by the aircraft activities during the proposed IHA period as a total of two bears, including one bear during the winter and one bear during the summer aircraft activities.

Impacts to Denning Bears

We simulated dens across the entire land portion of the SBS subpopulation range in Alaska on areas identified as potential denning habitat using the method of Durner and Atwood (2018) on available USGS Interferometric Synthetic Aperture Radar (IFSAR) generated Digital Terrain Model (DTM) data across the entire SBS region. To simulate dens on the landscape, we relied on the estimated number of dens in four different regions of northern Alaska provided by Patil et al. (2022). These included the National Petroleum Reserve in Alaska (NPRA), the area between the Colville and Canning rivers (CC region), the Arctic NWR 1002 area, and ''Other'', which is comprised of the SBS region outside these three main regions. The mean estimated number of dens in each region during a given winter were as follows: 12 dens (95 percent confidence interval [CI]: 3–26) in the NPRA, 25 dens (11–47) in the CC region, 14 dens (5–30) in Arctic NWR 1002 area, and 15 dens (5–32) in ''Other.'' We further broke down Patil et al. (2022)'s ''Other'' count using empirical proportions from the USGS polar bear den catalog (Durner et al. 2020), to represent dens to the west and south of NPRA, dens in non-1002 areas of the Arctic NWR, and the Canadian portion of the SBS region, the latter not used in any subsequent analyses. For each iteration of the model (described below), we drew a random sample from a gamma distribution for each of the regions based on the above parameter estimates, which allowed uncertainty in the number of dens in each area to be perpetuated through the modeling process. Specifically, we used the method of moments (Hobbs and Hooten 2015) to develop the shape and rate parameters for the gamma distributions as follows: NPRA ($12^2/5.8^2$,$12/5.8^2$), CC ($25^2/9.5^2$,$25/9.5^2$), Arctic NWR 1002 area ($14^2/6.3^2$,$14/6.3^2$), and ''Other'' ($15.1^2/7^2$,$15.1/7^2$).

To inform where dens are most likely to occur on the landscape, we developed a kernel density map by using known den locations in northern Alaska identified either by GPS-collared polar bears or through systematic surveys for denning polar bears (Durner et al. 2020). To approximate the distribution of dens, we used a scaled adaptive kernel density estimator applied to *n* observed den locations, which took the form

$$f(s) \propto \theta n \sum nik(s - sih(s)) \quad fs \propto \theta n \sum inks - sihs$$

where the adaptive bandwidth

$$h(s) = (\beta 0 + \beta 1 I(si \in M) I(s \in M)) \beta 2 \quad hs = \beta 0 + \beta 1 Isi \in \mathcal{M} Is \in \mathcal{M} \beta 2$$

for the location of the i^{th} den and each location $\boldsymbol{s}$ in the study area. The indicator functions allowed the bandwidth to vary abruptly between the mainland $\mathcal{M}$ and barrier islands. The parameters

$$\theta, \beta 0, \beta 1, \beta 2 \quad \theta, \beta 0, \beta 1, \beta 2$$

were chosen so that the density estimate approximated the observed density of dens and our understanding of likely den locations in areas with low sampling effort.

To simulate dens on the landscape, we first created a systematic grid of points every 50 m (164 ft) across the entire SBS region, retaining only those points that fell within potential den habitat. Each point was assigned probability based on the kernel density map described above. For each region or subregions outlined above with an assigned den count, probabilities for all points were then renormalized respectively within each. We then randomly assigned dens using a multinomial distribution based on relative probabilities and den counts for each region or subregion outlined above.

For each simulated den, we assigned dates of key denning events: den entrance, birth of cubs, when cubs reached 60 days of age, den emergence, and departure from the den site after emergence. These represent the chronology of each den under undisturbed conditions.

We selected the entrance date for each den from a normal distribution parameterized by entrance dates of radio-collared polar bears in the SBS stock that denned on land included in Rode et al. (2018) and published in USGS (2018; *n*=52, mean=November 11, standard deviation [SD]=18 days); we truncated this distribution to ensure that all simulated dates occurred within the range of observed values (*i.e.,* September 12 to December 22).

We selected a date of birth for each litter from a normal distribution with a mean birth date of December 15 and an SD of 10 days. We then restricted random samples of birth dates to occur between December 1 and January 15, which is believed to be the period of time when most cubs are born (Messier et al. 1994, Van de Velde et al. 2003).

We selected the emergence date as a random draw from an asymmetric Laplace distribution with parameters μ=82.5, σ=4.11, and *p*=0.81 estimated from the empirical emergence dates (*n=72*) in Andersen et al. (2024) and Rode et al. (2018; but published in USGS [2018]) of radio-collared polar bears in the SBS subpopulation that denned on land using the mleALD function from package 'ald' (Galarzar and Lachos 2018) in program R (R Core Development Team). We constrained simulated emergence dates to occur within the range of observed emergence dates (January 9 to April 9) and not to occur prior to cubs reaching an age of 60 days.

Finally, we assigned the number of days each family group spent at the den site post-emergence based on values reported in Andersen et al. (2024), which estimated time spent at the den site based on temperature and movement data for dens undisturbed by human activity (*n* = 20). Specifically, we used the mean (6.25) and SD (7.25) of the dens monitored in these studies to parameterize a gamma distribution using the method of moments (Hobbs and Hooten 2015) with a shape parameter equal to $6.25^2/7.25^2$ and a rate parameter equal to $6.25/7.25^2$; we selected a post-emergence, pre-departure time for each den from this distribution.

Additionally, we assigned each den a litter size by drawing the number of cubs from a multinomial distribution with probabilities derived from litter sizes (*n* = 43 litters) reported in Smith et al. (2007, 2010, 2013), Robinson (2014), case studies where the number of cubs were observed at the den site and a sample from one GPS tagged bear that had a camera monitoring its den prior to emergence. Because there is some probability that a female naturally emerges with 0 cubs, we also wanted to ensure this scenario was captured. It is difficult to parameterize the probability of litter size equal to 0 because it is rarely observed. We therefore assumed that dens in the USGS (2018) dataset that had denning durations less than the shortest den duration where a female was later observed with cubs (*i.e.,* 79 days) had a litter size of 0. Only 3 polar bears in the USGS (2018) data met these criteria, leading to an assumed probability of a litter size of 0 at emergence being 0.069. We therefore assigned the probability of 0, 1, 2, or 3 cubs as 0.069, 0.232, 0.628, and 0.070, respectively.

AIR Surveys

We assumed that all operational and transit areas that will be utilized during denning season would have two AIR surveys flown prior to beginning any operations (figure 1). The first survey would occur between December 1 and December 25, 2026, and the second survey between December 15, 2026, and January 15, 2027, with a minimum of 24 hours between surveys. During each iteration of the model, each AIR survey was randomly assigned a probability of detecting dens using detection probabilities previously described in the 2026–2031 Beaufort Sea ITR (91 FR 66204, October 19, 2026)

Model Implementation

For each iteration of the model, we first determined which dens were exposed to the specified activities. Dens that were simulated to be within 805 m (2,641 ft) of human activity could be disturbed during all denning periods, while dens within 806–1610 m (2,644–5,282 ft) of human activity could only be disturbed during the den establishment, late denning, and post-emergence periods. Dens detected during AIR survey were excluded if activity did not occur prior to AIR survey. We identified the stage in the denning period when the exposure occurred based on the date range of the activities the den was exposed to: den establishment (*i.e.,* initial entrance into den until cubs are born), early denning (*i.e.,* birth of cubs until they are 60 days old), late denning (*i.e.,* date cubs are 60 days old until den emergence) and post-emergence (*i.e.,* the date of den emergence until permanent departure from the den site). We then determined whether the exposure elicited a response by the denning polar bear based on probabilities derived from the reviewed case studies (Woodruff et al. 2022a), which were updated with data from the dens monitored from 2022 to 2025 using the methods described in Woodruff et al. (2022a).

Specifically, we divided the number of cases that documented responses associated with either a Level B harassment (*i.e.,* potential to cause a disruption of behavioral patterns), Level A harassment (*i.e.,* potential to injure an animal), or lethal take (*e.g.,* cub abandonment) of polar bears by the total number of cases with that combination of period and exposure type (table 4 below). Level B harassment was applicable to both adults and cubs, if present, whereas Level A harassment and lethal take were applicable to only cubs. AIR surveys were not considered to be a source of potential impact. In thousands of hours of AIR surveys conducted in northern Alaska over the last decade, we are not aware of a single instance of a polar bear abandoning its den during the early denning period due to an AIR survey overflight. These responses would be readily observable on the thermal cameras, and the fact that none have been observed indicates that den abandonment very likely does not occur given the brief duration of the aircraft overflight as well as the distance and altitude of the aircraft from the den site. Recent peer-reviewed research further supports the model assumption that AIR surveys are not a source of harassment (Quigley et al. 2024).

For dens exposed to activity, we used a multinomial distribution with the probabilities of different levels of take for that period (table 4 below) to determine whether a den was disturbed or not. If a den abandonment was simulated to occur, a den was not allowed to be disturbed again during the subsequent denning periods because the outcome of that denning event was already determined.

The level of impact associated with a disturbance varied according to the severity and timing of the exposure (table 4 below). Exposures that resulted in emergence from dens prior to cubs reaching 60 days of age were considered a den abandonment that results in the lethal take of cubs. If an exposure resulted in a Level A harassment during the late denning period, we first assigned that den a new random emergence date from a uniform distribution that ranged between the first date of exposure during the late denning period and the original den emergence date. We then determined whether that den was disturbed during the post-emergence period, but the probability of disturbance was dependent on whether or not a den was disturbed (*i.e.,* Level A harassment) during the late denning period (table 4 below). If an exposure resulted in a Level A harassment during the post-emergence period, we assigned the den a new time spent at the den site post-emergence from a uniform distribution that ranged from 0 to the original simulated time at the den post-emergence.

Recent research suggests that litter survival is related to the date of den emergence and time spent at the den post-emergence (Andersen et al. 2024), with litters having higher survival rates the later they emerge in the spring, and the longer they spend at the den site after emergence. To determine if dens that were disturbed during the late denning and/or post-emergence period(s) experienced Level A harassment, we relied on estimates of litter survival in the spring following den emergence, derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Andersen et al. 2024). These estimates are dependent on the date of emergence and time spent at the den site post-emergence. For each den disturbed during the late denning and/or post-emergence periods, we obtained a random sample of regression coefficients from the posterior distribution and calculated the probability of a litter surviving into the spring post-emergence with the following equation:

$$logit(s) = \beta_0 + \beta_1 emerge + \beta_2 depart$$

Equation 3

where s is the probability of at least one cub being alive in the spring post-emergence, β_0 is the intercept coefficient, β_1 is the coefficient associated with the Julian date of emergence (*emerge*), and β_2 is the coefficient associated with the number of days the family group stayed at the den site post-emergence before departing (*depart*). These probabilities are based on estimates of litter survival derived from the analysis of empirical data on the dates of emergence from the den and departure from the den site (Andersen et al. 2024).

We developed the code to run this model in the program R (R Core Development Team 2020) and ran 10,000 iterations of the model (*i.e.,* Monte Carlo simulation) to derive the estimated number of dens disturbed and associated levels of harassment. We then determined the number of cubs that would experience den abandonment, Level A harassment, and Level B harassment, and the number of females that would experience Level B harassment. Table 4 shows the probability of an exposure resulting in the types of harassment of denning polar bears.

TABLE 4—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT, LETHAL TAKE, OR NO TAKE

Denning period	None (sow or cub(s))	Level B (sow)	Level B (cub(s))	Level A (cub(s))	Den abandonment (cub(s))
Den Establishment	0.818	0.182	0.000	0.000	0.000
Early Denning	0.941	0.059	0.000	0.000	0.059
Late Denning	0.711	0.289	0.000	0.289	0.000
Post Emergence—Previously Undisturbed Den	0.000	1.000	0.280	0.720	0.000

TABLE 4—PROBABILITY THAT AN EXPOSURE ELICITED A RESPONSE BY DENNING POLAR BEARS THAT WOULD RESULT IN LEVEL B HARASSMENT, LEVEL A HARASSMENT, LETHAL TAKE, OR NO TAKE—Continued

Denning period	None (sow or cub(s))	Level B (sow)	Level B (cub(s))	Level A (cub(s))	Den abandonment (cub(s))
Post Emergence—Previously Disturbed Den	0.000	1.000	0.700	0.300	0.000

Note: Level B harassment was applicable to both adults and cubs, if present; Level A harassment and lethal take were applicable to cubs only and were not possible during the den establishment period, which ended with the birth of the cubs. During the early denning period, there was no Level A harassment for cubs, only lethal take. We provide two sets of take probabilities for the post-emergence period. The first (Post-emergence—Undisturbed) is the set of probabilities when a den has not been disturbed during the late denning period. The second (Post-emergence–Disturbed) is the set of probabilities for a den that was disturbed during the late denning period (Rode et al. 2018; Andersen et al. 2024).

Estimated Harassment

We estimated 8.0 (median=8; 95 percent CI: 2–16) land-based dens in the area of specified activity in AIDEA's request and within a 1.6-km (1-mi) buffer of the activities. Estimates for different levels of take are presented in table 5 below. The distributions of simulated Level A harassments as well as lethal takes due to den abandonment were non-normal and heavily skewed, as indicated by markedly different mean and median values. The heavily skewed nature of these distributions has led to a mean value that is not representative of the most common model result. Thus, when reporting estimates associated with this analysis, we provide the median value.

TABLE 5—RESULTS OF THE DEN DISTURBANCE MODEL FOR PROPOSED ACTIVITY

Level of harassment/take	Estimates *			
	Probability	Mean	Median	95% CI
Level B Harassment	0.873	4.415	4	0–14
Level A Harassment	0.753	3.034	2	0–11
Lethal Take	0.15	0.287	0	0–2

Note: * Estimates are provided for the probability, mean, median, and 95 percent Confidence Intervals (CI) for Level B harassment, Level A harassment, and Lethal take. The probabilities represent the probability of ≥1 take of a bear occurring during a given winter.

Critical Assumptions

To conduct this analysis and estimate the potential amount of Level B harassment, Level A harassment, and lethal take, we made several critical assumptions.

Our estimates do not account for variable responses by polar bear age and sex; however, sensitivity of denning polar bears was incorporated into the analysis. The available information suggests that polar bears are generally resilient to low levels of disturbance. Females with dependent young and juvenile polar bears are physiologically the most sensitive (Andersen and Aars 2008) and most likely to experience harassment from disturbance. Not enough information on composition of the SBS polar bear stock in the specified project area is available to incorporate individual variability based on age and sex or to predict its influence on harassment estimates. Our estimates are derived from a variety of sample populations with various age and sex structures, and we assume the exposed population will have a similar composition, and that, therefore, the response rates are applicable.

The estimates of behavioral response presented here do not account for potential individual movements of animals in response to the specified activities that would alter the density of polar bears in or near the project area. Not enough information is available about the movement of polar bears in response to specific disturbances to refine the assumption that their density does not change.

Polar bears create maternal dens on sea ice as well as on land. The den simulation used in our analysis does not simulate dens on the sea ice. However, the specified activities will be conducted entirely on land and only a small percentage of the activities will occur within 1.6 km (1 mi) of the coastline, and these activities will occur later in the denning season. Therefore, the impact of the activities will be primarily limited to land-based dens within 1.6 km (1 mi) of the project impact areas used during denning season. Additionally, this impact area will be surveyed during AIR surveys to mitigate impacts on denning polar bears.

For the purposes of the above analyses and estimates of take by Level B and Level A harassment, and the risks of lethal take, we assumed that all areas within the specified project area (figure 1) would have human activity at some point during the denning season. This assumption results in an estimate of take for the 1-year IHA period that accounts for all possible operational scenarios.

Sum of Harassment From All Sources

Our analyses quantified the total number Level B harassment, Level A harassment, and lethal take potential to result from AIDEA's specified activities. We evaluated three potential sources of harassment/take, including surface interactions, aircraft overflights, and den disturbance of sows and/or cubs in our analyses. A summary of total estimated take via Level B and Level A harassment during the project by source is provided in table 6. We do not anticipate lethal take to occur due to the low probability of lethal take (0.15) and a median of zero. Our estimates account for the mitigative benefit of maternal den surveys, which are intended to identify dens before disturbance may occur, a 1.6 km operational exclusion zone around all identified dens, and the very low probability of den abandonment (less than 6 percent; table 4 above).

TABLE 6—TOTAL ESTIMATED TAKES BY HARASSMENT OF POLAR BEARS, BY SOURCE

Source and type of harassment	Number of estimated takes by Level B harassment	Number of estimated takes by Level A harassment
Bears on the surface—winter	4	0
Aircraft activities—summer	1	0
Aircraft activities—winter	1	0
Denning Bears	4	2
Total	10	2

We recognize the limitations of our predictive models and take estimates that significantly exceed historical data collected over decades of similar oil and gas activity on Alaska's North Slope (outside the specific geographic scope of this request) as discussed in our most recent Incidental Take Regulations for year-round oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska (91 FR 66204, October 19, 2026). The models incorporate assumptions that attempt to strike a balance between potential overestimates and potential underestimates, but, overall, are more likely to contribute to an overestimate, rather than an underestimate, of the incidental take of polar bears. Because of these limitations and the likely overestimates of incidental take by its predictive models, this proposed IHA considers a range of qualitative factors and its predictive models altogether as the ''best available scientific evidence'' to support its determinations. FWS considered all information before it in line with Executive Order (E.O.) 14303, ''Restoring Gold Standard Science.'' We recognize that, if it considered the model absent considering applicable qualitative factors, it would not be considering the ''best available science.''

Determinations and Findings

In proposing these findings, we considered the best available scientific information, including: the biological and behavioral characteristics of polar bears, the most recent information on polar bear distribution and abundance within the area of the specified activities, the current and expected future status of the stock (including existing and foreseeable human and natural stressors), the potential sources of disturbance caused by the project, and the potential responses of polar bears to this disturbance. In addition, we reviewed AIDEA's application, materials, information in our files and datasets, published reference materials, and we consulted with fellow species experts.

Small Numbers

For our small numbers determination, we consider whether the estimated number of polar bears to be subjected to incidental take is small relative to the population size of the species or stock.

1. The footprint of the specified activities within the specified geographic region is extremely small relative to the range of the SBS stock of polar bears. Polar bears from the SBS stock occur well beyond the boundaries of the proposed IHA region. Even when accounting for an impact area that extends one mile away from all human activity, the specified activities only overlap with 0.5 percent of the SBS stock range. As such, the IHA boundaries represent only a small subset of the potential area in which the polar bear may occur. Thus, the FWS concludes that only a small portion of the SBS polar bear stock may be present in the specified geographic region during the time of the specified activities.

2. Few dens would occur in proximity to industry activities. Our denning simulations show that on average eight dens are estimated to occur within 1 mile of the specified activities during each of the next five denning seasons. This number represents roughly 5 percent of the approximately 120 SBS polar bear dens that are established each year. The mitigation measures included in the request reduce the number of dens whose occupants are estimated to be disturbed by the specified activities to 2.8 percent of the land-based dens and 1.4 percent of all dens in the SBS stock (figure 2, below).

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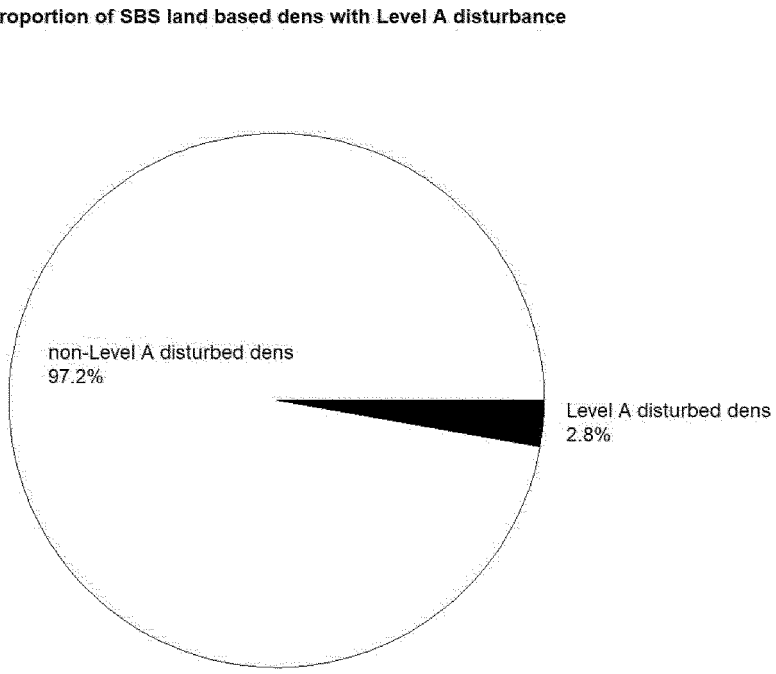


Figure 2—Proportion of SBS land-based dens whose occupants are estimated to experience Level A disturbance as a result of the specified activities. Land-based dens represent roughly half of the SBS maternal polar bear dens established each year.

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3. We estimate that AIDEA's proposed specified activities in the specified geographic region will cause the take of no more than 10 polar bears by Level B harassment and 2 polar bears by Level A harassment during the 1-year period of this proposed IHA (table 6 above). Take of 12 animals is 1.32 percent of the best available estimate of the current SBS stock size of 907 animals ((12 ÷ 907) × 100 ≈ 1.32 percent) (Bromaghin et al. 2015, 2021; Atwood et al. 2020) and represents a ''small number'' of polar bears of that stock. The FWS released a draft stock assessment report (SAR) for the SBS polar bear population on January 2, 2025 (90 FR 114), in which the SBS polar bear stock has changed to 819 bears, largely due to a shift in the border between the SBS and North Beaufort Sea stock. Should this draft SAR be finalized, 12 bears constitute 1.47 percent of the SBS stock. These estimates indicate that the number of polar bears that would be incidentally taken is small relative to the size of the SBS stock.

Small Numbers Conclusion

We propose a finding that take of up to 12 total polar bears represents a small number of the SBS stock.

Negligible Impact

1. The number of polar bears that use the terrestrial habitat of the North Slope is small in relation to the entire SBS stock. The distribution and habitat use patterns of polar bears indicate that relatively few polar bears will occur in the specified areas of activity at any particular time and, therefore, few polar bears are likely to be affected.

2. Mitigation measures will reduce potential impacts. AIDEA has proposed, and would be required to adopt, monitoring requirements and mitigation measures designed to reduce the potential impacts of their operation on polar bears. Den detection surveys for polar bears and adaptive mitigation and management responses based on real-time monitoring information will be used to avoid or minimize interactions with polar bears and, therefore, limit potential disturbance of these animals.

3. The majority of human-polar bear interactions will result in no effect or short-term, temporary behavioral changes. When developing estimates for Level B harassment, the FWS has determined that there is a 99 percent chance that at least 88 percent of encounters with bears on the surface in the open water season and 80 percent of encounters with bears on the surface in the ice season are expected to result in no significant change in a biologically important behavior, and we do not consider those interactions to result in a take. The remainder of encounters are anticipated to result in short-term, temporary changes in behavior that are indicative of Level B harassment of the animal.

4. Estimated Level A harassments will not alter the distribution of cub survival probabilities for the SBS stock. We estimate two cubs may experience Level A harassment as a result of the specified activities. The impact of these estimated harassment events can be quantified by first evaluating the estimated survival consequence to individual cubs and then estimating associated changes in overall survival rates for the stock. Lacking data regarding individual cub survival, we conduct this analysis using the metric of litter survival, which has been estimated by relevant empirical studies (Rode et al. 2018, Andersen et al 2024). While the metric does not account for partial litter loss (because a sow observed with one cub in the spring is assumed to have had an original litter size of one cub), it also cannot account for natural litter sizes of zero (because a sow observed with no cubs in spring is assumed to have lost a litter). Because this metric represents the best available information, and because it is not biased in only one direction, we feel it is the

most appropriate available metric to reflect potential impacts to cub survival.

The denning analysis model allows us to compare the probability of litter survival using both the undisturbed and disturbed (if applicable) emergence and departure dates of simulated dens. With this information, we can estimate the average decrease in survival probability that can be attributed to simulated industry disturbance. The mean probability of litter survival for dens experiencing Level A harassment decreased 11 percent after simulated disturbance (pre-disturbance 85.4 percent, post-disturbance 75.3 percent).

When examining the potential impact of two Level A harassment events at the stock level, we consider the low percentage of SBS dens with cubs that the model anticipates will experience Level A harassment. Given that 2.8 percent of land-based dens within the SBS stock are anticipated to experience Level A harassment in any year, the 11 percent decrease does not alter or shift the overall survival probability distribution for the SBS stock (figure 3, below). Further, if we examine the distribution of survival rates for the entire land-based SBS stock, counting for potential decrease in survival due to both potential Level A harassment and potential lethal take via den abandonment (which is not anticipated), we see no more than a minor change in distribution, as is illustrated by the similarities of the graphs in figure 3.

Further, it is important to acknowledge that roughly half of SBS polar bear dens are not found on land, but rather on sea ice, and would not overlap spatially with the specified activities.

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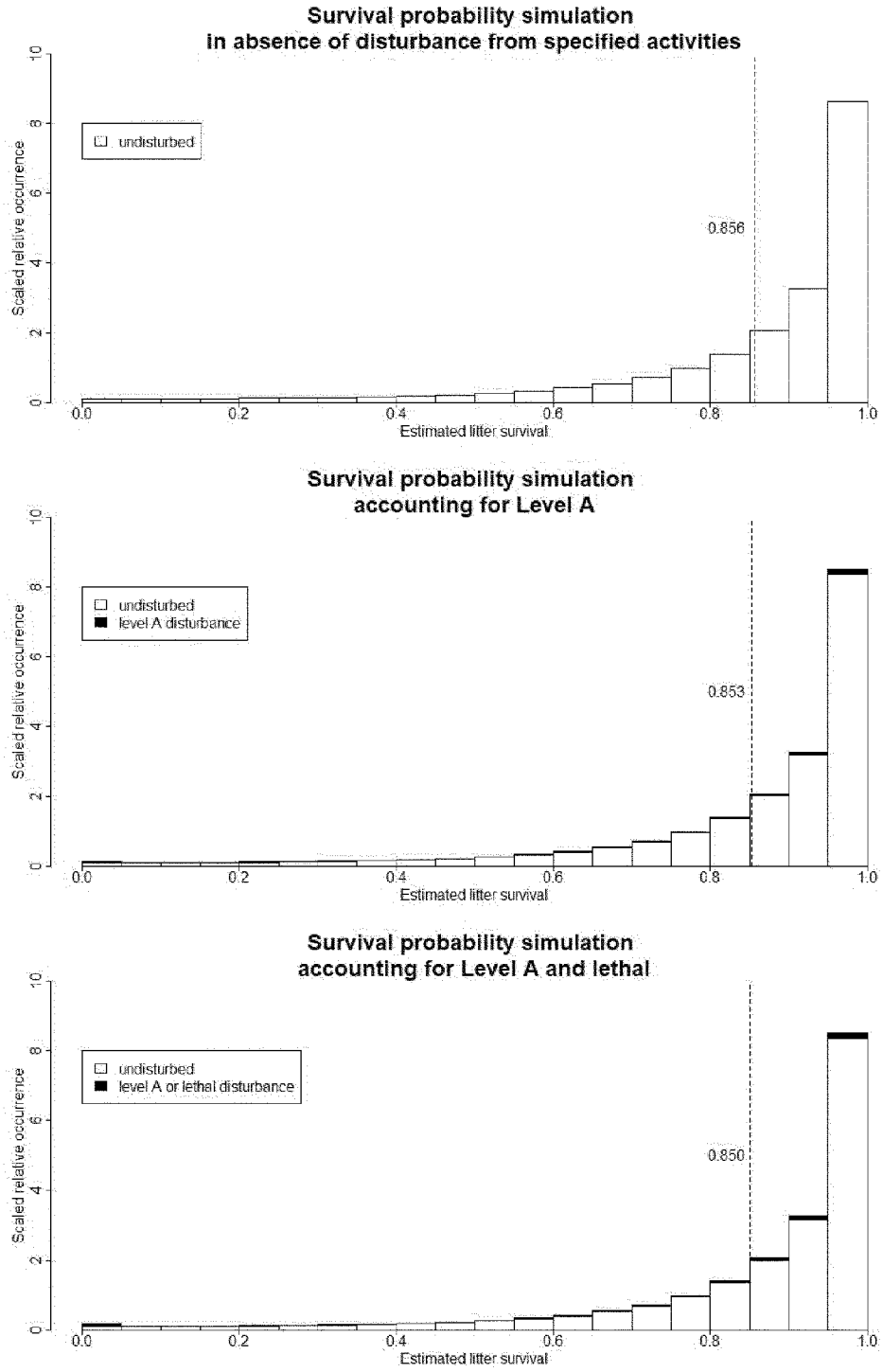


Figure 3– Litter survival probability distributions for the annual land-based dens of the SBS polar bear stock. The X-axes of these graphs depict the simulated probability that one or more cubs from a litter will be alive in the spring, and the Y-axes of these graphs depict the relative occurrence of the survival probabilities in our simulations. (Top plot: Survival probabilities simulated with no disturbance from industry. Bottom plot: Survival probabilities simulated with estimated Level A harassment from industry activities.)

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5. Lethal take via den abandonment is rare within the Southern Beaufort Sea stock. Records of den abandonment in the oilfield are rare—the FWS has only

one account of potential den abandonment within the 13 case studies used to develop early denning period disturbance rates. Thus, if there is an unidentified den in the operational area, the probability of her abandoning her den in response to human disturbance is very low (less than 6 percent). Applying the denning model, the greatest annual simulated probability of lethal take throughout the proposed IHA is 0.15. The median number of lethal takes was zero. These results, coupled with the mitigative measures of maternal den surveys, a 1.6 km (1 mi) operational exclusion zone around all identified dens, and personnel training and monitoring, in addition to the very low rate of potential den abandonment support our finding that lethal take due to sow abandonment of the den and litter during the early denning period is unlikely.

6. Mitigation measures significantly reduce the potential for running over a den. While the specified activities entail considerable vehicle travel throughout the tundra in previously unimpacted areas, the inclusion of mitigation measures will significantly reduce the probability of running over a den. All identified denning habitat (Durner and Atwood 2018) will be buffered from all operations by 100 m (328 ft), and areas with slopes of 10–15 degrees will be buffered from source locations (vibroses trucks) by 25 m (82 ft). By excluding these areas from travel, the only dens that could be run over would be those located in areas not currently identified as polar bear denning habitat, which would be rare (Durner and Atwood 2018).

7. We do not anticipate that loss of a cub or litter will adversely affect annual recruitment rates at the population level. Under the proposed IHA, anticipated incidental Level A harassment only involves cubs during the denning period. Impacts to denning females, the demographic group most important to annual recruitment, would only involve take by Level B harassment. Therefore, the immediate number of potentially available reproductive females that would contribute to recruitment for the SBS stock would remain unaffected if a den disturbance were to result in the mortality of the cubs. If a den disturbance were to result in the mortality of the entire litter, the female would be available to breed during the next mating season and produce another litter during the next denning season.

Cubs inherently cannot contribute to annual rates of recruitment until they have reached sexual maturity because in wildlife biology the concept of recruitment speaks to individuals entering the reproductive population. Further, while adult male bears would contribute to the overall number of individuals in the population, they do not contribute significantly to annual rates of recruitment. While a very small decrease in the number of males in a breeding population may be a concern if the stock was at risk of inbreeding depression or Allee effects (*e.g.,* decrease in population size or individual fitness in response to low population density), this is not the case in the SBS stock. Female cubs have the opportunity to reach sexual maturity and contribute to annual recruitment; however, natural rates of survival fluctuate in the SBS stock. Death of one female cub less than once per year is within the natural variability found within the SBS stock and cannot be reasonably expected to cause an adverse impact on annual rates of recruitment.

Based on the low percentage of SBS stock polar bears potentially being removed from the stock even if den disturbance were to result in the mortality of the cubs, and the expectation that the number of potentially available reproductive females that would contribute to recruitment would be unaffected by den disturbance, the FWS does not anticipate that the loss of a cub or litter would adversely affect annual recruitment rates at the population level for the SBS stock of polar bears.

We reviewed the effects of industry activities on polar bears, including impacts from surface interactions, aircraft overflights, and den disturbance. Based on our review of these potential impacts, past monitoring reports, and the biology and natural history of polar bears, we conclude that any incidental take reasonably likely to occur as a result of specified activities would be limited to short-term behavioral disturbances and temporary reductions in fitness that would not affect the rates of recruitment or survival for the SBS stock of polar bears.

The FWS has analyzed the potential impact of the proposed taking in light of other factors affecting SBS polar bears, including, but not limited to, subsistence harvest and other human-caused removals. As we gain a better understanding of these and other effects, we will incorporate the information in future authorizations. While a variety of ongoing factors pose significant challenges to SBS polar bears, we do not expect them to influence the degree of impacts (*i.e.,* short-term behavioral responses and temporary reductions in fitness) resulting from the specified activities or incidental harassment to be authorized over the next 5 years under the proposed incidental take regulations.

Our analysis indicates that the impacts of these specified activities over one year cannot be reasonably expected to, and are not reasonably likely to, adversely affect the SBS stock of polar bears through effects on annual rates of recruitment or survival. Similarly, the estimated impacts described in AIDEA's request, cannot be reasonably expected to, and are not reasonably likely to, adversely affect the SBS stock of polar bears through effects on annual rates of recruitment or survival. We preliminarily find that the total of the taking will have no more than a negligible impact on the SBS stock of polar bears.

Impact on Subsistence Use

Based on past community consultations, locations of hunting areas, the lack of anticipated overlap of hunting areas and project activities, and the best scientific information available, including monitoring data from similar activities, we propose a finding that take caused by mobilization, seismic survey, and summer cleanup activities in the project area will not have an unmitigable adverse impact on the availability of polar bears for taking for subsistence uses during the proposed timeframe.

While polar bears represent a small portion, in terms of the number of animals, of the total subsistence harvest for the Kaktovik community, their harvest is important to Alaska Natives. AIDEA would coordinate with the Village of Kaktovik to mitigate potential conflict with subsistence hunting. They will hold a meeting with the Village prior to the commencement of the planned activities and document any discussions of potential conflict. AIDEA will make reasonable efforts to ensure that activities do not interfere with subsistence hunting and that adverse effects on the availability of polar bears are minimized. AIDEA will also employ subsistence representatives for each shift to avoid disruptions to subsistence users and resources. Should such a concern be voiced, development of a plan of cooperation (POC), which must identify measures to minimize any adverse effects on polar bears, will be required. The POC will ensure that project activities will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This POC must provide the procedures addressing how AIDEA will work with the affected Alaska Native communities and what actions will be taken to avoid

interference with subsistence hunting of polar bears, as warranted.

The FWS has not received any reports and is not aware of information that indicates that polar bears are being or will be deterred from hunting areas or impacted in any way that diminishes their availability for subsistence use by mobilization, seismic survey, and summer cleanup activities.

Least Practicable Adverse Impact

We evaluated the practicability and effectiveness of mitigation measures based on the nature, scope, and timing of the specified activities, the best available scientific information, and monitoring data during AIDEA's activities in the specified geographic region. We propose a finding that the mitigation measures included within AIDEA's request will ensure least practicable adverse impacts on polar bears (AIDEA 2026).

Polar bear den surveys at the beginning of the winter season, the resulting 1.6-km (1-mi) operational exclusion zone around any known polar bear dens, and restrictions on the timing and types of activities in the vicinity of dens will ensure that impacts to denning female polar bears and their cubs are minimized during this critical period. Minimum flight elevations over polar bear areas and flight restrictions around observed polar bears and known polar bear dens will reduce the potential for aircraft disturbing polar bears. Finally, AIDEA will implement mitigation measures to prevent the presence and impact of attractants in camps such as the use of wildlife-resistant waste receptacles, daily food waste incineration, and storing hazardous materials in drums or other secure containers. These measures are outlined in a polar bear interaction plan that was developed in coordination with the FWS and is part of AIDEA's application for this IHA. Based on the information we currently have regarding den and aircraft disturbance and polar bear attractants, we concluded that the mitigation measures outlined in AIDEA's request (AIDEA 2026) and incorporated into this authorization will minimize impacts from the mobilization, seismic survey, and summer cleanup activities to the extent practicable.

Several mitigation measures were considered but determined to be not practicable. These measures are listed below:

• *Grounding all flights if they must fly below 457 m (1,500 ft)*—Requiring all aircraft to maintain an altitude of 457 m (1,500 ft) at all times is not practicable as some operations may require flying below 457 m (1,500 ft) to perform necessary inspections or maintain safety of flight crew. Aircraft are required to fly above 457 m (1,500 ft) at all times within 805 m (0.5 mi) of an observed polar bear unless there is an emergency.

• *One-mile buffer around all known polar bear denning habitat*—One-mile (1.6-km) buffer around all known polar bear denning habitat is not practicable as much of AIDEA's proposed project area occurs within 1.6 km (1 mi) of denning habitat; thus, to exclude all areas within 1.6 km (1 mi) of denning habitat would preclude the planned activities from occurring.

• *Prohibition of driving over all high relief areas, embankments, or stream and river crossings*—AIDEA has committed to a 100-m (330-ft) buffer on each side of defined denning critical habitat (16-degree slope and height of 1.6 m [5.2 ft]), and a 25-m (82.5-ft) buffer on slopes of 10–15 degrees for all source points, which encompasses most high relief areas and embankments. However, streams and rivers occur throughout the project area, and not all streams and rivers have the slope necessary to support the snow drifts required by denning sows. To completely avoid these types of areas would likely cause personnel to drive further away from established operational areas and unnecessarily create additional safety concerns.

• *Use of a broader definition of ''denning habitat'' for operational offsets*—There is no available data to support broadening the defining features of denning habitat beyond that established by the USGS. However, AIDEA has committed to using SnowDens to model snow drift accumulation across the project area to further identify areas of potential denning habitat.

• *Establishment of corridors for sow and cub transit to the sea ice*—As there is no data to support the existence of natural transit corridors to the sea ice, establishment of corridors in the IHA area would be highly speculative. Therefore, there would be no mitigative benefit realized by their establishment.

• *Require all activities to cease if a polar bear is injured or killed until an investigation is completed*—The FWS has incorporated reporting requirements into this proposed authorization for all polar bear interactions. While it may aid in any subsequent investigation, ceasing all activities may not be practicable or safe and, thus, will not be mandated.

• *Require use of den detection dogs*—It is not practicable or safe to require scent-trained dogs to detect dens due to the large spatial extent that would need to be surveyed within activity areas.

• *Require the use of handheld or vehicle-mounted Forward Looking Infrared (FLIR)*—AIR has been found to be four times more effective at detecting dens versus ground-based FLIR (handheld or vehicle-mounted FLIR) due to impacts of blowing snow on detection. AIDEA has incorporated into their mitigation measures the use of handheld or vehicle-mounted FLIR when transiting major drainages and denning critical habitat, but it is not practicable to use the equipment during all transit.

• *Construct safety gates, fences, and enclosures to prevent polar bears from accessing facilities*—This project will require no permanent facility/structures and encompasses a large area. Construction and deconstruction of barriers for a moving camp would increase potential human-polar bear interactions and impacts to polar bear habitat.

• *Employ protected species observers (PSOs) for monitoring, recording, reporting, and implementing mitigation measures*—All personnel will be trained in wildlife observation. Monitoring, recording, reporting measures are described in the IHA application. If personnel cannot be observant and detect bears, dedicated bear guards would be used (refer to the IHA application). A 360-degree visual survey of the access routes and any locations within sight of the coast will be completed during aviation, and if any marine mammals are observed within 0.8 km (0.5 mi), the fixed wing aircraft or helicopter would not land or continue inspections and would leave the area.

• *Avoid areas of high-density polar bear use (e.g., barrier islands and coastline) including for the establishment of camps and pads*—While mobilization routes will traverse high-density polar bear denning habitat areas throughout the denning season, AIDEA has designed their seismic survey to focus on lower denning density areas in the early denning season, arriving in coastal areas in late March and April when many polar bears have emerged and departed from their den locations.

• *Avoid predominantly coastal routes for flight pathways*—AIDEA will use direct routes to and from their planned locations to avoid disturbance in coastal areas. However, seismic survey areas do overlap the coast and therefore stickpicking operations must occur in those areas.

• *Restrict activity and travel over polar bear denning habitat to eliminate or lessen risk of den collapse*—This project has activities that will travel

over potential polar bear denning habitat. AIDEA has committed to multiple effective mitigation measures to minimize their potential impacts to polar bear denning habitat and reduce to chance of den collapse. Therefore, we believe that the probability of this project's activities causing a den collapse is near zero and additional mitigation measures would not further reduce the probability.

Required Determinations

National Environmental Policy Act (NEPA)

We have prepared a draft environmental assessment in accordance with the NEPA (42 U.S.C. 4321 *et seq.*). We have preliminarily concluded that authorizing the incidental, unintentional take of 10 polar bears by Level B harassment and 2 polar bears by Level A harassment, all from the SBS stock, during the proposed harassment authorization period would not significantly affect the quality of the human environment and, thus, preparation of an environmental impact statement for this incidental harassment authorization is not required by section 102(2) of NEPA or its implementing regulations. We are accepting comments on the draft environmental assessment as specified above in **DATES** and **ADDRESSES**.

Endangered Species Act

Under the Endangered Species Act (ESA) (16 U.S.C. 1536(a)(2)), all Federal agencies are required to ensure the actions they authorize are not likely to jeopardize the continued existence of any threatened or endangered species or result in destruction or adverse modification of critical habitat. Prior to issuance of a final IHA, the FWS will complete intra-Service consultation under section 7 of the ESA on our proposed issuance of an IHA. These evaluations and findings will be made available on the FWS's website at *https://ecos.fws.gov/ecp/report/biological-opinion* or available upon request.

Government-to-Government Consultation

It is our responsibility to communicate and work directly on a Government-to-Government basis with federally recognized Alaska Native Tribes and organizations in developing programs for healthy ecosystems. We seek their full and meaningful participation in evaluating and addressing conservation concerns for protected species. It is our goal to remain sensitive to Alaska Native culture and to make information available to Alaska Natives. Our efforts are guided by E.O. 13175, ''Consultation and Coordination With Indian Tribal Governments,'' 512 DM 5—''Procedures for Consultation with Indian Tribes,'' 512 DM 6—''Department of the Interior Policy on Consultation with Alaska Native Claims Settlement Act Corporations,'' 510 FW 1—''The Service's Native American Policy,'' and 510 FW 2—''The Service's Alaska Native Relations Policy.''

The FWS has evaluated possible effects of the specified activities on federally recognized Alaska Native Tribes and organizations. The applicant has presented a communication process, culminating in a POC if needed, with the Alaska Native organizations and communities most likely to be affected by their work. The FWS does not anticipate impacts to Alaska Native Tribes or Alaska Native Claims Settlement Act corporations and does not anticipate requesting consultation; however, we invite continued discussion, either about the project and its impacts or about our coordination and information exchange throughout the IHA/POC process.

Paperwork Reduction Act

This authorization does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The OMB has previously approved the information collection requirements associated with IHAs and assigned OMB Control Number 1018–0194 (expired 08/31/2026, and in accordance with 5 CFR 1320.10, an agency may continue to conduct or sponsor this collection of information while the submission is pending at OMB).

Proposed Authorization

We propose to authorize, for 1 year from date of issuance, incidental take harassment of polar bears from the SBS stock for activities associated with AIDEA's mobilization, seismic survey, and summer cleanup activities in the Arctic National Wildlife Refuge in northeast Alaska. We do not anticipate any lethal take.

A. General Conditions for the IHA for AIDEA

1. Activities must be conducted in the manner described in the revised request dated September 2, 2026, (received September 10, 2026, with additional access route locations submitted September 14, 2026) for an IHA and in accordance with all applicable conditions and mitigation measures. The taking of polar bears whenever the required conditions, mitigation, monitoring, and reporting measures are not fully implemented as required by the IHA is prohibited. Failure to follow the measures specified both in the revised request and within this proposed authorization may result in the modification, suspension, or revocation of the IHA.

2. If project activities cause unauthorized take (*i.e.,* take of 1 or more polar bears through methods not described in the IHA), then AIDEA must take the following actions:

i. Cease its activities immediately (or reduce activities to the minimum level necessary to maintain safety);

ii. Report the details of the incident to the FWS within 48 hours; and

iii. Suspend further activities until the FWS has reviewed the circumstances and determined whether additional mitigation measures are necessary to avoid further unauthorized taking.

3. All operations managers, aircraft pilots, and vehicle operators must receive a copy of this IHA and maintain access to it for reference at all times during project work. These personnel must understand, be fully aware of, and be capable of implementing the conditions of the IHA at all times during project work.

4. This IHA will apply to activities associated with the proposed project as described in this document and in AIDEA's revised request. Changes to the proposed project without prior authorization may invalidate the IHA.

5. AIDEA's revised request is fully incorporated into this IHA unless exceptions are specifically noted herein. The revised request includes:

i. AIDEA's original *Request for an IHA,* dated August 2026 (received by the FWS August 15, 2026), which includes AIDEA's *Polar Bear Avoidance and Interaction Plan* and geospatial files;

ii. AIDEA's revised *Request for an IHA,* dated September 2, 2026 (received by the FWS September 10, 2026); and

iii. AIDEA's additional information on access routes, received September 14, 2026.

6. Operators will allow the FWS personnel or the FWS's designated representative to visit project work sites to monitor for impacts to polar bears and subsistence uses of polar bears at any time throughout project activities so long as it is safe to do so. ''Operators'' are all personnel operating under AIDEA's authority, including all contractors and subcontractors.

AIDEA must implement the following policies and procedures to avoid interactions and minimize to the

greatest extent practicable any adverse impacts on polar bears, their habitat, and the availability of these marine mammals for subsistence uses.

B. General Avoidance Measures

7. AIDEA must cooperate with the FWS and other designated Federal, State, and local agencies to monitor and mitigate the impacts of activities on polar bears.

8. Trained and qualified personnel must be designated to monitor for the presence of polar bears, initiate mitigation measures, and monitor, record, and report the effects of the activities on polar bears. AIDEA must provide all operators with polar bear awareness training prior to their participation in project activities.

9. An FWS-approved polar bear safety, awareness, and interaction plan must be on file with the FWS Marine Mammal Management office and available onsite. The interaction plan must include:

i. A description of the proposed activity (*i.e.,* a summary of the plan of operations during the proposed activity);

ii. A food, waste, and other attractants management plan;

iii. Personnel training policies, procedures, and materials;

iv. Site-specific polar bear interaction risk evaluation and mitigation measures;

v. Polar bear avoidance and encounter procedures; and

vi. Polar bear observation and reporting procedures.

10. AIDEA must contact potentially affected subsistence communities and hunter organizations to discuss potential conflicts caused by the activities and provide the FWS documentation of communications as described in *D. Measures To Reduce Impacts to Subsistence Users.*

11. *Mitigation measures for aircraft.* AIDEA must undertake the following activities to limit disturbance from aircraft activities:

i. Operators of support aircraft shall, at all times, conduct their activities at the maximum distance practicable from concentrations of polar bears.

ii. Fixed-wing aircraft and helicopter operations within the IHA area must maintain a minimum altitude of 457 m (1,500 ft) above ground level when safe and operationally possible.

iii. Under no circumstances, other than an emergency, will aircraft operate at an altitude lower than 457 m (1,500 ft) within 805 m (0.5 mi) of a polar bear observed on ice or land measured in a straight line between the polar bear and the ground directly underneath the aircraft. Helicopters may not hover or circle above such areas or within 805 m (0.5 mi) of such areas. If weather conditions or operational constraints necessitate operation of aircraft at altitudes below 457 m (1,500 ft), the operator must avoid areas of known polar bear concentrations and should take precautions to avoid flying directly over or within 805 m (0.5 mi) of these areas.

iv. Aircraft may not be operated in such a way as to separate individual polar bears from a group (*i.e.,* two or more polar bears).

12. *Mitigation measures for winter activities.* AIDEA must undertake the following activities to limit disturbance around polar bear dens:

i. AIDEA must conduct or otherwise obtain the results of two aerial infrared (AIR) surveys of all denning habitat located within 1.6 km (1 mi) of specified activities in an attempt to identify maternal polar bear dens. The first survey must occur between December 1 and December 25, 2025, and the second survey must occur between December 15, 2025, and January 15, 2026, with at least 24 hours occurring between the completion of the first survey and the beginning of the second survey. Surveys must not be conducted during daytime or times when weather conditions significantly hinder visibility (*e.g.,* blowing snow, precipitation, or airborne moisture). A scientist with experience in real-time aerial infrared interpretation must be onboard during all flights. All AIR survey videos must be made available to FWS within 48 hours of survey completion.

ii. All observed or suspected polar bear dens must be reported to the FWS prior to the initiation of activities.

iii. If a suspected den site is located, AIDEA will immediately consult with the FWS to analyze the data and determine if additional surveys or mitigation measures are required. The FWS will determine whether the suspected den is to be treated as a putative den for the purposes of this IHA.

iv. Operators must observe a 1.6-km (1-mi) operational exclusion zone around all putative polar bear dens during the denning season (November–April, or until the female and cubs leave the areas). Should a suspected den be discovered within 1.6 km (1 mi) of activities, work must cease, and the FWS contacted for guidance. The FWS will evaluate these instances on a case-by-case basis to determine the appropriate action. Potential actions may range from cessation or modification of work to conducting additional monitoring, and AIDEA must comply with any additional measures specified.

v. In determining the denning habitat that requires surveys, use the den habitat map developed by the USGS. A map of potential coastal polar bear denning habitat can be found at: *https://www.usgs.gov/centers/asc/science/polar-bear-maternal-denning?qt-science_center_objects=4#qt-science_center_objects.*

vi. Use vehicle-mounted or handheld forward-looking infrared and thermal scopes. When transiting or entering new terrain within the project area, operators must use vehicle-mounted or handheld forward-looking infrared units and thermal scopes to enhance detection of dens and/or traveling family units (female with cubs) following den emergence. Areas along any major drainages, snow drifts greater than 1.5 m (5 ft) in height, snow piles, and any other areas that may provide suitable snow buildup for denning polar bears during seismic surveys should be surveyed.

vii. Restrict activity in denning habitat. To reduce the risk of den disturbance, operators must restrict activity and travel that would occur over polar bear denning habitat and avoid steep terrain and areas with pressure ridges that may support polar bear dens. A 100-m (330-ft) buffer must be placed on each side of defined denning critical habitat (*i.e.,* a 16-degree slope and height of 1.6 m [5.2 ft]) and a 25-m (82.5-ft) buffer must be placed on slopes of 10–15 degrees for all source points.

C. Monitoring

13. AIDEA must provide onsite observers and implement the FWS-approved polar bear safety, awareness, and interaction plan to apply mitigation measures, monitor the project's effects on polar bears and subsistence uses, and evaluate the effectiveness of mitigation measures.

14. Onsite observers must be present during all operations and must record all polar bear observations, identify and document potential harassment, and work with personnel to implement appropriate mitigation measures.

15. AIDEA shall cooperate with the FWS and other designated Federal, State, and local agencies to monitor the impacts of project activities on polar bears. Where information is insufficient to evaluate the potential effects of activities on polar bears and the subsistence use of this species, AIDEA may be required to participate in joint monitoring efforts to address these information needs and ensure the least practicable impact to this resource.

D. Measures To Reduce Impacts to Subsistence Users

AIDEA must conduct its activities in a manner that, to the greatest extent practicable, minimizes adverse impacts on the availability of polar bears for subsistence uses.

16. AIDEA will be required to develop an FWS-approved POC if, through community consultation, concerns are raised regarding impacts to subsistence harvest or Alaska Native Tribes and organizations.

17. If an FWS-approved POC is required, AIDEA will implement that POC.

18. Prior to conducting the work, AIDEA will take the following steps to reduce potential effects on subsistence harvest of polar bears:

i. Avoid work in areas of known polar bear subsistence harvest;

ii. Notify the Native Village of Kaktovik of the proposed project activities;

iii. Work to resolve any concerns of potentially affected Alaska Native Tribal organizations and corporations regarding the project's effects on subsistence hunting of polar bears;

iv. If any unresolved or ongoing concerns of potentially affected Alaska Native Tribal organizations and corporations remain, modify the POC in consultation with the FWS and subsistence stakeholders to address these concerns; and

v. Implement FWS-required mitigation measures that will reduce impacts to subsistence users and their resources.

E. Reporting Requirements

AIDEA must report the results of monitoring to the FWS Marine Mammals Management office via email at: *FW7_mmm_reports@fws.gov.*

19. *In-season monitoring reports.*

20. *Activity progress reports.* AIDEA must:

i. Notify the FWS at least 48 hours prior to the onset of activities;

ii. Provide the FWS weekly progress reports of any significant changes in activities and/or locations; and

iii. Notify the FWS within 48 hours after ending of activities.

21. *Polar bear observation reports.* AIDEA must report, within 48 hours, all observations of polar bears and potential polar bear dens during any project activities. Upon request, monitoring report data must be provided in a common electronic format (to be specified by the FWS). Information in the observation report must include, but need not be limited to:

i. Date and time of each observation;

ii. Locations of the observer and polar bears (GPS coordinates if possible);

iii. Number of polar bears;

iv. Sex and age class—adult, subadult, cub (if known);

v. Observer name and contact information;

vi. Weather, visibility, and if at sea, sea state, and sea-ice conditions at the time of observation;

vii. Estimated closest distance of polar bears from personnel and facilities;

viii. Type of work being conducted at time of sighting;

ix. Possible attractants present;

x. Polar bear behavior—initial behavior when first observed (*e.g.,* walking, swimming, resting, etc.);

xi. Potential reaction—behavior of polar bear potentially in response to presence or activity of personnel and equipment;

xii. Description of the encounter;

xiii. Duration of the encounter; and

xiv. Mitigation actions taken.

22. *Human-polar bear interaction reports.* AIDEA must report all human-polar bear interaction incidents immediately, and not later than 48 hours after the incident. Human-polar bear interactions include:

i. Any situation in which there is a possibility for unauthorized take. For instance, when project activities exceed those included in an IHA, when a mitigation measure was required but not enacted, or when the injury or death of a polar bear occurs. Reports must include all information specified for an observation report in paragraphs (3)(i)–(xiv) of this section E, a complete detailed description of the incident, and any other actions taken.

ii. Injured, dead, or distressed polar bears that are clearly not associated with project activities (*e.g.,* animals found outside the project area, previously wounded animals, or carcasses with moderate to advanced decomposition or scavenger damage) must also be reported to the FWS immediately, and not later than 48 hours after discovery. Photographs, video, location information, or any other available documentation must be included.

23. *Final report.* The results of monitoring and mitigation efforts identified in the marine mammal avoidance and interaction plan must be submitted to the FWS for review within 90 days of the expiration of this IHA. Upon request, final report data must be provided in a common electronic format (to be specified by the FWS). Information in the final report must include, but need not be limited to:

i. Copies of all observation reports submitted under the IHA;

ii. A summary of the observation reports;

iii. A summary of monitoring and mitigation efforts including areas, total hours, total distances, and distribution;

iv. Analysis of factors affecting the visibility and detectability of polar bears during monitoring;

v. Analysis of the effectiveness of mitigation measures;

vi. A summary and analysis of the distribution, abundance, and behavior of all polar bears observed; and

vii. Estimates of take in relation to the specified activities.

Request for Public Comments

If you wish to comment on this proposed authorization, the associated draft environmental assessment, or both documents, you may submit your comments by either of the methods described in **ADDRESSES**. Please identify whether you are commenting on the proposed authorization, draft environmental assessment, or both, make your comments as specific as possible, confine them to issues pertinent to the proposed authorization, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph that you are addressing. The FWS will consider all comments that are received before the close of the comment period (see **DATES**). The FWS does not anticipate extending the public comment period beyond the 30 days required under section 101(a)(5)(D)(iii) of the MMPA.

Comments, including names and street addresses of respondents, will become part of the administrative record for this proposal. Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comments to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Peter Fasbender,

Assistant Regional Director—Fisheries and Ecological Services, Alaska Region.

[FR Doc. 2026–23318 Filed 11–16–26; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516; O2509–014–004–125222.1; LLAZ920000]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Western Gateway Pipeline Project in Cochise, Graham, Maricopa, and Pinal Counties in Arizona; Chaves, Curry, Doña Ana, Eddy, Grant, Hidalgo, Luna, Otero, and Roosevelt Counties in New Mexico; and Hutchinson, Carson, Potter, Oldham, Deaf Smith, Parmer, Hudspeth, and El Paso Counties in Texas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Mineral Leasing Act (MLA) of 1920, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) Arizona State Director intends to prepare an Environmental Impact Statement (EIS) to consider the effects of the construction, operation, maintenance, and eventual decommissioning of a new 20-inch-diameter liquid petroleum product pipeline from Borger, Texas, to El Paso, Texas, and a 24-inch diameter pipeline from El Paso, Texas, to Buckeye, Arizona, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues, and is providing the criteria for public review.

DATES: This notice initiates the public scoping process for the EIS. The BLM requests that the public submit comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies by December 17, 2026. To afford the BLM the opportunity to consider comments and address them in the EIS, please ensure your comments are received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. Comments received outside this window will not be considered.

ADDRESSES: You may submit comments related to the Western Gateway Pipeline Project (Project) by any of the following methods:

- *Project Website: https://eplanning.blm.gov/project-home/?id=95c62a3a-75be-f111-aaae-001dd8029bbb.*
- *Mail:* Bureau of Land Management, Arizona State Office, ATTN: Western Gateway Pipeline Project, One North Central Avenue, Suite 800, Phoenix, AZ 85004.

Documents pertinent to this proposal may be examined online on the BLM National NEPA Register at the link above; the BLM Arizona State Office, One North Central Avenue, Suite 800, Phoenix, AZ 85004; and the BLM New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Celina Martinez, BLM Project Manager, telephone (800) 432–9914; address One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427; or visit the project website listed above. Contact Ms. Martinez to have your name added to our mailing list. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Martinez. 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: This document provides notice that the BLM Arizona State Director intends to prepare an EIS to consider the effects of the Project, announces the beginning of the scoping process, and seeks public input on issues. The BLM is evaluating whether to grant a right-of-way (ROW) for the Project which consists of a new build 20-inch diameter pipeline from Borger, Texas, to El Paso, Texas, and a 24-inch diameter pipeline from El Paso, Texas, to Buckeye, Arizona, to transport refined liquid petroleum products (*i.e.,* gasoline, diesel, jet fuel). The Project would be developed by Phillips 66 across approximately 887 miles of Federal, state, county, and private lands between Borger, Texas, and Buckeye, Arizona. The Project would also include pipeline-related facilities, such as, but not limited to, access roads, pump stations, mainline valve stations, and breakout facilities.

If approved, the new construction would tie into Kinder Morgan's existing Santa Fe Pacific Pipeline, L.P. from Colton, California, to Buckeye, Arizona, which would be reversed to enable east-to-west product flows. The Project would also tie into the Gold Pipeline, operated by Phillips 66, which runs from Borger, Texas, to St. Louis, Missouri. This section of pipeline would also be reversed for an east-to-west product flow. The Project, along with the connections to the existing Santa Fe Pacific Pipeline and the Gold Pipeline, would result in a total 1,300-mile pipeline system that would transport refined liquid petroleum products from Illinois refineries to California. The Project's proposed construction activities would occur only along the 887-mile portion of the route from Borger, Texas, to Buckeye, Arizona.

Purpose and Need for the Proposed Action

The purpose for BLM's action is to respond to Phillips 66's ROW application filed with the BLM on February 11, 2026, under the MLA. Phillips 66's goal is to obtain authorization across Federal lands to construct, operate, maintain, and decommission a refined petroleum pipeline, access roads, and related facilities in Arizona and New Mexico.

The BLM is the lead Federal agency responsible for issuing the ROW grant and associated temporary use permits (TUPs) for the Western Gateway Pipeline Project under Section 28 of the MLA of 1920 (30 U.S.C. 185). Because the proposed petroleum pipeline would cross lands administered by two or more Federal agencies, the BLM serves as the designated lead Federal agency for authorization of the pipeline ROW. Issuance of a ROW or TUP by the BLM will occur with the concurrence of each respective land-managing agency whose lands are crossed by the Project.

The need for the Project comes from the Federal responsibilities under Section 28 of the MLA of 1920 (30 U.S.C. 185), 43 Code of Federal Regulations (CFR) part 2880 as amended, Title V of the FLPMA, 43 CFR part 2800, as amended, and other applicable Federal laws, regulations, and policies.

Preliminary Proposed Action and Alternatives

BLM is currently considering one alternative (proposed action) and the no action alternative. Additional alternatives may be identified by cooperators, Federal agencies, tribes, state and local agencies, and the public during the scoping process or by the BLM during its NEPA review.

Under the Proposed Action, the BLM would issue a 30-year ROW grant and any necessary temporary use permits for the construction, operation, maintenance, and eventual decommissioning of a 20-inch, or 24-inch diameter refined liquid petroleum product pipeline on Federal lands, consistent with BLM's jurisdiction as lead Federal agency under Section 28 of

the MLA. Other Federal land-managing agencies whose lands are crossed by the Project would provide concurrence to the BLM for issuance of these authorizations.

The proposed project consists of a total of 887 miles of pipeline. Approximately 170 miles of underground pipeline would be constructed and operated on BLM-administered land that includes approximately 31 miles administered by the Carlsbad Field Office, 16 miles administered by the Roswell Field Office, 101 miles administered by the Las Cruces District Office in New Mexico, 9 miles administered by the Safford Field Office, 4 miles administered by the Tucson Field Office, and 9 miles administered by the Lower Sonoran Field Office in Arizona. The proposed action would result in the construction and operation of underground pipeline crossing approximately 16 miles of Department of War land in Texas (Fort Bliss), 0.3 mile of Bureau of Reclamation (USBR) land in Arizona (Central Arizona Project Canal), and 0.25 mile of U.S. Fish and Wildlife Service (USFWS) land in Arizona (Gila River Waterfowl Management Area). It would also cross the Rio Grande, under the jurisdiction of the International Boundary and Water Commission. In addition, the proposed action would result in the construction and operation of underground pipeline crossing approximately 228 miles of state and county lands and 472 miles of private lands. In addition to the new pipelines, the proposed action would involve the construction of other ancillary facilities required to be authorized by the appropriate federal agency with jurisdiction for non-pipeline project elements such as electric powerlines.

The long-term corridor for the pipeline would typically be 30 feet wide with an additional 60-foot-wide temporary construction corridor for a combined width of 90 feet, resulting in impacts to approximately 2,033 acres of Federal lands, 2,496 acres of state and county lands, and 5,149 acres of private/unknown lands where the surface owner has not been determined, for a total of 9,768 acres. Temporary and long-term workspaces for facilities outside of the pipeline corridor would affect approximately 1,189 acres on Federal lands, 1,364 acres on state and county lands, and 2,971 acres on private/unknown lands, for a total of 5,523 acres. However, the specific locations and dimensions of the pipeline corridor and additional workspaces would be further established based on site-specific construction requirements, resource avoidance measures, or other location-specific considerations.

Under the No Action Alternative, the BLM would deny the ROW application and the Project would not be constructed on Federal lands. Under this alternative, the Project would not be constructed, and existing land uses on the Project site would continue.

The BLM welcomes comments on all preliminary alternatives as well as suggestions for additional alternatives. The BLM also welcomes comments providing relevant information, studies, or analyses with respect to the proposed action.

Summary of Expected Impacts

The EIS will analyze environmental effects sufficient to support the BLM's ROW and TUP decisions and the concurrences required from other Federal land-managing agencies. The BLM's decision will be the primary Federal authorization for the pipeline across all Federal lands.

The EIS will evaluate potential environmental effects of the proposed action and alternatives, and the reasonably foreseeable effects on resources and issues such as caves and karst; playas; native plants; national historic or scenic trails; and sensitive, rare, threatened and endangered species, such as the lesser prairie-chicken, Sonoran Desert tortoise, southwestern willow flycatcher, yellow-billed cuckoo, dunes sagebrush lizard, and cactus ferruginous pygmy-owl. Additionally, the EIS will evaluate potential environmental effects on air quality, noise, geology, agriculture, water resources (including aquatic resources, water quality, groundwater, water supplies and wells, and floodplains), biological resources (including vegetation; noxious weeds and invasive plants; raptors, eagles, and migratory birds), cultural resources, paleontological resources, visual resources, special land use designations, recreation, transportation, public health and safety, and socioeconomics.

Permits and Authorizations Anticipated at This Time

- *ROW grant and TUP:* BLM;
- *Section 404 of Clean Water Act:* U.S. Army Corps of Engineers;
- *Endangered Species Act (ESA):* USFWS;
- *Section 401 permit:* Texas Commission of Environmental Quality (TCEQ), New Mexico Environment Department (NMED), and Arizona Department of Environmental Quality (ADEQ);
- *Outgrant (for crossing waters in the Northern International Boundary zone):* International Boundary and Water Commission;
- *Air quality permits:* TCEQ, NMED, and ADEQ;
- *General national pollutant discharge elimination system permit:* TCEQ, NMED, and ADEQ;
- *U.S. and State Highway utility encroachment permit:* Texas Department of Transportation (TxDOT), New Mexico Department of Transportation (NMDOT), and Arizona Department of Transportation (ADOT);
- *Interstate permitting:* TxDOT, NMDOT, ADOT, and Federal Highway Administration; and,
- All other state and county required permits (*e.g.,* road use, load, zoning, conditional use, crossing/encroachment, noxious weed management).

Further details of these permitting requirements may be found in the Plan of Development for the Project, will be available on the ePlanning Project page (see **ADDRESSES**).

Schedule for the Decision-Making Process

The BLM may provide additional opportunities for public participation consistent with the NEPA process. The Final EIS is anticipated to be released in February 2028, with a Record of Decision in May 2028.

Public Scoping Process

This notice of intent initiates the scoping period. The BLM will hold up to three virtual scoping meetings on Zoom. The specific dates of these scoping meetings will be announced in advance through postcards, letters to interested parties, and the ePlanning Project page (see **ADDRESSES**).

Responsible Official

The BLM Arizona State Director is the deciding official for this project. The other affected Federal agencies would issue separate decisions for lands under their jurisdiction based on the analysis contained in the EIS.

Nature of Decision To Be Made

The BLM will use the analysis in the EIS to inform its decision about whether to grant, grant with conditions, or deny the application for a ROW on Federal lands. If the BLM issues a ROW, the BLM decision maker may include terms, conditions, and stipulations determined to be in the public interest, which may include modifying the proposed use or changing the location or route of the proposed facilities. The BLM's resource management goals, objectives, opportunities, and/or conflicts will be

considered in the decision process for the proposed ROW application.

The USBR, USFWS, and the Department of War may use the analysis in the EIS to inform federal decision-making, as appropriate.

Additional Information

The BLM will utilize and coordinate the NEPA process to help support compliance with applicable procedural requirements under the ESA (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts on such resources.

In July 2026, the BLM invited 31 Indian tribal nations to participate in government-to-government consultation in accordance with Executive Order 13175, BLM Manual Section 1780, and other Departmental policies. The BLM will provide additional opportunities for government-to-government consultation during the NEPA process. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, state, and local agencies, along with Indian tribal nations, and other stakeholders that may be interested in or affected by the proposed Project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that BLM withhold your personal identifying information from public review, BLM cannot guarantee that it will be able to do so.

(Authority: 42 U.S.C. 4336a(c), 30 U.S.C. 185, 43 CFR part 2800)

Raymond Suazo,

BLM Arizona State Director.

[FR Doc. 2026–23368 Filed 11–16–26; 8:45 am]

BILLING CODE 4331–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A2407–014–004–065516, #O2509–014–004–125222]

Draft Environmental Assessment, Public Hearing, and Request for Comment on the Maximum Economic Recovery and Fair Market Value for the Falkirk Mining Company Proposed Federal Coal Lease-By-Application and Mining Plan for NDMT106782389, McLean County, ND

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability and public hearing.

SUMMARY: The Bureau of Land Management (BLM) and the Office of Surface Mining Reclamation and Enforcement (OSM) announce that a draft environmental assessment (EA) is available for public review for the Falkirk Mining Company's Federal coal lease-by-application (LBA) for Falkirk Mine, serial number NDMT 106782389, and mining plan for the proposed NDMT 106782389. The BLM also announces that a public hearing will be held to receive comments on the Fair Market Value (FMV), Maximum Economic Recovery (MER), and on factors that may affect the FMV and MER determinations of the coal resources contained in the proposed LBA lease tracts. The BLM and OSM take these actions in compliance with the National Environmental Policy Act of 1969, as amended; the Mineral Leasing Act, as amended; and the Federal Land Policy and Management Act of 1976, as amended.

DATES: The draft EA will be available on November 17, 2026. To receive due consideration, written comments on the FMV and MER must be received by the BLM Montana/Dakotas State Office no later than December 17, 2026.

A public hearing will be held on December 16, 2026 from 3 p.m. until 5 p.m.

ADDRESSES: The public hearing will be held at the Underwood City Hall, 88 Lincoln Ave., Underwood, ND 58576. Any updates to the public hearing will be provided through the ePlanning project website and a press release.

The draft EA and documents pertinent to this proposal are available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/Project-Home/?id=e52d7cb7-1509-f111-8406-001dd8029ed0*

Please submit your comments to this website.

FOR FURTHER INFORMATION CONTACT: Tessa Wallace, BLM Montana/Dakotas State Office, Solid Minerals, 5001 Southgate Dr., Billings, MT 59101; telephone: 406–896–5086; email: *tlwallace@blm.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Wallace. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose and need for the BLM's Federal action are to respond to Falkirk Mining Company's emergency LBA to lease Federal coal resources at the Falkirk Mine in North Dakota. The Federal tracts contain approximately 1.89 million tons of minable coal over approximately 208.72 acres, which could be mined through 2034. The purpose of OSM's Federal action is to conduct an analysis of the potential environmental effects of the proposed mining plan for the proposed NDMT 106782389 lease. OSM will use this analysis to inform its recommendation to the Assistant Secretary for Land and Minerals Management, who may approve, approve with conditions, or disapprove the proposed Federal mining plan. Two alternatives are analyzed in draft EA.

Comments on the FMV and MER received from the public will be considered and incorporated as appropriate into the final EA and written report.

The tracts for the proposed NDMT 106782389 lease underlie private surface and are described as follows:

Fifth Principal Meridian, North Dakota

T. 145 N., R. 83 W.,
sec. 32, SW¼.
T. 144 N., R. 84 W.,
sec. 2, lot 1.

The areas described aggregate 208.72 acres, according to the surveys of the said land, on file with the BLM.

Through this notice, the BLM invites the public to provide comments regarding factors that may affect the determinations of the FMV and MER.

Any proprietary information or data that you submit to the BLM must be marked as confidential and mailed directly to the BLM Montana-Dakotas State Office, Attention: Tessa Wallace (see **FOR FURTHER INFORMATION CONTACT**) to assure the data will be treated in accordance with the applicable laws

and regulations governing the confidentiality of such information or data. A copy of the comments submitted by the public on the FMV and MER for the tracts, except those portions identified as proprietary and that meet one of the exemptions in the Freedom of Information Act, will be available for public inspection at the BLM Montana/Dakotas State Office (see **FOR FURTHER INFORMATION CONTACT**), during regular business hours (8 a.m. to 4:30 p.m. MT), Monday through Friday, except Federal holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, the BLM cannot guarantee that we will be able to do so.

Consultation Under Section 106 of the National Historic Preservation Act

The BLM and OSM will coordinate within the NEPA process to ensure compliance with applicable procedural requirements under section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The BLM and OSM invite public participation in the section 106 process pursuant to 36 CFR 800.2(d) and are providing an opportunity for the public to comment on the identification of historic properties, the assessment of effects, and potential measures to avoid, minimize, or resolve adverse effects. To protect cultural resources, BLM and OSM will not disclose precise site locations or other sensitive information and will manage confidential materials consistent with NHPA section 304 and applicable BLM and OSM policy. Individuals or organizations with a demonstrable interest in historic preservation issues may request consulting party status under 36 CFR 800.3(f).

(Authority: 43 CFR 3422.1, 43 CFR 3425.3 and 3425.4)

Joshua F. Alexander,

Deputy State Director, BLM Montana/Dakotas.

[FR Doc. 2026–23399 Filed 11–16–26; 8:45 am]

BILLING CODE 4331–20–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–44188; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before October 31, 2026, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by December 2, 2026.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 2013, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 2013, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before October 31, 2026. Pursuant to 36 CFR 60.13, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers.

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

Solano County

Cordelia Substation, (Pacific Gas and Electric Company Historic-Era Electrical Infrastructure MPS), 2412 Cordelia Road, Fairfield, MP100013689

DELAWARE

New Castle County

Eden Hall, 206 West 10th Street, Wilmington, SG100013686

KANSAS

Marion County

Marion Downtown Historic District, Roughly bounded on the west and south by Walnut Street, which falls in a historic rail right-of-way. To the north and northeast are single-family residences. To the east is Mud Creek, Marion, SG100013687

MAINE

Cumberland County

HARVEY GAMAGE (Schooner), 100 W. Commercial Street, Portland, SG100013683

Franklin County

North Franklin Agricultural Building, 134 Park Street, Phillips, SG100013684

Penobscot County

Hathorn Manufacturing Company, 75 South Main Street, Brewer, SG100013685

PENNSYLVANIA

Allegheny County

Chatham University Historic District, Roughly bounded by Fifth Avenue, Woodland Road, W. Woodland Road, Wilkins Avenue and Murray Hill Avenue, Pittsburgh, SG100013678

A request for removal has been made for the following resource(s):

KANSAS

Rush County

St. Joseph's Catholic Church, Rectory, and School, (Post Rock Limestone Properties in Kansas, 1870–1948 MPS), 202 Main Street, Liebenthal, OT100013144

Additional documentation has been received for the following resource(s):

NEW JERSEY

Middlesex County

Princeton Nurseries Historic District (Additional Documentation), Generally along Mapleton Rd. and Ridge Rd., Plainsboro and South Brunswick, AD08000899, Comment period: 0 days

PENNSYLVANIA

Lehigh County

Dent Hardware Company Factory Complex (Additional Documentation), 1101 Third St., Whitehall, AD86001772

PUERTO RICO

San Juan Municipality

Distrito Historico del Viejo San Juan-Old San Juan Historic District (Boundary Increase)

(Additional Documentation), Roughly bounded by Avenidas Munoz Rivera & Ponce de Leon, Paseo de Covadonga and Calles J. A. Corretejer, Recinto Sur, San Juan, AD12000465

Authority: 36 CFR 60.13.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2026–23373 Filed 11–16–26; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–806 and 731–TA–1805–1807 (Preliminary)]

Corrugated Die-Cut Cardboard Boxes From China, Malaysia, and Turkey; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of corrugated die-cut cardboard boxes from China, Malaysia, and Turkey, provided for in subheading 4819.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and alleged to be subsidized by the Government of Turkey.[2] [3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

Background

On September 9, 2026, the American Pizza Boxes Manufacturers Coalition [4] and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of corrugated die-cut cardboard boxes from Turkey and LTFV imports of corrugated die-cut cardboard boxes from China, Malaysia, and Turkey. Accordingly, effective September 9, 2026, the Commission instituted countervailing and antidumping duty investigation Nos. 701–TA–806 and 731–TA–1805–1807 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of September 14, 2026 (91 FR 58174), as revised on October 8, 2026 (91 FR 64401). The Commission conducted its conference on September 30, 2026. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 13, 2026. The views of the Commission are contained in USITC Publication 5810 (November 2026), entitled *Corrugated Die-Cut Cardboard Boxes from China, Malaysia, and Turkey: Investigation Nos. 701–TA–806 and 731–TA–1805–1807 (Preliminary).*

By order of the Commission.

Issued: November 13, 2026.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2026–23401 Filed 11–16–26; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 91 FR 67276 and 67283 (October 26, 2026).

[3] Commissioner Samuel T. Negatu not participating.

[4] The coalition is composed of U.S. producers Smurfit Westrock plc, Atlanta, Georgia, and Pratt Industries, Inc., Atlanta, Georgia.

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Examination and/or Treatment

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Office of Workers' Compensation Programs (OWCP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before December 17, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form LS–1 is used by employers to authorize medical treatment for injured workers and by claimants to report findings of physical examinations and treatment recommended. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 9, 2026 (91 FR 34839).

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–OWCP.

Title of Collection: Request for Examination and/or Treatment.

OMB Control Number: 1240–0029.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 60,000.

Total Estimated Number of Responses: 60,000.

Total Estimated Annual Time Burden: 32,700 hours.

Total Estimated Annual Other Costs Burden: $2,250,000.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior PRA Analyst.

[FR Doc. 2026–23303 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

[OMB Control No. 1290–0044]

Registration for Public API; Correction

AGENCY: Office of the Assistant Secretary for Policy, Department of Labor

ACTION: Correction notice.

SUMMARY: This is a correction of a notice published September 1, 2026 (91 FR 56221) which in error stated that comments must be received on or before 9/30/2026 and the correction that was published on September 29, 2026 (91 FR 61451) that stated that comments must be received on or before 10/30/2026. The Agency will consider all written comments that are received on or before October 31, 2026.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Brandon Brown,

Certifying Officer.

[FR Doc. 2026–23316 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–HX–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Crimson Oak Grove Resources, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–1024, electronically at the Federal eRulemaking Portal, *https://www.regulations.gov.* Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice); *Petitionsformodification@dol.gov* (email); or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, 30 CFR 44.10 and 30 CFR 44.11 establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–024–C.

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, AL 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.1002(a), Installation of electric equipment and conductors; permissibility.

Modification Request: The petitioner requests modification of the application of 30 CFR 75.1002(a) to permit the use of non-permissible electronic testing or diagnostic equipment located within 150 feet of pillar workings or longwall faces (subject area).

The petitioner states that:

(a) The equipment allowed under this Petition (low voltage or battery-powered non-permissible electronic testing and diagnostic equipment) shall be limited to: AMS 2140 Machinery Health

Analyzer; laptop computers; oscilloscopes; insulation testers (meggers); signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers for testing or troubleshooting mining equipment. Fault detectors are not allowed in the subject area.

(b) Where commercially available, the operator must use equipment that meets IEC 60079–11 or the ANSI/UL 60079–11 for two-fault IS (marked ia), one-fault IS (marked ib), or no-fault IS (marked ic) in that order of preference. The equipment must have an IP 66 rating or higher when available. When an IP 66 rating is not available, the highest IP rating available must be used. When equipment contains lithium batteries, the equipment must meet lithium battery safety standard UL1642 or IEC 62133. All other equipment in the subject area must be permissible.

(c) A record for this equipment shall be maintained on mine property either in a secure book or electronically in a secure computer system not susceptible to alteration. The record will contain the date of manufacture and/or purchase of each particular piece of electronic testing and diagnostic equipment and include proof of compliance with any lithium battery safety standard. The original equipment manufacturers' user and maintenance manuals shall be followed and maintained on mine property. The record and manuals shall be made available to Authorized Representatives of the Secretary and miners at the mine.

(d) This equipment shall be used only:

(1) until MSHA-approved permissible electronic testing and diagnostic equipment is available;

(2) if mechanical equipment is not commercially available that can perform the work; or

(3) when the mining equipment being tested cannot be towed or moved under its own power to intake air, out of the subject area.

The petitioner proposes the following alternative method:

(a) The equipment to be used in the subject area shall be examined by a qualified person, as set forth in 30 CFR 75.153, prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. At a minimum, the qualified person conducting the exam shall:

(1) Check the instrument for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure the lithium cells and/or pack are not damaged or swelled in size.

(b) The equipment shall be examined at least weekly by a qualified person as required by 30 CFR 75.512–2 and the exam results shall be recorded weekly in the equipment's record. Examination entries in the record may be expunged after one year.

(c) The equipment shall be serviced according to the manufacturers' recommendations. Dates of service shall be recorded and include a description of the work performed.

(d) The equipment shall not be put into service until MSHA has initially inspected the equipment and determined it is in compliance with all the terms and conditions of this Petition. The equipment shall be tested for potential adverse effects of Radio Frequency Interference (RFI) and Electromagnetic Interference (EMI) for any disturbances with performance of remote control transmitters, atmospheric monitoring systems, fire sensors, machine-mounted methane monitors, hand-held detectors, miner's cap lamps, tracking and communication systems, proximity detection systems, etc. A record of the test performed similar to those conducted by NIOSH shall be maintained on mine property for the service life of the equipment and made available to MSHA upon request. MSHA should be notified at least 5 working days before such testing will be performed.

(e) The equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the equipment is being used, the equipment shall be de-energized immediately and withdrawn out of the subject area to fresh air. Batteries shall not be removed to de-energize equipment because removing the battery exposes battery contacts to accidental short-circuiting. All requirements of 30 CFR 75.323 must be met before returning the equipment to the subject area.

(f) For additional safety, prior to taking the equipment to the subject area or energizing the equipment in the subject area, a certified person (as set forth by 30 CFR 75.100) shall conduct a visual examination of the location where the equipment will be used for:

(1) Evidence that the subject area appears to be sufficiently rock-dusted; and

(2) The presence of accumulated combustible material including float coal dust in suspension. If the rock-dusting appears insufficient, or the presence of float coal dust is observed in suspension, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of combustible materials including float coal dust in suspension have been cleaned-up or removed.

(g) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as set forth by 30 CFR 75.320. Measurement devices shall be calibrated or bump tested before each shift to verify proper operation. In addition, all methane detectors must provide visual and audible warnings when methane is detected at and above 1.0 percent.

(h) Prior to energizing the equipment in the subject area, methane tests must be made at least 12 inches from the roof, face, ribs and floor, as set forth in 30 CFR 75.323(a).

(i) The subject area must be examined, as set forth by 30 CFR 75.360, prior to using the equipment. If the area has not been examined, a supplemental examination, as set forth by 30 CFR 75.361, must be performed before any non-certified person enters the area.

(j) Before using the equipment in the subject area, the air quantity on the section, for that shift, is at least the minimum quantity required by the mine's approved ventilation plan. A qualified person shall continuously monitor for methane immediately before and during the use of the equipment in the subject area. The qualified person shall have a hand-held methane detector and be strategically positioned in locations with the greatest potential to detect hazardous gas in the area where the equipment is being used. A qualified person shall also remain with the equipment while the equipment is used in the subject area.

(k) Batteries contained in the equipment must be ''changed out'' in intake air, out of the subject area. No work shall be performed on any testing and diagnostic equipment listed in this Petition while such equipment is in the subject area. Replacement batteries for the equipment shall not be brought in the subject area. On each entry into the mine, all batteries for the equipment must be fully charged and protected (*i.e.,* carried only in the compartment provided for a spare battery in the

equipment or the equipment carrying case). Batteries for the equipment listed within this Petition shall not be charged underground. The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) The battery pack must not be disassembled or modified by anyone other than permitted by the manufacturer of the equipment;

(2) The battery pack must only be charged using the original equipment manufacturer's recommended charger on the surface of the mine;

(3) The battery must not be exposed to water or allowed to get wet. This does not preclude incidental exposure of sealed battery packs;

(4) The battery must not be placed in direct sunlight or used or stored near a source of heat; and

(5) The battery must not be used at the end of its life cycle (*e.g.* when there is a performance decrease of greater than 20% in battery operated equipment). The battery must be disposed of properly.

(l) Personnel engaged in the use of the equipment shall be properly qualified, as specified in 30 CFR 75.153, and trained in accordance with the manufacturers' recommended safe use procedures and trained to recognize hazards associated with the use of the equipment where methane could be present.

(m) All qualified persons and miners affected shall receive specific training on the terms and conditions of this Petition before using the equipment in subject areas. A record of any training on this Petition shall be maintained and provided upon request by an Authorized Representative of the Secretary.

(n) The equipment used shall be no older than 10 years from date of manufacture or removed at the end of its service life as recommended by the manufacturer, whichever is shorter.

(o) The operator is responsible for ensuring that all persons, including contractors, are using the equipment in accordance with this Proposed Decision and Order. The conditions of use in this Proposed Decision and Order shall apply to all non-permissible electronic equipment used in the subject area, regardless of whether the equipment is used by an employee or by an independent contractor.

(p) The operator shall post this Proposed Decision and Order in unobstructed locations on mine bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

(q) The subject equipment shall not be used when coal production is occurring on the section. All mining on the section shall cease prior to use of the equipment in the subject area. A positive means of preventing mobile equipment from tramming in the same entry or crosscut of the affected area shall be provided and addressed in the mine ventilation plan.

(r) Unless specifically mentioned herein, nothing in this Proposed Decision and Order changes or supersedes the requirements otherwise imposed by the Mine Act, other mandatory standards or regulations, or approved ventilation or other plans.

The miners at Oak Grove Mine are represented by the United Mine Workers of America (UMWA). The petition for modification was provided to UMWA representative, Blake Layton, on August 31, 2026.

In support of the petition, the petitioner submitted a product data sheet for the AMS 2140 Machinery Health Analyzer.

The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 75.1002(a).

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23310 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Crimson Oak Grove Resources, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–1026, electronically at the Federal eRulemaking Portal, *https://www.regulations.gov.* Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice); *Petitionsformodification@dol.gov* (email); or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, 30 CFR 44.10 and 30 CFR 44.11 establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–026–C.

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, AL 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.507–1(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

Modification Request: The petitioner requests modification of the application of 30 CFR 75.507–1(a) to permit the use of non-permissible electronic testing or diagnostic equipment located in return air outby the last open crosscut (subject area).

The petitioner states that:

(a) The equipment allowed under the Proposed Decision and Order (PDO)

granted by MSHA (low voltage or battery-powered non-permissible electronic testing and diagnostic equipment) shall be limited to: AMS 2140 Machinery Health Analyzer; laptop computers; oscilloscopes; insulation testers (meggers); signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers for testing or troubleshooting mining equipment. Fault detectors are not allowed in the subject area.

(b) Where commercially available, the operator must use equipment that meets IEC 60079–11 or the ANSI/UL 60079–11 for two-fault IS (marked ia), one-fault IS (marked ib), or no-fault IS (marked ic) in that order of preference. The equipment must have an IP 66 rating or higher when available. When an IP 66 rating is not available, the highest IP rating available must be used. When equipment contains lithium batteries, the equipment must meet lithium battery safety standard UL1642 or IEC 62133. All other equipment in the subject area must be permissible.

(c) A record for this equipment shall be maintained on mine property either in a secure book or electronically in a secure computer system not susceptible to alteration. The record will contain the date of manufacture and/or purchase of each particular piece of electronic testing and diagnostic equipment and include proof of compliance with any lithium battery safety standard. The original equipment manufacturers' user and maintenance manuals shall be followed and maintained on mine property. The record and manuals shall be made available to Authorized Representatives of the Secretary and miners at the mine.

(d) This equipment shall be used only:

(1) until MSHA-approved permissible electronic testing and diagnostic equipment is available;

(2) if mechanical equipment is not commercially available that can perform the work; or

(3) when the mining equipment being tested cannot be towed or moved under its own power to intake air, out of the subject area.

The petitioner proposes the following alternative method:

(a) The equipment to be used in the subject area shall be examined by a qualified person, as set forth in 30 CFR 75.153, prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. At a minimum, the qualified person conducting the exam shall:

(1) Check the instrument for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure the lithium cells and/or pack are not damaged or swelled in size.

(b) The equipment shall be examined at least weekly by a qualified person as required by 30 CFR 75.512–2 and the exam results shall be recorded weekly in the equipment's record. Examination entries in the record may be expunged after one year.

(c) The equipment shall be serviced according to the manufacturers' recommendations. Dates of service shall be recorded and include a description of the work performed.

(d) The equipment shall not be put into service until MSHA has initially inspected the equipment and determined it is in compliance with all the terms and conditions of the PDO granted by MSHA. The equipment shall be tested for potential adverse effects of Radio Frequency Interference (RFI) and Electromagnetic Interference (EMI) for any disturbances with performance of remote control transmitters, atmospheric monitoring systems, fire sensors, machine-mounted methane monitors, hand-held detectors, miner's cap lamps, tracking and communication systems, proximity detection systems, etc. A record of the test performed, similar to those conducted by NIOSH, shall be maintained on mine property for the service life of the equipment and made available to MSHA upon request. MSHA should be notified at least 5 working days before such testing will be performed.

(e) The equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the equipment is being used, the equipment shall be de-energized immediately and withdrawn out of the subject area to fresh air. Batteries shall not be removed to de-energize equipment because removing the battery exposes battery contacts to accidental short-circuiting. All requirements of 30 CFR 75.323 must be met before returning the equipment to the subject area.

(f) For additional safety, prior to taking the equipment to the subject area or energizing the equipment in the subject area, a certified person (as set forth by 30 CFR 75.100) shall conduct a visual examination of the location where the equipment will be used for:

(1) Evidence that the subject area appears to be sufficiently rock-dusted; and

(2) The presence of accumulated combustible material including float coal dust in suspension.

If the rock-dusting appears insufficient, or the presence of float coal dust is observed in suspension, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of combustible materials including float coal dust in suspension have been cleaned-up or removed.

(g) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as set forth by 30 CFR 75.320. Measurement devices shall be calibrated or bump tested before each shift to verify proper operation. In addition, all methane detectors must provide visual and audible warnings when methane is detected at and above 1.0 percent.

(h) Prior to energizing the equipment in the subject area, methane tests must be made at least 12 inches from the roof, face, ribs and floor, as set forth in 30 CFR 75.323(a).

(i) The subject area must be examined, as set forth by 30 CFR 75.360, prior to using the equipment. If the area has not been examined, a supplemental examination, as set forth by 30 CFR 75.361, must be performed before any non-certified person enters the area.

(j) Before using the equipment in the subject area, the air quantity on the section, for that shift, is at least the minimum quantity required by the mine's approved ventilation plan. A qualified person shall continuously monitor for methane immediately before and during the use of the equipment in the subject area. The qualified person shall have a hand-held methane detector and be strategically positioned in locations with the greatest potential to detect hazardous gas in the area where the equipment is being used. A qualified person shall also remain with the equipment while the equipment is used in the subject area.

(k) Batteries contained in the equipment must be ''changed out'' in intake air, out of the subject area. No work shall be performed on any testing and diagnostic equipment listed in the PDO granted by MSHA while such equipment is in the subject area.

Replacement batteries for the equipment shall not be brought in the subject area. On each entry into the mine, all batteries for the equipment must be fully charged and protected (*i.e.,* carried only in the compartment provided for a spare battery in the equipment or the equipment carrying case). Batteries for the equipment listed within the PDO granted by MSHA shall not be charged underground. The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) The battery pack must not be disassembled or modified by anyone other than permitted by the manufacturer of the equipment;

(2) The battery pack must only be charged using the original equipment manufacturer's recommended charger on the surface of the mine;

(3) The battery must not be exposed to water or allowed to get wet. This does not preclude incidental exposure of sealed battery packs;

(4) The battery must not be placed in direct sunlight or used or stored near a source of heat; and

(5) The battery must not be used at the end of its life cycle (*e.g.,* when there is a performance decrease of greater than 20% in battery operated equipment). The battery must be disposed of properly.

(l) Personnel engaged in the use of the equipment shall be properly qualified, as specified in 30 CFR 75.153, and trained in accordance with the manufacturers' recommended safe use procedures and trained to recognize hazards associated with the use of the equipment where methane could be present.

(m) All qualified persons and miners affected shall receive specific training on the terms and conditions of the PDO granted by MSHA before using the equipment in subject areas. A record of any training on the PDO granted by MSHA shall be maintained and provided upon request by an Authorized Representative of the Secretary.

(n) The equipment used shall be no older than 10 years from date of manufacture or removed at the end of its service life as recommended by the manufacturer, whichever is shorter.

(o) The operator is responsible for ensuring that all persons, including contractors, are using the equipment in accordance with the PDO granted by MSHA. The conditions of use in this PDO granted by MSHA shall apply to all non-permissible electronic equipment used in the subject area, regardless of whether the equipment is used by an employee or by an independent contractor.

(p) The operator shall post the PDO granted by MSHA in unobstructed locations on mine bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

(q) The subject equipment shall not be used when coal production is occurring on the section. All mining on the section shall cease prior to use of the equipment in the subject area. A positive means of preventing mobile equipment from tramming in the same entry or crosscut of the affected area shall be provided and addressed in the mine ventilation plan.

(r) Unless specifically mentioned herein, nothing in the PDO granted by MSHA changes or supersedes the requirements otherwise imposed by the Mine Act, other mandatory standards or regulations, or approved ventilation or other plans.

The miners at Oak Grove Mine are represented by the United Mine Workers of America (UMWA). The petition for modification was provided to UMWA representative, Blake Layton, on August 31, 2026.

In support of the petition, the petitioner submitted a product data sheet for the AMS 2140 Machinery Health Analyzer.

The petitioner asserts that the alternative method will at all times guarantee no less than the same measure of protection afforded the miners under 30 CFR 75.507–1(a).

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23308 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Ramaco Resources Land Holdings, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–0991, electronically at the *Federal eRulemaking Portal, https://www.regulations.gov.* Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–022–C.

Petitioner: Ramaco Resources Land Holdings, LLC, 499 Fork Ridge Road, Raven, Virginia, 24639.

Mine: Tiller No. 1, MSHA ID No. 44–06804, located in Tazewell County, Virginia.

Regulation Affected: 30 CFR 75.301, Air Course.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.301 to permit the

return air course to enter a ventilation tube at the bottom of the existing slope and be coursed to the surface.

The petitioner states that:

(a) The petitioner seeks modification of 30 CFR 75. 301 as it pertains to the definition of an air course.

(b) That standard 30 CFR 75.301 provides in relevant part:

Air Course. An entry or a set of entries separated from other entries by stoppings, overcasts, other ventilation control devices, or by solid blocks of coal or rock so that any mixing of air currents between each is limited to leakage.

(c) Tiller No. 1 Mine is a Slope/Shaft Underground Coal Mine with existing developments in the Tiller Coal Seam.

(d) The underground mine is currently idle with no underground ventilation. The petitioner intends to restart the mine in the future to conduct additional mining in the Tiller Seam as well as to use the existing developed works to access the underlying Castle Seam.

(e) In July 2026, the petitioner conducted a re-entry and exploration of the mine to determine the feasibility and actions needed to rehabilitate the mine to resume operation. During the exploration it was determined the set of entries previously used to direct return air to the surface (Mud Lick Mains) are no longer accessible due to mine roof deterioration and collapses. The loss of these entries has resulted in the Tiller No 1 Mine having only two usable openings to the surface; the Belt Neutral Slope and the Intake Shaft (Blowing Mine Fan).

(f) Currently, to comply with 30 CFR 75.301, the petitioner must have at least three usable openings to the surface to facilitate

(1) an Intake Air Course/Primary Escapeway,

(2) Neutral Air Course Belt/Alternate Escapeway, and

(3) Return Air course.

(g) The petitioner seeks an alternative method to the mandatory safety standard, asserting it will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) An isolated return air course using a separate entry or set of entries, separated from other air courses using traditionally accepted ventilation controls, will be maintained in the underground areas of the mine from the bottom of the Slope to all areas within the mine where a return air course is needed.

(b) At the bottom of the existing slope the return air course will enter a ventilation tube and be coursed to the surface. The ventilation tube will be continuous from the bottom of the slope to the surface where it will be connected to an exhausting mine fan installation.

(c) The ventilation tube will have a minimum outside diameter of 42″ and will be constructed of MSHA Approved materials.

(d) The ventilation tube will be attached to the mine roof using non-combustible chains, cables or straps as deemed appropriate, or the tubing will be placed on the mine floor and secured and protected from damage.

(e) The entry where the tubing will be placed will be the belt/neutral slope entry (Alternate Escapeway). This entry will be ventilated from the main blowing mine fan with air traveling outby to the surface. This entry will be examined each shift as required by 30 CFR 75.360. Examinations will include ensuring the tubing is properly maintained.

(f) The slope where the Tubing Return Air Course will share the same entry as the Belt Neutral Air Course is 1,030′ in length.

(g) The tubing will be connected to a mine fan installation on the surface installed in compliance with all applicable requirements of 30 CFR 75.310–312. The fan to be used will be a 929 RBB Centrifugal exhauster capable of operating at 900 RPM producing up to 30 IN/WG of vacuum.

(h) The current Main Mine Fan (Blowing) is a Joy Axivene, 9 foot Direct Drive Centrifugal Fan.

(i) The current Main Mine Fan (Blowing) and the Return Mine Fan (Exhausting) will operate at all times. The Main Mine Fan will be adjusted to introduce enough air into the mine to supply the working areas of the mine ventilated by the Exhaust Mine Fan (Ventilation Tube Split) as well as to ventilate areas to be coursed to the Belt/Neutral Air Course. This will ensure constant air flow in all areas without any unplanned reversals.

(j) The air entering the mine from the Main Mine Fan (Blowing) will always be 40% or more greater than the air exiting the mine through the exhausting ventilation tube. The anticipated air flow through the Exhausting Mine Fan and tubing will be 60,000 CFM. The Main Mine Fan (Blowing) will be adjusted to deliver 84,000 CFM or more into the mine.

(k) Examinations of the return air courses, per compliance with 30 CFR 75.364, will be accomplished by a certified examiner traveling at least one entry of the return air course in its entirety. These examinations will end when the return air enters the exhaust ventilation tubing near the bottom of the slope.

(l) The examination of the portion of the return air being course through the tubing will consist of examining the outside perimeter of the tube along the 1,030′ entirety. This examination will include all connectors and means used to secure the tubing into place. Ports will be provided for inserting a Pitot Tube for measuring the air flow inside the ventilation tubing. A minimum of three ports will be installed as follows:

(1) within 50′ of the beginning of the tube near the slope bottom,

(2) at the approximate mid-point (500′ from the bottom of the slope), and

(3) within 50′ of the fan installation on the surface. Obtaining these three readings will allow the examiner to quantify the air flow to determine the amount of leakage if any. Due to the pressure differential of the exhaust system, any leakage would travel from the neutral air course into the tubing and would therefore pose no hazard of return air short circuiting into the neutral. These examinations of the tube conducted weekly will be in addition to the examinations which will be conducted each shift in accordance with 30 CFR 75.360 as detailed in item (f).

(m) The petitioner intends to develop new air shafts once the mine reaches the Castle Seam, at which time this alternative Return Air Course will no longer be needed. The petitioner anticipates completion of the new air shafts within 9 to 12 months after the slope construction begins.

The miners at Ramaco Resources Land Holdings, LLC are not represented by a labor organization and this petition is posted on the mine bulletin board as September 8, 2026. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard. In support of the proposed alternative method, the petitioner has also submitted a mine map depicting the location of the mine fans, ventilation tubing, ventilation controls and the air courses.

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23307 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Crimson Oak Grove Resources, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–1025, electronically at the Federal eRulemaking Portal, *https://www.regulations.gov.* Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances at 202–693–9440 (voice); *Petitionsformodification@dol.gov* (email); or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, 30 CFR 44.10 and 30 CFR 44.11 establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–025–C.

Petitioner: Crimson Oak Grove Resources, LLC, 8800 Oak Grove Mine Road, Adger, AL 35006.

Mine: Oak Grove Mine, MSHA ID No. 01–00851, located in Jefferson County, AL.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests modification of the application of 30 CFR 75.500(d) to permit the use of non-permissible electronic testing or diagnostic equipment located inby the last crosscut (subject area).

The petitioner states that:

(a) The equipment allowed under the Proposed Decision and Order (PDO) granted by MSHA (low voltage or battery-powered non-permissible electronic testing and diagnostic equipment) shall be limited to: AMS 2140 Machinery Health Analyzer; laptop computers; oscilloscopes; insulation testers (meggers); signal analyzer devices; ultrasonic measuring devices; electronic component testers; and electronic tachometers for testing or troubleshooting mining equipment. Fault detectors are not allowed in the subject area.

(b) Where commercially available, the operator must use equipment that meets IEC 60079–11 or the ANSI/UL 60079–11 for two-fault IS (marked ia), one-fault IS (marked ib), or no-fault IS (marked ic) in that order of preference. The equipment must have an IP 66 rating or higher when available. When an IP 66 rating is not available, the highest IP rating available must be used. When equipment contains lithium batteries, the equipment must meet lithium battery safety standard UL1642 or IEC 62133. All other equipment in the subject area must be permissible.

(c) A record for this equipment shall be maintained on mine property either in a secure book or electronically in a secure computer system not susceptible to alteration. The record will contain the date of manufacture and/or purchase of each particular piece of electronic testing and diagnostic equipment and include proof of compliance with any lithium battery safety standard. The original equipment manufacturers' user and maintenance manuals shall be followed and maintained on mine property. The record and manuals shall be made available to Authorized Representatives of the Secretary and miners at the mine.

(d) This equipment shall be used only:

(1) until MSHA-approved permissible electronic testing and diagnostic equipment is available;

(2) if mechanical equipment is not commercially available that can perform the work; or

(3) when the mining equipment being tested cannot be towed or moved under its own power to intake air, out of the subject area.

The petitioner proposes the following alternative method:

(a) The equipment to be used in the subject area shall be examined by a qualified person, as set forth in 30 CFR 75.153, prior to taking the equipment underground to ensure the equipment is being maintained in a safe operating condition. At a minimum, the qualified person conducting the exam shall:

(1) Check the instrument for any physical damage and the integrity of the case;

(2) Remove the battery and inspect for corrosion;

(3) Inspect the contact points to ensure a secure connection to the battery;

(4) Reinsert the battery and power up and shut down to ensure proper connections;

(5) Check the battery compartment cover or battery attachment to ensure that it is securely fastened; and

(6) For equipment utilizing lithium type cells, ensure the lithium cells and/or pack are not damaged or swelled in size.

(b) The equipment shall be examined at least weekly by a qualified person as required by 30 CFR 75.512–2 and the exam results shall be recorded weekly in the equipment's record. Examination entries in the record may be expunged after one year.

(c) The equipment shall be serviced according to the manufacturers' recommendations. Dates of service shall be recorded and include a description of the work performed.

(d) The equipment shall not be put into service until MSHA has initially inspected the equipment and determined it is in compliance with all the terms and conditions of the PDO granted by MSHA. The equipment shall be tested for potential adverse effects of Radio Frequency Interference (RFI) and Electromagnetic Interference (EMI) for any disturbances with performance of remote control transmitters, atmospheric monitoring systems, fire sensors, machine-mounted methane monitors, hand-held detectors, miner's

cap lamps, tracking and communication systems, proximity detection systems, etc. A record of the test performed, similar to those conducted by NIOSH, shall be maintained on mine property for the service life of the equipment and made available to MSHA upon request. MSHA should be notified at least 5 working days before such testing will be performed.

(e) The equipment shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more of methane is detected while the equipment is being used, the equipment shall be de-energized immediately and withdrawn out of the subject area to fresh air. Batteries shall not be removed to de-energize equipment because removing the battery exposes battery contacts to accidental short-circuiting. All requirements of 30 CFR 75.323 must be met before returning the equipment to the subject area.

(f) For additional safety, prior to taking the equipment to the subject area or energizing the equipment in the subject area, a certified person (as set forth by 30 CFR 75.100) shall conduct a visual examination of the location where the equipment will be used for:

(1) Evidence that the subject area appears to be sufficiently rock-dusted; and

(2) The presence of accumulated combustible material including float coal dust in suspension.

If the rock-dusting appears insufficient, or the presence of float coal dust is observed in suspension, the equipment may not be energized until sufficient rock dust has been applied and/or the accumulations of combustible materials including float coal dust in suspension have been cleaned-up or removed.

(g) All hand-held methane detectors shall be MSHA-approved and maintained in permissible and proper operating condition as set forth by 30 CFR 75.320. Measurement devices shall be calibrated or bump tested before each shift to verify proper operation. In addition, all methane detectors must provide visual and audible warnings when methane is detected at and above 1.0 percent.

(h) Prior to energizing the equipment in the subject area, methane tests must be made at least 12 inches from the roof, face, ribs and floor, as set forth in 30 CFR 75.323(a).

(i) The subject area must be examined, as set forth by 30 CFR 75.360, prior to using the equipment. If the area has not been examined, a supplemental examination, as set forth by 30 CFR 75.361, must be performed before any non-certified person enters the area.

(j) Before using the equipment in the subject area, the air quantity on the section, for that shift, is at least the minimum quantity required by the mine's approved ventilation plan. A qualified person shall continuously monitor for methane immediately before and during the use of the equipment in the subject area. The qualified person shall have a hand-held methane detector and be strategically positioned in locations with the greatest potential to detect hazardous gas in the area where the equipment is being used. A qualified person shall also remain with the equipment while the equipment is used in the subject area.

(k) Batteries contained in the equipment must be ''changed out'' in intake air, out of the subject area. No work shall be performed on any testing and diagnostic equipment listed in the PDO granted by MSHA while such equipment is in the subject area. Replacement batteries for the equipment shall not be brought in the subject area. On each entry into the mine, all batteries for the equipment must be fully charged and protected (*i.e.,* carried only in the compartment provided for a spare battery in the equipment or the equipment carrying case). Batteries for the equipment listed within the PDO granted by MSHA shall not be charged underground. The following maintenance and use conditions shall apply to equipment containing lithium-type batteries:

(1) The battery pack must not be disassembled or modified by anyone other than permitted by the manufacturer of the equipment;

(2) The battery pack must only be charged using the original equipment manufacturer's recommended charger on the surface of the mine;

(3) The battery must not be exposed to water or allowed to get wet. This does not preclude incidental exposure of sealed battery packs;

(4) The battery must not be placed in direct sunlight or used or stored near a source of heat; and

(5) The battery must not be used at the end of its life cycle (*e.g.,* when there is a performance decrease of greater than 20% in battery operated equipment). The battery must be disposed of properly.

(l) Personnel engaged in the use of the equipment shall be properly qualified, as specified in 30 CFR 75.153, and trained in accordance with the manufacturers' recommended safe use procedures and trained to recognize hazards associated with the use of the equipment where methane could be present.

(m) All qualified persons and miners affected shall receive specific training on the terms and conditions of the PDO granted by MSHA before using the equipment in subject areas. A record of any training on the PDO granted by MSHA shall be maintained and provided upon request by an Authorized Representative of the Secretary.

(n) The equipment used shall be no older than 10 years from date of manufacture or removed at the end of its service life as recommended by the manufacturer, whichever is shorter.

(o) The operator is responsible for ensuring that all persons, including contractors, are using the equipment in accordance with the PDO granted by MSHA. The conditions of use in this PDO granted by MSHA shall apply to all non-permissible electronic equipment used in the subject area, regardless of whether the equipment is used by an employee or by an independent contractor.

(p) The operator shall post the PDO granted by MSHA in unobstructed locations on mine bulletin boards and/or in other conspicuous places where notices to miners are ordinarily posted for a period of not less than 60 consecutive days.

(q) The subject equipment shall not be used when coal production is occurring on the section. All mining on the section shall cease prior to use of the equipment in the subject area. A positive means of preventing mobile equipment from tramming in the same entry or crosscut of the affected area shall be provided and addressed in the mine ventilation plan.

(r) Unless specifically mentioned herein, nothing in the PDO granted by MSHA changes or supersedes the requirements otherwise imposed by the Mine Act, other mandatory standards or regulations, or approved ventilation or other plans.

The miners at Oak Grove Mine are represented by the United Mine Workers of America (UMWA). The petition for modification was provided to UMWA representative, Blake Layton, on August 31, 2026.

In support of the petition, the petitioner submitted a product data sheet for the AMS 2140 Machinery Health Analyzer.

The petitioner asserts that the alternative method will at all times guarantee no less than the same measure

of protection afforded the miners under 30 CFR 75.500(d).

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23305 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Coeur Alaska Inc.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–0925, electronically at the *Federal eRulemaking Portal, https://www.regulations.gov.* Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–002–M.

Petitioner: Coeur Alaska Inc., 3031 Clinton Drive, Suite 202, Juneau, AK 99801.

Mine: Kensington Mine, MSHA ID No. 50–01544, located in Juneau, Alaska.

Regulation Affected: 30 CFR 57.6603, Air gap.

Modification Request: The petitioner requests modification of the application of 30 CFR 57.6603 to permit an alternative method of complying with the requirement to maintain a minimum 15-foot air gap between electric power lines and blasting lines.

The petitioner states that:

(a) The petitioner requests a clarification of 30 CFR 57.6603 to permit the use of non-electric (NONEL) shock tube and electronic detonator initiation systems. The section currently calls for maintaining a minimum 15-foot air gap between electric power lines and blasting lines in underground drifts but does not specify if it pertains to electronic or electric initiation means. The current practice at Kensington is to maintain a minimum of 2 feet between blast and electrical lines, as per 30 CFR 57.6308 manufacturer (Dyno Nobel) recommendations for the electronic initiation system. The petitioner would like to continue this workflow—using a central blast system to initiate electronic detonators and subsequently NONEL detonators in the hole.

(b) The petitioner operates an underground metal/nonmetal mine with numerous existing drifts ranging from approximately 10 to 16 feet in width.

(c) Due to these dimensional constraints, maintaining a 15-foot air gap between installed electric power lines and blasting lines, as required by § 57.6603, is not feasible in certain areas without significantly altering mine infrastructure.

(d) The petitioner currently utilizes blasting initiation products along with central blasting hardware and software from Dyno Nobel.

(e) The petitioner utilizes NONEL (non-electric) shock tube and Driftshot Starter electronic initiation systems for development blasting activities. For the latter, the system is initiated via a central blast computer that requires both a coded signal and a blast specific voltage to trigger an initiation response in the Driftshot Starters.

(f) Production blasts adopt the same principal but are fully electronic and do not rely on NONEL delays.

(g) Unlike traditional electric blasting caps, Dyno Nobel electronic systems are not susceptible to stray electrical currents, or induced voltages from nearby energized power lines. They require a secondary coded signal and specific voltage to be initiated. The continuous communication between the central blast system and the blast control units would throw a fault and prevent initiation should this state be upset and left unresolved. The petitioner also submitted an official certification from electrical testing taken by Detnet—who partnered with Dyno Nobel when developing the electronic initiation systems.

(h) After a successful handshake between the Driftshot starters and central blasting computer, a blasting voltage is initiated from the blast control units down the blast lines. The blast lines are attached to the Driftshot starters via a segment of harness wire. The Driftshot starters are attached to a segment of Detcord, which in turn sets off the NONEL caps with appropriate delays.

(i) High voltage testing up to 30 kV and lightning simulations were performed on the electronic detonators. No degradation in performance was reported and there was no unplanned initiation.

(j) Kensington is compliant with 30 CFR 57.6308, wherein initiation systems have been installed, and used, in accordance with the manufacturer's recommendations. Dyno Nobel has recommended a minimum of 2 feet separation between live electrical wires and trunk/harness wires. Should there be a need to cross over the two lines, these can be done on a 90 degree angle, with a slight drop on the blast line.

(k) The existing standard was developed primarily to address hazards associated with electric detonators and the risk of premature initiation due to electrical energy.

(l) The application of the 15-foot air-gap requirement to Kensington's current electronic initiation systems does not directly address the same hazard profile and presents operational challenges in narrow underground headings.

(m) Detnet has been used reliably throughout the industry and Kensington since its implementation. It has also undergone rigorous testing that renders 30 CFR 57.6603 not applicable for this scenario.

(n) Electronic initiation systems differ from the susceptibility of stray currents as with electric initiation—and require several more steps for positive initiation.

(o) Kensington has implemented the electronic initiation system as per 30 CFR 57.6308, and separated blast cables double the distance away from high voltage lines.

(p) Should faults occur, problem areas cannot be blasted until the problem is resolved.

(q) Electric detonators have been removed from Kensington underground, as per manufacturer recommendation.

(r) The petitioner states that the proposed alternative method provides no less than the same measure of protection while allowing safe and practical blasting operations within existing underground constraints.

The petitioner proposes the following alternative method:

(a) All development blasting initiation shall be conducted using NONEL shock tube and Driftshot electronic starter systems. No electric detonators shall be used in the mine without leadership approval.

(b) Shock tubes shall be visually inspected prior to use to ensure integrity and proper condition.

(c) Blasting circuits shall continue to be physically organized and secured to prevent entanglement, abrasion, or damage from mobile equipment. Audits shall also be conducted on new and existing headings to ensure compliance with manufacturer install guidelines.

(d) Detnet user manuals have suggested that a 1 foot minimum is sufficient for separation between live cable and blast line infrastructure. However, Dyno Nobel guidelines prefer a 2 foot separation to further reduce noise interference in electronics.

(e) Electric power lines shall be properly installed, insulated, and maintained in accordance with applicable MSHA standards.

(f) Blasting activities shall be conducted in accordance with established safe blasting procedures, including clearing, guarding the blast area, and only connecting the blast lines at end of shift.

(g) All personnel involved in blasting operations shall be trained in the safe handling and use of NONEL and electronic systems, including recognition of potential hazards and proper setup techniques.

(h) Misfire procedures specific to NONEL and electronic systems are in place and shall be strictly followed.

(i) The miners at Kensington Mine are represented by a miners representative and the petition for modification has been served to the miners representative on May 10, 2026.

In support of the petition, the petitioner provided additional information including manufacturer safety and testing documentation, Detnet and Dyno Nobel cable installation recommendations, and a manufacturer note on electronic vs. electric detonators.

The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23309 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by Ramaco Resources Land Holdings, LLC.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before December 17, 2026.

ADDRESSES: You may submit comments and informational materials, identified by Docket No. MSHA–2026–0992, electronically at the *Federal eRulemaking Portal, https://www.regulations.gov*. Follow the online instructions for making electronic submissions. You should not include personal or proprietary information that you do not wish to disclose publicly. If you mark parts of a comment as ''business confidential'' information, MSHA will not post those parts of the comment. Otherwise, MSHA will post all comments without change, including any personal information provided. MSHA cautions against submitting personal information.

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2026–023–C.

Petitioner: Ramaco Resources Land Holdings, LLC, 499 Fork Ridge Road, Raven, Virginia, 24639.

Mine: Tiller No. 1, MSHA ID No. 44–06804, located in Tazewell County, Virginia.

Regulation Affected: 30 CFR 75.364(b)(2), Weekly examination.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.364(b)(2) to permit the weekly examination of the return air course to end when the return air course enters the exhaust ventilation tube at the bottom of the existing slope.

The petitioner states that:

(a) The petitioner seeks modification of 30 CFR 75. 364(b)(2) as it pertains to weekly examinations of a return air course.

(b) That standard 30 CFR 75.364(b)(2) provides in relevant part:

In at least one entry of each return air course, in its entirety, so that the entire air course is traveled.

(c) Tiller No. 1 Mine is a Slope/Shaft Underground Coal Mine with existing developments in the Tiller Coal Seam.

(d) The underground mine is currently idle with no underground ventilation. The petitioner intends to restart the mine in the future to conduct

additional mining in the Tiller Seam as well as to use the existing developed works to access the underlying Castle Seam.

(e) In July 2026, the petitioner conducted a re-entry and exploration of the mine to determine the feasibility and actions needed to rehabilitate the mine to resume operation. During the exploration it was determined the set of entries previously used to direct return air to the surface (Mud Lick Mains) are no longer accessible due to mine roof deterioration and collapses. The loss of these entries has resulted in the Tiller No 1 Mine having only two usable openings to the surface; the Belt Neutral Slope and the Intake Shaft (Blowing Mine Fan).

(f) Currently, to comply with 30 CFR 75.301, the petitioner must have at least three usable openings to the surface to facilitate:

(1) an Intake Air Course/Primary Escapeway,

(2) Neutral Air Course Belt/Alternate Escapeway, and

(3) Return Air course.

(g) The petitioner intends to establish an isolated return air course to the surface by installing ventilation tubing within the Belt/Alternate Escapeway (Slope Entry) to be connected to an exhausting fan installation on the surface.

(h) The petitioner seeks an alternative method to the mandatory safety standard, asserting it will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

The petitioner proposes the following alternative method:

(a) An isolated return air course using a separate entry or set of entries, separated from other air courses using traditionally accepted ventilation controls, will be maintained in the underground areas of the mine from the bottom of the Slope to all areas within the mine where a return air course is needed.

(b) At the bottom of the existing slope the return air course will enter a ventilation tube and be coursed to the surface. The ventilation tube will be continuous from the bottom of the slope to the surface where it will be connected to an exhausting mine fan installation.

(c) The ventilation tube will have a minimum outside diameter of 42″ and will be constructed of MSHA Approved materials.

(d) The ventilation tube will be attached to the mine roof using non-combustible chains, cables or straps as deemed appropriate, or the tubing will be placed on the mine floor and secured and protected from damage.

(e) The entry where the tubing will be placed will be the belt/neutral slope entry (Alternate Escapeway). This entry will be ventilated from the main blowing mine fan with air traveling outby to the surface. This entry will be examined each shift as required by 30 CFR 75.360. Examinations will include ensuring the tubing is properly maintained.

(f) The slope where the Tubing Return Air Course will share the same entry as the Belt Neutral Air Course is 1,030′ in length.

(g) The tubing will be connected to a mine fan installation on the surface installed in compliance with all applicable requirements of 30 CFR 75.310 through 75.312. The fan to be used will be a 929 RBB Centrifugal exhauster capable of operating at 900 RPM producing up to 30 IN/WG of vacuum.

(h) The current Main Mine Fan (Blowing) and the Return Mine Fan (Exhausting) will operate at all times. The Main Mine Fan will be adjusted to introduce a sufficient quantity of air into the mine to supply the working areas of the mine ventilated by the Exhaust Mine Fan (Ventilation Tube Split) as well as to ventilate areas to be coursed to the Belt/Neutral Air Course. This will ensure constant air flow in all areas without any unplanned reversals.

(i) The air entering the mine from the Main Mine Fan (Blowing) will always be 40% or more greater than the air exiting the mine through the exhausting ventilation tube. The anticipated air flow through the Exhausting Mine Fan will be 60,000 CFM. The Main Mine Fan (Blowing) will be adjusted to deliver 84,000 CFM or more into the mine.

(j) Examinations of the return air courses, per compliance with 30 CFR 75.364(b)(2), will be accomplished by a certified examiner traveling at least one entry of the return air course in its entirety. These examinations will end when the return air enters the exhaust ventilation tubing near the bottom of the slope.

(k) The examination of the portion of the return air being course through the tubing will consist of examining the outside perimeter of the tube along the 1,030′ entirety. This examination will include all connectors and means used to secure the tubing into place. Ports will be provided for inserting a Pitot Tube for measuring the air flow inside the ventilation tubing. A minimum of three ports will be installed as follows:

(1) within 50′ of the beginning of the tube near the slope bottom,

(2) at the approximate mid-point (500′ from the bottom of the slope), and

(3) within 50′ of the fan installation on the surface. Obtaining these three readings will allow the examiner to quantify the air flow to determine the amount of leakage if any. Due to the pressure differential of the exhaust system, any leakage would travel from the neutral air course into the tubing and would therefore pose no hazard of return air short circuiting into the neutral. These examinations of the tube conducted weekly will be in addition to the examinations which will be conducted each shift in accordance with 30 CFR 75.360 as detailed in item (f).

(l) The petitioner intends to develop new air shafts once the mine reaches the Castle Seam, at which time this alternative Return Air Course will no longer be needed. The petitioner anticipates completion of the new air shafts within 9 to 12 months after the slope construction begins.

The miners at Ramaco Resources Land Holdings, LLC are not represented by a labor organization and this petition is posted on the mine bulletin board as September 8, 2026. The petitioner asserts that the alternative method will guarantee no less than the same measure of protection afforded the miners under the mandatory standard. In support of the proposed alternative method, the petitioner has also submitted a mine map depicting the locations of the mine fans, ventilation tubing, ventilation controls and the air courses.

Corliss A. Josephs-Conway,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2026–23311 Filed 11–16–26; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0148]

Proposed Extension of Information Collection: Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program for all information collections, to provide the public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This

program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection titled ''Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines.''

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that comments received after the deadline will not be considered.

- *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2026–0860.
- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 200 Constitution Avenue NW, Washington, DC 20210. Before visiting MSHA in person, call 202–693–9440 to make an appointment.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal (MNM) mines.

The Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) governs paperwork burdens imposed on the public by Federal agencies when using identical questions to collect information from 10 or more persons. The PRA defines paperwork burden in 44 U.S.C. 3502(2) as the time, effort, or financial resources expended to generate, maintain, or provide information to or for a Federal agency. Under 44 U.S.C. 3507, the PRA also establishes policies and procedures for information collection to control paperwork burdens imposed by Federal agencies on the public, including evaluating public comments.

B. Information Collection

To fulfill its statutory mandate to promote miners' health and safety, MSHA requires information under the ICR request titled ''Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines.'' This information collection is intended to ensure that components of proximity detection systems at underground coal mines are intact, the system is functioning properly, and take action to correct any defects.

Burden costs associated with the ICR include:

1. Certifying and recording machine-mounted components;
2. Recording miner-wearable components;
3. Recording persons trained in proximity detection systems; and
4. Maintaining records.

The associated standards that authorize the collection of information are described below.

1. Certifying and Recording Machine-Mounted Components (30 CFR 75.1732(d)(1))

Under 30 CFR 75.1732(c)(1), operators must designate a person who must perform a check of machine-mounted components of the proximity detection system to verify that components are intact, that the system is functioning properly, and take action to correct defects—

(i) At the beginning of each shift when the machine is to be used; or

(ii) Immediately prior to the time the machine is to be operated if not in use at the beginning of a shift; or

(iii) Within 1 hour of a shift change if the shift change occurs without an interruption in production.

Under 30 CFR 75.1732(d)(1), at the completion of the check of the machine-mounted components of the proximity detection system, a certified person must certify by initials, date, and time that the check was conducted. The certified person is defined under 30 CFR 75.100 as a person who has been certified as a mine foreman (mine manager), an assistant mine foreman (section foreman), or a preshift examiner (mine examiner). Defects found as a result of the check, including corrective actions and dates of corrective actions, must be recorded before the end of the shift.

2. Recording Miner-Wearable Components (30 CFR 75.1732(d)(2))

Under 30 CFR 75.1732(c)(2), operators must check for proper operation of miner-wearable components at the beginning of each shift that the components are to be used and correct defects before the components are used.

Under 30 CFR 75.1732(d)(2), the operator must make a record of the defects found as a result of the check of miner-wearable components at the beginning of each shift, as required under 30 CFR 75.1732(c)(2), including corrective actions and dates of corrective actions.

3. Recording Persons Trained in Proximity Detection Systems (30 CFR 75.1732(d)(3))

Under 30 CFR 75.1732(b)(6), a proximity detection system must be installed and maintained in proper operating condition by a person trained in the installation and maintenance of the system.

Under 30 CFR 75.1732(d)(3), the operator must make a record of the persons trained in the installation and maintenance of proximity detection systems in proper operating condition, as required under 30 CFR 75.1732(b)(6).

4. Maintaining Records (30 CFR 75.1732(d)(4) and (d)(5))

Under 30 CFR 75.1732(d)(4), the operator must maintain records in a secure book or electronically in a secure computer system not susceptible to alteration.

Under 30 CFR 75.1732(d)(5), the operator must retain records for at least one year and make them available for inspection by authorized representatives of the Secretary and representatives of miners.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection titled ''Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines.'' MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The ICR is available on *https://www.regulations.gov.* MSHA cautions commenters against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *https://www.regulations.gov* and *https://www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 200 Constitution Avenue NW, Washington, DC 20210. Before visiting MSHA in person, call 202–693–9440 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This ICR concerns provisions for Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this ICR from the previous ICR.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Control Number: 1219–0148.

Affected Public: Business or other for-profit entity.

Number of Annual Respondents: 142.

Frequency: On occasion.

Number of Annual Responses: 229,744.

Annual Time Burden: 653 hours.

Annual Recordkeeping Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed ICR; they will become a matter of public record and be available at *https://www.reginfo.gov.*

Corliss A. Josephs-Conway,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2026–23312 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0009]

Proposed Extension of Information Collection: Training Plans and Records of Training for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program for all information collections, to provide the public and Federal agencies with an opportunity to comment on proposed collections of information, in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection titled ''Training Plans and Records of Training for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines.''

DATES: All comments must be received on or before January 19, 2027.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that comments received after the deadline will not be considered.

• *Federal E-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for docket number MSHA–2026–0892.

• *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 200 Constitution Avenue NW, Washington, DC 20210. Before visiting MSHA in person, call 202–693–9440 to make an appointment.

• MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Corliss A. Josephs-Conway, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legal Authority

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended, 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise, as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal (MNM) mines.

The Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) governs paperwork burdens imposed on the public by Federal agencies when using identical questions to collect information from 10 or more persons. The PRA defines paperwork burden in 44 U.S.C. 3502(2) as the time, effort, or financial resources expended to generate, maintain, or provide information to or for a Federal agency. Under 44 U.S.C. 3507, the PRA also establishes policies and procedures for information collection to control paperwork burdens imposed by Federal agencies on the public, including evaluating public comments.

B. Information Collection

To fulfill its statutory mandate to promote miners' health and safety, MSHA requires information under the information collection request (ICR) request titled ''Training Plans and Records of Training for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines.'' This information collection is intended to ensure that operators are in compliance with the training requirements in developing, maintaining, and implementing training plans and protect miners' health and safety.

Burden costs associated with the ICR include:

1. Developing New and Revising Existing Training Plans and Submitting to MSHA
2. Recording and Certifying Miner Trainings
3. Providing Copies of Training Plans
4. MSHA Reviewing Training Plans

The associated standards that authorize the collection of information are described below.

1. Developing New and Revising Existing Training Plans and Submitting to MSHA (30 CFR 48.3(a), (b), (c), and (l) and 30 CFR 48.23(a), (b), (c), and (l))

Under 30 CFR 48.3(a) and 48.23(a), each operator of a mine shall have an MSHA-approved plan containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners. In the case of a new mine which is to be opened or a mine which is to be reopened or reactivated, the operator shall have an approved plan prior to opening the new mine, or reopening or reactivating the mine. For surface mines and surface areas of underground mines reopened or reactivated periodically using portable equipment and mobile teams of miners as a normal method of operation by the operator, the operator is excepted but shall maintain an approved plan for training covering all mine locations which are operated with portable equipment and mobile teams of miners.

Under 30 CFR 48.3(b) and 48.23(b), the training plan shall be filed with the District Manager for the area in which the mine is located.

Under 30 CFR 48.3(c) and 48.23(c), each operator shall submit to the District Manager the following information:

(i) The company name, mine name, and MSHA identification number of the mine.

(ii) The name and position of the person designated by the operator who is responsible for health and safety training at the mine. This person may be the operator.

(iii) A list of MSHA approved instructors with whom the operator proposes to make arrangements to teach the courses, and the courses each instructor is qualified to teach

(iv) The location where training will be given for each course.

(v) A description of the teaching methods and the course materials which are to be used in training.

(vi) The approximate number of miners employed at the mine and the maximum number who will attend each session of training.

(vii) The predicted time or periods of time when regularly scheduled refresher training will be given. This schedule shall include the titles of courses to be taught, the total number of instruction hours for each course, and the predicted time and length of each session of training.

(viii) For the purposes of ''New task training of miners'' of this subpart, the operator shall submit:

(a) A complete list of task assignments to correspond with the definition of ''task'' in 30 CFR 48.2(f) or 48.22(f). Task means a work assignment that includes duties of a job that occur on a regular basis and which requires physical abilities and job knowledge.

(b) The titles of personnel conducting the training for this section.

(c) The outline of training procedures used in training miners in those work assignments listed according to 30 CFR 48.2(c)(8)(i) or 48.22(c)(8)(i).

(d) The evaluation procedures used to determine the effectiveness of training under 30 CFR 48.7 or 48.27.

Under 30 CFR 48.3(l) and 48.23(l), the operator shall notify the District Manager of the area in which the mine is located and the miners' representative of any changes of modifications which the operator proposes to make in the approval training plan. The operator shall obtain the approval of the District Manager for such changes or modifications.

Under 30 CFR 48.3(o) and 48.23(o), each operator engaged in shaft or slope construction shall have an MSHA-approved training plan prior to commencing shaft or slope construction, containing programs for training new miners, training experienced miners, training miners for new tasks, annual refresher training, and hazard training for miners.

Under 30 CFR 48.3(p), each underground coal operator, who is required to submit a revised program of instruction for mine emergency evacuation and firefighting program of instruction, shall also submit a revised training plan under this part 48.

2. Recording and Certifying Miner Training (30 CFR 48.9 and 30 CFR 48.29)

Under 30 CFR 48.9(a) and 48.29(a), upon a miner's completion of each MSHA approved training program, the operator shall record and certify on MSHA Form 5000–23 that the miner has received the specified training. A copy of the training certificate shall be given to the miner at the completion of the training. The training certificates for each miner shall be available at the minesite for inspection by MSHA and for examination by the miners, the miner's representative, and State inspection agencies. When a miner leaves the operator's employ, the miner shall be entitled to a copy of his training certificates.

Under 30 CFR 48.9(c) and 48.29(c), copies of training certificates for currently employed miners shall be kept at the minesite for 2 years, or for 60 days after termination of employment.

3. Providing Copies of Training Plans (30 CFR 48.3(d), (f), and (n) and 30 CFR 48.23(d), (f), and (n))

Under 30 CFR 48.3(d) and 48.23(d), the operator shall furnish to the representative of the miners a copy of the training plan two weeks prior to its submission to the District Manager. Where a miners' representative is not designated, a copy of the plan shall be posted on the mine bulletin board 2 weeks prior to its submission to the District Manager. Written comments received by the operator from miners or their representatives shall be submitted to the District Manager. Miners or their representatives may submit written comments directly to the District Manager.

Under 30 CFR 48.3(f) and 48.23(f), the operator shall make a copy of the MSHA approved training plan available at the mine site for MSHA inspection and for examination by the miners and their representatives.

Under 30 CFR 48.3(n) and 48.23(n), the operator shall post on the mine bulletin board, and provide to the miners' representative, a copy of all MSHA revisions and decisions which concern the training plan at the mine and which are issued by the District Manager.

4. MSHA Reviewing Training Plans (30 CFR 48.3(a), (e), (i), (j), and (m) and 30 CFR 48.23(a), (e), (i), (j), and (m))

Under 30 CFR 48.3(e) and 48.23(e), all training required by the training plan submitted to and approved by the District Manager as required by subpart A and B shall be subject to evaluation by the District Manager to determine the effectiveness of the training programs. If it is deemed necessary, the District Manager may require changes in, or additions to, programs. Upon request from the District Manager the operator shall make available for evaluation the instructional materials, handouts, visual aids and other teaching accessories used or to be used in the training programs. Upon request from the District Manager the operator shall provide information

concerning the schedules of upcoming training.

Under 30 CFR 48.3(i) and 48.23(i), instructors may have their approval revoked by MSHA for good cause which may include not teaching a course at least once every 24 months. Before any revocation is effective, the District Manager must send written reasons for revocation to the instructor and the instructor shall be given an opportunity to demonstrate or achieve compliance before the District Manager on the matter. A decision by the District Manager to revoke an instructor's approval may be appealed by the instructor to MSHA. Such an appeal shall be submitted to the Administrator within 5 days of notification of the District Manager's decision. Upon revocation of an instructor's approval, the District Manager shall immediately notify operators who use the instructor for training.

Under 30 CFR 48.3(a)(2) and 48.23(a)(2), within 60 days after the operator submits the plan for approval, unless extended by MSHA, the operator shall have an approved plan for the mine.

Under 30 CFR 48.3(j) and 48.23(j), the District Manager for the area in which the mine is located shall notify the operator and the miners' representative, in writing, within 60 days from the date on which the training plan is filed, of the approval or status of the approval of the training programs.

Under 30 CFR 48.3(j)(1) and 48.23(j)(1), if revisions are required for approval, or to retain approval thereafter, the revisions required shall be specified to the operator and the miners' representative and the operator and the miners' representative shall be afforded an opportunity to discuss the revisions with the District Manager, or to propose alternate revisions or changes. The District Manager, in consultation with the operator and the representative of the miners, shall fix a time within which the discussion will be held, or alternate revisions or changes submitted, before final approval is made.

Under 30 CFR 48.3(j)(2) and 48.23(j)(2), the District Manager may approve separate programs of the training plan and withhold approval of other programs, pending discussion of revisions or submission of alternate revisions or changes.

Under 30 CFR 48.3(m) and 48.23(m), in the event the District Manager disapproves a training plan or a proposed modification of a training plan or requires changes in a training plan or modification, the District Manager shall notify the operator and the miners' representative in writing of:

(1) The specific changes or items of deficiency.

(2) The action necessary to effect the changes or bring the disapproved training plan or modification into compliance.

(3) The deadline for completion of remedial action to effect compliance, which shall serve to suspend punitive action under the provisions of sections 104 and 110 of the Act and other related regulations until that established deadline date, except that no such suspension shall take place in imminent danger situations.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection titled ''Training Plans and Records of Training for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines.'' MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The ICR is available on *https://www.regulations.gov.* MSHA cautions commenters against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *https://www.regulations.gov* and *https://www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations and Variances, 200 Constitution Avenue NW, Washington, DC 20210. Before visiting MSHA in person, call 202–693–9440 to make an appointment.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This ICR concerns provisions for Training Plans and Records of Training for Underground Miners and Miners Working at Surface Mines and Surface Areas of Underground Mines. MSHA has updated the data with respect to the number of respondents, responses, time burden, and burden costs supporting this ICR from the previous ICR.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Control Number: 1219–0009.

Affected Public: Business or other for-profit entity.

Number of Annual Respondents: 4,597.

Frequency: On occasion.

Number of Annual Responses: 129,998.

Annual Time Burden: 12,234 hours.

Annual Recordkeeping Costs: $464,509.

MSHA Form(s): MSHA Form 5000–23, Certificate of Training.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the proposed ICR; they will become a matter of public record and be available at *https://www.reginfo.gov.*

Corliss A. Josephs-Conway,

Certifying Officer, Mine Safety and Health Administration.

[FR Doc. 2026–23313 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0043]

TUV SUD America, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for TUV SUD America, Inc. (TUVAM) as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA will add four

standards to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on November 16, 2026.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1000 ext. 18477; email: *meilinger.francis2@dol.gov*.

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–1000 ext. 11538; email: *robinson.kevin@dol.gov*. OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition for TUV SUD America Inc. (TUVAM). TUVAM's expansion covers the addition of five test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including TUVAM, which details the NRTL's scope of recognition. These pages are available from the OSHA website at: *https://www.osha.gov/nationally-recognized-testing-laboratory-program.*

TUVAM submitted an application to OSHA for expansion of the NRTL scope of recognition on December 17, 2024 (OSHA–2007–0043–0073), requesting the expansion of the NRTL scope of recognition to include seven additional test standards. This application was revised on February 6, 2026 (OSHA–2007–0043–0072) to remove two standards from the original request. This expansion covers the remaining five standards. OSHA did not perform any on-site reviews with respect to this application.

OSHA published the preliminary notice announcing TUVAM's expansion application in the **Federal Register** on August 21, 2026 (91 FR 54392). The agency requested comments by September 8, 2026; however, no comments were received in response to this notice.

To review copies of all public documents pertaining to TUVAM's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor at (202) 693–2350. Docket No. OSHA–2007–0043 contains all materials in the record concerning TUVAM's recognition. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined TUVAM's expansion application and examined other pertinent information. Based on its review of this evidence, OSHA finds that TUVAM meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant TUVAM's expanded scope of recognition. OSHA limits the expansion of TUVAM's recognition to include the testing and certification of products for demonstration of conformance to the test standards shown below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVAM'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1564	Industrial Battery Chargers.
UL 1004–6*.	Servo and Stepper Motors.
UL 1004–8*.	Inverter Duty Motors.
UL 61010–2–011*.	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–011: Particular Requirements for Refrigerating Equipment.
UL 61010–2–012*.	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–012: Particular Requirements for Climatic and Environmental Testing and Other Temperature Conditioning Equipment.

* Represents standard that OSHA is adding to the NRTL Program's List of Appropriate Test Standards.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

In this notice, OSHA also announces the final decision to add four new test standards to the NRTL Program's List of Appropriate Test Standards. Table 2 below lists the test standards that are new to the NRTL Program. OSHA has determined that these test standards are appropriate test standards and will add them to the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARDS OSHA WILL ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 1004–6	Servo and Stepper Motors.
UL 1004–8	Inverter Duty Motors.
UL 61010–2–011.	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–011: Particular Requirements for Refrigerating Equipment.

TABLE 2—TEST STANDARDS OSHA WILL ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS—Continued

Test standard	Test standard title
UL 61010–2–012.	Electrical Equipment for Measurement, Control and Laboratory Use—Part 2–012: Particular Requirements for Climatic and Environmental Testing and Other Temperature Conditioning Equipment.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, OSHA may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, Chapter 2, Section VIII), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including but not limited to, abiding by the following conditions of recognition:

1. TUVAM must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. TUVAM must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVAM must continue to meet the requirements for recognition, including all previously published conditions on TUVAM's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVAM as a NRTL, subject to the limitations and conditions specified above. Additionally, OSHA will add four standards to the NRTL Program's List of Appropriate Test Standards.

III. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878; June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on October 23, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23306 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Grant of Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for SGS North America, Inc. as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on November 17, 2026.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, phone: (202) 693–1000 ext. 11847 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1000 ext. 11538 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of SGS North America, Inc. (SGS) as a NRTL. SGS's expansion covers the addition of two test standards to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including SGS, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

SGS submitted two applications to OSHA for expansion of the NRTL scope of recognition: the first application dated January 9, 2025 (OSHA–2006–0040–0097) requested the addition of one test standard, and the second application dated July 18, 2025 (OSHA–2006–0040–0096) requesting the addition of another test standard. In total, the expansion applications requested the addition of two test standards to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform an on-site review in response to these applications. OSHA staff preliminarily determined that OSHA should grant the applications for test standard expansion.

OSHA published the preliminary notice announcing SGS's expansion applications in the **Federal Register** on August 21, 2026 (91 FR 54402). The agency requested comments by September 8, 2026, but it received no comments in response to this notice.

To obtain or review copies of all public documents pertaining to the SGS application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department

of Labor. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS's recognition. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

II. Final Decision and Order

OSHA staff examined SGS's expansion applications and examined other pertinent information. Based on its review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant SGS's expanded scope of recognition. OSHA limits the expansion of SGS's recognition to include the two additional testing standards. OSHA grants SGS expansion of the NRTL scope of recognition to include the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1340	Hoists.
UL 2056	Power Banks.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, SGS must abide by the following conditions of the NRTL recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. SGS must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS as a NRTL, subject to the limitations and conditions specified above.

III. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878; June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on October 8, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23314 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

UL LLC: Application for Expansion of Recognition

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

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of UL LLC for expansion of the scope of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before December 2, 2026.

ADDRESSES: Comments may be submitted as follows:

Electronically: You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency's name and the docket number for this rulemaking (Docket No. OSHA–2009–0025). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting information they do not want made available to the public, or submitting materials that contain personal information (either about themselves or others), such as Social Security numbers and birthdates.

Submission of comments: You may submit comments and attachments, identified by Docket No. OSHA–2009–0025, electronically at *www.regulations.gov,* which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions. The Federal e-Rulemaking Portal at *www.regulations.gov* is the only way to submit comments on this Notice.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before December 2, 2026 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of

Communications, phone: (202) 693–1000 ext. 18477 or email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–1000 ext. 11538 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of the Application for Expansion

OSHA is providing notice UL LLC (UL), is applying for expansion of the current recognition as a NRTL. UL requests the addition of one test standard to the NRTL scope of recognition.

OSHA's recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes: (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides a final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

II. General Background on the Application

UL submitted an application to OSHA for expansion of the NRTL scope of recognition on October 2, 2025 (OSHA–2009–0025–0086), requesting the addition of one test standard to the NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform an on-site review in response to this application. OSHA staff has preliminarily determined that OSHA should grant the application for test standard expansion.

Table 1, below, lists the appropriate test standard found in UL's application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 347A	Medium Voltage Power Conversion Equipment.

III. Preliminary Findings on the Application

UL submitted an acceptable application for expansion of the scope of recognition. OSHA's review of the application file and pertinent documentation indicates that UL has met the requirements prescribed by 29 CFR 1910.7 for expanding the recognition to include the addition of one test standard for NRTL testing and certification listed in Table 1. This preliminary finding does not constitute an interim or temporary approval of UL's application.

OSHA seeks comment on this preliminary determination.

IV. Public Participation

OSHA welcomes public comment as to whether UL meets the requirements of 29 CFR 1910.7 for expansion of recognition as a NRTL and whether the test standard listed in Table 2 above is an appropriate test standard that should be included in the NRTL Program's List of Appropriate Test Standards. Comments should consist of pertinent written documents and exhibits.

Commenters needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials also are generally available online at *https://www.regulations.gov* under Docket No. OSHA–2009–0025 (for further information, see the ''*Docket*'' heading in the section of this notice titled **ADDRESSES**).

OSHA staff will review all comments to the docket submitted in a timely manner. After addressing the issues raised by these comments, staff will make a recommendation to the Assistant Secretary of Labor for Occupational Safety and Health on whether to grant UL's application for expansion of the scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of the final decision in the **Federal Register**.

V. Authority and Signature

Amanda Laihow, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 7–2025 (90 FR 27878; June 30, 2025), and 29 CFR 1910.7.

Signed at Washington, DC, on October 8, 2026.

Amanda Laihow,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2026–23315 Filed 11–16–26; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2027–011]

Freedom of Information Act (FOIA) Advisory Committee Meetings

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meetings.

SUMMARY: We are announcing two upcoming Freedom of Information Act

(FOIA) Advisory Committee meetings in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meetings will be Thursday, December 3, 2026, from 10:30 a.m. to 1:00 p.m. Eastern Time (ET) and Thursday, December 10, 2026, from 10:00 a.m. to noon ET. You must register to attend. (See registration information below.)

ADDRESSES: The December 3, 2026, meeting will be held in the William G. McGowan Theater at the National Archives Building, 700 Pennsylvania NW, Washington, DC. The December 10, 2026, meeting will be a virtual meeting. We will send access instructions for the meetings to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5770.

SUPPLEMENTARY INFORMATION:

Agendas and meeting materials: We will post all meeting materials, including the agendas, at *https://www.archives.gov/ogis/foia-advisory-committee/2026-2028-term.* These meetings will be the first and second of the seventh committee term. The purpose of the meetings will be to introduce the members and the work of the committee, establish subcommittees and, for each subcommittee, select co-chairs (one government co-chair and one non-government co-chair).

Procedures: These meetings are open to the public in accordance with the Federal Advisory Committee Act, (5 U.S.C. 1001–1014). Both meetings will include a public comment period. Oral public comments must be made in person at the December 3, 2026, meeting and virtually at the December 10, 2026, meeting.

(1) If you wish to attend the December 3, 2026, meeting, email *foia-advisory-committee@nara.gov* with your name and organizational affiliation, if any;

(2) If you wish to attend the December 10, 2026, meeting, register at *https://nara.zoomgov.com/webinar/register/WN_BqMqbqDCSPi4-xg8pcmpsA.*

Public comments for both meetings will be limited to three minutes per individual. If you plan to attend the December 3, 2026, meeting in person, you will undergo security screening when you enter the building.

We will also livestream both meetings on the National Archives YouTube channel; the December 3, 2026, meeting is at *https://www.youtube.com/live/zC-lS0l9cWg* and the December 10, 2026, meeting is at *https://www.youtube.com/live/KZnKH83X4M0.* Both meetings include a captioning option.

To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5770. Members of the media who wish to register, those who are unable to register online, and those who require special accommodations, should contact Kirsten Mitchell (contact information listed above).

Jessie Kratz,

Committee Management Officer.

[FR Doc. 2026–23387 Filed 11–16–26; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–616 and 50–617; NRC–2026–0265]

SMR, LLC; Palisades SMR, LLC; Pioneer Units 1 and 2; Receipt of Construction Permit Application

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing public notice of receipt and availability each week, for four consecutive weeks, beginning November 10, 2026, of the second part of a phased construction permit application, from SMR, LLC, on behalf of Palisades SMR, LLC, a wholly-owned subsidiary of Holtec International, for a dual-unit SMR–300 plant located at the Palisades Energy Center (PEC) in Covert, Michigan. The units are individually named Pioneer Unit 1 and Pioneer Unit 2. This is the second of four consecutive weekly notifications. The application for the construction permits was received on September 30, 2026.

DATES: November 17, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–0265 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–2026–0265. 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.* Part 2 of the Pioneer Units 1 and 2 construction permit application is available in ADAMS under package Accession No. ML26273A416.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Orenak, telephone: 301–415–3229; email: *Michael.Orenak@nrc.gov,* Victoria Huckabay, telephone: 301–415-5183; email: *Victoria.Huckabay@nrc.gov,* and Jason Lising, telephone 301–415–1119; email: *Jason.Lising@nrc.gov.* All are staff of the Office of Advanced Reactors at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

On September 30, 2026, SMR, LLC, on behalf of Palisades SMR, LLC (Palisades SMR), a wholly-owned subsidiary of Holtec International, filed with the NRC, the second part (Part 2) of a phased construction permit application (CPA) for a utilization facility pursuant to Section 103 of the Atomic Energy Act and part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities.'' Part 2 of the application consists of a complete preliminary safety analysis report. Palisades SMR also provided an updated version of the Quality Assurance Topical Report that was previously approved by the NRC and is seeking review of these revisions. Part 2 also contains a set of exemption requests which address aspects of the CPA that require exemption from the existing rules. The general and financial information submitted with the Part 1 of the application is incorporated by reference into the Part 2 CPA.

Part 1 of the application was submitted on December 31, 2025, and consisted of a limited work authorization request pursuant to 10 CFR 50.10(d), ''Request for limited work authorization,'' three exemption requests, and a comprehensive environmental report. In Part 1, Palisade SMR was seeking NRC approval to conduct certain early construction activities of a dual-unit SMR–300 plant at the PEC in Covert, Michigan. In Part 2, Palisades SMR is seeking NRC approval to complete construction activities of the dual-unit SMR–300 plant site.

Palisades SMR submitted Part 2 of its application as part of a phased application approach for a construction permit for a utilization facility, as described in 10 CFR 2.101(a)(9) and 10 CFR 2.600(d).

The NRC staff is currently undertaking its acceptance review of the application. If the application is accepted for docketing, subsequent **Federal Register** notices will be issued that address the acceptability of the tendered construction permit application for docketing and provisions for participation of the public in the permitting process. These weekly notices of receipt and availability of the application are being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

Authority: 42 U.S.C. 2011 *et seq.*

Dated: November 13, 2026.

For the Nuclear Regulatory Commission.

Michelle Hayes,

Chief, Advanced Reactor Licensing Branch 2, Division of Advanced Reactor Licensing, Office of Advanced Reactors.

[FR Doc. 2026–23355 Filed 11–16–26; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2026–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 16, 23, 30, and December 7, 14, 21, 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 November 16, 2026

There are no meetings scheduled for the week of November 16, 2026.

Week of November 23, 2026—Tentative

There are no meetings scheduled for the week of November 23, 2026.

Week of November 30, 2026—Tentative

There are no meetings scheduled for the week of November 30, 2026.

Week of December 7, 2026—Tentative

There are no meetings scheduled for the week of December 7, 2026.

Week of December 14, 2026—Tentative

Tuesday, December 15, 2026

10:00 a.m. Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Wesley Held: 301–287–3591)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 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 December 21, 2026—Tentative

There are no meetings scheduled for the week of December 21, 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: November 13, 2026.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2026–23381 Filed 11–13–26; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 07007027; License No. SNM–7007; EAF–RII–2026–0052; NRC–2026–5050]

In the Matter of TRISO–X, LLC; Confirmatory Order Modifying License

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to TRISO–X, LLC (the licensee), as a result of a successful Alternative Dispute Resolution (ADR) mediation. On June 9, 2026, the NRC notified the licensee of an apparent violation being considered for escalated enforcement. The apparent violation involved the implementation of management measures to ensure the design basis supporting the structural stability function of the TX–1 process building's main force resisting system (MFRS) was maintained during construction. The NRC provided the licensee with the opportunity to respond through a written response, a Pre-decisional Enforcement Conference (PEC), or ADR. The licensee elected to participate in ADR, and mediation sessions were held on July 29 and August 20, 2026, during which the parties reached an Agreement in Principle. As part of the agreement, the licensee committed to taking certain corrective actions and consented to the issuance of a Confirmatory Order to make those commitments legally binding and resolve the apparent violation without further enforcement action by the NRC. The Confirmatory Order is effective upon issuance.

DATES: The Confirmatory Order was issued on October 21, 2026.

ADDRESSES: Please refer to Docket ID NRC–2026–5050 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–2026–5050. 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.*
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carmen Rivera, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0296; email: *Carmen.Rivera@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Authority: 42 U.S.C. 2011 *et seq.*

Dated: November 13, 2026.

For the Nuclear Regulatory Commission.

Jamie Pelton,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

Attachment—Confirmatory Order Modifying License

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of: TRISO–X, LLC, TRISO–X Facility, Docket No. 07007027, License No. SNM–7007, EAF–RII–2026–0052

CONFIRMATORY ORDER MODIFYING LICENSE (EFFECTIVE UPON ISSUANCE)

I

TRISO–X, LLC (TRISO–X) is the holder of Special Nuclear Material License No. SNM–7007, issued on February 13, 2026, by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to Part 70 of *Title 10 of the Code of Federal Regulations* (10 CFR). The license authorizes TRISO–X to receive, acquire, possess, transfer, and use byproduct, source, and special nuclear material in accordance with conditions specified therein. The facility is located on the licensee's site in Oak Ridge, Tennessee.

This Confirmatory Order is the result of an agreement reached during Alternative Dispute Resolution (ADR) mediation sessions conducted on July 29, 2026, and August 20, 2026.

II

From March 9 through 12, 2026, the NRC conducted an inspection of construction activities at the TRISO–X site. As discussed in NRC Inspection Report 07007027/2026–006, dated June 9, 2026, the NRC identified an apparent violation associated with TRISO–X's failure to apply effective management measures, specifically, design control measures, to ensure the design basis supporting the structural stability function of the TX–1 process building's main force resisting system (MFRS) was maintained during construction.

In accordance with the NRC Enforcement Policy, the apparent violation was considered for escalated enforcement action on the basis of the information available to the NRC at the time of the inspection, including the following:

1. On or before January 19, 2026, the licensee approved (and later implemented) welding processes that could not meet the design specifications for the special concentrically braced frames (SCBF) forming part of the MFRS. Specifically, the licensee implemented welding processes for the construction of SCBF diagonal braces that did not achieve the qualified weld size necessary to meet the requirements of the construction code specified in the licensing basis of the facility. Consequently, multiple SCBF welds were constructed such that their available design strength was less than the strength required to meet the applicable construction code.

2. From approximately January 28, 2026, to February 16, 2026, and from February 20, 2026, to March 10, 2026, the licensee failed to conduct visual weld inspections of the structural steel in the MFRS of the TX–1 process building as required by the applicable construction code. Specifically, the field welded connections of the SCBF diagonal braces were not inspected by an authorized special inspector prior to and during welding on a random daily basis as required by the construction code. As a result, the quality of the welding operations performed over the period identified above was not verified to be in conformance with the design basis and quality requirements.

By letter dated June 9, 2026, the NRC notified TRISO–X of the results of the inspection with an opportunity to: (1) attend a Pre-decisional Enforcement Conference, (2) provide a written response to the NRC, or (3) participate in an ADR mediation session in an effort to resolve these concerns.

In response to the NRC's offer, TRISO–X requested the use of the NRC's ADR process to achieve resolution of the apparent violation. On July 29, 2026, and August 20, 2026, the NRC and TRISO–X participated in ADR mediation sessions conducted by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process uses a neutral mediator, who has no decision-making authority, to assist the parties in resolving disputes. The ADR mediation sessions resulted in an Agreement in Principle concerning resolution of the apparent violation. This Confirmatory Order reflects the terms agreed upon through the ADR process and makes TRISO–X's commitments legally binding.

III

During the ADR sessions, TRISO–X and the NRC reached a preliminary settlement agreement called an Agreement in Principle.

The elements of the agreement include the following:

A. Definitions

1. *Braced-frame intersection welds,* as used in the Agreement in Principle and this Confirmatory Order, refers to the existing flare bevel groove field welds on the TX–1 process building that connect the diagonal braces of the special concentrically braced frames (SCBF) at their intersection, which form part of the building's Main Force Resisting System (MFRS). These are the welds characterized by the NRC as nonconforming with the original design with respect to their effective throat size and the welding process selected for their installation, as discussed in NRC Inspection Report 07007027/2026–006, dated June 9, 2026.

B. Pre-ADR Corrective Actions

Prior to the ADR sessions, TRISO–X completed the corrective actions and enhancements listed below to address the noncompliance and preclude recurrence of the apparent violation. The NRC agreed to give TRISO–X credit for these corrective actions, subject to verification through NRC inspection.

1. TRISO–X completed an apparent cause analysis for the braced-frame intersection welds using the 5-Why Cause & Effect Method to identify the cause of the potential weld nonconformance. The analysis identified the apparent cause as a shop drawing detail error which resulted in braced-frame intersection welds that did not meet the original design requirements.

2. TRISO–X conducted an extent of condition review which revealed that the issue described in Item III.A.1 of this Confirmatory Order included ten (10) SCBF in the MFRS of the TX–1 process building.

3. On April 3, 2026, TRISO–X issued a verbal Stop Work to the construction contractor for structural welding (referred to in the contractor documentation as 'x-bracing' welding operations) to prevent any further potential nonconforming welds, followed by a formal confirmation of Stop Work via letter, dated April 5, 2026.

4. TRISO–X performed an analysis and calculation of the braced-frame intersection welds which determined that a $\frac{7}{16}$-inch effective throat meets the design requirements (*i.e.,* demand-to-capacity ratios less than 1). TRISO–X updated the applicable design drawings to specify the use of $\frac{7}{16}$-inch effective throat instead of the original $\frac{5}{8}$-inch to ensure compliance with revised design requirements.

5. TRISO–X developed a Performance Qualification Record (PQR) for the Weld Procedure Specification (WPS) used in the installation of the braced-frame intersection welds to validate the WPS welding parameters, specifically to support an

effective throat larger than that specified in American Institute of Steel Construction (AISC) Standard 360–16, ''*Specification for Structural Steel Buildings,*'' Table J2.2, for the welding processes used to make the welds.

6. TRISO–X developed and implemented a qualified Ultrasonic Testing (UT) procedure for the braced-frame intersection welds to measure the as-built effective throats. TRISO–X performed UT on 100% of the braced-frame intersection welds under Nonconformance Report NCR–15. The UT results indicated that the effective throats of all braced-frame intersection welds measured equal to or greater than a 7/16-inch, meeting the updated design requirements.

7. TRISO–X completed an extent of condition review for all partial penetration groove welds in the TX–1 process building design drawings to identify other structural welding locations where incorrect design parameters were specified. TRISO–X identified some design drawings for pipe support welds that potentially could have led to a similar issue with the shop drawing detailing process. These design drawings were revised to clarify the design intent.

8. The Engineer of Record conducted an extent of condition review of TX–1 design and shop drawings issued at the time of discovery of the vendor shop drawing error that led to the braced-frame intersection welds nonconformance. The extent of condition review concluded that this issue was localized and did not extend to other areas of the project. TRISO–X and the Engineer of Record addressed the shop drawing review process and communicated to personnel the application of internal review standards and the lessons learned related to this event.

9. TRISO–X directed the construction contractor to revise vendor shop drawings applicable to the braced-frame intersection welds to update weld size and remove incorrect joint designation. Additionally, TRISO–X directed the construction contractor to revise vendor shop drawings for the shop welds at the intersection of the SCBF and confirmed that the WPS used for their installation met the original design requirements.

10. TRISO–X revised the construction contractor Site Specific Quality Plan to implement enhancements to the Nonconformance Report (NCR)/Corrective Action Process; integration of work planning documentation and proper identification of required inspections; and protocols for ensuring consistency of reviews of sub-suppliers.

11. TRISO–X revised the structural steel Inspection and Test Plan (ITP) to include additional witness and hold points and clear notification requirements for TRISO–X to ensure code-required special inspections are conducted prior to, during, and after welding activities.

12. Effective May 21, 2026, TRISO–X implemented a periodic Quality Control (QC) coordination meeting between TRISO–X and the appropriate TX–1 construction project contractors/subcontractors.

13. On July 7, 2026, TRISO–X held a meeting with the construction contractor and the Engineer of Record to confirm the roles and responsibilities of Special Inspectors under the 2018 Edition of the International Building Code (IBC–2018), Chapter 17. A follow-up letter documenting these responsibilities was issued on July 13, 2026, and signed by all parties.

14. TRISO–X developed a weld tracking mechanism to clearly communicate the status of the braced-frame intersection welds to internal stakeholders including Engineering, Regulatory, and Construction groups.

15. On July 15, 2026, TRISO–X performed a walkdown and visual inspection of SCBF components located on the first level of the TX–1 process building. The status of the as-built welds and open NCRs was reviewed and the results documented in a report.

16. On July 22, 2026, TRISO–X provided training to the Quality Assurance (QA) Special Inspectors to reinforce expectations for inspections, documentation, and escalation of field issues to management. This training is documented in TRISO–X CR–2026–0022–CA04.

17. On June 11, 2026, TRISO–X issued a letter to the construction contractor requiring replacement of the Quality Control subcontractor due to unacceptable performance of assigned duties for QC inspection of construction activities.

18. TRISO–X implemented a new procedure, TX0–PRO–QAS–0171, ''*Construction Surveillance Program,*'' to formalize the QA requirements for surveillance and oversight of contractors performing construction activities. The procedure includes two forms, Construction Surveillance Report and ITP Review Checklist, to improve consistency of documentation.

19. TRISO–X developed specific work packages for SCBF welding to incorporate the updated ITPs.

20. TRISO–X revised TXF–QAS–PLN–0016, ''*Construction Quality Plan,*'' to include references to additional oversight requirements and execution expectations that are implemented through new procedure TX0–PRO–QAS–0171, ''*Construction Surveillance Program.*''

C. Corrective Actions Agreed to in ADR

1. TRISO–X shall demonstrate, with respect to the structural stability safety function for natural phenomena hazards (NPH), that the existing braced-frame intersection welds meet the performance objectives and quality requirements of the structural codes and standards documented in TRISO–X materials license SNM–7007 and the license application incorporated by reference therein. The forces, limit states, material strengths, and resistance factors used in the design of the welded connections shall be consistent with the intended performance of the connection and the assumptions used in the design of the structure. This demonstration shall be made available to the NRC for inspection within 30 days of the issuance date of this Confirmatory Order. If TRISO–X chooses to rework or replace individual components of the braced-frame or the entire braced-frame, including welded connections, then this corrective action item (Item III.C.1) does not apply to those components. The demonstration for existing conditions shall include, at a minimum, the following:

a. Technical justification demonstrating that the braced-frame intersection welds meet all applicable design requirements with the revised 7/16-inch effective throat

b. The WPS and associated PQRs that support the use of an effective throat larger than specified in AISC 360–16, Table J2.2, for the braced-frame intersection welds

c. Qualification records (performance demonstration) of the UT procedure used for measuring the as-built effective throat of the braced-frame intersection welds

d. Training and qualification records of the personnel who performed the UT examination of the braced-frame intersection welds

e. Examination reports for the UT performed on the braced-frame intersection welds in accordance with the qualified UT procedure

f. Training and qualification records of individuals performing QA oversight of the WPS qualification and UT examinations

g. QA oversight records of WPS qualification and the UT examination performed on the braced-frame intersection welds

2. If the NRC's review of the information provided for Item III.C.1 above concludes that TRISO–X did not successfully demonstrate that the structural stability safety function of the TX–1 process building and its braced-frame intersection welds is maintained, TRISO–X shall repair, replace, or redesign all braced-frame intersection welds to restore such function in accordance with TRISO–X materials license SNM–7007 and the license application incorporated by reference therein. TRISO–X agrees to complete this item within 6 months of the date of the NRC correspondence documenting the conclusions about Item III.C.1 of this Confirmatory Order.

3. For any future structural field welding, including rework or replace, of SCBF's flare bevel groove welds, TRISO–X will install the field welds using welding processes that conform with AISC 360–16 without exceeding the effective throat limitations in AISC 360–16, Table J2.2.

4. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will perform additional inspections (*e.g.* visual observation, non-destructive examination (NDE), or other methods as appropriate) of the completed SCBF fillet welds in the TX–1 process building which were not inspected by the welding Special Inspector before and during welding as required by AISC 341–16, ''*Seismic Provisions for Structural Steel Buildings.*'' TRISO–X will demonstrate that the inspection technique(s) and the results provide reasonable assurance that the fillet welds conform with the applicable design and installation requirements as specified in IBC–2018 and the applicable standards referenced therein. TRISO–X will correct any nonconforming fillet welds in accordance with the 2015 Edition of the American Welding Society (AWS) Code D1.1, ''*Structural Welding Code—Steel.*'' TRISO–X agrees to track implementation of the inspections and any necessary corrective

actions under its NCR process including a timeline for completion. If TRISO–X chooses to rework or replace any of the braced-frames or components of the SCBF, including fillet welded connections, then this corrective action item (Item III.C.4) does not apply to those components.

5. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will evaluate its existing corrective action program (CAP) against the guidance in NRC Regulatory Guide (RG) 3.75, ''*Corrective Action Programs for Fuel Cycle Facilities,*'' Section C, to identify and correct any gaps in its CAP with respect to the construction of the TX–1 process building. The evaluation will be formally documented, and the findings, if any, will be entered into TRISO–X's CAP for tracking and resolution, as determined to be appropriate by the licensee. The use of NRC RG 3.75 is intended to serve as a reference to help guide the evaluation and this provision is not intended to make compliance with NRC RG 3.75 a regulatory or licensing requirement.

6. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will perform external benchmarking at another facility within the U.S. nuclear industry, either under construction or operating, to identify actionable best practices related to design control and contractor oversight activities and implement those actions for construction activities at the TRISO–X facility. TRISO–X will capture the results of this benchmarking activity in its CAP and assign action items to track their completion.

7. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will conduct an effectiveness review of the corrective actions implemented to prevent issues similar to the design control errors leading to the issuance of this Confirmatory Order. The effectiveness review, its conclusions, and resulting follow-up actions will be entered into TRISO–X's CAP for tracking and resolution.

8. Within 3 months of the issuance date of this Confirmatory Order, TRISO–X will revise its Contractor Management procedure to:

a. implement a sitewide construction surveillance plan to clearly describe the activities that TRISO–X construction oversight personnel shall perform and witness. With respect to oversight activities, and as applicable to the circumstances, the Contractor Management procedure will address the following:

i. assessments, surveillances, audits, and inspections
ii. identification of nonconformances
iii. development and monitoring of corrective actions
iv. review of design and field work records
v. witness points and hold points
vi. review of contractor procedures
vii. review of contractor qualifications
viii. verification that items or services conform to procurement requirements before acceptance
ix. verification of record retention to demonstrate compliance with project requirements
x. identification of organizational interfaces and division of responsibilities

b. correct issues with roles and responsibilities presented in the original revision, and

c. establish appropriate monitoring metrics for specific construction activities identified during work package review.

9. Within 2 months after placement of the second level concrete floor slabs, TRISO–X will conduct a walkdown and visually inspect the SCBF components located on the second level of the TX–1 process building. The status of the as-built welds and open NCRs will be reviewed and the results documented in a report. TRISO–X agrees to track any necessary corrective actions under its NCR process including a timeline for completion and to complete remediation work to ensure compliance with applicable codes and design requirements.

10. Within 3 months of the issuance date of this Confirmatory Order, TRISO–X will perform an extent of condition review to identify other code-required special inspections (*e.g.,* welding, bolting, and protected zones) of the TX–1 process building MFRS and confirm that these were completed and documented in accordance with the applicable code requirements. TRISO–X agrees to track any necessary corrective actions under its NCR process including a timeline for completion and to complete remediation work to ensure compliance with applicable codes and design requirements.

11. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will provide Nuclear Safety Culture training to the TRISO–X Construction Oversight, Engineering, Regulatory, and Quality teams, including applicable construction contractor management personnel and QC/QA construction inspectors. The training will reinforce common expectations for quality, conservative decision-making, procedural compliance, questioning attitude, problem identification and resolution, Stop-Work authority, and raising safety concerns. TRISO–X agrees to maintain training materials and attendance records.

12. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will provide training for laborers and craft workers to reinforce that work execution must follow build-to-print practices using approved design documents, that work quality is essential, and that work should be stopped when there is uncertainty about the path forward. The training will be formalized and maintained as a requirement for onboarding of new laborers and craft workers involved in the construction of the TRISO–X process buildings.

13. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will conduct a lessons-learned presentation for the TRISO–X team (TRISO–X and applicable X-energy employees, contractors, and subcontractors) summarizing the apparent violation, contributing causes, corrective actions, and programmatic improvements. The presentation will provide formal internal lessons-learned to help ensure that personnel involved understand the circumstances that led to the apparent violation, reinforce expectations for future work, promote implementation of the corrective actions across the organization, and improve preparation and planning for installation of process equipment and items relied on for safety (IROFS). TRISO–X agrees to maintain presentation materials and attendance records.

14. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will prepare a formal lessons-learned report summarizing the apparent violation, causes, corrective actions, and programmatic improvements; distribute the report to applicable TRISO–X and X-energy personnel; and present the lessons learned during an internal company briefing such as an All-Hands meeting. TRISO–X will maintain an official copy of the report in its records.

15. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will develop a case study to highlight cross-cutting issues. This case study will be incorporated and maintained in training for new TRISO–X employees.

16. TRISO–X agrees to provide a lessons-learned presentation at the March 2027 NRC Regulatory Information Conference (RIC), or other mutually agreed forum if the RIC is not available, regarding its experience with construction of the TRISO–X facility, including the issues giving rise to this Confirmatory Order. The presentation will address, as appropriate, lessons learned regarding construction of a new fuel cycle facility; the selection, oversight, and management of contractors with limited or no prior nuclear industry experience; development and implementation of programs and processes as a new NRC licensee; and other regulatory, programmatic, and construction-related lessons learned during facility construction.

D. Agreement by Agency

Based on the completed corrective actions described in Section III.B above, and the commitments described in Section V below:

1. The NRC agrees not to issue a notice of violation for all matters discussed in the NRC's letter to TRISO–X, dated June 9, 2026 (NRC Inspection Report 07007027/2026–006, EAF–RII–2026–0052).

2. The NRC agrees not to impose a civil penalty for all matters discussed in the NRC's letter to TRISO–X, dated June 9, 2026 (NRC Inspection Report 07007027/2026–006, EAF–RII–2026–0052).

3. The NRC agrees not to consider this Confirmatory Order as an escalated enforcement action in the civil penalty assessment process for future enforcement cases involving the TRISO–X facility licensed under SNM–7007.

On October 5, 2026, TRISO–X consented to issuing this Confirmatory Order with the commitments, as described in Section V below. TRISO–X further agreed that this Confirmatory Order is to be effective upon issuance, the agreement memorialized in this Confirmatory Order settles the matter between the parties, and that TRISO–X has waived its right to a hearing.

IV

I find that TRISO–X's completed actions, as described in Section III above, combined with the commitments as set forth in Section

V are acceptable and necessary, and I conclude that with these commitments the public's health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that TRISO–X's commitments be confirmed by this Confirmatory Order. Based on the above and TRISO–X's consent, this Confirmatory Order is effective upon issuance.

Within 30 days of the issuance of this Confirmatory Order, and every three (3) months thereafter until completion of the commitments specified in Section V, TRISO–X shall submit a letter to the NRC describing the status of each action required by Section V and summarizing the actions taken during the reporting period. For each completed action, TRISO–X shall identify the date of completion and indicate that the action is available for NRC inspection and verification. TRISO–X may notify the NRC of completed actions and their availability for inspection at any time during the required three-month reporting intervals.

The NRC may inspect completed actions, including, as appropriate, corrective actions described in Section III.B and commitments required by Section V, to verify TRISO–X's compliance with this Confirmatory Order. The results of any such inspections, including the NRC's conclusions regarding compliance with the applicable provisions of this Confirmatory Order, will be documented in NRC inspection reports.

Unless otherwise specified, all documents required to be submitted to the NRC as a result of this Confirmatory Order will be submitted to U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001; with a copy to the Director, Division of Decommissioning, Fuels, ISFSI, and Transportation.

TRISO–X will retain a copy of all documentation and records necessary to demonstrate compliance with this Confirmatory Order for three (3) years after completion of the TX–1 process building construction, or as consistent with regulatory requirements, whichever is longer.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 70, *it is hereby ordered, effective upon issuance, that* License Number SNM–7007 *is modified as follows:*

1. TRISO–X shall demonstrate, with respect to the structural stability safety function for NPH, that the existing braced-frame intersection welds meet the performance objectives and quality requirements of the structural codes and standards documented in TRISO–X materials license SNM–7007 and the license application incorporated by reference therein. The forces, limit states, material strengths, and resistance factors used in the design of the welded connections shall be consistent with the intended performance of the connection and the assumptions used in the design of the structure. This demonstration shall be made available to the NRC for inspection within 30 days of the issuance date of this Confirmatory Order. If TRISO–X chooses to rework or replace individual components of the braced-frame or the entire braced-frame, including welded connections, then Item V.1 of this Confirmatory Order does not apply to those components. The demonstration for existing conditions shall include, at a minimum, the following:

a. Technical justification demonstrating that the braced-frame intersection welds meet all applicable design requirements with the revised 7/16-inch effective throat
b. The WPS and associated PQRs that support the use of an effective throat larger than specified in AISC 360–16, Table J2.2, for the braced-frame intersection welds
c. Qualification records (performance demonstration) of the UT procedure used for measuring the as-built effective throat of the braced-frame intersection welds
d. Training and qualification records of the personnel who performed the UT examination of the braced-frame intersection welds
e. Examination reports for the UT performed on the braced-frame intersection welds in accordance with the qualified UT procedure
f. Training and qualification records of individuals performing QA oversight of the WPS qualification and UT examinations
g. QA oversight records of WPS qualification and the UT examination performed on the braced-frame intersection welds

2. If the NRC's review of the information provided for Item V.1 above concludes that TRISO–X did not successfully demonstrate that the structural stability safety function of the TX–1 process building and its braced-frame intersection welds is maintained, TRISO–X shall repair, replace, or redesign all braced-frame intersection welds to restore such function in accordance with TRISO–X materials license SNM–7007 and the license application incorporated by reference therein. TRISO–X agrees to complete this item within 6 months of the date of the NRC correspondence documenting the conclusions about Item V.1.

3. For any future structural field welding, including rework or replace, of SCBF's flare bevel groove welds, TRISO–X will install the field welds using welding processes that conform with AISC 360–16 without exceeding the effective throat limitations in AISC 360–16 Table J2.2.

4. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will perform additional inspections (*e.g.* visual observation, NDE, or other methods as appropriate) of the completed SCBF fillet welds in the TX–1 process building which were not inspected by the welding Special Inspector before and during welding as required by AISC 341–16, ''Seismic Provisions for Structural Steel Buildings.'' TRISO–X will demonstrate that the inspection technique(s) and the results provide reasonable assurance that the fillet welds conform with the applicable design and installation requirements as specified in IBC–2018 and the applicable standards referenced therein. TRISO–X will correct any nonconforming fillet welds in accordance with the 2015 Edition of AWS D1.1, ''Structural Welding Code—Steel.'' TRISO–X agrees to track implementation of the inspections and any necessary corrective actions under its NCR process including a timeline for completion. If TRISO–X chooses to rework or replace any of the braced-frames or components of the SCBF, including fillet welded connections, then Item V.4 of this Confirmatory Order does not apply to those components.

5. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will evaluate its existing CAP against the guidance in NRC RG 3.75, ''*Corrective Action Programs for Fuel Cycle Facilities,*'' Section C, to identify and correct any gaps in its CAP with respect to the construction of the TX–1 process building. The evaluation will be formally documented, and the findings, if any, will be entered into TRISO–X's CAP for tracking and resolution, as determined to be appropriate by the licensee. The use of NRC RG 3.75 is intended to serve as a reference to help guide the evaluation and this provision is not intended to make compliance with RG 3.75 a regulatory or licensing requirement.

6. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will perform external benchmarking at another facility within the U.S. nuclear industry, either under construction or operating, to identify actionable best practices related to design control and contractor oversight activities and implement those actions for construction activities at the TRISO–X facility. TRISO–X will capture the results of this benchmarking activity in its CAP and assign action items to track their completion.

7. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will conduct an effectiveness review for the corrective actions implemented to prevent issues similar to the design control errors leading to the issuance of this Confirmatory Order. The effectiveness review, its conclusions, and resulting follow-up actions will be entered into TRISO–X's CAP for tracking and resolution.

8. Within 3 months of the issuance date of this Confirmatory Order, TRISO–X will revise its Contractor Management procedure to:

a. implement a sitewide construction surveillance plan to clearly describe the activities that TRISO–X construction oversight personnel shall perform and witness. With respect to oversight activities, and as applicable to the circumstances, the Contractor Management procedure will address the following:

i. assessments, surveillances, audits, and inspections
ii. identification of nonconformances
iii. development and monitoring of corrective actions
iv. review of design and field work records
v. witness points and hold points
vi. review of contractor procedures
vii. review of contractor qualifications
viii. verification that items or services conform to procurement requirements before acceptance
ix. verification of record retention to

demonstrate compliance with project requirements

x. identification of organizational interfaces and division of responsibilities

b. correct issues with roles and responsibilities presented in the original revision, and

c. establish appropriate monitoring metrics for specific construction activities identified during work package review.

9. Within 2 months after placement of the second level concrete floor slabs, TRISO–X will conduct a walkdown and visually inspect the SCBF components located on the second level of the TX–1 process building. The status of the as-built welds and open NCRs will be reviewed and the results documented in a report. TRISO–X agrees to track any necessary corrective actions under its NCR process including a timeline for completion and to complete remediation work to ensure compliance with applicable codes and design requirements.

10. Within 3 months of the issuance date of this Confirmatory Order, TRISO–X will perform an extent of condition review to identify other code-required special inspections (*e.g.,* welding, bolting, and protected zones) of the TX–1 process building MFRS and confirm that these were completed and documented in accordance with the applicable code requirements. TRISO–X agrees to track any necessary corrective actions under its NCR process including a timeline for completion and to complete remediation work to ensure compliance with applicable codes and design requirements.

11. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will provide Nuclear Safety Culture training to the TRISO–X Construction Oversight, Engineering, Regulatory, and Quality teams, including applicable construction contractor management personnel and QC/QA construction inspectors. The training will reinforce common expectations for quality, conservative decision-making, procedural compliance, questioning attitude, problem identification and resolution, stop-work authority, and raising safety concerns. TRISO–X agrees to maintain training materials and attendance records.

12. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will provide training for laborers and craft workers to reinforce that work execution must follow build-to-print practices using approved design documents, that work quality is essential, and that work should be stopped when there is uncertainty about the path forward. The training will be formalized and maintained as a requirement for onboarding of new laborers and craft workers involved in the construction of the TRISO–X process buildings.

13. Within 6 months of the issuance date of this Confirmatory Order, TRISO–X will conduct a lessons-learned presentation for the TRISO–X team (TRISO–X and applicable X-energy employees, contractors, and subcontractors) summarizing the apparent violation, contributing causes, corrective actions, and programmatic improvements. The presentation will provide formal internal lessons-learned to help ensure that personnel involved understand the circumstances that led to the apparent violation, reinforce expectations for future work, promote implementation of the corrective actions across the organization, and improve preparation and planning for installation of process equipment and IROFS. TRISO–X agrees to maintain presentation materials and attendance records.

14. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will prepare a formal lessons-learned report summarizing the apparent violation, causes, corrective actions, and programmatic improvements; distribute the report to applicable TRISO–X and X-energy personnel; and present the lessons learned during an internal company briefing such as an All-Hands meeting. TRISO–X will maintain an official copy of the report in its records.

15. Within 12 months of the issuance date of this Confirmatory Order, TRISO–X will develop a case study to highlight cross-cutting issues. This case study will be incorporated and maintained in training for new TRISO–X employees.

16. TRISO–X will provide a lessons-learned presentation at the March 2027 NRC RIC, or other mutually agreed forum if the RIC is not available, regarding its experience with construction of the TRISO–X facility, including the issues giving rise to this Confirmatory Order. The presentation will address, as appropriate, lessons learned regarding construction of a new fuel cycle facility; the selection, oversight, and management of contractors with limited or no prior nuclear industry experience; development and implementation of programs and processes as a new NRC licensee; and other regulatory, programmatic, and construction-related lessons learned during facility construction.

This agreement is binding upon successors and assigns of TRISO–X, LLC. The Chief Nuclear Materials Inspector, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by TRISO–X or its successors of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than TRISO–X, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Chief Nuclear Materials Inspector, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene (hereinafter ''petition''), and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562, August 3, 2012). 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. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *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 its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created; the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *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. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice 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 so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at

https://www.nrc.gov/site-help/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., Eastern Time, Monday through Friday, excluding federal holidays.

Participants who believe that they have a 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 the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://ehd.nrc.gov/home* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. 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 are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

If a person other than TRISO–X or its successors requests a hearing, that person shall set forth with particularity the manner in which their interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 30 days from the date of this Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the U.S. Nuclear Regulatory Commission.

/RA/

Jamie Pelton,

Deputy Office Director and Chief Nuclear Materials Inspector, Office of Nuclear Material Safety and Safeguards.

Dated the 21st day of October 2026.

Attachments: As stated.

[FR Doc. 2026–23395 Filed 11–16–26; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Disclosure of Termination Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of an information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB), under the Paperwork Reduction Act, extend its approval of a collection of information regarding the disclosure of termination information under PBGC's regulations governing distress terminations and for PBGC–initiated terminations (OMB control number 1212–0065; expires February 28, 2027). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments must be received on or before January 19, 2027 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to Disclosure of Termination Information in the subject line.
- *Mail or Hand Delivery:* Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0065. All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any 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.

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; emailing *disclosure@pbgc.gov;* or, calling 202–229–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Abigail Davidow (*davidow.abigail1@pbgc.gov*), Deputy Assistant General Counsel, Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–8706. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Sections 4041 and 4042 of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), 29 U.S.C. § 1301–1461, govern the termination of single-employer defined benefit pension plans that are subject to title IV of ERISA. A plan administrator may initiate a distress termination pursuant to section 4041(c), and PBGC may itself initiate proceedings to terminate a pension plan under section 4042 if PBGC determines that certain conditions are present. Under sections 4041(c)(2)(D) and 4042(c)(3) of ERISA, upon a request by an affected party, a

plan administrator must disclose information it has submitted to PBGC in connection with a distress termination filing, and a plan administrator or plan sponsor must disclose information it has submitted to PBGC in connection with a PBGC-initiated termination. The provisions also require PBGC to disclose the administrative record relating to a PBGC-initiated termination upon request by an affected party.

The collection of information has been approved by OMB under control number 1212–0065 (expires February 28, 2027). PBGC intends to request that OMB extend its approval for another three years. 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.

PBGC estimates that approximately 25 plans will terminate as distress or PBGC-initiated terminations each year. PBGC further estimates that participants or other affected parties will annually request termination information in connection with approximately one-quarter of those terminations, resulting in approximately six requests per year (¼ of 25). PBGC estimates that the hour burden for each request will be about 18 minutes. PBGC expects that the staff of plan administrators and sponsors will perform the work in-house and that no work will be contracted to third parties. The total annual hour burden is estimated to be 1 hour and 48 minutes (6 plans × 18 minutes), and the total annual cost burden is estimated to be $0.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Joseph Krettek,

Assistant General Counsel, Legislative and Regulatory Division, Pension Benefit Guaranty Corporation.

[FR Doc. 2026–23389 Filed 11–16–26; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. K2026–10]

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:* November 20, 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:

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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).:* K2026–10; *Filing Title:* Request of the United States Postal Service Concerning Modification One to

[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).

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 92, Which Includes an Extension of That Agreement; *Filing Acceptance Date:* November 12, 2026; *Filing Authority:* 39 CFR 3041.505, and 3041.515; *Public Representative:* Maxine Bradley; *Comments Due:* November 20, 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. 2026–23357 Filed 11–16–26; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

2027 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: As required by the Railroad Unemployment Insurance Act (Act), the Railroad Retirement Board (RRB) hereby publishes its notice for calendar year 2027 of account balances, factors used in calculating experience-based employer contribution rates, computation of amounts related to the monthly compensation base, and the maximum daily benefit rate for days of unemployment or sickness.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2026. The balance in notice (2) is based on data as of September 30, 2026. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2027. The determinations made in notices (8) through (11) are effective January 1, 2027. The determination made in notice (12) is effective for registration periods beginning after June 30, 2027.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275.

FOR FURTHER INFORMATION CONTACT: Terri Lischka, Bureau of the Actuary and Research, Railroad Retirement Board, 844 N Rush Street, Chicago, Illinois 60611–1275, telephone (312) 751–3305.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2026, the computation of the calendar year 2027 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2027, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2027.

Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The accrual balance of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2026, is $331,783,262.40;

2. The September 30, 2026, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is $5,059,021,508.02 as of June 30, 2026;

4. The cumulative system unallocated charge balance is ($540,735,331.54) as of June 30, 2026;

5. The pooled credit ratio for calendar year 2027 is zero;

6. The pooled charged ratio for calendar year 2027 is zero;

7. The surcharge rate for calendar year 2027 is zero;

8. The monthly compensation base under section 1(i) of the Act is $2,235 for months in calendar year 2027;

9. The amount described in sections 1(k) and 3 of the Act as ''2.5 times the monthly compensation base'' is $5,587.50 for base year (calendar year) 2027;

10. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $5,587.50 with respect to disqualifications ending in calendar year 2027;

11. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $2,887 for months in calendar year 2027;

12. The maximum daily benefit rate under section 2(a)(3) of the Act is $107 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2027.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The ratio of the June 30, 2026 system compensation base of $5,059,021,508.02 to the June 30, 1991 system compensation base of $2,763,287,237.04 is 1.83079828. Multiplying 1. 83079828 by $100 million yields $183,079,828.00. Multiplying $50 million by 1. 83079828 produces $91,539,914.00. The Account balance on June 30, 2026, was $331,783,262.40. Accordingly, the surcharge rate for calendar year 2027 is zero.

Pooled Credit

A pooled credit is applied in the calculation of each employer's contribution rate, subject to the applicable minimum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is more than the greater of $250 million or the amount that bears the same ratio to $250 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the balance is more than the greater of $250 million or the indexed $250 million, the excess amount is divided by the system compensation base for the preceding calendar year, resulting in the pooled credit amount.

The ratio of the June 30, 2026 system compensation base of $5,059,021,508.02 to the June 30, 1991 system compensation base of $2,763,287,237.04 is 1.83079828. Multiplying 1.83079828 by $250 million yields $457,699,570.00. The Account balance on June 30, 2026, was $331,783,262.40. Accordingly, the

pooled credit rate for calendar year 2027 is zero.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2027 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2027 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

Using the calendar year 2027 tier 1 tax base of $192,300 for A above produces the amount of $2,234.92, which must then be rounded to $2,235. Accordingly, the monthly compensation base is determined to be $2,235 for months in calendar year 2027.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a–2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until the employee has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2027 monthly compensation base of $2,235 produces $5,587.50. Accordingly, the amount determined under sections 1(k), 3 and 4(a–2)(i)(A) is $5,587.50 for calendar year 2027.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2027 monthly compensation base is $2,235. The ratio of $2,235 to $600 is 3.72500000. Multiplying 3.72500000 by $775 produces $2,887. Accordingly, the amount determined under section 2(c) is $2,887 for months in calendar year 2027.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2027, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2026 monthly compensation base is $2,150. Multiplying $2,150 by 0.05 yields $107.50. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2027, is determined to be $107.

By Authority of the Board.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2026–23352 Filed 11–16–26; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106884; File No. SR–C2–2026–030]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule To Clarify That Fee Codes BC, BM, BN and BO Apply to the Russell 2000 Index (''RUT'')

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2026, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend its Fees Schedule to clarify that Fee Codes BC, BM, BN and BO apply to the Russell 2000 Index (''RUT''). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), the Exchange's website (*https://www.cboe.com/us/options/regulation/rule_filings/ctwo/*), and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective November 2, 2026, to clarify that fee codes BC, BM, BN and BO apply to options on the Russell 2000 Index (''RUT'').

Currently, fee codes BC, BM, BN and BO in the ''Fee Codes and Associated Fees'' table do not expressly reference RUT. The Exchange proposes to amend the Fees Schedule to add RUT to fee codes BC, BM, BN and BO in the ''Fee Codes and Associated Fees'' table to clarify that these are the fees specifically charged for RUT. The Exchange notes that these fee codes (BC, BM, BN and BO) are already used in a prior table that expressly calls out the applicable fees for executions in RUT. This proposed change is only intended to provide clarity in the second instance where these fee codes are used within the Fee Schedule. The proposed change does not make any substantive changes to the amount of any fee or rebate set forth in the Fees Schedule, nor does it change how any fee or rebate is assessed. Rather, the proposed change is non-substantive and clarifying in nature and is intended to make the Fees Schedule more accurate and transparent.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange believes the proposed amendment to add RUT to fee codes BC, BM, BN and BO in the ''Fee Codes and Associated Fees'' table of the Fees Schedule is reasonable, equitable, and not unfairly discriminatory, and promotes just and equitable principles of trade, because it is a clarifying change that makes no substantive change to any fee amount. The proposed change will provide greater clarity and transparency in the Fees Schedule regarding the fee codes applicable to RUT transactions, thereby reducing potential confusion among market participants, which removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest. The proposed change applies equally to all Trading Permit Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe the proposed change will impose any burden on intramarket competition. The proposed change is a clarifying, non-substantive change that adds ''RUT'' to the description for fee codes BC, BM, BN and BO in the Fees Schedule, does not change any fee amount, and applies equally to all Trading Permit Holders.

The Exchange does not believe the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competitive issues, but rather is a clarifying change designed to improve the clarity and transparency of the Exchange's Fees Schedule

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–C2–2026–030 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–C2–2026–030. 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–C2–2026–030 and should be submitted on or before December 8, 2026.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23328 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106888; File No. SR–EMERALD–2026–24]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Options Exchange Fee Schedule To Exclude Options Volume Executed During Extended Trading Hours From Calculations Applicable for Certain Fees, Rebates, and Discounts

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Emerald Options Exchange Fee Schedule (''Fee Schedule'') to clarify that the Exchange will exclude options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the name of the Exchange's other affiliate.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/emerald-options/rule-filings*, and at the Exchange's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the name of the Exchange's other affiliate, MIAX Sapphire, LLC (''MIAX Sapphire'').

Exchange Rule 501 describes the Exchange's hours of operation. In particular, the hours during which option transactions may be made on the Exchange shall be from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time except for option contracts on Exchange Traded Fund Shares, as defined in Rule 402(j), and Index-Linked Securities, as defined in Rule 402(k)(1), which may remain open for trading beyond 4:00 p.m. but in no case later than 4:15 p.m. Eastern Time, as designated by the Exchange. The Exchange does not offer options trading outside of the hours described in Exchange Rule 501.

Currently, certain of the Exchange's transactional and non-transactional fees, rebates and tiers are determined by volume in a particular segment calculated as a percentage of total national volume cleared at the Options Clearing Corporation in the relevant account types. For example, the Exchanges calculates transaction fees (or rebates) to Priority Customers,[3] Market Makers,[4] and professional origins (*i.e.,* referred to in the Fee Schedule under the origin Non-Priority Customer, Firm Proprietary/Broker-Dealer, and Non-MIAX Emerald Market Makers) [5] based on the total monthly sides executed by the Member [6] in all options classes on MIAX Emerald in the relevant origin type and/or applicable liquidity, not including Excluded Contracts,[7] (as the numerator) expressed as a percentage of (divided by) CTCV [8] (as the denominator).

Additionally, the Exchange assesses monthly Trading Permit [9] fees and MEI Port fees to Market Makers based on the lesser of either the per class basis or percentage of total national average daily volume measurement.[10] The amount of the monthly Market Maker Trading Permit fee and MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the tables in Sections 3)b) and 5)d)ii) of the Fee Schedule.[11] The Exchange assesses MIAX Emerald Market Makers the monthly Market Maker Trading Permit fee and MEI Port fee based on the greatest number of classes listed on MIAX Emerald that the MIAX Emerald Market Maker was assigned to quote in on any given day within a calendar

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[4] The term ''Market Makers'' refers to ''Lead Market Makers'', ''Primary Lead Market Makers'' and ''Registered Market Makers'' collectively. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[5] The Exchange notes that certain terms are not expressly defined in the Fee Schedule.

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[7] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions section of the Fee Schedule.

[8] ''CTCV'' means Customer Total Consolidated Volume calculated as the total national volume cleared at The Options Clearing Corporation in the Customer range in those classes listed on MIAX Emerald for the month for which fees apply, excluding volume cleared at the Options Clearing Corporation in the Customer range executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions section of the Fee Schedule.

[9] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[10] *See* Fee Schedule, Sections 3)b) and 5)d)ii).

[11] *Id.*

month.[12] The class volume percentage is based on the total national average daily volume in classes listed on MIAX Emerald in the prior calendar quarter.[13] Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee and MEI Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.[14]

The Exchange notes there are other examples in the Fee Schedule where fees or rebates are determined by certain volume calculations in particular segments calculated as a percentage of national volume in each segment.

On May 28, 2026, Cboe Exchange, Inc. (''Cboe'') received approval from the U.S. Securities and Exchange Commission (''Commission'') to amend the Cboe rules to provide for extended trading sessions for multi-listed equity options that meet certain eligibility criteria.[15] Pursuant to the Cboe Approval Order, Cboe may offer an extended morning trading session (from 7:30 a.m. to 9:25 a.m. Eastern Time) and an extended afternoon session (from 4:00 p.m. to 4:15 p.m.) for equity options that are not exchange-traded product options that already trade until 4:15 p.m.[16] Cboe launched the extended trading sessions on October 19, 2026, with the initial listings of select multi-listed equity and exchange-traded fund options.[17] Other exchanges have filed rule proposals with the Commission to offer the same extended trading sessions for multi-listed equity options, which proposals were also approved by the Commission.[18]

The Exchange now proposes to amend the Fee Schedule to add a section titled ''Notes'' before Section 1 of the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. In particular, the Exchange proposes to exclude the following from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month: (1) total national volume cleared at the Options Clearing Corporation in the relevant account types in multiply-listed equity options classes that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time; and (2) total national volume cleared at the Options Clearing Corporation in the relevant account types in option classes in Exchange Traded Fund Shares (as defined in Rule 402(j)) and Index-Linked Securities (as defined in Rule 402(k)(1)) that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, except for options on such Exchange Traded Fund Shares or Index-Linked Securities which have been designated by the Exchange as remaining open for trading beyond 4:00 p.m. Eastern Time but in no case later than 4:15 p.m. Eastern Time. The Exchange further proposes to clarify that the exclusions noted above are separate from volume the Exchange excludes in the event that it experiences an Exchange System Disruption,[19] as described in the Fee Schedule.

The purpose of the proposed changes is to add clarity to the Fee Schedule. The Exchange does not offer extended trading sessions at this time. The Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. If the Exchange were to not exclude multi-listed equity options volume executed during other exchanges' extended trading sessions, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations.

The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the name of the Exchange's other affiliate. Currently, the last paragraph provides as follows:

> Except as otherwise provided in this Fee Schedule as described below, all fees set forth in this Fee Schedule are specific to and assessed exclusively for use of MIAX Emerald and do not include access to and/or use of MIAX[20] or MIAX Pearl.[21]

Since this language was originally established, the Exchange's affiliate, MIAX Sapphire launched operations. Accordingly, the Exchange proposes to amend this paragraph to insert MIAX Sapphire. The purpose of this change is to provide consistency and clarity in the Fee Schedule and to align the Fee Schedule with that of the Exchange's affiliates, MIAX, MIAX Pearl, and MIAX Sapphire, to specify that the fees described in the Fee Schedule apply exclusively to the Exchange, within limited exceptions noted.

Implementation Date

The proposed rule changes are effective beginning November 1, 2026.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of the Act,[22] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[23] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to exclude volume in multi-listed equity options executed during extended trading sessions from

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 105569 (May 28, 2026), 91 FR 33005 (June 2, 2026) (SR–CBOE–2025–079) (the ''Cboe Approval Order'').

[16] *See id.; see also* Cboe Rule 5.1 (describing requirements that must be met for equity options to be able to trade during the extended trading sessions).

[17] *See* Press Release, Cboe Launches Extended Trading Sessions for Select Single Stock and ETF Options (October 19, 2026), *available at https://ir.cboe.com/news/news-details/2026/Cboe-Launches-Extended-Trading-Sessions-for-Select-Single-Stock-and-ETF-Options/default.aspx.*

[18] *See* Securities Exchange Act Release Nos. 106218 (August 28, 2026), 91 FR 56504 (September 2, 2026) (SR–NYSEAMER–2026–34); 105785 (June 26, 2026), 91 FR 40061 (July 1, 2026) (SR–MRX–2026–11).

[19] ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. *See* the Definitions section of the Fee Schedule.

[20] ''MIAX'' refers to one of the Exchange's affiliates, Miami International Securities Exchange, LLC.

[21] ''MIAX Pearl'' refers to one of the Exchange's affiliates, MIAX PEARL, LLC.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(4) and (5).

its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month is reasonable, equitably allocated and not unfairly discriminatory. This is because the changes will provide greater clarity to Members regarding volume in multi-list equity options that the Exchange will exclude from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts. The Exchange believes it is reasonable and not unfairly discriminatory to ensure that the Fee Schedule is clear and concise to all market participants.

The Exchange believes it is reasonable to exclude volume executed during the extended trading sessions of other exchanges because, if the Exchange were to not exclude such volume, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed each month. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange believes its proposal is reasonable.

Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all Members uniformly, in that each Member's volume for purposes of pricing tiers, non-transaction fees and other incentives would continue to be calculated in a uniform manner and would now exclude multi-list equity options volume executed during extended trading sessions.

The Exchange believes its proposal to add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX Emerald, with limited exceptions, is reasonable, equitable and not unfairly discriminatory. This is because the proposed change is to align with text in the fee schedules of the Exchange's affiliates and to provide consistency and clarity in the Fee Schedule.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [24] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as described above, the proposed rule change is designed to provide greater clarity regarding volume that the exchange will exclude in its volume calculations to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

Inter-Market Competition

The Exchange does not believe the proposal would impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers, non-transaction fees and other incentives. The Exchange's proposal to add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX Emerald, with limited exceptions, also does not raise any competitive issues and is solely to provide clarity in the Fee Schedule.

Intra-Market Competition

Additionally, the Exchange believes the proposal would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[24] 15 U.S.C. 78f(b)(4) and (5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[25] and Rule 19b–4(f)(2) [26] thereunder. 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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–EMERALD–2026–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–EMERALD–2026–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR–EMERALD–2026–24 and

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23332 Filed 11–16–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106882; File No. SR–Phlx–2026–73]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Regarding Fees for Interfirm Cabinet Connectivity

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2026, Nasdaq PHLX LLC (''Nasdaq Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity order, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity connection, as described below. Currently, the Exchange assesses the applicable installation fee and ongoing monthly fee only to the customer that submits the order. The other customer that accepts and participates in the connection is not separately assessed those fees. Under the proposal, each customer participating in a new interfirm cabinet connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For interfirm cabinet connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

Background

The Exchange's data center campus consists of the original data center (''NY11''), an initial expansion area (''NY11–4''), and a second expansion area (''NY11–5'') (collectively, the ''Data Center'' or ''Data Center Campus''). Interfirm Cabinet Connectivity is a fiber-based connectivity service that links cabinets used by two different colocation customers (''Interfirm Cabinet Connectivity'') throughout the Data Center Campus. The interfirm cabinet connection consists of two customer-side legs that meet at the Nasdaq-provided distribution point: [3] one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet.

Before the Exchange implemented equalized connectivity [4] throughout its Data Center, a customer would order Interfirm Cabinet Connectivity through the Nasdaq customer portal and identify the customer to which the ordering customer wanted to connect, with the ordering customer being solely responsible for both the installation and the ongoing monthly fiber connectivity fees. No separate installation or ongoing monthly fees were assessed, or are currently assessed, to the non-ordering customer for its side of the Interfirm Cabinet Connectivity.

With respect to provision and installation of the service, the fiber for the Interfirm Cabinet Connectivity was provided and installed by a third-party provider or by the customer. The Exchange did not provide or install such fiber or manage such services.

Equalization places greater emphasis on the way Interfirm Cabinet Connectivity is supervised and managed, with Nasdaq taking a more central role in those functions. While customers still request the interfirm cabinet connection through the Nasdaq Customer Portal, the pre-existing fiber in the Interfirm Cabinet Connectivity has been replaced with Exchange-provided, equalized fiber. Under this structure, the Exchange supervises and audits the interfirm cabinet connection on an ongoing basis.[5]

As discussed above, the Interfirm Cabinet Connectivity consists of two customer-side legs that meet at the Nasdaq-provided distribution point: one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet. The Exchange provides and manages the cabling and standardized demarcation points and performs inventory management, implementation support,

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As used in this context, a ''distribution point'' is a designated passive cabling node within the Data Center's structured telecommunications architecture, where backbone or feeder cabling terminates, and from which downstream cabling is routed to customer cabinets or equipment locations. Distribution points serve as standardized, auditable locations used for organizing, patching, and managing connectivity.

[4] Equalized connectivity refers to connectivity implemented using equalized cabling and infrastructure designed to support equidistant connectivity relative to other customer locations in the Data Center. The Equalization Project enhances the integrity of the Exchange's Data Center networks by establishing standardized connectivity requirements and providing for greater Exchange management oversight of those components. *See* Securities Exchange Act Release No. 34–101078 (Sept. 18, 2024), 89 FR 77937 (Sept. 24, 2024) (SR–NASDAQ–2024–054) (describing the Equalization Project in greater detail).

[5] The Exchange notes that a third-party provider, specifically the Data Center operator, runs the Interfirm Cabinet Connectivity. All other functions are performed by the Exchange.

ongoing maintenance, monitoring, audit, and operational oversight for the connection.

Both customers must act before the connection is implemented: one customer initiates the Interfirm Cabinet Connectivity order through the Nasdaq Customer Portal, and the other customer accepts it. If the second customer does not accept the order, the connection is not implemented. Each participating customer consequently receives a distinct customer-side leg of a Nasdaq-provided, Nasdaq-managed, equalized connectivity path. Interfirm Cabinet Connectivity is optional and is not required for a customer to obtain colocation services or to connect to the Exchange's trading systems.

Proposal

The Exchange proposes to retain the existing installation and ongoing monthly fees for Interfirm Cabinet Connectivity and extend their application to the non-ordering, accepting customer side of the connection. Under the proposal, each customer participating in a new Interfirm Cabinet Connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For Interfirm Cabinet Connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

The Exchange anticipates implementing the proposed rule change during the first quarter of 2027 and will announce that implementation date through an Equity Trader Alert or other customer communication.

The Exchange believes that assessing the existing fees separately to each customer appropriately reflects the Exchange's increased role in managing Data Center connectivity following Equalization. The Exchange now provides the fiber and manages, supervises, monitors, and audits the connection after installation. The proposal also aligns the allocation of fees with the structure of the service: two separately provided and managed customer-side legs join at the Nasdaq-provided distribution point, and each customer must authorize and receive the benefit of its own leg. The proposal therefore assesses each customer for the Nasdaq-provided and Nasdaq-managed connectivity furnished to that customer.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fees are reasonable because each customer receives a distinct leg of an equalized connectivity path that the Exchange actively provides and manages. Each customer-side leg is a defined, Exchange-managed component of that path. Following equalization, the Exchange provides the fiber connectivity and administers the cabling, standardized demarcation points, inventory, and ongoing operational support associated with each leg, and it supervises and audits the connection on an ongoing basis. Each customer's leg is a component the Exchange implements, administers, monitors, and supports. Applying the existing $550 installation fee and $385 monthly fee to each customer is reasonable because each customer receives, and the Exchange manages, a distinct leg of the equalized path.[9] The Exchange believes this approach equitably allocates the fees among the customers that receive and use each Exchange-managed leg of the connection. Each customer receives connectivity through its respective leg of the connectivity path, and each customer is accordingly responsible for the fees associated with the connectivity provided to it. The fact that the two connectivity paths collectively facilitate communication between the customers does not alter the fact that each customer receives a separately identifiable connectivity service. The Exchange further believes that assessing each customer for its respective connectivity leg avoids requiring one customer to pay for the leg that another customer receives. The Exchange therefore believes that its methodology represents an equitable allocation of fees among the customers using Interfirm Cabinet Connectivity.

The amount of each fee is also reasonable because it is unchanged from the Fiber connectivity fee amounts currently assessed to the ordering customer for Interfirm Cabinet Connectivity and is the same amount charged for certain other Fiber connectivity offerings.[10]

The Exchange also believes that the proposal is reasonable because it supports a uniformly administered and

[6] The Exchange notes that the structure proposed here parallels the structure the Exchange adopted for TNO Cross-Connect. A telecommunications company (''telco'') connectivity path in the Data Center consists of two Nasdaq-provided and Nasdaq-managed legs that meet at a Nasdaq-provided distribution point: the TNO Cross-Connect, which runs from the telco's carrier cabinet to the distribution point, and the customer-side leg, which runs from the distribution point to the customer's cabinet. *See* Exchange Rule General 8, Section 1. As with TNO Cross-Connect, the Exchange proposes to assess each leg, because the Exchange provides and manages both and, with equalized connectivity, exercises greater management oversight over each component of the path. *See* Securities Exchange Act Release Nos. 105017 (Mar. 16, 2026), 91 FR 13349 (Mar. 19, 2026) (SR–Phlx–2026–13); 05767 (June 24, 2026), 91 FR 39131 (June 29, 2026) (SR–Phlx–2026–40). The Exchange notes, however, that unlike TNO Cross Connect, the proposed Interfirm Cabinet Connectivity offering is optional and not required for collocating with the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] The Exchange also believes that the proposed fees are reasonable when viewed against the fee another exchange charges for a similar service. NYSE offers a ''Data Center Fiber Cross Connect'' service, for which it charges the User that requests the service an initial charge of $500 plus a monthly charge of $600 for a single cross connect, or $7,700 over the first year. *See* NYSE Connectivity Fee Schedule (last updated Oct. 2, 2026), Section A (Co-Location Fees). By comparison, under the proposal each customer participating in a new Interfirm Cabinet Connectivity connection would pay $5,170 over the first year for its own leg (a $550 installation fee plus twelve monthly fees of $385), or approximately 33% less than NYSE's first-year charge for a single cross connect. This comparison is based solely on NYSE's published fee schedule, which does not identify a separate charge to any other party to the connection, and the Exchange makes no representation regarding NYSE's billing practices beyond what that schedule states. The Exchange offers this comparison as context. The proposal need not replicate NYSE's fee structure to be consistent with the Act. The Act does not require an exchange to adopt another exchange's approach to pricing a similar service. The question under Section 6(b)(4) is whether the proposed fees are reasonable and equitably allocated among the persons using the Exchange's facilities, and the proposal meets that standard. Each customer would pay the same, existing monthly fee for the Exchange-provided and Exchange-managed leg that it receives. For new connections, each customer would also pay the same, existing installation fee for its leg. No customer would be asked to bear the fees attributable to another customer's leg of the connection path. Under the Exchange's current model, the ordering customer alone pays the fees for a connection in which two customers each receive a leg. Under the proposal, neither customer subsidizes the other. Each pays the same fee for its own leg, and only for the leg it receives. For connections already established as of the implementation date, the accepting customer would pay the ongoing monthly fee for its leg but not the installation fee, because that one-time fee has already been assessed to the ordering customer when the connection was established. In that case, the ordering customer's fees would not change.

[10] *See* Exchange Rule General 8.

auditable Interfirm Cabinet connectivity pathway within the Data Center. As the Exchange has explained, equalization is intended to enhance the integrity of the Data Center network by establishing standardized connectivity requirements for each component of the connectivity path and exercising greater management oversight over those components.[11] A standardized, Nasdaq-managed path in which the Exchange oversees the cabling, demarcation points, and supporting architecture enhances the Exchange's ability to monitor, maintain, and audit that connectivity.[12] Each customer-side leg of Interfirm Cabinet Connectivity is a component of that path. Assessing the existing fees to each customer for its own leg allocates those fees among the customers that receive and use each Exchange-managed leg of the path and does not alter the path's availability or operation.

The Exchange further believes the proposal is reasonable because Interfirm Cabinet Connectivity is an optional service. Customers are not required to purchase Interfirm Cabinet Connectivity to obtain colocation services or to connect to the Exchange's trading systems. Rather, a customer purchases the service only if it elects to establish a fiber connection between its cabinet and the cabinet of another colocation customer, and each customer may determine for itself whether the service, at the proposed fees, is appropriate for its business.

The Exchange believes that applying the fees separately to both customers is equitable and not unfairly discriminatory because both customers receive a substantially similar customer-side service and both benefit from the Exchange's provision and ongoing management of the equalized path. Under the current billing model, only the ordering customer pays even though the accepting customer also receives a Nasdaq-provided and Nasdaq-managed leg of the connection. The proposal allocates the fees to both beneficiaries and treats the ordering and accepting customers alike. Each customer would pay the same, existing fee for the Exchange-provided and Exchange-managed leg that it receives, and no customer would be asked to bear the fees attributable to another customer's leg of the connection.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory not to assess the installation fee to the accepting customer for Interfirm Cabinet Connectivity connections already in place as of the implementation date. The installation fee is a one-time charge assessed when a connection is ordered and established. For a connection already in place, the connection has been established and the installation fee has already been assessed to the ordering customer. The Exchange therefore believes that it would be inappropriate to assess a one-time installation charge for a connection that is not being newly established. Those accepting customers will, however, be assessed the ongoing monthly fee beginning on the implementation date, which is consistent with the Exchange's rationale for assessing each customer for the Exchange-managed leg of the connection that it receives and uses. The distinction is drawn by whether a connection is in place as of the implementation date, and not by the identity, size, or trading activity of any customer, and it applies uniformly to every accepting customer with an existing connection.

The Exchange will apply the same fee amounts and billing methodology to all similarly situated customers. The proposal does not distinguish among customers based on their identity, trading activity, or anticipated use of the connection. Rather, each new customer will pay the same installation fee and monthly fee for its own leg of the standardized, equalized connectivity path.[13] Because both parties must affirmatively participate in the Nasdaq Customer Portal order process before implementation, as described above, each customer will have notice of the fee treatment before the Exchange provisions the connection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposal will impose an undue burden on intramarket competition because it will apply the same fees to each customer participating in an Interfirm Cabinet Connectivity order. The proposal will eliminate the current difference in the ongoing monthly fee treatment of the ordering and accepting customers, each of which receives a customer-side leg of the Exchange-provided and Exchange-managed connection, and, for new orders, the difference in their installation fee treatment.

The proposal therefore will treat similarly situated customers consistently. Each customer participating in an Interfirm Cabinet Connectivity arrangement through a new order will be assessed the same installation and recurring monthly fees for its respective connectivity leg. For connections already in place as of the implementation date, the Exchange will not assess a one-time installation fee to the accepting customer because the connection has already been established, but the accepting customer will be assessed the same ongoing monthly fee as the ordering customer. This distinction turns on whether a connection is in place as of the implementation date and applies uniformly to all such connections. It does not favor or disadvantage any customer relative to another. The fees do not distinguish among customers based on their identity, business model, trading activity, or the identity of the customer with which they establish connectivity.

The Exchange also does not believe that the proposal will impose an undue burden on intermarket competition. Interfirm Cabinet Connectivity is an optional service that customers are not required to purchase to obtain colocation services or connect to the Exchange's trading systems. The proposal does not alter the availability or technical operation of the service. Instead, it applies the existing fees separately to each customer that elects to participate in and receive a customer-side leg of the connection: for new orders, the existing installation fee and ongoing monthly fee, and for existing connections, the existing ongoing monthly fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[11] *See* SR–Phlx–2026–40, *supra* note 6, 91 FR at 39132.

[12] *See, e.g.,* SR–Phlx–2026–13, *supra* note 6, 91 FR at 13350; SR–Phlx–2026–40, *supra* note 6.

[13] As discussed above and as proposed, existing Interfirm Cabinet Connectivity customers will each pay only the ongoing monthly fees. For such established Interfirm Cabinet Connectivity connections, the Exchange will not assess a second installation fee to the non-ordering customer.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–Phlx–2026–73 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–Phlx–2026–73. 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–Phlx–2026–73 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23326 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0618]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 173

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Rule 173 is intended to inform investors that they purchased securities in a registered transaction to facilitate their ability to trace their purchases for purposes of asserting their rights under the liability provisions of the Federal securities laws. The information required by Rule 173 is mandatory and is not made publicly available. We estimate that responses to Rule 173 are made by approximately 5,720 respondents approximately 43,546 times a year for a total of 249,083,120 responses annually. We estimate that it takes approximately 0.0167 burden hours per response and $0 cost burden per response to provide the information required under Rule 173. As a result, we estimate that the total annual reporting burden for Rule 173 is 4,159,688 hours (0.0167 hours per response × 249,083,120 responses) and that the total annual 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=202608-3235-013* or send an email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice by December 18, 2026.

Dated: November 12, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23322 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106890; File No. SR–NYSEAMER–2026–100]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Change Amending Section 341 of the NYSE American Company Guide To Address Multi-Step Transactions

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, NYSE American LLC (''NYSE American'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 341 (''Acquisition of a Listed Issuer by an Unlisted Entity'') of the NYSE American Company Guide (''Company Guide'') to address the application of Section 341 to multi-step transactions. The proposed rule change is available on the Exchange's website at *www.nyse.com* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 341 (''Acquisition of a Listed Issuer by an Unlisted Entity'') of the Company Guide provides that, if a listed issuer engages in a Reverse Merger,[3] it will be eligible for continued listing on the Exchange only if the post-transaction entity meets the standards for initial listing. Section 341 provides that the Exchange will refuse to list additional securities of a listed issuer in connection with a Reverse Merger unless the post-transaction entity meets the standards for initial listing and the listed issuer obtains shareholder approval of the issuance of such securities as required by Section 713(b) of the Company Guide.

In recent times, a small number of companies listed on the Exchange have structured a Reverse Merger as a multi-step transaction. In a multi-step reverse merger, in connection with the consummation of a merger with the unlisted entity, the listed company issues to the owner of the unlisted entity (i) a number of shares of the listed company's common stock that would not require shareholder approval under Section 713(b) or give rise to a change of control and (ii) additional consideration in the form of contingently convertible securities that will become convertible into common stock upon subsequent receipt of approval of the listed company's shareholders. The owners of the unlisted entity obtain control of the post-merger entity only upon the later conversion of the contingently convertible securities into common stock. The Exchange notes that the definition of ''Reverse Merger'' for purposes of Section 341 and the requirements of the rule only apply when the change of control occurs. As such, under Section 341 as currently drafted, a listed issuer may consummate the merger in a multi-step reverse merger transaction even if the combined entity would not meet the Exchange's initial listing standards. In such a case, the Exchange would have no choice but to permit the consummation of the merger and then delist the company in the event that the shareholders approve the conversion of the contingently convertible securities and the combined entity proceeds with conversion and does not meet the initial listing standards at the time of that conversion. In some cases, a company may refrain from converting the contingently convertible securities in order to avoid delisting, leaving the company in the unusual position of having completed a merger without effectuating the change of control that was anticipated when the merger agreement was reached.

The Exchange wishes to address the effect under Section 341 of structuring a Reverse Merger using the multi-step reverse merger structure. The Exchange proposes to amend Section 341 to define a Multi-Step Reverse Merger for purposes of that rule as a transaction in which a listed issuer engages in a Reverse Merger through a series of transactions, where the listed issuer enters into an agreement with an unlisted entity that provides for an initial issuance of shares of the listed issuer, along with the anticipated future issuance of additional shares of the listed issuer upon conversion, exchange or exercise of securities of another type of the listed issuer when the future issuance of the shares would result in a change of control of the listed issuer. The Exchange proposes to amend Section 341 to provide that in a Multi-Step Reverse Merger, the listed issuer will be eligible for continued listing on the Exchange only if, at the time of the initial issuance of shares of the listed issuer, the contemplated post-transaction entity meets initial listing standards. The revised rule will specify that, in determining the post-transaction entity's compliance with initial listing standards in a Multi-Step Reverse Merger, the Exchange will assume the issuance of all shares anticipated to be issued upon conversion, exchange or exercise of securities as part of the Multi-Step Reverse Merger.

Section 341 provides that the Exchange should be consulted whenever a listed issuer is contemplating a transaction or series of transactions that could constitute a Reverse Merger. If the Exchange determines that a transaction or series of transactions constitute a Reverse Merger, the listed issuer must submit an initial listing application for the post-transaction entity with sufficient time to allow the Exchange to complete its review before the effective date of the Reverse Merger. The proposed amended form of Section 341 will provide that the listed issuer must submit the required initial listing application prior to the Reverse Merger or the initial issuance of shares of the listed issuer in the Multi-Step Reverse Merger, as the case may be.

In its current form, Section 341 states that ''in determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed issuer.'' The Exchange proposes to clarify this statement by modifying it to state that the Exchange will undertake this analysis of all relevant factors ''in considering whether a change of control has occurred in the context of a Reverse Merger.''

Section 341 contains a sentence providing that if the initial listing application has not been approved prior to the effective date of the Reverse Merger, the Exchange will issue a Staff Determination Letter as set forth in Section 1202 and begin delisting proceedings pursuant to Part 12. The Exchange proposes to amend this sentence to state that if the initial listing application has not been approved prior to the effective date of the Reverse Merger or the initial issuance of shares of the listed issuer in the Multi-Step Reverse Merger, as the case may be, the Exchange will issue a Staff Determination Letter and begin delisting proceedings.

The Exchange believes the proposed amendment to Section 341 is appropriate as it would prevent a listed company from entering into a Multi-Step Reverse Merger where the ownership structure upon completion of all of the intended steps could result in a Reverse Merger that would require the listed company to be delisted for failing to meet initial listing standards. As such, the proposed amendment is consistent with the purpose of Section 341 in its current form, which is to prevent entities that do not qualify for initial listing from achieving listing status by undertaking a Reverse Merger with a listed issuer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove

[3] For the purposes of Section 341, a ''Reverse Merger'' is a transaction or series of transactions whereby a listed issuer combines with, or into, an entity not listed on the Exchange, resulting in a change of control of the listed issuer and potentially allowing such unlisted entity to obtain an Exchange listing. In determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed issuer. The Exchange will also consider the nature of the businesses and the relative size of both the listed issuer and the unlisted entity.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed amendment to Section 341 is appropriate as it would prevent a listed issuer from entering into a Multi-Step Reverse Merger where the ownership structure upon completion of all of the intended steps could result in a Reverse Merger that would require the listed issuer to be delisted. As such, the proposed amendment is consistent with the purpose of Section 341 in its current form, which is to prevent entities that do not qualify for initial listing from achieving listing status by undertaking a Reverse Merger with a listed issuer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule amendment will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule amendment would be applied in a nondiscriminatory manner to all listed companies that seek to consummate a transaction. In addition, any company wishing to undertake a Multi-Step Reverse Merger could seek to list on another national securities exchange that does not have a similar 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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–2026–100 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–2026–100. 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–2026–100 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23334 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0748]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Revision: Ombudsman Matter Management System (OMMS) Form

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 revision of the proposed collection of information.

Section 4(g)(8) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78d(g)(8) requires the SEC Ombuds to (i) act as a liaison between the Commission and any retail investor in resolving problems that retail investors may have with the Commission or with self-regulatory organizations (''SROs''); (ii) review and make recommendations regarding policies and procedures to encourage persons to present questions to the Investor Advocate regarding compliance with the securities laws; and (iii) establish safeguards to maintain the confidentiality of communications between the persons described in clause (ii) and the Ombuds. In addition, Section 4(g)(8) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78d(g)(8) requires the Ombuds to submit a semi-annual report to the Investor Advocate describing the activities and evaluating the effectiveness of the Ombuds during the preceding year.

Each year, the Commission's Office of the Investor Advocate, Office of the Ombuds (''Ombuds'') receives over 2,500 contacts from investors who have complaints or questions about the SEC or any of the self-regulatory organizations that it oversees. To make it easier for the public to contact the Ombuds, the Ombuds created an electronic form (Ombudsman Matter Management System Submission Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Ombudsman Matter Management System (OMMS) Submission Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the OMMS Submission Form is voluntary. Absent the forms, the public still has several ways to contact the Ombuds, including telephone, letters, and email. Investors can access the OMMS Submission Form through the Ombuds web page at the web address *https://www.sec.gov/ombuds* or directly at the web address *https://omms.sec.gov.*

The dual purpose of the OMMS Submission Form is to make it easier for

[5] 17 CFR 200.30–3(a)(12).

the public to contact the agency with complaints, questions, tips, or other feedback and to streamline the workflow of Ombuds staff that record, process, and respond to investor contacts. Investors who submit complaints, ask questions, or provide tips do so voluntarily. Although the OMMS Submission Form provides a structured format for incoming investor correspondence, the Commission does not require that investors use any particular form or format when contacting the Ombuds. Investors who choose not to use the OMMS Submission Form will receive the same level of service as those who do.

The Ombuds receives approximately 1,500 contacts each year through the Ombudsman Matter Management System Submission Form. The Ombudsman uses the information that investors supply on the Ombudsman Matter Management System Submission Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, referring matters to enforcement or examinations for potential investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends.

This proposed collection is a revision of the previously approved collection for OMMS. The OMMS Submission Form is being revised to include a new information type. Specifically, the user of the revised OMMS Submission Form will be asked to respond to a prepopulated list, which asks whether the submitter is a: Individual Investor; Registered Representative; Accountant; Other Financial Professional; Issuer/Attorney for an Issuer; Brokerage Firm Compliance Officer; Academic/Researcher/Student; Member of the Press.

The staff of the Commission estimates that the total reporting burden for using the Ombudsman Matter Management System Submission Form is 750 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 1,500 respondents × 30 minutes = 750 burden hours.

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=202608-3235-007* 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 December 18, 2026.

Dated: November 12, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23325 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106891; File No. SR–CCUS–2026–01]

Self-Regulatory Organizations; Cboe Clear U.S., LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee Schedule To Adopt a Broker-Dealer Clearing Member Incentive Program and Reduce the Clearing Fee for Securities Contracts

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2026, Cboe Clear U.S., LLC (''CCUS'' or the ''Clearinghouse'') 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 primarily by CCUS. CCUS filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and paragraph (f)(2) of Rule 19b–4 [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

CCUS proposes to amend its Fee Schedule to adopt a Broker-Dealer Clearing Member Incentive Program (the ''BD Program'') in connection with CCUS's issuance and clearance of securities listed on a national securities exchange (''Securities Contracts''),[5] and to reduce the clearing fee for Securities Contracts from $0.002 to $0.001 per cleared contract.

The text of the proposed rule change is also available on the Commission's website (*https://www.sec.gov/rules/sro.shtml*), CCUS's website (*https://www.cboe.com/solutions/clearing/us/notices/ccus-sec-filings/*), and at the principal office of CCUS.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CCUS proposes to amend its Fee Schedule to adopt the BD Program in connection with its issuance and clearance of Securities Contracts, and to reduce the clearing fee for Securities Contracts.[6] Market Makers and other broker-dealers trading for their own proprietary accounts are critical for options to have liquid and active markets. These market participants generally clear securities options transactions through separate clearing firms, including, in the case of broker-dealers, transactions for proprietary accounts of broker-dealers (''PAB'' transactions). Therefore, for Market Maker or PAB transactions in Securities Contracts issued by CCUS to be cleared, CCUS Clearing Members must be able and eligible to clear Securities Contracts.

Before a clearing firm can clear Market Maker or PAB transactions in Securities Contracts at CCUS, CCUS understands a clearing firm must complete significant back-office development work, including system development, connectivity to CCUS, risk and margin integration, testing and certification, and operational readiness. Clearing firms have many competing items in their development queues. To incentivize clearing firms to prioritize in the near term the work needed to clear Market Maker or PAB transactions in Securities Contracts at CCUS, CCUS proposes to adopt the BD Program.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4.

[5] See CCUS Rule 101(ttt).

[6] The proposed rule change also moves the effective date of the fee schedule to the top of the fee schedule, and clarifies the statement that ''fees are assessed per cleared contract in USD'' applies to the clearing fees table on the fee schedule.

Eligibility and Selection

CCUS may select BD Clearing Members [7] (or prospective BD Clearing Members) to participate in the BD Program. To be eligible, a firm must: (1) notify CCUS of its intent to participate in the BD Program no later than November 11, 2026, in a form and manner prescribed by CCUS; and (2) be a BD Clearing Member or a prospective BD Clearing Member at the time it provides such notice.

CCUS will select BD Program participants from among eligible firms by considering the following factors: (1) adequacy of capital, (2) operational capacity, (3) clearing experience, (4) regulatory history, and (5) other relevant factors CCUS believes demonstrate the firm's capacity to engage in the clearing of Securities Contracts. CCUS believes it is reasonable to limit participation in the BD Program to clearing firms that can demonstrate they possess the resources to be operationally ready to clear Securities Contracts at CCUS in a compressed time period (as early as the open of regular trading hours on November 16, 2026, as discussed below). Regardless of participation in the BD Program, any BD Clearing Member (or prospective BD Clearing Member, once approved) may clear Securities Contracts through CCUS at any time those contracts are trading on a national securities exchange.

Standards and Payments

If, by the open of regular trading hours on November 16, 2026, a BD Program participant (1) is a BD Clearing Member in good standing with CCUS that has satisfied applicable documentation and operational requirements prescribed by CCUS and completed connectivity and certification testing for clearing Market Maker or PAB transactions in Securities Contracts cleared by CCUS,[8] and (2) submits written documentation evidencing readiness to clear Market Maker or PAB transactions in Securities Contracts cleared by CCUS, each in a manner prescribed by CCUS, the BD Program participant will receive a one-time payment of $1,250,000. If a BD Program participant does not satisfy the above criteria by the open of regular trading hours on November 16, 2026, but does so by November 25, 2026, the BD Program participant will instead receive a one-time payment of $750,000. If a BD Program participant does not satisfy the above criteria by November 25, 2026, but does so by November 30, 2026, the BD Program participant will instead receive a one-time payment of $500,000.

Clearing Fee Reduction

CCUS also proposes to reduce the clearing fee for Securities Contracts set forth in the clearing fees table on the Fee Schedule from $0.002 per cleared contract to $0.001 per cleared contract. The reduced fee will apply equally to all transactions. CCUS proposes the reduction to lower the cost of clearing transactions at CCUS.

2. Statutory Basis

CCUS believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency and, in particular, Section 17A(b)(3) of the Act.[9] Specifically, CCUS believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act,[10] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

CCUS also believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act,[11] which requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and that they not be designed to permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency.

CCUS believes the BD Program is reasonably designed to encourage clearing firms to prioritize the significant back-office development work CCUS understands they would need to undertake to enable them to clear Market Maker or PAB transactions in Securities Contracts that will clear through CCUS in a compressed timeline. CCUS believes this will support liquid and active markets in listed options issued and cleared by CCUS, which facilitates tighter spreads, increased trading opportunities, and enhanced market quality to the benefit of all market participants that trade those options. CCUS believes the fixed amounts are reasonable in light of the internal resources, system development, and opportunity costs CCUS would expect a clearing firm to incur to complete this work by the proposed deadlines.

While CCUS has no way of predicting with certainty how many BD Clearing Members or prospective BD Clearing Members will notify CCUS of their intent to participate in the BD Program, CCUS anticipates that at least one prospective BD Clearing Member will do so. CCUS believes the different payment amounts for BD Program participants are reasonable because the higher payment amounts reflect the greater value to the market of having BD Clearing Members able to clear Securities Contracts at CCUS by an earlier date. CCUS believes the proposed deadlines are reasonable based on its assessment that they provide clearing firms with sufficient time to satisfy the proposed program standards while incentivizing clearing firms to complete the work in an expeditious manner to justify the payment amounts.

CCUS notes the proposed BD Program, including the proposed payment amounts, is comparable to other participant incentive programs designed to promote liquidity in listed options. For example, CCUS currently offers the FCM Clearing Member Incentive Program, which provides up to $500,000 for completing the work required to become and actively clear as a CCUS Clearing Member.[12] Similar to the BD Program, the CCUS FCM Clearing Member Incentive Program was designed to incentivize certain clearing firms to become Clearing Members given regulatory and operational costs associated with becoming Clearing Members. Additionally, Cboe Exchange, Inc. (''Cboe Options'') currently offers several Lead Market-Maker (''LMM'') Incentive Programs designed to incentivize quoting in certain products to provide significant liquidity, which would, in turn, provide greater trading opportunities, market transparency, and enhanced price discovery for all market

[7] A BD Clearing Member means a firm that (i) is registered as a broker-dealer under Section 15(b) of the Act (15 U.S.C. 78o(b)); (ii) has completed a Clearing Member Application (as defined in CCUS Rule 101(w)); and (iii) has been granted privileges by CCUS specifically with respect to Securities Contracts. See CCUS Rule 101(j). A prospective BD Clearing Member is one that has begun this application process, including the process to become a registered broker-dealer under the Act and otherwise eligible to clear securities options such as taking any required steps at FINRA.

[8] Certification and operational requirements include (i) Conformance testing with the Clearinghouse; (ii) Deposit of Minimum Guaranty Fund requirement; and (iii) Activating its accounts at CCUS (and providing any additional documentation required for activation).

[9] 15 U.S.C. 78q–1(b)(3).

[10] 15 U.S.C. 78q–1(b)(3)(D).

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *See* Cboe Clear U.S., LLC Rule Certification, Submission Number CCUS–2026–07 (September 4, 2026), available at *https://cdn.cboe.com/resources/notices/cboe-clear-us/2026/2026-07_CCUS_FCM_Incentive_Program_-Cover_Letter-_-for_website-.pdf*.

participants, in the applicable options, including during trading hours outside of regular trading hours for certain products when liquidity may otherwise be lower.[13]

Additionally, CCUS believes the BD Program is equitable and not unfairly discriminatory. The BD Program is open to any securities clearing firm that meets the objective eligibility criteria. CCUS will select BD Program participants by considering objective factors and applying them consistently to all firms that notify CCUS of their intent to participate, which factors bear directly on whether a firm can reasonably be expected to satisfy the BD Program standards by the proposed deadlines. The standards that a BD Program participant must satisfy to receive any payment (including the specified deadlines), and the fixed payment amounts, will apply equally to all BD Program participants. Participation in the BD Program is voluntary and within the discretion of a clearing firm, as is the determination by a clearing firm to commit its own resources to complete development work to clear Securities Contracts at CCUS. If a clearing firm participates in the BD Program but does not satisfy a payment standard, it simply does not receive the payment. Similarly, if a clearing firm does not participate in the BD Program but wishes to be a BD Clearing Member and clear Securities Contracts at CCUS, it may do so within its own discretion.

CCUS believes it is not unfairly discriminatory to offer payments only to BD Clearing Members (and prospective BD Clearing Members) that satisfy the BD Program standards, because BD Program participants will undertake development obligations and costs that other Clearing Members do not to be in a position to clear Market Maker or PAB transactions in Securities Contracts cleared at CCUS in a compressed timeframe to the benefit of all market participants.

CCUS further believes the proposed reduction of the clearing fee for Securities Contracts from $0.002 to $0.001 per cleared contract is reasonable because it lowers the cost of clearing for all Clearing Members that clear those contracts, which CCUS believes may encourage additional clearing activity in Securities Contracts at CCUS to the benefit of all market participants. CCUS believes the reduced fee is equitable and not unfairly discriminatory because it will apply uniformly to all transactions.

CCUS further believes the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. The BD Program establishes one-time incentive payments and does not amend CCUS's margin methodology, Guaranty Fund requirements, default management procedures, or other risk management rules or procedures. To receive any payment, a BD Program participant must be a BD Clearing Member in good standing that has satisfied all applicable documentation and operational requirements prescribed by CCUS, including conformance testing, deposit of the Minimum Guaranty Fund requirement, and account activation, and has completed connectivity and certification testing. The BD Program does not waive or modify any CCUS membership, financial, or risk management requirement applicable to BD Clearing Members. Payments under the BD Program will be funded from CCUS's general corporate resources.

B. Clearing Agency's Statement on Burden on Competition

CCUS 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.[14] All clearing firms that are BD Clearing Members or prospective BD Clearing Members may notify CCUS of their intent to participate in the BD Program. CCUS will select participants in the BD Program based on the same objective factors. The terms of the BD Program, including the standards necessary to be met for payments and the amounts of payments, will apply uniformly to all participants. Participation in the BD Program is voluntary and within the discretion of a clearing firm, as is the determination by a clearing firm to commit its own resources to complete development work to clear Securities Contracts at CCUS. If a clearing firm participates in the BD Program but does not satisfy a payment standard, it simply does not receive the payment. Similarly, if a clearing firm does not participate in the BD Program but wishes to be a BD Clearing Member and clear Securities Contracts at CCUS, it may do so within its own discretion.

CCUS believes the BD Program will promote competition by increasing the number of clearing firms able to clear Market Maker or PAB transactions in Securities Contracts through CCUS, which may promote liquid and active markets in these securities, which may facilitate tighter spreads and trading opportunities to the benefit of all market participants. Similarly, the reduced clearing fee for Securities Contracts will apply equally to all Clearing Members and does not impose any burden on competition; rather, CCUS believes the lower fee may promote competition by reducing the cost of clearing those contracts.

C. Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CCUS has not solicited, and does not intend to solicit, written comments on the proposed rule change, and has not received any written comments from Clearing Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and paragraph (f) of Rule 19b–4[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[13] *See, e.g.,* Cboe Options Fees Schedule (as of October 1, 2026), available at *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (which includes LMM incentive programs for NANO and VIX options during regular trading hours and SPX options during different portions of global trading hours); and Cboe Options Notice C2026072301, Cboe Options Exchange LMM Program Solicitations (linking to descriptions of the programs). While paid out monthly based on the satisfaction of certain criteria, the annual amounts that may be paid out to a program participant may be significant in the aggregate. For example, an LMM appointed to the SPX global trading hours program that satisfies the criteria each month during a year would receive $600,000. Cboe Options previously offered similar LMM incentive programs to promote liquidity in newly listed options products. See, *e.g.,* Securities Exchange Act Release No. 102974 (May 2, 2025), 90 FR 19562 (May 8, 2025) (SR–CBOE–2025–030) (filing to adopt an LMM Incentive Program in connection with the initial listing of SPEQX options on Cboe Options to incentivize quoting in the new product and provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in SPEQX options).

[14] 15 U.S.C. 78q–1(b)(3)(I).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(2).

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–CCUS–2026–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CCUS–2026–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of CCUS. 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–CCUS–2026–01 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23335 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0272]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 11a–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 discussed below.

Rule 11a–2 (17 CFR 270.11a–2) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

The Commission staff estimates that 656 registrants are governed by Rule 11a–2. Based on this estimate, the total annual burden hours associated with the rule is estimated to be 656 hours. The estimated burden hours associated with rule 11a–2 has decreased by 1 hour from the current allocation of 657 hours. The decrease is due to a decrease in the number of registrants. The estimated external cost associated with this collection of information continues to be $0. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate Paperwork Reduction Act (''PRA'') submissions for those registration statements (see the separate PRA submissions for Form N–3 (17 CFR 274.11b), Form N–4 (17 CFR 274.11c) and Form N–6 (17 CFR 274.11d). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the PRA and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

The public may view and comment on this information collection request at: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202609-3235-003* 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 December 18, 2026.

Dated: November 12, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23324 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106877; File No. SR–24X–2026–28]

Self-Regulatory Organizations; 24X National Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Warrant Performance Incentive Program

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 29, 2026, 24X National Exchange LLC (''24X'' 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its warrant performance incentive program. The proposed rule change is available on the Exchange's website at *https://equities.24exchange.com/regulation* 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.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange adopted a warrant performance incentive program (''Program'') to allow Members of the Exchange who participate in the Program (''Participants'') to earn the right to purchase Non-Voting Common Units [3] of 24X US Holdings LLC (''24X US Holdco''), the Exchange's parent company.[4] As described in the Warrant Program Releases, each Member of the Exchange may become a Participant in the Program by prepaying $250,000 or $500,000 in Exchange fees (''Prepayment Fee'') [5] and satisfying the Program eligibility requirements.[6] Upon joining the Program, each Participant will receive a warrant that vests based on the Participant's achievement of certain minimum trading volumes (''Target Volume'') [7] on the Exchange during each designated pre-determined period in which the Program is in effect (''Measurement Period'').[8] When the warrants vest, Participants will have the right to exercise the warrants to purchase a certain number of 24X US Holdco Non-Voting Common Units.

24X Overnight Trading

The Target Volume may be met by trading activity in any security traded on 24X. Participants that trade securities on 24X during 24X Overnight Trading—defined in the Warrant Program Release as a trading session in which trading is permitted during the period from 8 p.m. ET to 9:30 a.m. ET for each overnight period except for Friday to Saturday and Saturday to Sunday [9]—will receive quintuple credit (*i.e.,* multiplied by five) (''5X Overnight Multiplier'') for such trading for purposes of calculating the Participant's performance during the Measurement Period.[10] A cap of 50% of the Target Volume (post the 5X Overnight Multiplier) will be placed on trading contributions during 24X Overnight Trading, such that any overnight trades executed beyond the cap will not be counted toward a Participant's Target Volume.[11]

The Exchange has determined to revise the Program to clarify that 24X Overnight Trading will begin at 9:00 p.m. ET instead of 8:00 p.m. ET. At the time of the Warrant Program Release, the Exchange's rules provided that the 24X Market Session (the Exchange's overnight trading session) [12] would begin at 8:00 p.m. ET.[13] Since then, the Exchange has revised its rules to reflect that the Post-Market Session [14] will end at 8:00 p.m. ET and the 24X Market Session will begin at 9:00 p.m. ET.[15] Therefore, the Exchange is making this change to align the terms of the Program with the revised schedule of the Exchange's trading sessions.

The Exchange has further determined to revise the Program to allow any trading that occurs during 24X Overnight Trading beyond the 50% Target Volume cap to still count toward a Participant's Target Volume on a one-to-one basis. Currently, the Program contemplates that trades executed overnight will be eligible for the 5X Overnight Multiplier until the 50% Target Volume cap is reached, and then no additional overnight trades will be counted toward a Participant's Target Volume. In order to encourage liquidity provision during 24X Overnight Trading, the Exchange is revising the Program so that additional overnight trades beyond the 50% Target Volume cap will be counted toward a Participant's Target Volume, but will not be eligible for the 5X Overnight Multiplier.[16] Maintaining the 50% Target Volume cap on the number of overnight trades that are eligible for the 5X Overnight Multiplier will ensure that daytime liquidity still remains strong.

Sponsored Participant Prepayment Fee

A recent amendment to the Program also allows a Sponsored Participant, as defined in Exchange Rules 1.5(ee) and 11.3(b), to be a joint Participant in the Program together with a Sponsoring Member [17] of the Exchange, so long as the Sponsored Participant: (i) fulfills the provisions of Exchange Rule 11.3(b); (ii) qualifies as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933; (iii) has executed the required documentation for participation in the Program (the subscription agreement, warrant agreement, and confidentiality agreement, each between the Sponsored Participant and the Exchange); (iv) has caused to be tendered (by the Sponsoring Member) the Prepayment Fee no later than the first day of each

[3] 24X notes that it filed a proposed rule change for immediate effectiveness to amend the Second Amended and Restated Limited Liability Company Agreement of 24X US Holdings LLC, as amended (''24X US Holdco LLC Agreement'') to accommodate aspects of the proposal that affected the 24X US Holdco LLC Agreement. The changes to the 24X Holdco LLC Agreement included amendments to authorize the issuance of Non-Voting Common Units as well as the implementation of the liquidity program related to the Program. Securities Exchange Act Rel. No. 104098 (Sept. 26, 2025), 90 FR 47029 (Sept. 30, 2025) (SR–24X–2025–11).

[4] Securities Exchange Act. Rel. No. 104018 (Sept. 23, 2025), 90 FR 46437 (Sept. 26, 2025) (SR–24X–2025–04) (''Warrant Program Release''). The Exchange later amended certain dates in the Program. Securities Exchange Act Rel. No. 104257 (Nov. 25, 2025), 90 FR 55207 (Dec. 1, 2025) (SR–24X–2025–12). The Exchange also amended the Program to make additional Non-Voting Common Units available to be purchased by Participants starting in the last Measurement Period of 2026. Securities Exchange Act Rel. No. _____ (Nov. __, 2026), __FR _____ (Nov. __, 2026) (SR–24X–2026–27) (''Expanded Warrant Program Release''). These three releases are collectively referred to as the ''Warrant Program Releases.''

[5] *See* Expanded Warrant Program Release at .

[6] *See* Warrant Program Release at 46437–46438.

[7] As discussed in more detail in the Warrant Program Release, the ''Target Volume'' is 5% of the average daily trading volume on the Exchange, where the daily trading volume is calculated based on total aggregated average daily volume traded over each Measurement Period.

[8] As discussed in more detail in the Warrant Program Releases, the ''Measurement Period'' for Year 1 (2025) is October 14, 2025 through December 31, 2025; the Measurement Periods for Year 2 (2026) are (1) January 1–March 31, 2026, (2) April 1–June 30, 2026, (3) July 1–September 30, 2026, and (4) October 1–December 31, 2026; the Measurement Periods for Year 3 (2027) are (1) January 1–March 31, 2027, (2) April 1–June 30, 2027, (3) July 1–September 30, 2027 and (4) October 1–December 31, 2027; and the Measurement Period for Year 4 (2028) is January 1–March 31, 2028.

[9] *See* Warrant Program Release at 46439.

[10] *See id.*

[11] Suppose that the 24X CADV is 70 million for Q1 of Year 3. As a result, the Target Volume is 3.5 million for Q1 of Year 3 (70 million × 5% = 3.5 million), and the cap of 50% on the Target Volume is 1.75 million (3.5 million × 50% = 1.75 million). Suppose that a Participant trades 2 million shares during trading hours other than 24X Overnight Trading and 500,000 shares during 24X Overnight Trading. The Participant's 24X Overnight Trading is subject to the 5X Overnight Multiplier (500,000 shares × 5 = 2.5 million). However, the Participant's 24X Overnight Trading is capped at 1.75 million. Accordingly, the Participant's total volume for the quarter counted for the Program is 3.75 million (2.0 million + 1.75 million). Therefore, the Participant would satisfy the 5% Target Volume of 3.5 million for the quarter. *See* Warrant Program Release at 46440.

[12] *See* 24X Rule 1.5(c).

[13] *See* Securities Exchange Act. Rel. No. 104086 (Sept. 26, 2025), 90 FR 46978 (Sept. 30, 2025) (SR–24X–2025–07).

[14] *See* 24X Rule 1.5(y).

[15] *See id.*

[16] The example that appears in note 11 *supra* would be modified under this change as follows. Suppose that the 24X CADV is 70 million for Q1 of Year 3. As a result, the Target Volume is 3.5 million for Q1 of Year 3 (70 million × 5% = 3.5 million), and the cap of 50% on the Target Volume is 1.75 million (3.5 million × 50% = 1.75 million). Suppose that a Participant trades 2 million shares during trading hours other than 24X Overnight Trading and 500,000 shares during 24X Overnight Trading. The Participant's overnight trading is subject to the 5X Overnight Multiplier for 350,000 of the 500,000 shares traded (350,000 shares × 5 = 1.75 million). Then, the remaining 150,000 shares traded during 24X Overnight Trading are counted toward the Participant's Target Volume with no multiplier. Accordingly, the Participant's total volume for the quarter counted for the Program is 3.9 million (2.0 million + 1.75 million + 150,000). Therefore, the Participant would satisfy the 5% Target Volume of 3.5 million for the quarter.

[17] *See* 24X Rule 1.5(ff).

calendar quarter of the Program Period to participate in the Program as of such quarter; [18] and (v) has identifiable trading volume on the Exchange that is directly attributable to the Sponsored Participant.[19]

In order to reduce the barrier to entry for prospective Sponsored Participants that desire to participate in the Program, the Exchange has also determined to revise the Program to allow Sponsored Participants that jointly participate in the Program together with a Sponsoring Member to tender the Prepayment Fee directly to the Exchange on their own behalf, rather than causing the Prepayment Fee to be tendered by the Sponsoring Member. All other terms regarding the Prepayment Fee would remain unchanged as described in the Warrant Program Releases.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act [20] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act [21] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Exchange Act [22] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Exchange Act,[23] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the proposed changes to the Program are consistent with the Act. Clarifying that 24X Overnight Trading will begin at 9:00 p.m. ET instead of 8:00 p.m. ET reduces the potential for confusion regarding the Program terms that apply to overnight trading, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Allowing overnight trades beyond those eligible for the 5X Overnight Multiplier to be counted toward a Participant's Target Volume on a one-to-one basis will encourage liquidity provision to the Exchange during 24X Overnight Trading, while the maintenance of the 50% Target Volume cap with respect to the 5X Overnight Multiplier will also support liquidity provision during the Exchange's other trading sessions. The Exchange believes that such changes are equitable and reasonable because they apply to all Program Participants on the same terms and conditions, and because they are designed to bring greater volume and liquidity to the Exchange, particularly during 24X Overnight Trading when trading activity might otherwise be less consistent as the industry adjusts to overnight trading. This will benefit all market participants, even those that do not participate in the Program, by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

Further, allowing Sponsored Participants to tender the Prepayment Fee on their own behalf rather than through a Sponsoring Member would reduce the burden of participation on both Sponsored Participants and their corresponding Sponsoring Members, which would encourage additional Sponsored Participant enrollment in the Program. Greater participation in the Program would promote the long-term interests of the Exchange by encouraging the provision of liquidity on the 24X market. The Exchange believes that an increase in volume and liquidity would benefit all market participants by providing more trading opportunities and tighter spreads, even to those market participants that do not participate in the Program, thereby perfecting the mechanism for a free and open market and national market system. The Exchange also believes that the additional funds provided by increased participation of Sponsored Participants could be used for the regulation and operation of the Exchange and would enable the Exchange to have greater capacity to carry out the purposes of the Act and to comply with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, and, in turn, would protect investors and the public interest. Further, the Exchange believes that the proposed change is fair, reasonable, and not unfairly discriminatory because it is being offered to all Sponsored Participants on the same terms and conditions. The proposed change is based on objective standards and would have the same effect for all Sponsored Participants and their corresponding Sponsoring Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Program as amended by this proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes that the Program as amended by this proposed rule change would further increase both intermarket and intramarket competition by encouraging volume and liquidity provision to the Exchange during 24X Overnight Trading and by incentivizing Sponsored Participants to jointly participate in the Program together with a Sponsoring Member and to direct their orders to the Exchange, all of which will enhance the quality of quoting and increase the volume of securities traded on the Exchange. To the extent that this purpose is achieved, the Exchange believes that all of the Exchange's market participants would benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[18] If a Sponsoring Member has already tendered the Prepayment Fee on its own behalf in the process of becoming a Member Participant, such Prepayment Fee will only be attributed to the Sponsoring Member and not to any Sponsored Participants that wish to jointly participate in the Program. In the case that a Sponsoring Member that is already a Member Participant in the Program wishes to additionally jointly participate in the Program together with a Sponsored Participant, the Sponsoring Member must tender an additional Prepayment Fee for each such Sponsored Participant.

[19] *See* Securities Exchange Act Rel No. 105481 (May 13, 2026), 91 FR 28695, 28696 (May 18, 2026) (SR–24X–2026–16). To jointly participate in the Program together with a Sponsored Participant, a Sponsoring Member must also (i) be a Member in good standing of 24X; (ii) be a registered broker-dealer pursuant to Section 15 of the Exchange Act; and (iii) qualify as an ''accredited investor'' as such term is defined in Regulation D of the Securities Act of 1933. *See id.*

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

[22] *See id.,*

[23] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[24] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder,[25] because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] 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–24X–2026–28 on the subject line.

Paper Comments

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–24X–2026–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–24X–2026–28 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

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[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106880; File No. SR–NASDAQ–2026–094]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Regarding Fees for Interfirm Cabinet Connectivity

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity order, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings,* and at the principal office of the Exchange.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity connection, as described below. Currently, the Exchange assesses the applicable installation fee and ongoing monthly fee only to the customer that submits the order. The other customer that accepts and participates in the connection is not separately assessed those fees. Under the proposal, each customer participating in a new interfirm cabinet connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For interfirm cabinet connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

Background

The Exchange's data center campus consists of the original data center (''NY11''), an initial expansion area (''NY11–4''), and a second expansion area (''NY11–5'') (collectively, the ''Data Center'' or ''Data Center Campus''). Interfirm Cabinet Connectivity is a fiber-based connectivity service that links cabinets used by two different colocation customers (''Interfirm Cabinet Connectivity'') throughout the Data Center Campus. The interfirm cabinet connection consists of two customer-side legs that meet at the

Nasdaq-provided distribution point: [3] one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet.

Before the Exchange implemented equalized connectivity [4] throughout its Data Center, a customer would order Interfirm Cabinet Connectivity through the Nasdaq customer portal and identify the customer to which the ordering customer wanted to connect, with the ordering customer being solely responsible for both the installation and the ongoing monthly fiber connectivity fees. No separate installation or ongoing monthly fees were assessed, or are currently assessed, to the non-ordering customer for its side of the Interfirm Cabinet Connectivity.

With respect to provision and installation of the service, the fiber for the Interfirm Cabinet Connectivity was provided and installed by a third-party provider or by the customer. The Exchange did not provide or install such fiber or manage such services.

Equalization places greater emphasis on the way Interfirm Cabinet Connectivity is supervised and managed, with Nasdaq taking a more central role in those functions. While customers still request the interfirm cabinet connection through the Nasdaq Customer Portal, the pre-existing fiber in the Interfirm Cabinet Connectivity has been replaced with Exchange-provided, equalized fiber. Under this structure, the Exchange supervises and audits the interfirm cabinet connection on an ongoing basis.[5]

As discussed above, the Interfirm Cabinet Connectivity consists of two customer-side legs that meet at the Nasdaq-provided distribution point: one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet. The Exchange provides and manages the cabling and standardized demarcation points and performs inventory management, implementation support, ongoing maintenance, monitoring, audit, and operational oversight for the connection.

Both customers must act before the connection is implemented: one customer initiates the Interfirm Cabinet Connectivity order through the Nasdaq Customer Portal, and the other customer accepts it. If the second customer does not accept the order, the connection is not implemented. Each participating customer consequently receives a distinct customer-side leg of a Nasdaq-provided, Nasdaq-managed, equalized connectivity path. Interfirm Cabinet Connectivity is optional and is not required for a customer to obtain colocation services or to connect to the Exchange's trading systems.

Proposal

The Exchange proposes to retain the existing installation and ongoing monthly fees for Interfirm Cabinet Connectivity and extend their application to the non-ordering, accepting customer side of the connection. Under the proposal, each customer participating in a new Interfirm Cabinet Connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For Interfirm Cabinet Connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

The Exchange anticipates implementing the proposed rule change during the first quarter of 2027 and will announce that implementation date through an Equity Trader Alert or other customer communication.

The Exchange believes that assessing the existing fees separately to each customer appropriately reflects the Exchange's increased role in managing Data Center connectivity following Equalization. The Exchange now provides the fiber and manages, supervises, monitors, and audits the connection after installation. The proposal also aligns the allocation of fees with the structure of the service: two separately provided and managed customer-side legs join at the Nasdaq-provided distribution point, and each customer must authorize and receive the benefit of its own leg. The proposal therefore assesses each customer for the Nasdaq-provided and Nasdaq-managed connectivity furnished to that customer.[6]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fees are reasonable because each customer receives a distinct leg of an equalized connectivity path that the Exchange actively provides and manages. Each customer-side leg is a defined, Exchange-managed component of that path. Following equalization, the Exchange provides the fiber connectivity and administers the cabling, standardized demarcation points, inventory, and ongoing operational support associated with each leg, and it supervises and audits the connection on an ongoing basis. Each customer's leg is a component the Exchange implements, administers, monitors, and supports. Applying the existing $550 installation fee and $385 monthly fee to each customer is reasonable because each customer receives, and the Exchange manages, a distinct leg of the equalized path.[9] The

[3] As used in this context, a ''distribution point'' is a designated passive cabling node within the Data Center's structured telecommunications architecture, where backbone or feeder cabling terminates, and from which downstream cabling is routed to customer cabinets or equipment locations. Distribution points serve as standardized, auditable locations used for organizing, patching, and managing connectivity.

[4] Equalized connectivity refers to connectivity implemented using equalized cabling and infrastructure designed to support equidistant connectivity relative to other customer locations in the Data Center. The Equalization Project enhances the integrity of the Exchange's Data Center networks by establishing standardized connectivity requirements and providing for greater Exchange management oversight of those components. *See* Securities Exchange Act Release No. 34–101078 (Sept. 18, 2024), 89 FR 77937 (Sept. 24, 2024) (SR–NASDAQ–2024–054) (describing the Equalization Project in greater detail).

[5] The Exchange notes that a third-party provider, specifically the Data Center operator, runs the Interfirm Cabinet Connectivity. All other functions are performed by the Exchange.

[6] The Exchange notes that the structure proposed here parallels the structure the Exchange adopted for TNO Cross-Connect. A telecommunications company (''telco'') connectivity path in the Data Center consists of two Nasdaq-provided and Nasdaq-managed legs that meet at a Nasdaq-provided distribution point: the TNO Cross-Connect, which runs from the telco's carrier cabinet to the distribution point, and the customer-side leg, which runs from the distribution point to the customer's cabinet. *See* Exchange Rule General 8, Section 1. As with TNO Cross-Connect, the Exchange proposes to assess each leg, because the Exchange provides and manages both and, with equalized connectivity, exercises greater management oversight over each component of the path. *See* Securities Exchange Act Release No. 105014 (Mar. 16, 2026), 91 FR 13371 (Mar. 19, 2026) (SR–NASDAQ–2026–014). The Exchange notes, however, that unlike TNO Cross Connect, the proposed Interfirm Cabinet Connectivity offering is optional and not required for collocating with the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] The Exchange also believes that the proposed fees are reasonable when viewed against the fee another exchange charges for a similar service. NYSE offers a ''Data Center Fiber Cross Connect''

Continued

Exchange believes this approach equitably allocates the fees among the customers that receive and use each Exchange-managed leg of the connection. Each customer receives connectivity through its respective leg of the connectivity path, and each customer is accordingly responsible for the fees associated with the connectivity provided to it. The fact that the two connectivity paths collectively facilitate communication between the customers does not alter the fact that each customer receives a separately identifiable connectivity service. The Exchange further believes that assessing each customer for its respective connectivity leg avoids requiring one customer to pay for the leg that another customer receives. The Exchange therefore believes that its methodology represents an equitable allocation of fees among the customers using Interfirm Cabinet Connectivity.

The amount of each fee is also reasonable because it is unchanged from the Fiber connectivity fee amounts currently assessed to the ordering customer for Interfirm Cabinet Connectivity and is the same amount charged for certain other Fiber connectivity offerings.[10]

The Exchange also believes that the proposal is reasonable because it supports a uniformly administered and auditable Interfirm Cabinet connectivity pathway within the Data Center. As the Exchange has explained, equalization is intended to enhance the integrity of the Data Center network by establishing standardized connectivity requirements for each component of the connectivity path and exercising greater management oversight over those components.[11] A standardized, Nasdaq-managed path in which the Exchange oversees the cabling, demarcation points, and supporting architecture enhances the Exchange's ability to monitor, maintain, and audit that connectivity.[12] Each customer-side leg of Interfirm Cabinet Connectivity is a component of that path. Assessing the existing fees to each customer for its own leg allocates those fees among the customers that receive and use each Exchange-managed leg of the path and does not alter the path's availability or operation.

The Exchange further believes the proposal is reasonable because Interfirm Cabinet Connectivity is an optional service. Customers are not required to purchase Interfirm Cabinet Connectivity to obtain colocation services or to connect to the Exchange's trading systems. Rather, a customer purchases the service only if it elects to establish a fiber connection between its cabinet and the cabinet of another colocation customer, and each customer may determine for itself whether the service, at the proposed fees, is appropriate for its business.

The Exchange believes that applying the fees separately to both customers is equitable and not unfairly discriminatory because both customers receive a substantially similar customer-side service and both benefit from the Exchange's provision and ongoing management of the equalized path. Under the current billing model, only the ordering customer pays even though the accepting customer also receives a Nasdaq-provided and Nasdaq-managed leg of the connection. The proposal allocates the fees to both beneficiaries and treats the ordering and accepting customers alike. Each customer would pay the same, existing fee for the Exchange-provided and Exchange-managed leg that it receives, and no customer would be asked to bear the fees attributable to another customer's leg of the connection.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory not to assess the installation fee to the accepting customer for Interfirm Cabinet Connectivity connections already in place as of the implementation date. The installation fee is a one-time charge assessed when a connection is ordered and established. For a connection already in place, the connection has been established and the installation fee has already been assessed to the ordering customer. The Exchange therefore believes that it would be inappropriate to assess a one-time installation charge for a connection that is not being newly established. Those accepting customers will, however, be assessed the ongoing monthly fee beginning on the implementation date, which is consistent with the Exchange's rationale for assessing each customer for the Exchange-managed leg of the connection that it receives and uses. The distinction is drawn by whether a connection is in place as of the implementation date, and not by the identity, size, or trading activity of any customer, and it applies uniformly to every accepting customer with an existing connection.

The Exchange will apply the same fee amounts and billing methodology to all similarly situated customers. The proposal does not distinguish among customers based on their identity, trading activity, or anticipated use of the connection. Rather, each new customer will pay the same installation fee and monthly fee for its own leg of the standardized, equalized connectivity path.[13] Because both parties must affirmatively participate in the Nasdaq Customer Portal order process before implementation, as described above, each customer will have notice of the fee treatment before the Exchange provisions the connection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposal will impose an undue burden on intramarket competition because it will apply the same fees to

service, for which it charges the User that requests the service an initial charge of $500 plus a monthly charge of $600 for a single cross connect, or $7,700 over the first year. *See* NYSE Connectivity Fee Schedule (last updated Oct. 2, 2026), Section A (Co-Location Fees). By comparison, under the proposal each customer participating in a new Interfirm Cabinet Connectivity connection would pay $5,170 over the first year for its own leg (a $550 installation fee plus twelve monthly fees of $385), or approximately 33% less than NYSE's first-year charge for a single cross connect. This comparison is based solely on NYSE's published fee schedule, which does not identify a separate charge to any other party to the connection, and the Exchange makes no representation regarding NYSE's billing practices beyond what that schedule states. The Exchange offers this comparison as context. The proposal need not replicate NYSE's fee structure to be consistent with the Act. The Act does not require an exchange to adopt another exchange's approach to pricing a similar service. The question under Section 6(b)(4) is whether the proposed fees are reasonable and equitably allocated among the persons using the Exchange's facilities, and the proposal meets that standard. Each customer would pay the same, existing monthly fee for the Exchange-provided and Exchange-managed leg that it receives. For new connections, each customer would also pay the same, existing installation fee for its leg. No customer would be asked to bear the fees attributable to another customer's leg of the connection path. Under the Exchange's current model, the ordering customer alone pays the fees for a connection in which two customers each receive a leg. Under the proposal, neither customer subsidizes the other. Each pays the same fee for its own leg, and only for the leg it receives. For connections already established as of the implementation date, the accepting customer would pay the ongoing monthly fee for its leg but not the installation fee, because that one-time fee has already been assessed to the ordering customer when the connection was established. In that case, the ordering customer's fees would not change.

[10] *See* Exchange Rule General 8.

[11] *See* SR–NASDAQ–2026–014, *supra* note 6, 91 FR 13371 n.4.

[12] *Id.* at 13372.

[13] As discussed above and as proposed, existing Interfirm Cabinet Connectivity customers will each pay only the ongoing monthly fees. For such established Interfirm Cabinet Connectivity connections, the Exchange will not assess a second installation fee to the non-ordering customer.

each customer participating in an Interfirm Cabinet Connectivity order. The proposal will eliminate the current difference in the ongoing monthly fee treatment of the ordering and accepting customers, each of which receives a customer-side leg of the Exchange-provided and Exchange-managed connection, and, for new orders, the difference in their installation fee treatment.

The proposal therefore will treat similarly situated customers consistently. Each customer participating in an Interfirm Cabinet Connectivity arrangement through a new order will be assessed the same installation and recurring monthly fees for its respective connectivity leg. For connections already in place as of the implementation date, the Exchange will not assess a one-time installation fee to the accepting customer because the connection has already been established, but the accepting customer will be assessed the same ongoing monthly fee as the ordering customer. This distinction turns on whether a connection is in place as of the implementation date and applies uniformly to all such connections. It does not favor or disadvantage any customer relative to another. The fees do not distinguish among customers based on their identity, business model, trading activity, or the identity of the customer with which they establish connectivity.

The Exchange also does not believe that the proposal will impose an undue burden on intermarket competition. Interfirm Cabinet Connectivity is an optional service that customers are not required to purchase to obtain colocation services or connect to the Exchange's trading systems. The proposal does not alter the availability or technical operation of the service. Instead, it applies the existing fees separately to each customer that elects to participate in and receive a customer-side leg of the connection: for new orders, the existing installation fee and ongoing monthly fee, and for existing connections, the existing ongoing monthly fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2026–094 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–NASDAQ–2026–094. 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–NASDAQ–2026–094 and should be submitted on or before December 8, 2026.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23340 Filed 11–16–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106883; File No. SR–OCC–2026–013]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Options Clearing Corporation Concerning Providing the Ability To Satisfy Daily Margin Deficit Amounts With Non-Cash Collateral Prior To Settlement Time

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 2026, The Options Clearing Corporation (''OCC'' or ''Corporation'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and paragraph (f) of Rule 19b–4 [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would update OCC's cash settlement process to provide Clearing Members with the ability to satisfy daily margin deficit amounts with non-cash collateral prior to the daily Settlement Time.

The proposed changes to OCC's Rules are contained in Exhibit 5 to SR–OCC–2026–013. Material proposed to be added is marked by underlining and material proposed to be deleted is marked with strikethrough text. All terms with initial capitalization that are

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f).

not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OCC conducts a daily cash settlement process in which OCC drafts cash from Clearing Member bank accounts to offset any deficit in margin assets pledged by the Clearing Member as compared to the total required margin as of Settlement Time.[6] Currently, prior to Settlement Time (8:00 a.m. CT), OCC makes a Daily Margin Report available to each Clearing Member showing, among other things, the Clearing Member's margin requirements and margin previously deposited by the Clearing Member, as well as any surplus over the margin amount required or margin deficit to be satisfied. For all Clearing Members who are reported to have a margin deficit, OCC authorizes cash withdrawals from the Clearing Members' bank accounts in order to satisfy the deficit. Clearing Members currently do not have the opportunity to deposit additional collateral after receipt of the Daily Margin Report to offset any start-of-day margin deficit identified on the report before OCC drafts cash from the Clearing Members' bank accounts.

OCC proposes to replace the Daily Margin Report with a Daily Account Summary.[7] OCC proposes to offer Clearing Members an opportunity, after receiving the Daily Account Summary and prior to Settlement Time, to deposit collateral in order to reduce or eliminate their Start-of-Day Margin Deficit. Any such collateral deposit would correspondingly reduce or eliminate the necessary cash withdrawal from the Clearing Member's bank account. OCC's Rules already provide Clearing Members a similar opportunity to offset deficits in their Clearing Fund allocations prior to OCC withdrawing cash from Clearing Member bank accounts, as described in Rule 1005.[8] OCC seeks to give Clearing Members this ability with respect to margin deficits.

1. Purpose

OCC proposes to change its Rules to provide Clearing Members with an opportunity to reduce or eliminate any margin deficit identified in the Daily Account Summary to avoid OCC's cash draw prior to Settlement Time.

This change is expected to have positive effects on both OCC and Clearing Members. The current start-of-day margin cash settlement process often requires multiple inefficient transfers of collateral and cash during the trading day, resulting in temporary double-collateralization for Clearing Members. Presently, after OCC drafts cash from a Clearing Member's bank account prior to Settlement Time to satisfy a start-of-day-margin deficit, the Clearing Member often deposits non-cash collateral with OCC and requests that OCC return some or all of the cash back to the Clearing Member's bank account. OCC allows this intraday deposit of margin and returns the cash, but the process is inefficient for all parties. Under the current process, OCC must often make multiple cash transactions, drafting cash from Clearing Member accounts and then returning the cash to the Clearing Member on the same day. And because the cash transfer is not instantaneous, this series of events leaves Clearing Members double-collateralized for a period. Clearing Members may not receive their returned cash until hours after they deposited additional collateral, meaning that they are double-collateralized (through the newly deposited collateral and the cash that has not yet been returned) from the time when they deposit additional collateral until the previously drafted cash is returned to their bank accounts.

This process increases cash liquidity demands on Clearing Members, causes Clearing Members to hold excess collateral to attempt to avoid daily deficit cash drafts, and increases instances of same-day double-collateralization. For OCC, this process increases transactional cash flows, causing unnecessary inefficiency and increased operational risk. These issues could be alleviated or eliminated if Clearing Members had the opportunity to deposit collateral to satisfy any identified margin deficit before OCC withdraws cash to satisfy the deficit. And regardless of whether a Clearing Member chooses to deposit additional margin, the ultimate Start-of-Day Margin Deficit and the corresponding deficit cash draft would be no greater than the deficit originally identified in the Daily Account Summary.

A hypothetical example may demonstrate how the updated daily settlement process would work in practice. If OCC were to report on a Clearing Member's Daily Account Summary that the Clearing Member faced a margin deficit, the Clearing Member would be afforded the choice whether to offset that deficit, in whole or in part, by depositing collateral prior to OCC issuing cash settlement instructions to the Clearing Member's bank. If the Clearing Member were to choose not to deposit additional collateral, OCC would issue cash settlement instructions to the Clearing Member's bank to satisfy the deficit with cash from the Clearing Member's account. But if the Clearing Member were to deposit additional collateral before OCC issued cash settlement instructions to the bank, the newly deposited collateral would reduce or eliminate the amount that OCC would withdraw from the Clearing Member's bank account.

If the proposed change is adopted, OCC will no longer immediately draft the full margin deficit from the Clearing Member's account in cash, but instead will give the Clearing Member the opportunity to satisfy or reduce the deficit with non-cash collateral before OCC conducts any cash draw from Clearing Member bank accounts. This reduces Clearing Members' need for cash liquidity, double-collateralization, and OCC's transactional cash flows and any attendant operational risk.

OCC does not anticipate that this proposed change would negatively affect its liquidity. Start of day liquidity is unaffected because OCC will continue to withdraw cash from Clearing Member bank accounts by Settlement Time each

[5] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[6] *See* OCC Rule 100 [sic] (''The term 'settlement time', when used in respect of a Clearing Member's obligation to pay the Corporation amounts owed to settle confirmed trades and/or stock loan transactions or any other obligations to the Corporation, other than those related to any cross-margining program with a Participating CCO and transactions settling outside the United States, means 8:00 a.m. Central Time'').

[7] The Daily Account Summary will be similar in substance to the current report except that the Deficit line on the document will be separated and described as a start-of-day obligation owed by the Clearing Member unless additional non-cash collateral is deposited.

[8] *See* OCC Rule 1005(c) (authorizing OCC to withdraw from the Clearing Member's bank account an amount equal to any deficit the member fails to satisfy as shown on certain reports listing, among other things, the current amount of the contribution required of such Clearing Member and any deficit in the Clearing Member's contribution or surplus over and above the required amount).

day to satisfy any remaining margin deficits, just as it does in the current model. And intraday liquidity will be only minimally affected. In the current model when OCC withdraws cash to satisfy a margin deficit, most of the cash is returned to Clearing Members that same day after the Clearing Members deposit additional non-cash collateral. Finally, the proposed change affects only margin deficits; it will not affect how OCC handles money that flows daily through it from one party to another or how OCC collects mandatory margin cash requirements from time to time. For example, the settlement system by which OCC collects cash from one Clearing Member and passes it along to another Clearing Member would remain unchanged, as would the process for when a Clearing Member defaults. OCC will have qualified liquidity resources supported by all eligible forms of collateral both at the start of the day and intraday under the proposed change.

Description of Change

In order to provide Clearing Members with the opportunity to satisfy daily margin deficits with collateral prior to OCC initiating a cash draw from their bank accounts, OCC proposes to amend its Rules.[9] In particular OCC proposes amendments to Rule 605 and the creation of a new Rule 605A to implement this change.

OCC proposes to amend Rule 605 to change the name of the report Clearing Members receive identifying their margin deficit from ''Daily Margin Report'' to ''Daily Account Summary.'' This change is proposed to more accurately reflect the document that Clearing Members receive on a daily basis that identifies their margin deficit. OCC also proposes shortening and simplifying the rule by simply stating that the Daily Account Summary will show the margin required by the Clearing Member's ''margined positions,'' rather than listing each type of position that could require margin; however, the types of positions covered in the report will not change. Additionally, OCC proposes to move the sentences requiring that any margin deficit be satisfied by Settlement Time and authorizing OCC to withdraw cash from the Clearing Member's bank account to obtain satisfaction from current Rule 605 to proposed Rule 605A and to make conforming changes, as discussed below.

Rule 605A creates a new term, the ''Start-of-Day Margin Deficit,'' to represent any remaining margin deficit after a Clearing Member has had the opportunity to deposit collateral to offset the margin deficit identified in the Daily Account Summary. New Rule 605A states that Clearing Members are permitted to deposit such collateral to reduce any margin deficit identified in the Daily Account Summary. Under the new Rule, when OCC receives and recognizes the newly deposited collateral before OCC has issued withdrawal instructions to the Clearing Member's bank, the outstanding margin deficit will be reduced. The margin deficit identified in the Daily Account Summary minus the value of the collateral deposited thereafter is the Start-of-Day Margin Deficit, and subject to the provisions of Rule 606 OCC may withdraw cash from the Clearing Member's bank account to satisfy this deficit.

Finally, the changes to Rule 605 and the creation of Rule 605A will require ancillary changes in Rule 606 to add the term Start-of-Day Margin Deficit and in Rules 606 and 607 to change the term Daily Margin Report to Daily Account Summary.

Implementation Timeframe

OCC expects to implement the proposed changes following receipt of all necessary approvals and within approximately 270 days after the launch of Ovation [10] as OCC's system of record in light of the technical system changes that are required to implement this change. OCC will announce the implementation date of the proposed changes by an Information Memorandum posted to its public website at least two weeks prior to implementation.

2. Statutory Basis

OCC believes the proposed rule change is consistent with Section 17A of the Exchange Act [11] and Rules 17ad–22(e)(17) and (21) [12] thereunder. Section 17A(b)(3)(F) of the Act [13] requires, among other things, that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and, in general, to protect investors and the public interest. The proposed change would provide Clearing Members with the option to provide non-cash collateral to satisfy any start-of-day margin deficit rather than requiring a cash draw, fostering OCC's cooperation and coordination with Clearing Members regarding the form of eligible collateral they wish to deposit. The change would also protect investors and the public interest by ensuring that margin deficits are satisfied while also affording Clearing Members the opportunity to select for themselves the collateral to be deposited, maximizing their capital and liquidity efficiency. For these reasons, the proposed changes to OCC's rules are reasonably designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and, in general, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Act.[14]

Rule 17ad–22(e)(17)(i) [15] requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage OCC's operational risks by, among other things, identifying the plausible sources of operational risk and mitigating their impact through the use of appropriate systems, policies, procedures, and controls. The proposed change to the start-of-day margin deficit settlement process should reduce or eliminate Clearing Members' need to engage in same-day collateral substitution, thereby reducing or eliminating OCC's operational risk in conducting that process. If Clearing Members deposit collateral to satisfy any margin deficit during the proposed optional window, OCC will no longer need to make cash draws from Clearing Member bank accounts and then return the cash later in the day when the Clearing Member has deposited other collateral. Avoiding this inefficient process eliminates the risk that OCC might make an operational error in the same-day collateral substitution. For those reasons, OCC believes that the proposal is consistent with Rule 17ad–22(e)(17)(i).[16]

Rule 17ad–22(e)(21)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves, and to regularly review the efficiency and effectiveness of its

[9] OCC does not propose to amend OCC Rule 706 to apply this change to cross-margining accounts at this time. OCC intends to address its cross-margining accounts, including their daily settlement procedure, in a future filing.

[10] OCC is building Ovation, a new clearance and settlement system, to replace its current clearing platform. Information about OCC's planned launch of Ovation may be found at *https://www.theocc.com/company-information/occ-transformation.*

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 240.17ad–22(e)(17) and (21).

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] *Id.*

[15] 17 CFR 240.17ad–22(e)(17)(i).

[16] *Id.*

settlement arrangements.[17] This proposed change promotes efficiency by reducing or eliminating the need for same-day collateral substitution for Clearing Members who wish to take advantage of the optional window to deposit collateral to offset their margin deficits. The change would enable Clearing Members to more efficiently allocate their assets for collateral purposes and avoid intraday double-collateralization. And as noted above, this change would reduce the number of cash draws and returns OCC is required to make to satisfy margin deficits, improving efficiency. For those reasons, OCC believes that the proposal is consistent with Rule 17ad–22(e)(21)(i).[18]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act [19] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. All Clearing Members would have the opportunity to deposit non-cash collateral during the optional window, if they so choose. The proposal would not advantage any particular Clearing Members at the expense of others.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[22]

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–OCC–2026–013 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–OCC–2026–013. 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 such filing will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2026–013 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23327 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 240.17ad–22(e)(21)(i).

[18] *Id.*

[19] 15 U.S.C. 78q–1(b)(3)(I).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2 p.m. on Thursday, November 19, 2026.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: November 12, 2026.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2026–23319 Filed 11–12–26; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0518]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Form CB—Tender Offer/Rights Offering Notification Form

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

An entity conducting an exempt cross-border business combination or rights offering is required to file a Form CB (17 CFR 249.480) to the extent the party would have had a filing obligation if the transaction were not eligible for the exemption. Form CB is intended to help the Commission determine whether a transaction meets the eligibility requirements of the exemptive rules. Form CB also helps to ensure that information about the transaction is publicly available in order to help security holders make informed investment decisions. The information required by Form CB is mandatory, and Form CB filings are publicly available on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. We estimate that approximately 49 respondents make one Form CB filing per year, for a total of approximately 49 responses annually. We estimate that respondents incur approximately 0.12 burden hours per Form CB filing, for a total annual reporting burden of 6 hours (0.12 hours per response × 49 responses). We estimate that respondents incur $225 cost burden per Form CB filing, for a total annual cost burden of $11,025 ($225 cost per response × 49 responses).

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=202608-3235-016* or send an email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice by December 18, 2026.

Dated: November 12, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23321 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106879; File No. SR–FINRA–2026–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend FINRA Rule 6121.02 Concerning the Resumption of Trading Following a Level 3 Market-Wide Circuit Breaker Halt in Connection With the Industry's Expansion of Trading Hours to 23 Hours Per Day, 5 Days Per Week

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 4, 2026, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) concerning the resumption of trading following a Level 3 market-wide circuit breaker halt in connection with the industry's expansion of trading hours to 23 hours per day, 5 days per week.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org* and at the principal office of FINRA.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA proposes to amend FINRA Rule 6121.02 concerning the resumption of trading following a Level 3 market-wide circuit breaker (''MWCB'') halt (''Level 3 Market Decline'') in connection with the industry's expansion of trading hours to 23 hours per day, 5 days per week (''23/5 Trading''). As discussed herein, the proposed rule change would retain the current 4:00 a.m. Eastern Time (''E.T.'') resumption time following a Level 3 Market Decline.

Background

The MWCB mechanism under FINRA Rule 6121.02 provides an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when U.S. securities markets experience extreme broad-based declines. FINRA and all U.S. equity exchanges (collectively, the self-regulatory organizations or ''SROs'') adopted uniform rules relating to market-wide circuit breakers in 2012, which are designed to slow the effects of extreme price movement through coordinated trading halts across U.S. securities markets when severe price declines reach levels that may exhaust market liquidity.[3] Such market-wide circuit breakers provide for trading halts in all U.S. equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index during regular trading hours.

Pursuant to Rule 6121.02, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1),

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''MWCB Approval Order'').

13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. E.T. and before 3:25 p.m. E.T. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. E.T. would not halt market-wide trading. If a Level 3 Market Decline occurs at any time during the trading day, trading otherwise than on an exchange in all NMS stocks will halt for the remainder of the trading day.

Proposal

FINRA now proposes to amend Rule 6121.02 to reflect extended trading hours under 23/5 Trading. On December 6, 2026, several exchanges intend to offer new overnight trading sessions that would be available from 9:00 p.m. E.T. to 4:00 a.m. E.T.

As discussed, consistent with the uniform rules in place across all SROs, current Rule 6121.02(c)(2) provides that, if a Level 3 Market Decline occurs at any time during the trading day, trading otherwise than on an exchange in all NMS stocks will halt for the remainder of the trading day. Currently, that means that the earliest that any SRO would permit trading to resume after a Level 3 Market Decline is 4:00 a.m. E.T. the following day, since no SROs are open for trading before 4:00 a.m. E.T.

Unless amended, when 23/5 Trading is launched, the current rule's reference to halting ''for the remainder of the trading day'' [4] would permit trading to resume at an earlier time, *i.e.,* 9:00 p.m. E.T. on the same calendar day, when some SROs' systems would generally become available for overnight trading. FINRA does not believe that this is an expected or desired result and is therefore amending this rule in coordination with the other SROs such that trading will not resume until 4:00 a.m. E.T. or later on the following trading day, consistent with current market practice. This proposed rule change is not intended to make any substantive changes to the MWCB mechanism. Rather, the proposed rule change would preserve the current resumption time following a Level 3 Market Decline.

To effect this change, FINRA proposes to delete the language in Rule 6121.02(c)(2) that provides that FINRA shall halt trading otherwise than on an exchange in all NMS stocks ''for the remainder of the trading day'' if a Level 3 Market Decline occurs at any time during the trading day, and replace it with new language that explicitly provides that FINRA shall halt trading otherwise than on an exchange in all NMS stocks until 4:00 a.m. Eastern Time or later on the following trading day.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date of the proposed rule change will be December 6, 2026.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The MWCB mechanism described in Rule 6121.02 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. The proposed rule change, when applied uniformly by all SROs, would ensure that the current 4:00 a.m. E.T. resumption time following a Level 3 halt continues to apply under 23/5 Trading, notwithstanding current rule text implying that the resumption time would coincide with the start of overnight trading on SROs operating an overnight session.

Rather than leave the rule in place as is, which would result in an earlier resumption time than originally contemplated when the rule was adopted, FINRA and the U.S. equity exchanges met alongside industry representatives to determine the appropriate resumption time. Following those discussions, the collective decision was made to retain the 4:00 a.m. E.T. resumption time, notwithstanding the fact that an earlier resumption time would be possible with the introduction of 23/5 Trading. The proposed rule change codifies this decision into FINRA's rules. FINRA understands that the other SROs have filed or will also be filing similar proposed rule changes. As a result, the market as a whole, including on- and off-exchange, will continue to be subject to harmonized rules for the resumption of trading following a Level 3 Market Decline.

While the SROs had previously decided to tie the resumption time following a Level 3 halt to the earliest SRO opening time, the upcoming transition to 23/5 Trading raises various concerns that warrant a change from the current approach. First, FINRA notes that the MWCB mechanism was designed to provide a cooling-off period where market participants would be provided with additional time to evaluate the market events that led to the decline before determining how to position their trading activity for the next day. With the introduction of 23/5 Trading and the start of overnight trading on some SROs at 9:00 p.m. E.T., however, this cooling-off period could be materially shortened, reducing one of the key benefits that the MWCB mechanism was designed to provide in the first place. Rather than shorten the cooling-off period and risk this benefit, FINRA believes the market would be better served by a change to the length of the associated trading halt that mirrors current market practice. Under the proposed rule, as is the case today, after a Level 3 halt, all SROs would permit trading to resume at 4:00 a.m. E.T. or later, and no SRO would offer an overnight trading session starting on the day of a Level 3 halt.

Second, overnight trading may be subject to different liquidity and participation considerations than the current pre-market sessions that start at or after 4:00 a.m. E.T. Notably, while retail investors have expressed interest in overnight trading, FINRA expects that institutional investors will take more time to transition to a round-the-clock model. However, such institutional participation may be of heightened importance following a Level 3 halt. FINRA is concerned that permitting trading during hours that institutional participants do not normally trade may impact the quality of price discovery at a time of significant market volatility. Waiting until 4:00 a.m. E.T. to permit trading to resume would facilitate broader participation and therefore price discovery.

Finally, FINRA notes that the Commission recently approved an amendment to the Plan to Address Extraordinary Market Volatility (''LULD Plan'') that would establish new price protections from 9:00 p.m. E.T. to 4:00 a.m. E.T.[6] While these price bands would help to assure a fair and orderly market during normal market conditions, it is possible that they

[4] *See* FINRA Rule 6121.02(c)(2).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] *See* Securities Exchange Act Release No. 106042 (August 5, 2026), 91 FR 51515 (August 10, 2026) (Order Granting Approval of the Twenty-Seventh Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Establish Temporary Price Band Protections in Overnight Trading). *See also* Securities Exchange Act Release No. 106624 (October 7, 2026), 91 FR 65016 (October 13, 2026) (Notice of Filing and Order of Summary Effectiveness on a Temporary Basis Not To Exceed 120 Days of Proposed Twenty-Ninth Amendment to the National Market System Plan to Address Extraordinary Market Volatility to Revise the Time for Calculating the Consolidated Price in Connection with Overnight Trading).

would instead prevent normal price discovery following a Level 3 Market Decline. Rather than allowing trading to resume with such price bands in effect, which would represent a change from the current trading resumption following a Level 3 Market Decline, FINRA believes that waiting until 4:00 a.m. E.T. or later to permit trading to resume would ensure that price discovery can occur unimpeded during pre-market trading, as it does today, which may further inform prices going into opening auctions and regular market hours trading following a Level 3 halt.

Given the factors discussed above, FINRA believes that trading in all NMS stocks otherwise than on an exchange should not resume before 4:00 a.m. E.T. on the trading day after a Level 3 halt. This decision, which FINRA understands is or will also be reflected in the rules of the other SROs, would promote a fair and orderly market at a time of significant market volatility, and thereby protect investors and the public interest. In addition, while the actual Level 3 resumption time would not be changing in practice—as proposed, the current resumption time and future resumption time would both be 4:00 a.m. E.T. at the earliest—FINRA believes that it is appropriate to amend its rules to ensure that its rules reflect the upcoming changes due to 23/5 Trading. Without this change, market participants may mistakenly believe that FINRA intends for trading to resume at 9:00 p.m. E.T. following a Level 3 halt. The proposed rule change would therefore facilitate operational transparency while providing for a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across U.S. securities markets. Further, FINRA understands that the other SROs have filed or intend to file proposed rule changes to ensure a consistent resumption time at 4:00 a.m. E.T. or later across markets. Thus, the proposed rule change will help to ensure consistency across markets without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–FINRA–2026–025 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–FINRA–2026–025. 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 FINRA. 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–FINRA–2026–025 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23339 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change 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. FINRA has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106876; File No. SR–DTC–2026–010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Partial Amendment No. 1 and Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Establish and Implement AnnounceDirect for the Submission of Corporate Action Announcements

November 12, 2026.

I. Introduction

On September 15, 2026, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change DTC–2026–010, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for public comment in the **Federal Register** on September 29, 2026.[3] The Commission has received comments regarding the substance of the changes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 106486 (Sept. 24, 2026), 91 FR 61520 (Sept. 29, 2026) (File No. SR–DTC–2026–010) (''Notice of Filing'').

proposed.[4] On November 6, 2026, DTC filed Partial Amendment No. 1 to modify the proposed rule change (the proposed rule change, as modified by Partial Amendment No. 1, is hereinafter referred to as the ''proposed rule change'').[5] The Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and to designate a longer time period for Commission action on the proposed rule change.

II. Description of Partial Amendment No. 1

In Partial Amendment No. 1, DTC revises the implementation timeframe for the first phase of AnnounceDirect from November 2026 to no later than March 31, 2027 and states that DTC would announce the specific implementation date by Important Notice at least 14 days in advance.

III. 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 Exchange 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–DTC–2026–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to file number SR–DTC–2026–010. 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 DTC and on DTCC's website (*https://dtcc.com/legal/sec-rule-filings.aspx*). 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–DTC–2026–010 and should be submitted on or before December 8, 2026.

IV. Designation of Longer Period for Commission Action

Section 19(b)(2)(i) of the Exchange Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved unless the Commission extends the period within which it must act as provided in Section 19(b)(2)(ii) of the Exchange Act.[7] Section 19(b)(2)(ii) of the Exchange Act allows the Commission to designate a longer period for review (up to 90 days from the publication of notice of the filing of a proposed rule change) if the Commission finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents.[8]

The 45th day after publication of the Notice of Filing is November 13, 2026. In order to provide the Commission with sufficient time to consider the proposed rule change, the Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change and therefore is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Exchange Act,[9] designates December 28, 2026, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–DTC–2026–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Sherry R. Haywood,

Assistant Secretary.

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[4] Comments on the proposed rule change are available at *https://www.sec.gov/rules-regulations/public-comments/sr-dtc-2026-010.*

[5] Partial Amendment No. 1 is available at *https://files.dtcc.com/download/assets/SR-DTC-2026-010-AnnounceDirect-redacted.pdf/a1658c64da0811f18e1d527ec7585796.*

[6] 15 U.S.C. 78s(b)(2)(i).

[7] 15 U.S.C. 78 s(b)(2)(ii).

[8] *Id.*

[9] *Id.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106881; File No. SR–NasdaqTX–2026–057]

Self-Regulatory Organizations; Nasdaq Texas, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule General 8 Regarding Fees for Interfirm Cabinet Connectivity

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 6, 2026, Nasdaq Texas, LLC (''Nasdaq Texas'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity order, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaqtx/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule General 8, Section 1(b) to provide that the installation fee and ongoing monthly fee for interfirm cabinet connectivity will apply separately to each of the two customers connected through an interfirm cabinet connectivity connection, as described below. Currently, the Exchange assesses the applicable installation fee and ongoing monthly fee only to the customer that submits the order. The other customer that accepts and participates in the connection is not separately assessed those fees. Under the proposal, each customer participating in a new interfirm cabinet connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For interfirm cabinet connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

Background

The Exchange's data center campus consists of the original data center (''NY11''), an initial expansion area (''NY11–4''), and a second expansion area (''NY11–5'') (collectively, the ''Data Center'' or ''Data Center Campus''). Interfirm Cabinet Connectivity is a fiber-based connectivity service that links cabinets used by two different colocation customers (''Interfirm Cabinet Connectivity'') throughout the Data Center Campus. The interfirm cabinet connection consists of two customer-side legs that meet at the Nasdaq-provided distribution point: [3] one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet.

Before the Exchange implemented equalized connectivity [4] throughout its Data Center, a customer would order Interfirm Cabinet Connectivity through the Nasdaq customer portal and identify the customer to which the ordering customer wanted to connect, with the ordering customer being solely responsible for both the installation and the ongoing monthly fiber connectivity fees. No separate installation or ongoing monthly fees were assessed, or are currently assessed, to the non-ordering customer for its side of the Interfirm Cabinet Connectivity.

With respect to provision and installation of the service, the fiber for the Interfirm Cabinet Connectivity was provided and installed by a third-party provider or by the customer. The Exchange did not provide or install such fiber or manage such services.

Equalization places greater emphasis on the way Interfirm Cabinet Connectivity is supervised and managed, with Nasdaq taking a more central role in those functions. While customers still request the interfirm cabinet connection through the Nasdaq Customer Portal, the pre-existing fiber in the Interfirm Cabinet Connectivity has been replaced with Exchange-provided, equalized fiber. Under this structure, the Exchange supervises and audits the interfirm cabinet connection on an ongoing basis.[5]

As discussed above, the Interfirm Cabinet Connectivity consists of two customer-side legs that meet at the Nasdaq-provided distribution point: one leg extends from the first customer's cabinet to the Nasdaq-provided distribution point, and the other extends from the Nasdaq-provided distribution point to the second customer's cabinet. The Exchange provides and manages the cabling and standardized demarcation points and performs inventory management, implementation support, ongoing maintenance, monitoring, audit, and operational oversight for the connection.

Both customers must act before the connection is implemented: one customer initiates the Interfirm Cabinet Connectivity order through the Nasdaq Customer Portal, and the other customer accepts it. If the second customer does not accept the order, the connection is not implemented. Each participating customer consequently receives a distinct customer-side leg of a Nasdaq-provided, Nasdaq-managed, equalized connectivity path. Interfirm Cabinet Connectivity is optional and is not required for a customer to obtain colocation services or to connect to the Exchange's trading systems.

Proposal

The Exchange proposes to retain the existing installation and ongoing monthly fees for Interfirm Cabinet Connectivity and extend their application to the non-ordering, accepting customer side of the connection. Under the proposal, each customer participating in a new Interfirm Cabinet Connectivity connection will be assessed the existing $550 installation fee and $385 ongoing monthly fee for its respective leg of the connectivity path. For Interfirm Cabinet Connectivity connections already in place as of the implementation date, the accepting customer will be assessed the ongoing monthly fee, but not the installation fee, for its respective leg, and the fees assessed to the ordering customer will not change.

The Exchange anticipates implementing the proposed rule change during the first quarter of 2027 and will announce that implementation date through an Equity Trader Alert or other customer communication.

The Exchange believes that assessing the existing fees separately to each customer appropriately reflects the Exchange's increased role in managing Data Center connectivity following Equalization. The Exchange now provides the fiber and manages, supervises, monitors, and audits the connection after installation. The proposal also aligns the allocation of fees with the structure of the service: two separately provided and managed customer-side legs join at the Nasdaq-provided distribution point, and each customer must authorize and receive the benefit of its own leg. The proposal therefore assesses each customer for the Nasdaq-provided and Nasdaq-managed connectivity furnished to that customer.[6]

[3] As used in this context, a ''distribution point'' is a designated passive cabling node within the Data Center's structured telecommunications architecture, where backbone or feeder cabling terminates, and from which downstream cabling is routed to customer cabinets or equipment locations. Distribution points serve as standardized, auditable locations used for organizing, patching, and managing connectivity.

[4] Equalized connectivity refers to connectivity implemented using equalized cabling and infrastructure designed to support equidistant connectivity relative to other customer locations in the Data Center. The Equalization Project enhances the integrity of the Exchange's Data Center networks by establishing standardized connectivity requirements and providing for greater Exchange management oversight of those components. *See* Securities Exchange Act Release No. 34–101078 (Sept. 18, 2024), 89 FR 77937 (Sept. 24, 2024) (SR–NASDAQ–2024–054) (describing the Equalization Project in greater detail).

[5] The Exchange notes that a third-party provider, specifically the Data Center operator, runs the Interfirm Cabinet Connectivity. All other functions are performed by the Exchange.

[6] The Exchange notes that the structure proposed here parallels the structure the Exchange adopted for TNO Cross-Connect. A telecommunications company (''telco'') connectivity path in the Data Center consists of two Nasdaq-provided and Nasdaq-managed legs that meet at a Nasdaq-provided distribution point: the TNO Cross-Connect, which runs from the telco's carrier cabinet to the distribution point, and the customer-side leg, which runs from the distribution point to the

Continued

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed fees are reasonable because each customer receives a distinct leg of an equalized connectivity path that the Exchange actively provides and manages. Each customer-side leg is a defined, Exchange-managed component of that path. Following equalization, the Exchange provides the fiber connectivity and administers the cabling, standardized demarcation points, inventory, and ongoing operational support associated with each leg, and it supervises and audits the connection on an ongoing basis. Each customer's leg is a component the Exchange implements, administers, monitors, and supports. Applying the existing $550 installation fee and $385 monthly fee to each customer is reasonable because each customer receives, and the Exchange manages, a distinct leg of the equalized path.[9] The Exchange believes this approach equitably allocates the fees among the customers that receive and use each Exchange-managed leg of the connection. Each customer receives connectivity through its respective leg of the connectivity path, and each customer is accordingly responsible for the fees associated with the connectivity provided to it. The fact that the two connectivity paths collectively facilitate communication between the customers does not alter the fact that each customer receives a separately identifiable connectivity service. The Exchange further believes that assessing each customer for its respective connectivity leg avoids requiring one customer to pay for the leg that another customer receives. The Exchange therefore believes that its methodology represents an equitable allocation of fees among the customers using Interfirm Cabinet Connectivity.

The amount of each fee is also reasonable because it is unchanged from the Fiber connectivity fee amounts currently assessed to the ordering customer for Interfirm Cabinet Connectivity and is the same amount charged for certain other Fiber connectivity offerings.[10]

The Exchange also believes that the proposal is reasonable because it supports a uniformly administered and auditable Interfirm Cabinet connectivity pathway within the Data Center. As the Exchange has explained, equalization is intended to enhance the integrity of the Data Center network by establishing standardized connectivity requirements for each component of the connectivity path and exercising greater management oversight over those components.[11] A standardized, Nasdaq-managed path in which the Exchange oversees the cabling, demarcation points, and supporting architecture enhances the Exchange's ability to monitor, maintain, and audit that connectivity.[12] Each customer-side leg of Interfirm Cabinet Connectivity is a component of that path. Assessing the existing fees to each customer for its own leg allocates those fees among the customers that receive and use each Exchange-managed leg of the path and does not alter the path's availability or operation.

The Exchange further believes the proposal is reasonable because Interfirm Cabinet Connectivity is an optional service. Customers are not required to purchase Interfirm Cabinet Connectivity to obtain colocation services or to connect to the Exchange's trading systems. Rather, a customer purchases the service only if it elects to establish a fiber connection between its cabinet and the cabinet of another colocation customer, and each customer may determine for itself whether the service, at the proposed fees, is appropriate for its business.

The Exchange believes that applying the fees separately to both customers is equitable and not unfairly discriminatory because both customers receive a substantially similar customer-side service and both benefit from the Exchange's provision and ongoing management of the equalized path. Under the current billing model, only the ordering customer pays even though the accepting customer also receives a Nasdaq-provided and Nasdaq-managed leg of the connection. The proposal allocates the fees to both beneficiaries and treats the ordering and accepting customers alike. Each customer would pay the same, existing fee for the Exchange-provided and Exchange-managed leg that it receives, and no customer would be asked to bear the fees attributable to another customer's leg of the connection.

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory not to assess the installation fee to the accepting customer for Interfirm Cabinet Connectivity connections already in place as of the implementation date. The installation fee is a one-time charge assessed when a connection is ordered and established. For a connection already in place, the connection has been established and the installation fee has already been assessed to the ordering customer. The Exchange therefore believes that it would be

customer's cabinet. *See* Exchange Rule General 8, Section 1. As with TNO Cross-Connect, the Exchange proposes to assess each leg, because the Exchange provides and manages both and, with equalized connectivity, exercises greater management oversight over each component of the path. *See* Securities Exchange Act Release No. 105033 (Mar. 17, 2026), 91 FR 13689 (Mar. 20, 2026) (SR-NasdaqTX–2026–005); 105766 (June 24, 2026), 91 FR 39133 (June 29, 2026) (SR-NasdaqTX–2026–031). The Exchange notes, however, that unlike TNO Cross Connect, the proposed Interfirm Cabinet Connectivity offering is optional and not required for collocating with the Exchange.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4) and (5).

[9] The Exchange also believes that the proposed fees are reasonable when viewed against the fee another exchange charges for a similar service. NYSE offers a ''Data Center Fiber Cross Connect'' service, for which it charges the User that requests the service an initial charge of $500 plus a monthly charge of $600 for a single cross connect, or $7,700 over the first year. *See* NYSE Connectivity Fee Schedule (last updated Oct. 2, 2026), Section A (Co-Location Fees). By comparison, under the proposal each customer participating in a new Interfirm Cabinet Connectivity connection would pay $5,170 over the first year for its own leg (a $550 installation fee plus twelve monthly fees of $385), or approximately 33% less than NYSE's first-year charge for a single cross connect. This comparison is based solely on NYSE's published fee schedule, which does not identify a separate charge to any other party to the connection, and the Exchange makes no representation regarding NYSE's billing practices beyond what that schedule states. The Exchange offers this comparison as context. The proposal need not replicate NYSE's fee structure to be consistent with the Act. The Act does not require an exchange to adopt another exchange's approach to pricing a similar service. The question under Section 6(b)(4) is whether the proposed fees are reasonable and equitably allocated among the persons using the Exchange's facilities, and the proposal meets that standard. Each customer would pay the same, existing monthly fee for the Exchange-provided and Exchange-managed leg that it receives. For new connections, each customer would also pay the same, existing installation fee for its leg. No customer would be asked to bear the fees attributable to another customer's leg of the connection path. Under the Exchange's current model, the ordering customer alone pays the fees for a connection in which two customers each receive a leg. Under the proposal, neither customer subsidizes the other. Each pays the same fee for its own leg, and only for the leg it receives. For connections already established as of the implementation date, the accepting customer would pay the ongoing monthly fee for its leg but not the installation fee, because that one-time fee has already been assessed to the ordering customer when the connection was established. In that case, the ordering customer's fees would not change.

[10] *See* Exchange Rule General 8.

[11] *See* SR–NasdaqTX–2026–005, SR–NasdaqTX–2026–031, *supra* note 6.

[12] *See* SR–NasdaqTX–2026–005, SR–NasdaqTX–2026–031, *supra* note 6.

inappropriate to assess a one-time installation charge for a connection that is not being newly established. Those accepting customers will, however, be assessed the ongoing monthly fee beginning on the implementation date, which is consistent with the Exchange's rationale for assessing each customer for the Exchange-managed leg of the connection that it receives and uses. The distinction is drawn by whether a connection is in place as of the implementation date, and not by the identity, size, or trading activity of any customer, and it applies uniformly to every accepting customer with an existing connection.

The Exchange will apply the same fee amounts and billing methodology to all similarly situated customers. The proposal does not distinguish among customers based on their identity, trading activity, or anticipated use of the connection. Rather, each new customer will pay the same installation fee and monthly fee for its own leg of the standardized, equalized connectivity path.[13] Because both parties must affirmatively participate in the Nasdaq Customer Portal order process before implementation, as described above, each customer will have notice of the fee treatment before the Exchange provisions the connection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange does not believe that the proposal will impose an undue burden on intramarket competition because it will apply the same fees to each customer participating in an Interfirm Cabinet Connectivity order. The proposal will eliminate the current difference in the ongoing monthly fee treatment of the ordering and accepting customers, each of which receives a customer-side leg of the Exchange-provided and Exchange-managed connection, and, for new orders, the difference in their installation fee treatment.

The proposal therefore will treat similarly situated customers consistently. Each customer participating in an Interfirm Cabinet Connectivity arrangement through a new order will be assessed the same installation and recurring monthly fees for its respective connectivity leg. For connections already in place as of the implementation date, the Exchange will not assess a one-time installation fee to the accepting customer because the connection has already been established, but the accepting customer will be assessed the same ongoing monthly fee as the ordering customer. This distinction turns on whether a connection is in place as of the implementation date and applies uniformly to all such connections. It does not favor or disadvantage any customer relative to another. The fees do not distinguish among customers based on their identity, business model, trading activity, or the identity of the customer with which they establish connectivity.

The Exchange also does not believe that the proposal will impose an undue burden on intermarket competition. Interfirm Cabinet Connectivity is an optional service that customers are not required to purchase to obtain colocation services or connect to the Exchange's trading systems. The proposal does not alter the availability or technical operation of the service. Instead, it applies the existing fees separately to each customer that elects to participate in and receive a customer-side leg of the connection: for new orders, the existing installation fee and ongoing monthly fee, and for existing connections, the existing ongoing monthly fee.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NasdaqTX–2026–057 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–NasdaqTX–2026–057. 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-NasdaqTX–2026–057 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Sherry R. Haywood,

Assistant Secretary.

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[13] As discussed above and as proposed, existing Interfirm Cabinet Connectivity customers will each pay only the ongoing monthly fees. For such established Interfirm Cabinet Connectivity connections, the Exchange will not assess a second installation fee to the non-ordering customer.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106875; File No. SR–NYSE–2026–55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend its Price List

November 12, 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 October 30, 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 its Price List to modify the share threshold requirement for free late D Orders at the close. 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 its Price List to modify the share threshold requirement for free late D Orders at the close.

The Exchange proposes to implement the fee changes effective November 2, 2026.

Background and Proposed Rule Change

Currently, in the section of the Price List headed ''Executions at the Close,'' the Exchange offers fees differentiated by time of entry (or last modification) for D Orders at the close by a member organization. Specifically, for member organizations with an ADV of at least 10,000 shares entered and executed by an affiliated Floor broker, D Orders are free up to specific monthly levels, which for Late D Orders is currently the first 10,000,000 shares.[4] Above that threshold, member organizations with Adding ADV of at least 0.50% of Tape A CADV and total close activity of at least 1.75% of Tape A CADV are charged $0.0011 per share; all other member organizations are charged $0.0012 per share.

The Exchange proposes to increase the volume threshold applicable to Late D Orders. As proposed, qualifying member organizations would not be charged for the first 15,000,000 shares of Late D Orders. The existing rate for Late D Orders applicable to volume above that threshold would remain unchanged. The Exchange believes that the proposed change would further encourage additional liquidity on the Exchange, particularly in the Closing Auction. The Exchange notes that several member organizations could benefit from the proposed higher threshold given their current D Order volumes. By increasing the amount of Late D Order volume that may be executed without charge, the Exchange believes that these member organizations would have an additional incentive to submit additional D Orders to the Closing Auction in order to take advantage of the enhanced pricing opportunity. As a result, the Exchange expects the proposal to attract additional liquidity and order flow to the Closing Auction, improving execution opportunities for all market participants. The Exchange further believes that member organizations derive significant value from participating in the Exchange's Closing Auction, a recognized industry benchmark for the pricing and valuation of numerous indices, funds, and derivative products.[5] Increased participation in the Closing Auction contributes to the quality of the auction process by enhancing liquidity, promoting price discovery, and increasing the opportunity for orders to receive executions at the Exchange's closing price. Moreover, because member organizations closely track the adding volumes they submit to the Exchange, the Exchange believes that they can readily determine at the time of execution whether their Late D Orders will execute free of charge or be subject to the current fee set forth in the Price List. Accordingly, the proposal would provide certainty regarding the applicable fees at the time of execution and promote the efficient use of Exchange systems.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposal to increase the volume threshold for Late D Orders so that qualifying member organizations would not be charged for the first 15,000,000 shares of Late D Orders is reasonable.

The Exchange believes that the proposal would encourage additional liquidity on the Exchange, especially during the Closing Auction, thereby contributing to robust levels of liquidity on the Floor and at the close, to the benefit of all market participants. The Exchange further believes that increased trading volumes contribute to the quality of the Closing Auction by improving execution opportunities for participants seeking to transact at the close, which benefits all market participants. In addition, the proposal is designed to attract higher volumes of orders from member organizations,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Price List defines ''Late D Orders'' as D Orders last modified in the last 1 minute before the scheduled close of trading. Footnote 10 of the Price List specifies that ''last modified'' means the later of the order's entry time or the final modification for a D Order designated for the close.

[5] For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) & (5).

which would promote greater price discovery and increased trading opportunities on the Exchange, both intraday and during the Closing Auction. The Exchange also believes that encouraging additional liquidity and order flow for execution on the trading Floor in the Closing Auction would strengthen the Exchange's competitive position and market share relative to its competitors. As noted, there are several member organizations that could benefit from the proposed higher threshold given their current D Order volumes, and the Exchange believes that increasing the amount of D Orders that are not charged a fee would incentivize those member organizations to enter additional D Orders in the Closing Auction in order to take advantage of the higher threshold. The Exchange's closing auction is a recognized industry benchmark, and member organizations receive a substantial benefit from the Exchange in obtaining high levels of executions at the Exchange's closing price on a daily basis.

Further, the proposed rule change also represents a reasonable attempt to encourage efficient usage of Exchange systems by member organizations by continuing to encourage all member organizations to enter or modify D Orders, which the Exchange believes serves the best interests of all member organizations and investors who access the Exchange. Finally, the Exchange believes that the proposed change is reasonable because it would continue to provide transparency and clarity to market participants, including investors, to determine what fee or rebate level would be applicable to any submitted order at the time of execution and therefore remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Proposal Is an Equitable Allocation of Credits

The Exchange believes the proposal equitably allocates fees and credits among market participants because all member organizations that participate on the Exchange may qualify for free Late D Orders up to the proposed level by meeting the current requirements, which would remain unchanged. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All member organizations that provide liquidity at the Exchange close and meet the requirements would be eligible for free Late D Orders up to the proposed volume threshold. The Exchange also believes the proposal equitably allocates its fees and credits among its market participants because the proposed change would encourage greater marketable and other liquidity at the closing auction, which helps to maintain the quality of the Exchange's closing auctions for the benefit of all market participants. Member organizations derive a substantial benefit from the higher volume of closing executions.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The proposal does not permit unfair discrimination because the proposed threshold for late D Orders would be applied to all similarly situated member organizations, who would all be eligible for the same fee waiver on an equal and non-discriminatory basis. The Exchange also believes that the proposal is not unfairly discriminatory because the proposed changes would equally encourage all member organizations to provide greater marketable and other liquidity at the closing auction. Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[8] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations.

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed waiver threshold would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the changes on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[9] and Rule 19b–4(f)(2) thereunder[10] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing. At any time within 60 days of the

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4.

filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSE–2026–55 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–2026–55. 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–2026–55 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23336 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106886; File No. SR–MIAX–2026–43]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Exclude Options Volume Executed During Extended Trading Hours From Calculations Applicable for Certain Fees, Rebates, and Discounts

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, Miami International Securities Exchange, LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Options Exchange Fee Schedule (the ''Fee Schedule'') to clarify that the Exchange will exclude options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to add clarifying text regarding how fees are assessed to align with text in the fee schedules of the Exchange's affiliates.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-options/rule-filings,* and at the Exchange's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to add clarifying text regarding how fees are assessed to align with text in the fee schedules of the Exchange's affiliates, MIAX PEARL, LLC (''MIAX Pearl''), MIAX Emerald, LLC (''MIAX Emerald''), and MIAX Sapphire, LLC (''MIAX Sapphire'').

Exchange Rule 501 describes the Exchange's hours of operation. In particular, the hours during which option transactions may be made on the Exchange shall be from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time except for option contracts on Exchange Traded Fund Shares, as defined in Rule 402(j), and Index-Linked Securities, as defined in Rule 402(k)(1), which may remain open for trading beyond 4:00 p.m. but in no case later than 4:15 p.m. Eastern Time, as designated by the Exchange. The Exchange does not offer options trading outside of the hours described in Exchange Rule 501.

Currently, certain of the Exchange's transactional and non-transactional fees, rebates and tiers are determined by volume in a particular segment calculated as a percentage of total national volume cleared at the Options Clearing Corporation in the relevant account types. For example, the Exchanges assesses transaction fees to Market Makers[3] using a sliding scale with volume thresholds based on the total national Market Maker volume of any multiply-listed options classes with traded volume on MIAX during the relevant month in simple and complex orders (excluding QCC[4] and cQCC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Market Makers'' refers to ''Lead Market Makers,'' ''Primary Lead Market Makers,'' and ''Registered Market Makers'' collectively. *See* Exchange Rule 100.

[4] A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01, coupled

Orders,[5] PRIME[6] and cPRIME[7] AOC Responses, and unrelated MIAX Market Maker quotes or unrelated MIAX Market Maker orders that are received during the Response Time Interval and executed against the PRIME Order (''PRIME Participating Quotes or Orders'') and unrelated MIAX Market Maker complex quotes or unrelated MIAX Market Maker complex orders that are received during the Response Time Interval and executed against a cPRIME Order (''cPRIME Participating Quote or Order'')).[8] Similarly, the Exchange provides tiered transaction credits to Priority Customers[9] with volume thresholds based on the percentage of national customer volume in multiply-listed options classes listed on MIAX entered and executed over the course of the month (excluding QCC and cQCC Orders, Priority Customer-to-Priority Customer Orders, C2C and cC2C Orders, PRIME and cPRIME AOC Responses, PRIME and cPRIME Contra-side Orders, and PRIME and cPRIME Orders for which both the Agency and Contra-side Order are Priority Customers).[10]

Additionally, the Exchange assesses monthly Trading Permit[11] and Full Service MEI Port fees to Market Makers based on the lesser of either the per class basis or percentage of total national average daily volume measurement.[12] The amount of monthly Market Maker Trading Permit fee or Full Service MEI Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the tables in Sections 3)b) or 5)d) of the Fee Schedule.[13] The Exchange assesses MIAX Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX that the MIAX Market Maker was assigned to quote in on any given day within a calendar month.[14] The class volume percentage is based on the total national average daily volume in classes listed on MIAX in the prior calendar quarter.[15] Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.[16]

The Exchange notes there are other examples in the Fee Schedule where fees or rebates are determined by certain volume calculations in particular segments calculated as a percentage of national volume in each segment.

On May 28, 2026, Cboe Exchange, Inc. (''Cboe'') received approval from the U.S. Securities and Exchange Commission (''Commission'') to amend the Cboe rules to provide for extended trading sessions for multi-listed equity options that meet certain eligibility criteria.[17] Pursuant to the Cboe Approval Order, Cboe may offer an extended morning trading session (from 7:30 a.m. to 9:25 a.m. Eastern Time) and an extended afternoon session (from 4:00 p.m. to 4:15 p.m.) for equity options that are not exchange-traded product options that already trade until 4:15 p.m.[18] Cboe launched the extended trading sessions on October 19, 2026, with the initial listings of select multi-listed equity and exchange-traded fund options.[19] Other exchanges have filed rule proposals with the Commission to offer the same extended trading sessions for multi-listed equity options, which proposals were also approved by the Commission.[20]

The Exchange now proposes to amend the Fee Schedule to add a section titled ''Notes'' before Section 1 of the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. In particular, the Exchange proposes to exclude the following from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month: (1) total national volume cleared at the Options Clearing Corporation in the relevant account types in multiply-listed equity options classes that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time; and (2) total national volume cleared at the Options Clearing Corporation in the relevant account types in option classes in Exchange Traded Fund Shares (as defined in Rule 402(j)) and Index-Linked Securities (as defined in Rule 402(k)(1)) that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, except for options on such Exchange Traded Fund Shares or Index-Linked Securities which have been designated by the Exchange as remaining open for trading beyond 4:00 p.m. Eastern Time but in no case later than 4:15 p.m. Eastern Time. The Exchange further proposes to clarify that the exclusions noted above are separate from volume the Exchange excludes in the event that it experiences a System outage, as described in the Fee Schedule.

The purpose of the proposed changes is to add clarity to the Fee Schedule. The Exchange does not offer extended trading sessions at this time. The Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. If the Exchange were to not exclude multi-listed equity options volume executed during other exchanges' extended trading sessions, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-

with a contra-side order or orders totaling an equal number of contracts. *See* Exchange Rule 516(j).

[5] A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[6] PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[7] A Complex Prime or ''cPRIME'' Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. *See* Exchange Rule 518(b)(7).

[8] *See* Fee Schedule, Section (1)(a)(i).

[9] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with the following Interpretation and Policy .01. *See* Exchange Rule 100.

[10] *See* Fee Schedule, Section (1)(a)(iii).

[11] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[12] *See* Fee Schedule, Section (3)(b) and Section (5)(d).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *See* Securities Exchange Act Release No. 105569 (May 28, 2026), 91 FR 33005 (June 2, 2026) (SR–CBOE–2025–079) (the ''Cboe Approval Order'').

[18] *See id.; see also* Cboe Rule 5.1 (describing requirements that must be met for equity options to be able to trade during the extended trading sessions).

[19] *See* Press Release, Cboe Launches Extended Trading Sessions for Select Single Stock and ETF Options (October 19, 2026), *available at https://ir.cboe.com/news/news-details/2026/Cboe-Launches-Extended-Trading-Sessions-for-Select-Single-Stock-and-ETF-Options/default.aspx.*

[20] *See* Securities Exchange Act Release Nos. 106218 (August 28, 2026), 91 FR 56504 (September 2, 2026) (SR–NYSEAMER–2026–34); 105785 (June 26, 2026), 91 FR 40061 (July 1, 2026) (SR–MRX–2026–11).

transactional fees, rebates, and discounts each month are likely to be skewed. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations.

The Exchange also proposes to add clarifying text at the end of the newly proposed Notes section to clarify how fees are assessed to align with text in the fee schedules of the Exchange's affiliates. MIAX Pearl, MIAX Emerald and MIAX Sapphire each have a sentence at the end of the Definitions sections of their respective fee schedules that provides generally as follows:

> Except as otherwise provided in this Fee Schedule with regard to network connectivity, including network testing and certification, all fees set forth in this Fee Schedule are specific to and assessed exclusively for use of MIAX Sapphire and does not include access to and/or use of MIAX, MIAX Pearl Options, MIAX Emerald or any other facilities of the Exchange.[21]

The Exchange now proposes to add a similar sentence at the end of the newly proposed Notes section. In particular, the Exchange proposes to provide as follows:

> Except as otherwise provided in this Fee Schedule with regard to network connectivity, including network testing and certification, all fees set forth in this Fee Schedule are specific to and assessed exclusively for use of MIAX and does not include access to and/or use of MIAX Pearl Options, MIAX Emerald, MIAX Sapphire or any other facilities of the Exchange.

The purpose of this change is to provide consistency and clarity in the Fee Schedule and to align the Fee Schedule with that of the Exchange's affiliates, MIAX Pearl, MIAX Emerald and MIAX Sapphire, to specify that the fees described in the Fee Schedule apply exclusively to the Exchange, within limited exceptions noted.

Implementation Date

The proposed rule changes are effective beginning November 1, 2026.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of the Act,[22] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[23] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month is reasonable, equitably allocated and not unfairly discriminatory. This is because the changes will provide greater clarity to Members regarding volume in multi-list equity options that the Exchange will exclude from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts. The Exchange believes it is reasonable and not unfairly discriminatory to ensure that the Fee Schedule is clear and concise to all market participants.

The Exchange believes it is reasonable to exclude volume executed during the extended trading sessions of other exchanges because, if the Exchange were to not exclude such volume, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed each month. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange believes its proposal is reasonable.

Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all Members uniformly, in that each Member's volume for purposes of pricing tiers, non-transaction fees and other incentives would continue to be calculated in a uniform manner and would now exclude multi-list equity options volume executed during extended trading sessions.

The Exchange believes its proposal to add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX, with limited exceptions, is reasonable, equitable and not unfairly discriminatory. This is because the proposed change is to align with text in the fee schedules of the Exchange's affiliates and to provide consistency and clarity in the Fee Schedule.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [24] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as described above, the proposed rule change is designed to provide greater clarity regarding volume that the exchange will exclude in its volume calculations to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

Inter-Market Competition

The Exchange does not believe the proposal would impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers, non-transaction fees and other incentives. The Exchange's proposal to

[21] *See* MIAX Sapphire Fee Schedule, Definitions section. The Exchange's affiliates, MIAX Pearl and MIAX Emerald, will propose similar changes to align this sentence with that of MIAX Sapphire—*i.e.,* inserting all affiliated options markets within the sentence.

[22] 15 U.S.C. 78f.

[23] 15 U.S.C. 78f(b)(4) and (5).

[24] 15 U.S.C. 78f(b)(4) and (5).

add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX, with limited exceptions, also does not raise any competitive issues and is solely to provide clarity in the Fee Schedule.

Intra-Market Competition

Additionally, the Exchange believes the proposal would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[25] and Rule 19b–4(f)(2) [26] thereunder. 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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MIAX–2026–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MIAX–2026–43. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MIAX–2026–43 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23330 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(ii).

[26] 17 CFR 240.19b–4(f)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106885; File No. SR–ISE–2026–59]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Rules at Options 7, Section 6 (Other Options Fees and Rebates)

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2026, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Rules at Options 7, Section 6 (Other Options Fees and Rebates).

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rulefilings,* and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 6 (Other Options Fees and Rebates).

Currently, the Exchange offers a PIM [3] rebate of $0.105 per contract to Electronic Access Members [4] that utilize PIM to execute more than 0.75% of Priority Customer volume in Regular Orders,[5] calculated as a percentage of Customer Total Consolidated Volume per day in a given month.[6] As used in the Pricing Schedule, ''Priority Customer'' includes ''Retail,'' as defined in Options 7, Section 1(c), and Customer Total Consolidated Volume means the total national volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF

[3] PIM is the Exchange's Price Improvement Auction as described in Options 3, Section 13. A PIM is comprised of the order the Electronic Access Member represents as agent (the ''Agency Order'') and a counter-side order for the full size of the Agency Order (the ''Counter-Side Order''). Responses, including the Counter-Side Order, and Improvement Orders may be entered during the exposure period. *See* Options 3, Section 13.

[4] The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

[5] A ''Regular Order'' is an order that consists of only a single option series and is not submitted with a stock leg.

[6] Eligible volume from Affiliated Members will be aggregated in calculating the percentage.

options in that month. The rebate is paid for Priority Customer Regular Orders under 250 contracts that are submitted to PIM.[7]

The Exchange proposes to modify the amount of this rebate, from $0.105 per contract, to $0.10 per contract. The Exchange is not otherwise modifying the eligibility, calculation, payment, aggregation, or exclusion provisions applicable to this rebate. The Exchange believes the revised rebate will continue to encourage qualifying Electronic Access Members to submit smaller-sized Priority Customer Regular Orders to PIM for price improvement while allowing the Exchange to periodically adjust its incentive programs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [10]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [11] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[12] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [13]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [14] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes that its proposal to reduce the PIM rebate in Options 7, Section 6.C from $0.105 per contract to $0.10 per contract is reasonable. The Exchange has limited resources to allocate to its incentive programs and periodically assesses its fee structure to ensure that its rebates continue to attract order flow while remaining sustainable. The proposed rebate of $0.10 per contract represents only a modest reduction from the current $0.105 per contract level, and the Exchange believes that this rebate remains attractive and will continue to incentivize qualifying Electronic Access Members to submit smaller-sized Priority Customer Regular Orders to PIM for price improvement, which benefits all market participants.

The Exchange believes that its proposal to reduce the PIM rebate is equitable and not unfairly discriminatory because the modified rebate will apply uniformly to all Electronic Access Members that satisfy the objective volume qualification (utilizing PIM to execute more than 0.75% of Priority Customer volume in Regular Orders, calculated as a percentage of Customer Total Consolidated Volume per day in a given month) with respect to all Priority Customer Regular Orders under 250 contracts submitted to PIM. Any Electronic Access Member is able to qualify for the rebate by meeting the applicable volume threshold, and all qualifying Members will receive the same $0.10 per contract rebate on such orders. Any Electronic Access Member may participate in PIM, and Market Makers may respond to a PIM. While the rebate is targeted at Priority Customer Regular Orders, this does not render the proposal unfairly discriminatory because Priority Customers pay no Fees for PIM Orders and Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers, and increased Market Maker activity facilitates tighter spreads that may cause an additional corresponding increase in order flow from other market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposal remains competitive with other options markets and will offer market participants another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In sum, if the proposed rebate level is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Intra-Market Competition

The Exchange's proposal to reduce the PIM rebate in Options 7, Section 6.C from $0.105 per contract to $0.10 per contract will not impose an undue burden on intra-market competition.

[7] The rebate is paid to the Agency Order as that term is defined within Options 3, Section 13. In the event a Crossing Transaction consists of two Priority Customer Orders, the Exchange would not pay this rebate.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[11] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[12] *See NetCoalition,* at 534–535.

[13] *Id.* at 537.

[14] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (Dec. 2, 2008), 73 FR 74770, 74782–83 (Dec. 9, 2008) (File No. SR–NYSEArca–2006–21)).

The modified rebate will apply uniformly to all Electronic Access Members that satisfy the same objective volume qualification, with respect to all Priority Customer Regular Orders under 250 contracts submitted to PIM. Any Electronic Access Member is able to qualify for the rebate by meeting the applicable volume threshold. Any Electronic Access Member may participate in PIM, and Market Makers may respond to a PIM. While the rebate is targeted at Priority Customer Regular Orders, this does not impose an undue burden on intra-market competition because Priority Customers pay no Fees for PIM Orders and Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers, and increased Market Maker activity facilitates tighter spreads that may cause an additional corresponding increase in order flow from other market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[15] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2026–59 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–ISE–2026–59. 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–ISE–2026–59 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23329 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106889; File No. SR–SAPPHIRE–2026–38]

Self-Regulatory Organizations; MIAX Sapphire, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Sapphire Options Exchange Fee Schedule To Exclude Options Volume Executed During Extended Trading Hours From Calculations Applicable for Certain Fees, Rebates, and Discounts

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, MIAX Sapphire, LLC (''MIAX Sapphire'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Sapphire Options Exchange Fee Schedule (''Fee Schedule'') to clarify that the Exchange will exclude options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/miax-sapphire/rule-filings,* and at the Exchange's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

Exchange Rule 501 describes the Exchange's hours of operation. In particular, the hours during which option transactions may be made on the Exchange shall be from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time except for option contracts on Exchange Traded Fund Shares, as defined in Rule 402(i), and Index-Linked Securities, as

defined in Rule 402(k)(1), which may remain open for trading beyond 4:00 p.m. but in no case later than 4:15 p.m. Eastern Time, as designated by the Exchange. The Exchange does not offer options trading outside of the hours described in Exchange Rule 501.

Currently, the Exchange assesses monthly Trading Permit [3] fees and MEO Port fees to Market Makers based on the lesser of either the per class basis or percentage of total national average daily volume measurement.[4] The amount of monthly Market Maker Trading Permit fee and MEO Port fee is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the tables in Sections 3)b) and 5)d)ii) of the Fee Schedule.[5] The Exchange assesses Market Makers the monthly Market Maker Trading Permit fee and MEO Port fee based on the greatest number of classes listed on MIAX Sapphire that the Market Maker was assigned to quote in on any given day within a calendar month.[6] The class volume percentage is based on the total national average daily volume in classes listed on MIAX Sapphire in the prior calendar quarter.[7] Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee and MEO Port fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.[8]

The Exchange notes that the Exchange's transactional fees and rebates currently are base rates with no tiers. The Exchange may, in the future, amend transactional fees and rebates to be determined by volume in a particular segment, which may be calculated as a percentage of total national volume cleared at the Options Clearing Corporation in the relevant account types.[9] The Exchange's affiliated options markets calculate certain of their transaction fees and rebates using various volume calculations in certain segments; [10] however, the Exchange does not do so at this time. If the Exchange decides to amend transactional fees and rebates to establish tiers utilizing volume calculations in particular segments, it will file a separate Rule 19b–4 filing with the U.S. Securities and Exchange Commission (''Commission'') to amend the Fee Schedule.

On May 28, 2026, Cboe Exchange, Inc. (''Cboe'') received approval from the Commission to amend the Cboe rules to provide for extended trading sessions for multi-listed equity options that meet certain eligibility criteria.[11] Pursuant to the Cboe Approval Order, Cboe may offer an extended morning trading session (from 7:30 a.m. to 9:25 a.m. Eastern Time) and an extended afternoon session (from 4:00 p.m. to 4:15 p.m.) for equity options that are not exchange-traded product options that already trade until 4:15 p.m.[12] Cboe launched the extended trading sessions on October 19, 2026, with the initial listings of select multi-listed equity and exchange-traded fund options.[13] Other exchanges have filed rule proposals with the Commission to offer the same extended trading sessions for multi-listed equity options, which proposals were also approved by the Commission.[14]

The Exchange now proposes to amend the Fee Schedule to add a section titled ''Notes'' before Section 1 of the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. In particular, the Exchange proposes to exclude the following from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month: (1) total national volume cleared at the Options Clearing Corporation in the relevant account types in multiply-listed equity options classes that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time; and (2) total national volume cleared at the Options Clearing Corporation in the relevant account types in option classes in Exchange Traded Fund Shares (as defined in Rule 402(i)) and Index-Linked Securities (as defined in Rule 402(k)(1)) that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, except for options on such Exchange Traded Fund Shares or Index-Linked Securities which have been designated by the Exchange as remaining open for trading beyond 4:00 p.m. Eastern Time but in no case later than 4:15 p.m. Eastern Time. The Exchange further proposes to clarify that the exclusions noted above are separate from volume the Exchange excludes in the event that it experiences an Exchange System Disruption,[15] as described in the Fee Schedule.

The purpose of the proposed change is to add clarity to the Fee Schedule. The Exchange does not offer extended trading sessions at this time. The Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. If the Exchange were to not exclude multi-listed equity options volume executed during other exchanges' extended trading sessions, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] *See* Fee Schedule, Sections 3)b) and 5)d)ii).

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] The proposed rule text is to align with the rule text proposed by the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX''), MIAX PEARL, LLC (''MIAX Pearl''), and MIAX Emerald, LLC (''MIAX Emerald'').

[10] *See, e.g.,* MIAX Fee Schedule, Section 1)a)i) (assessing MIAX market makers transaction fees using a sliding scale with volume thresholds based on the total national market maker volume of any multiply-listed options classes with traded volume on MIAX during the relevant month in simple and complex orders, with certain exclusions).

[11] *See* Securities Exchange Act Release No. 105569 (May 28, 2026), 91 FR 33005 (June 2, 2026) (SR–CBOE–2025–079) (the ''Cboe Approval Order'').

[12] *See id.; see also* Cboe Rule 5.1 (describing requirements that must be met for equity options to be able to trade during the extended trading sessions).

[13] *See* Press Release, Cboe Launches Extended Trading Sessions for Select Single Stock and ETF Options (October 19, 2026), *available at https://ir.cboe.com/news/news-details/2026/Cboe-Launches-Extended-Trading-Sessions-for-Select-Single-Stock-and-ETF-Options/default.aspx.*

[14] *See* Securities Exchange Act Release Nos. 106218 (August 28, 2026), 91 FR 56504 (September 2, 2026) (SR–NYSEAMER–2026–34); 105785 (June 26, 2026), 91 FR 40061 (July 1, 2026) (SR–MRX–2026–11).

[15] ''Exchange System Disruption'' means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. *See* the Definitions section of the Fee Schedule.

various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations.

Implementation Date

The proposed rule change is effective beginning November 1, 2026.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of the Act,[16] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[17] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month is reasonable, equitably allocated and not unfairly discriminatory. This is because the change will provide greater clarity to Members regarding volume in multi-list equity options that the Exchange will exclude from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts. The Exchange believes it is reasonable and not unfairly discriminatory to ensure that the Fee Schedule is clear and concise to all market participants.

The Exchange believes it is reasonable to exclude volume executed during the extended trading sessions of other exchanges because, if the Exchange were to not exclude such volume, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed each month. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange believes its proposal is reasonable.

Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all Members uniformly, in that each Member's volume for purposes of pricing tiers, non-transaction fees and other incentives would continue to be calculated in a uniform manner and would now exclude multi-list equity options volume executed during extended trading sessions.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [18] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as described above, the proposed rule change is designed to provide greater clarity regarding volume that the exchange will exclude in its volume calculations to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

Inter-Market Competition

The Exchange does not believe the proposal would impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers, non-transaction fees and other incentives.

Intra-Market Competition

Additionally, the Exchange believes the proposal would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed change will apply to all Members uniformly and in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[19] and Rule 19b–4(f)(2) [20] thereunder. 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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–SAPPHIRE–2026–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–SAPPHIRE–2026–38. 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

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] 15 U.S.C. 78f(b)(4) and (5).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–SAPPHIRE–2026–38 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23333 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0521]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension: Rule 425

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 (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more-timely basis, so long as the written communications are filed on the date of first use. The information filed under Rule 425 is mandatory, and filings made pursuant to Rule 425 are publicly available on the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. We estimate that responses to Rule 425 are made by approximately 547 respondents approximately 7.46 times a year for a total of 4,083 responses annually. We estimate that it takes approximately 0.25 burden hours per response and $0 cost burden per response to provide the information required under Rule 425. As a result, we estimate that the total annual reporting burden for Rule 425 is 1,021 hours (0.25 hours per response × 4,083 responses) and that the total annual 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=202608-3235-014* or send an email comment to *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov* within 30 days of the day after publication of this notice by December 18, 2026.

Dated: November 12, 2026.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23323 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106887; File No. SR–PEARL–2026–44]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Pearl Options Exchange Fee Schedule To Exclude Options Volume Executed During Extended Trading Hours From Calculations Applicable for Certain Fees, Rebates, and Discounts

November 12, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 30, 2026, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the MIAX Pearl Options Exchange Fee Schedule (''Fee Schedule'') to clarify that the Exchange will exclude options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the names of the Exchange's other affiliates.

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-options/pearl-options/rule-filings,* and at the Exchange's principal office.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the names of the Exchange's other affiliates, MIAX Emerald, LLC (''MIAX Emerald''), and MIAX Sapphire, LLC (''MIAX Sapphire'').

Exchange Rule 501 describes the Exchange's hours of operation. In particular, the hours during which option transactions may be made on the Exchange shall be from 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

except for option contracts on Exchange Traded Fund Shares, as defined in Rule 402(i), and Index-Linked Securities, as defined in Rule 402(k)(1), which may remain open for trading beyond 4:00 p.m. but in no case later than 4:15 p.m. Eastern Time, as designated by the Exchange. The Exchange does not offer options trading outside of the hours described in Exchange Rule 501.

Currently, certain of the Exchange's transactional and non-transactional fees, rebates and tiers are determined by volume in a particular segment calculated as a percentage of total national volume cleared at the Options Clearing Corporation in the relevant account types. For example, the Exchanges calculates transaction fees (or rebates) to Priority Customers,[3] Market Makers,[4] and professional origins (*i.e.,* referred to in the Fee Schedule under the origin Non-Priority Customer, Firm, BD, and Non-MIAX Pearl Market Makers) [5] based on the total monthly volume executed by the Member [6] in all options classes on MIAX Pearl in the relevant origin type, not including Excluded Contracts,[7] (as the numerator) expressed as a percentage of (divided by) TCV [8] (as the denominator).

Additionally, the Exchange assesses monthly Trading Permit [9] and Full Service MEO Port fees to Market Makers based on the lesser of either the per class basis or percentage of total national average daily volume measurement.[10] The amount of monthly Market Maker Trading Permit fee and Full Service MEO Port fees is based upon the number of classes in which the Market Maker was assigned to quote on any given day within the calendar month, or upon the class volume percentages set forth in the tables in Sections 3)b) and 5)d) of the Fee Schedule.[11] The Exchange assesses Market Makers the monthly Market Maker Trading Permit Fee based on the greatest number of classes listed on MIAX Pearl that the Market Maker was assigned to quote in on any given day within a calendar month.[12] The class volume percentage is based on the total national average daily volume in classes listed on MIAX Pearl in the prior calendar quarter.[13] Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit Fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national average daily volume.[14]

The Exchange notes there are other examples in the Fee Schedule where fees or rebates are determined by certain volume calculations in particular segments calculated as a percentage of national volume in each segment. For example, the Exchange also calculates certain alternative thresholds in certain classes like SPY, QQQ, and IWM to reach certain Market Maker tiers.

On May 28, 2026, Cboe Exchange, Inc. (''Cboe'') received approval from the U.S. Securities and Exchange Commission (''Commission'') to amend the Cboe rules to provide for extended trading sessions for multi-listed equity options that meet certain eligibility criteria.[15] Pursuant to the Cboe Approval Order, Cboe may offer an extended morning trading session (from 7:30 a.m. to 9:25 a.m. Eastern Time) and an extended afternoon session (from 4:00 p.m. to 4:15 p.m.) for equity options that are not exchange-traded product options that already trade until 4:15 p.m.[16] Cboe launched the extended trading sessions on October 19, 2026, with the initial listings of select multi-listed equity and exchange-traded fund options.[17] Other exchanges have filed rule proposals with the Commission to offer the same extended trading sessions for multi-listed equity options, which proposals were also approved by the Commission.[18]

The Exchange now proposes to amend the Fee Schedule to add a section titled ''Notes'' before Section 1 of the Fee Schedule to clarify that the Exchange will exclude multi-listed options volume executed during extended trading hours from the Exchange's volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. In particular, the Exchange proposes to exclude the following from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month: (1) total national volume cleared at the Options Clearing Corporation in the relevant account types in multiply-listed equity options classes that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time; and (2) total national volume cleared at the Options Clearing Corporation in the relevant account types in option classes in Exchange Traded Fund Shares (as defined in Rule 402(i)) and Index-Linked Securities (as defined in Rule 402(k)(1)) that occur outside of the hours of 9:30 a.m. Eastern Time to 4:00 p.m. Eastern Time, except for options on such Exchange Traded Fund Shares or Index-Linked Securities which have been designated by the Exchange as remaining open for trading beyond 4:00 p.m. Eastern Time but in no case later than 4:15 p.m. Eastern Time. The Exchange further proposes to clarify that the exclusions noted above are separate from volume the Exchange excludes in the event that it experiences a System outage, as described in the Fee Schedule.

The purpose of the proposed changes is to add clarity to the Fee Schedule. The Exchange does not offer extended trading sessions at this time. The Exchange proposes to exclude volume

[3] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[4] ''Market Maker'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of Exchange Rules. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[5] The Exchange notes that certain terms are not expressly defined in the Fee Schedule.

[6] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[7] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions section of the Fee Schedule.

[8] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions section of the Fee Schedule.

[9] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[10] *See* Fee Schedule, Section 3)b).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *See* Securities Exchange Act Release No. 105569 (May 28, 2026), 91 FR 33005 (June 2, 2026) (SR–CBOE–2025–079) (the ''Cboe Approval Order'').

[16] *See id.; see also* Cboe Rule 5.1 (describing requirements that must be met for equity options to be able to trade during the extended trading sessions).

[17] *See* Press Release, Cboe Launches Extended Trading Sessions for Select Single Stock and ETF Options (October 19, 2026), *available at https://ir.cboe.com/news/news-details/2026/Cboe-Launches-Extended-Trading-Sessions-for-Select-Single-Stock-and-ETF-Options/default.aspx.*

[18] *See* Securities Exchange Act Release Nos. 106218 (August 28, 2026), 91 FR 56504 (September 2, 2026) (SR–NYSEAMER–2026–34); 105785 (June 26, 2026), 91 FR 40061 (July 1, 2026) (SR–MRX–2026–11).

in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month. If the Exchange were to not exclude multi-listed equity options volume executed during other exchanges' extended trading sessions, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange proposes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations.

The Exchange also proposes to amend the last paragraph in the Definitions section of the Fee Schedule to add the names of the Exchange's other affiliates. Currently, the last paragraph provides as follows:

> Except as otherwise provided in this Fee Schedule with regard to network connectivity, including network testing and certification, all fees set forth in this Fee Schedule are specific to and assessed exclusively for use of MIAX Pearl and do not include access to and/or use of MIAX or any other facilities of the Exchange.

Since this language was originally established, the Exchange's affiliates, MIAX Emerald and MIAX Sapphire launched operations. Accordingly, the Exchange proposes to amend this paragraph to insert MIAX Emerald and MIAX Sapphire. The purpose of this change is to provide consistency and clarity in the Fee Schedule and to align the Fee Schedule with that of the Exchange's affiliates, MIAX Pearl, MIAX Emerald and MIAX Sapphire, to specify that the fees described in the Fee Schedule apply exclusively to the Exchange, within limited exceptions noted.

Implementation Date

The proposed rule changes are effective beginning November 1, 2026.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the provisions of Section 6 of the Act,[19] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[20] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to exclude volume in multi-listed equity options executed during extended trading sessions from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month is reasonable, equitably allocated and not unfairly discriminatory. This is because the changes will provide greater clarity to Members regarding volume in multi-list equity options that the Exchange will exclude from its volume calculations that determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts. The Exchange believes it is reasonable and not unfairly discriminatory to ensure that the Fee Schedule is clear and concise to all market participants.

The Exchange believes it is reasonable to exclude volume executed during the extended trading sessions of other exchanges because, if the Exchange were to not exclude such volume, then the volume calculations used by the Exchange to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month are likely to be skewed each month. This is because the extended trading sessions would increase the denominator used by the Exchange for its relevant volume calculations across various segments without the corresponding available increase in volume used in the numerator since the Exchange does not offer extended trading sessions. This has the potential to negatively impact market participants who may receive lower fees or higher rebates working through the Exchange's various tiers, which are based on increasing volume in each segment. Accordingly, the Exchange believes its proposal is reasonable.

Additionally, the Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because it will apply to all Members uniformly, in that each Member's volume for purposes of pricing tiers, non-transaction fees and other incentives would continue to be calculated in a uniform manner and would now exclude multi-list equity options volume executed during extended trading sessions.

The Exchange believes its proposal to add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX Pearl, with limited exceptions, is reasonable, equitable and not unfairly discriminatory. This is because the proposed change is to align with text in the fee schedules of the Exchange's affiliates and to provide consistency and clarity in the Fee Schedule.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [21] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as described above, the proposed rule change is designed to provide greater clarity regarding volume that the exchange will exclude in its volume calculations to determine applicable thresholds and tiers for transactions and non-transactional fees, rebates, and discounts each month.

Inter-Market Competition

The Exchange does not believe the proposal would impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as the Exchange believes the proposal is not concerned with competitive issues, but rather relates to calculation methodologies applicable to its pricing tiers, non-transaction fees and other incentives. The Exchange's proposal to add clarifying text at the end of the newly proposed Notes section to specify how the fees described in the Fee Schedule are exclusive to MIAX Pearl, with limited exceptions, also does not raise any competitive issues and is

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(4) and (5).

[21] 15 U.S.C. 78f(b)(4) and (5).

solely to provide clarity in the Fee Schedule.

Intra-Market Competition

Additionally, the Exchange believes the proposal would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act because, as described above, the proposed changes will apply to all Members uniformly and in the same manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2)[23] thereunder. 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 to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–PEARL–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–PEARL–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 submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–PEARL–2026–44 and should be submitted on or before December 8, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–23331 Filed 11–16–26; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 13161]

Certification Pursuant to Section 7008 of the National Security, Department of State, and Related Programs Appropriations Act, 2026 (Div. F, Pub. L. 119–75), With Respect to Guinea

Pursuant to the authority vested in me as Secretary of State, including by section 7008 of the National Security, Department of State, and Related Programs Appropriations Act, 2026 (Div. F, Pub. L. 119–75), and similar provisions in previous appropriations acts, I hereby certify that, subsequent to the termination of assistance to the Government of the Republic of Guinea, a democratically elected government has taken office in Guinea.

This Certification shall be reported to Congress and published in the **Federal Register**.

Dated: February 11, 2026.

Marco Rubio,

Secretary of State, U.S. Department of State.

Editorial Note: The Office of the Federal Register received this document November 13, 2026.

[FR Doc. 2026–23380 Filed 11–16–26; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

Release of Waybill Data

The Surface Transportation Board has received a request from Civil Design Incorporated on behalf of Illinois Soybean Association (WB26–53—10/05/26) for permission to use select data from the Board's 2020 to 2024 inclusive, unmasked Carload Waybill Samples. The request is for select counties identified in Table 1 and for railroad shipments of soybeans, corn and wheat that are included in Table 2. A copy of this request may be obtained from the Board's website under docket no. WB26–53.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Any inquiries on this request should be directed to *waybill@stb.gov.*

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2026–23398 Filed 11–16–26; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Agency Information Collection Activities; Comment Request on Form 5307—Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the IRS is inviting comments on the information collection request outlined in this notice.

DATES: Written comments should be received on or before January 19, 2027 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include ''OMB Control No. 1545–0200'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be

directed to Marcus W. McCrary, (470) 769–2001.

SUPPLEMENTARY INFORMATION: The IRS, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the IRS assess the impact and minimize the burden of its information collection requirements. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record, and viewable on relevant websites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Title: Form 5307—Application for Determination for Adopters of Modified Nonstandardized Pre-Approved Plans.

OMB Control Number: 1545–0200.

Form Number: 5307.

Abstract: An adopting employer of a nonstandardized pre-approved plan that has made modifications to the terms of the pre-approved plan that are not extensive, or an adopting employer of any pre-approved plan (either standardized or nonstandardized) that amends its pre-approved plan solely to add language to satisfy the requirements of Internal Revenue Code (IRC) sections 415 and 416 due to the required aggregation of plans, use Form 5307 to request a determination letter from the IRS. The IRS uses the information to determine if the adopted plan is qualified under IRC sections 401(a) and 501(a). The form may not be used to request a determination letter for a multiple employer plan.

Current Actions: There is no change to the previously approved information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time per Response: 31 hours, 29 minutes.

Estimated Total Annual Burden Hours: 3,151,000.

Dated: November 13, 2026.

Jon R. Callahan,

Senior Tax Analyst.

[FR Doc. 2026–23382 Filed 11–16–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Publication of the Tier 2 Tax Rates

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Publication of the tier 2 tax rates for calendar year 2027 as required by section 3241(d) of the Internal Revenue Code. Tier 2 taxes on railroad employees, employers, and employee representatives are one source of funding for benefits under the Railroad Retirement Act.

DATES: The tier 2 tax rates for calendar year 2027 apply to compensation paid in calendar year 2027.

FOR FURTHER INFORMATION CONTACT: Kathleen Edmondson, CC:EEE:EOET:ET1, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, telephone number (202) 317–6798 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Tier 2 Tax Rates: The tier 2 tax rate for 2027 under section 3201(b) on employees is 4.9 percent of compensation. The tier 2 tax rate for 2027 under section 3221(b) on employers is 13.1 percent of compensation. The tier 2 tax rate for 2027 under section 3211(b) on employee representatives is 13.1 percent of compensation.

Authority: 26 U.S.C. 3241.

Philip J. Lindenmuth,

Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes).

[FR Doc. 2026–23384 Filed 11–16–26; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Forms 3520 and 3520–A

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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 public is invited to submit comments on these requests.

DATES: Comments should be received on or before December 17, 2026 to be assured of consideration.

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: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts and Form 3520–A, Annual Information Return of Foreign Trust with a U.S. Owner.

OMB Control Number: 1545–0159.

Type of Request: Revision of a currently approved collection.

Description: U.S. persons file Form 3520 to report certain transactions with foreign trusts, ownership of foreign trusts under the rules of Internal Revenue Code sections 671 through 679, and receipt of certain large gifts or bequests from certain foreign persons. Form 3520–A is the annual information return of a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust under the grantor trust rules.

Current Actions: IRS is adjusting the burden to remove the burden for the filers covered under 1545–0092. The remaining burden in 1545–0159 reflects the transfer and gift tax filers burden. Therefore, there is a burden change due to Agency Estimate of a reduction of 1,780 respondents and 92,450 hours.

Form: 3520 and 3520–A.

Affected Public: Individuals or households; Private sector.

Estimated Number of Respondents: 40.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 40.

Estimated Time per Response: 52 hours, 11 minutes.

Estimated Total Annual Burden Hours: 2,087.

Authority: 44 U.S.C. 3501 *et seq.*

Juliana L. Pearson,

Treasury PRA Clearance Officer.

[FR Doc. 2026–23344 Filed 11–16–26; 8:45 am]

BILLING CODE 4831–GV–P

DEPARTMENT OF VETERANS AFFAIRS

[Docket No. VA–2026–VACO–0001]

Loan Guaranty: Assistance to Eligible Individuals in Acquiring Specially Adapted Housing; Cost-of-Construction Index for Fiscal Year 2027

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) announces that the aggregate amounts of assistance available under the Specially Adapted Housing (SAH) grant program will increase by 5.15 percent for fiscal year (FY) 2027.

DATES: The increases in the aggregate amounts outlined in this notice are effective as of October 1, 2026.

FOR FURTHER INFORMATION CONTACT: Jason Latona, Assistant Director, Loan Guaranty Service, Veterans Benefits Administration, (202) 461–9201.

SUPPLEMENTARY INFORMATION: In accordance with 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2), 38 U.S.C. 2102B(b)(2), and 38 CFR 36.4411, the Secretary of Veterans Affairs announces for FY 2027 the aggregate amounts of assistance available to veterans and service members eligible for SAH program grants.

Section 2102(e)(2) authorizes the Secretary to increase the aggregate amounts of SAH assistance annually based on a residential home cost-of construction index. Consistent with 38 CFR 36.4411(a), VA uses the Turner Building Cost Index for this purpose. Such an increase will be equal to the percentage by which the Turner Building Cost Index for the most recent calendar year exceeds that of the next preceding calendar year. If, however, the Turner Building Cost Index for the most recent full calendar year is equal to or less than the next preceding calendar year, the percentage increase will be zero. See 38 CFR 36.4411(b).

In the most recent quarter for which the Turner Building Cost Index is available, second quarter 2026, the index showed 5.15 percent over the index value listed for second quarter 2025. Turner Construction Company, *https://www.turnerconstruction.com/cost-index.* Pursuant to 38 CFR 36.4411(a), therefore, the aggregate amounts of assistance for SAH grants made pursuant to 38 U.S.C. 2101(a) and 2101(b) will increase by 5.15 percent for FY 2027.

Sections 2102A(b)(2) and 2102B(b)(2) require the Secretary to apply the same percentage calculated pursuant to section 2102(e) to grants authorized pursuant to sections 2102A and 2102B. As such, the maximum amount of assistance available under these grants will also increase by 5.15 percent for FY 2027.

The increases are effective as of October 1, 2026. 38 U.S.C. 2102(e), 38 U.S.C. 2102A(b)(2), and 38 U.S.C. 2102B(b)(2).

Specially Adapted Housing: Aggregate Amounts of Assistance Available During FY 2027

Section 2101(a) Grants and Temporary Residence Adaptation (TRA) Grants

Effective October 1, 2026, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(a) will be $133,042 during FY 2027.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(a) and 2102A will be $53,585 during FY 2027.

Section 2101(b) Grants and TRA Grants

Effective as of October 1, 2026, the aggregate amount of assistance available for SAH grants made pursuant to 38 U.S.C. 2101(b) will be $26,654 during FY 2027.

The maximum TRA grant made to an individual who satisfies the eligibility criteria under 38 U.S.C. 2101(b) and 2102A will be $9,568 during FY 2027.

Section 2102B Grants

Effective as of October 1, 2026, the amount of assistance available for grants made pursuant to 38 U.S.C. 2102B will be $122,062 during FY 2027; however, the Secretary may waive this limitation for a veteran if the Secretary determines a waiver is necessary for the rehabilitation program of the veteran.

Signing Authority

Douglas A. Collins, Secretary of Veterans Affairs, approved this document on November 9, 2026, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Gabriela DeCuir,

Alternate Federal Register Liaison Officer, Department of Veterans Affairs.

[FR Doc. 2026–23354 Filed 11–16–26; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

Appellate Procedures for the Board of Immigration Appeals; Final Rule

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[Docket No. EOIR–26–AB37; Dir. Order No. 12–2026]

RIN 1125–AB37

Appellate Procedures for the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review (''EOIR''), Department of Justice (''DOJ'' or ''Department'').

ACTION: Final rule.

SUMMARY: In February 2026, the Department issued an interim final rule (''IFR''), effective March 9, 2026, to streamline Board of Immigration Appeals (''Board'' or ''BIA'') procedures. The IFR's comment period closed on April 8, 2026. In this final rule, the Department responds to comments received and finalizes the IFR with minor changes.

DATES: This rule is effective on December 17, 2026.

FOR FURTHER INFORMATION CONTACT: Jamee E. Comans, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, Virginia, 22041, telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION:

I. Background

On February 6, 2026, the Department published an IFR that: (1) streamlined the process for the Board to review Immigration Judge decisions by making such review discretionary regarding certain aspects of the review; (2) established briefing schedules for cases being reviewed; and (3) streamlined other aspects of the appellate process to ensure timely adjudications and avoid adding to the Board's backlog. *See* Appellate Procedures for the Board of Immigration Appeals, 91 FR 5267 (Feb. 6, 2026). The IFR also made technical and non-substantive changes to EOIR's regulations. *See id.* These changes are discussed in more detail in Section I.C of this preamble.

The comment period for the IFR opened on February 6, 2026, and, after an extension,[1] closed on April 8, 2026, with 1,615 comments received.

In this final rule, the Department adopts as final the amendments made by the IFR with some changes. These changes are described in Section II of this preamble. In Section III of this preamble, the Department summarizes and responds to public comments received on the IFR.

A. Purpose of This Rulemaking

As discussed in the IFR, the Department issued the IFR in an effort to address lengthy and unprecedented appeal backlogs at the Board. *See* 91 FR 5270. The Department has attempted to address the Board's backlog multiple times over the years, *see* 91 FR 5268–70, yet the Board's pending caseload has continued to increase. Specifically, the Board's pending caseload increased from 35,837 cases in Fiscal Year (''FY'') 2017 to 325,774 cases in FY 2026—a nearly ninefold increase.[2] Lengthy backlogs and their accompanying adjudication delays significantly undermine the Government's efforts to effectively administer the Nation's immigration system, where many aliens with non-meritorious claims know they can potentially remain in the United States for years upon the filing of an appeal with the Board. *See INS* v. *Doherty,* 502 U.S. 314, 323 (1992) (''[A]s a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States.'').

These unsustainable numbers required the Department to fundamentally ''reconsider[ ] the Board's role as an appellate tribunal'' and, in turn, implement significant reforms to the Board's adjudicatory role and processes to better allow it to simultaneously keep up with incoming filings and meaningfully reduce its backlog. *See* 91 FR 5270. In issuing this rule, the Department ultimately determined that anything less than a significant departure from past practice would not achieve the necessary outcomes. Indeed, when the Department proposed its streamlining reforms in 2002, it laid out similar objectives to those animating this rulemaking: ''(1) Eliminating the current backlog of cases pending before the Board; (2) Eliminating unwarranted delays in the adjudication of administrative appeals; (3) Utilizing the resources of the Board more efficiently; and (4) Allowing more resources to be allocated to the resolution of those cases that present difficult or controversial legal questions—cases that are most appropriate for searching appellate review.'' *See* Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 7309, 7310 (Feb. 19, 2002) (notice of proposed rulemaking). Learning from that effort, the Department decided here that, rather than continuing a path of modest and likely ineffectual changes, fundamental reform was needed.

Importantly, although the changes made in this rule are a significant departure from past Board processes—in particular, the switch to summary dismissal as the default outcome—this rule does not alter an alien's statutory right to obtain Federal court review. *See generally* INA 242, 8 U.S.C. 1252.

B. Legal Authority

The Department issues this final rule through authority granted by section 103(g) of the Immigration and Nationality Act (''INA'' or ''the Act''), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 (''HSA''), Public Law 107–296, 116 Stat. 2135. *See* 91 FR 5267–68.

C. Summary of Regulatory Changes Made by IFR

The IFR revised 8 CFR 1003.1–1003.3, 1003.5–1003.6, 1003.18, 1003.38, 1003.42, 1003.55, 1208.31, 1208.35, 1240.15, 1240.26, and 1240.53 in Chapter V of title 8 of the Code of Federal Regulations (''CFR'').

The IFR amended EOIR's regulations to:

(1) Require appeals to be summarily dismissed by a single Board Member within 15 days of the appeal being filed, except where the appeal has been referred for consideration by the Board *en banc* and a majority of permanent Board members vote to accept the appeal for further consideration within 10 days of the appeal being filed, 91 FR 5270–71;

(2) Shorten the timeline for filing an appeal with the Board (except for appeals of asylum decisions on the merits) from 30 days to 10 days, 91 FR 5272;

(3) Standardize briefing schedules by requiring simultaneous briefing in all appeals that are not summarily dismissed within 20 days of the Board setting the briefing schedule, with no reply briefs permitted and grants of extensions of time limited to ''exceptional circumstances,'' 91 FR 5272–73;

(4) Eliminate the requirement that Immigration Judges review transcripts of their oral decisions before the Board adjudicates appeals of their decisions, 91 FR 5273–74;

(5) Remove or revise regulatory provisions authorizing the Chief

[1] *See* Appellate Procedures for the Board of Immigration Appeals; Extension of Comment Period, 91 FR 9705 (Feb. 27, 2026).

[2] *See* EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/3K4F-N2CJ*].

Appellate Immigration Judge to either extend adjudication deadlines in particular cases or to hold cases based on pending action, 91 FR 5274;

(6) Codify the requirement that all arguments must be raised in a Notice of Appeal to the Board, and that all other arguments will be deemed waived, 91 FR 5278;

(7) Correct outdated regulatory cross-references, 91 FR 5274; and

(8) Align the regulatory terminology with statutory terminology by updating the term ''noncitizen'' to ''alien'' and the term ''unaccompanied child'' or ''unaccompanied children'' to ''unaccompanied alien child'' or ''unaccompanied alien children,'' as appropriate, 91 FR 5274.

D. Procedural Validity of the Final Rule

A few weeks after the IFR published, a group of advocacy organizations challenged it in the U.S. District Court for the District of Columbia. On March 8, 2026, the court partially vacated the IFR, holding that certain portions violated the Administrative Procedure Act's (''APA'') notice-and-comment requirements. *See Amica Ctr. for Immigrant Rights* v. *EOIR,* 822 F. Supp. 3d 119, 168 (D.D.C. 2026).

Specifically, the court vacated the following three of the IFR's amendments [3] because, in the court's view, the procedural rule and foreign affairs exemptions to the APA's notice-and-comment requirement did not apply: (1) shortening the timeline for filing an appeal with the Board (except for appeals of the merits of certain asylum decisions) from 30 days to 10 days; (2) requiring that issues not raised in the Notice of Appeal be deemed waived; and (3) requiring that appeals be summarily dismissed by a single Board Member within 15 days of the appeal being filed, unless referred for consideration by the Board *en banc* and a majority of permanent Board members vote to accept for further consideration within 10 days of the appeal being filed. *Amica,* 822 F. Supp. 3d at 156–60 (procedural rule exemption analysis), 163–65 (foreign affairs exemption analysis).

However, in issuing this final rule, the Department has fully complied with the requirements of the APA, thereby obviating the basis for the *Amica* court's decision regarding these three provisions. As the Supreme Court has explained, an IFR containing all of the APA-required elements of a notice of proposed rulemaking (''NPRM''), as provided in 5 U.S.C. 553(b)–(d), satisfies the APA's procedural requirements. *See Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania,* 591 U.S. 657, 682–86 (2020). That notice of a final rule's provisions was provided via an IFR rather than an NPRM does not itself invalidate a final rule; rather, the focus is on whether fair notice was provided to the public. *Id.* at 684 (quoting *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 174 (2007)).

Here, the IFR contained all APA-required elements of an NPRM: a reference to legal authority, as required by 5 U.S.C. 553(b)(2) (91 FR 5267–68); a description of the terms and substance of the rule, as required by 5 U.S.C. 553(b)(3) (91 FR 5270–74); and a request for public comment, as required by 5 U.S.C. 553(c) (91 FR 5267). Additionally, this final rule provides a statement of the rule's purpose and basis, as required by 5 U.S.C. 553(c). Further, this final rule is being published 30 days prior to its effective date, as required by 5 U.S.C. 553(d) and reiterated in *Little Sisters. See* 591 U.S. at 686.

In sum, this final rule is now being issued after the notice-and-comment procedures required by the APA, thus alleviating the procedural concerns raised by the *Amica* court. As such, all provisions of the rule are presumed operative on the effective date.

E. Severability

To the extent that any portion of this rule is stayed, enjoined, or held invalid by a court, the Department intends for all other parts of the rule to remain in effect. Each change may operate independently of the others and would be unaffected if any other part of the rule were stayed, enjoined, or held invalid.

II. Revisions to IFR in Final Rule

This final rule adopts the provisions of the IFR, with the following revisions:

A. Clarifying Effect of a Summary Dismissal Order

First, in response to some commenters' confusion, the Department is updating regulatory language at 8 CFR 1003.1(d)(2)(ii) to clarify the contents and effect of a summary dismissal order for Federal court review purposes.

In the IFR, the Department included regulatory language stating that, when an appeal is summarily dismissed under the relevant paragraph, ''the Immigration Judge's decision is adopted by the Board and articulates the rationale for removal that is subject to judicial review.'' 8 CFR 1003.1(d)(2)(ii). The IFR explained that this language ''would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed.'' 91 FR 5271. Nevertheless, commenters expressed confusion over various issues relating to the processes for Board appeals and Federal circuit court petitions for review (''PFRs''), such as exhaustion or issue-preservation requirements.

Therefore, the Department is replacing this language with more specific procedures to ensure that parties and courts understand the effect of a summary dismissal order under this rule, including that such dismissal is done after consideration of the substance of the appeal. To do so, the new regulatory language mirrors the Board's pre-existing affirmance-without-opinion language in 8 CFR 1003.1(e)(4). For example, under this rule's summary dismissal procedures, when the Board summarily dismisses an appeal, the new regulatory language states that the Board will issue an order stating: ''The Board dismisses, without opinion, the appeal from the Immigration Judge's decision. The decision below is, therefore, the final agency determination. *See* 8 CFR 1003.1(d)(2)(ii).'' 8 CFR 1003.1(d)(2)(ii). Moreover, the newly added regulatory language at 8 CFR 1003.1(d)(2)(ii)(C) states that no further explanation or reasoning will be included and explains what this means for purposes of summary dismissals without opinion. Specifically, a summary dismissal without opinion shall, like affirmances without opinion, be deemed to reflect the following considerations: (1) that the result reached in the Immigration Judge's decision under review was correct; (2) that it does not necessarily imply approval of all of the reasoning of the Immigration Judge's decision; (3) that any errors in the decision under review were harmless or nonmaterial; and (4) that either the issues on appeal are squarely controlled by existing Board or Federal court precedent and do not involve the application of precedent to a novel factual situation, or the factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

These changes will standardize the contents of summary dismissal orders issued pursuant to 8 CFR 1003.1(d)(2)(ii) and specify the impacts of such orders, thereby reducing confusion over the scope of such orders and, relatedly, the attendant impacts they will have on issue exhaustion or

[3] For all other provisions of the IFR, either no challenge was raised or the court affirmatively determined that a stay was not warranted. *See Amica,* 822 F. Supp. 3d at 141–46, 165–68. Accordingly, those provisions are currently in effect.

preservation requirements before the Federal circuit courts.

Finally, the Department is also inserting language in 8 CFR 1003.1(d)(2)(ii) to make clear that the new summary dismissal procedure remains subject to the Board's existing prohibition on ''issu[ing] a decision affirming or granting to an alien an immigration status, relief or protection from removal, or other immigration benefit, as provided in 8 CFR 1003.47(b), that requires completion of identity, law enforcement, or security investigations or examinations if'' those checks have not been completed or need to be updated. 8 CFR 1003.1(d)(6)(i); *see also* 8 U.S.C. 1158(d)(5)(A)(i) (prohibiting the granting of asylum until appropriate checks have been completed regarding the applicant). Because such checks are required to be complete and current before an Immigration Judge grants status, relief, protection, or a benefit, *see* 8 CFR 1003.47(g), under the new procedures, it is unlikely that those checks will have expired by the time the Board would summarily dismiss any appeal. Nevertheless, the inserted language makes clear that if the checks expire between the date of the Immigration Judge order and the Board's decision to summarily dismiss the appeal, then the Board must wait until the checks have been updated.

B. Clarifying Appeal Deadline for Practitioner Discipline Cases

In the IFR, the Department stated that it had reconsidered the appeal timeline before the Board and was ''reducing the appeal period from 30 days to 10 days for all cases'' except for certain cases involving asylum applications. *See* 91 FR 5272. Other than the narrow exception for certain cases involving asylum applications, the Department intended for the 10-day appeal deadline to apply to all appeals, including appeals from decisions of an adjudicating official in practitioner discipline cases. *See* 8 CFR 1003.1(b)(13) (providing the Board with jurisdiction over appeals filed from ''[d]ecisions of adjudicating officials in disciplinary proceedings involving practitioners or recognized organizations as provided in [subpart G of 8 CFR 1003]'').

To clarify this intent, the Department is now amending 8 CFR 1003.106(c) to explicitly state that appeals from decisions in practitioner discipline cases must also be filed with the Board within 10 calendar days of the decision issued under 8 CFR 1003.106(b). The 10-day deadline applies regardless of which party files the appeal. *See* 8 CFR 1003.106(c) (noting either or both parties may file an appeal with the Board). This change will ensure that the intent of the IFR—to harmonize appellate deadlines across EOIR—is fully effectuated. *See, e.g.,* 28 CFR 68.54(a) (10-day deadline to appeal a decision of an Administrative Law Judge to the Chief Administrative Hearing Officer); 8 CFR 1003.6(c)(1) (10-day deadline for the Department of Homeland Security (''DHS'') to file an appeal of an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)). Further, this change will ensure that EOIR can swiftly impose sanctions on practitioners subject to discipline as a result of criminal, unethical, or unprofessional conduct, or frivolous behavior. 8 CFR 1003.101(a). This change will apply only prospectively to appeals of decisions in practitioner discipline cases issued on or after the effective date of this final rule.

C. Clarifying Temporary Appellate Immigration Judge Authority To Summarily Dismiss Cases

The IFR introduced, and this rule finalizes, streamlining provisions involving the Board's expanded use of summary dismissal. 8 CFR 1003.1(d)(2)(ii); *see also* 91 FR 5270–71. The Department is now amending 8 CFR 1003.1(a)(4) to clarify that Temporary Appellate Immigration Judges (''TAIJs'') have the authority to issue written orders summarily dismissing cases pursuant to 8 CFR 1003.1(d)(2). This was the intent of the IFR, and this change merely makes that intent explicit in the regulations to avoid confusion.

TAIJs possess all of the authority of permanent Appellate Immigration Judges, except they do not vote in the Board's *en banc* process. *See* 8 CFR 1003.1(a)(4). They also have the experience necessary to make appropriate decisions on whether to issue orders summarily dismissing cases. *See* 8 CFR 1003.1(a)(4) (listing individuals qualified to serve as TAIJs, including ''immigration judges, retired Board members, retired immigration judges, and administrative law judges'' and ''senior EOIR attorneys with at least ten years of experience in the field of immigration law''). Further, TAIJs are often appointed to help address fluctuations in the Board's caseload or changes in Board priorities. *See* Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15527 (Apr. 4, 2025) (explaining role and purpose of TAIJs). Allowing TAIJs to summarily dismiss cases will thus further advance this rule's goal of streamlining Board procedures and increasing the efficient processing of appeals. Although TAIJs do ''not have the authority to vote on any matter decided by the Board *en banc,*'' including whether a case should be decided pursuant to the procedures finalized in this rule or if a decision should be designated as precedent, *see* 8 CFR 1003.1(a)(4)–(5), (d)(2)(ii), (g)(3), under this rule, TAIJs will summarily dismiss cases or refer them to the permanent Appellate Immigration Judges for an *en banc* vote.

The Department is not making any changes to existing regulations limiting *en banc* voting to permanent Appellate Immigration Judges. However, TAIJs ''may serve as the author or panel member for a precedent decision'' or may adjudicate a case assigned to them if a majority of the Board votes to decide an appeal with full briefing. *See* 90 FR 15527 n.3.

D. Other Technical Changes

The Department is also making technical changes in this final rule to ensure consistency, clarity, and accuracy in the regulatory text.

First, the Department is making formatting changes to 8 CFR 1003.1(d)(2)(ii) to add subparagraphs for readability.

Second, the Department is making a minor correction to 8 CFR 1003.1(e)(8)(ii) to remove a reference to an ''extension period.'' The IFR amended 8 CFR 1003.1(e)(8)(ii) to remove language that previously authorized the Chief Appellate Immigration Judge to extend adjudication deadlines or hold cases based on a pending precedential decision or new regulatory actions, explaining that the previous language allowed the Chief Appellate Immigration Judge to ''delay cases at whim, either to avoid applying established regulatory adjudicatory timeframes or to effectuate policy goals of delaying cases.'' *See* 91 FR 5274. Consistent with the removal of language authorizing the extension of adjudication deadlines, this final rule removes a reference to an ''extension period'' in 8 CFR 1003.1(e)(8)(ii) and clarifies that if a dissenting or concurring panel member fails to complete his or her opinion by the end of the established time limits for adjudicating cases, the majority decision will be issued without the separate opinion.

Third, the Department is amending 8 CFR 1003.1(d)(2)(ii) to remove the date previously listed in that provision (March 9, 2026) and clarify that all appeals of any decision issued on or

after the effective date of this final rule—and not the IFR—are subject to this rule's summary dismissal procedures.

Fourth, the Department is making minor terminology amendments updating the terms ''Chairman'' and ''Vice Chairman'' to ''Chief Appellate Immigration Judge'' and ''Deputy Chief Appellate Immigration Judge,'' respectively, in a relevant section of this rule. *See* 8 CFR 1003.1(e)(8)(ii). These changes will conform the regulatory text to current EOIR terminology and thereby promote clarity and consistency.

Fifth, the Department is making a minor technical edit to 8 CFR 1003.1(e)(3) to avoid confusion regarding the production of transcripts. After issuance of the IFR, 8 CFR 1003.1(e)(3) stated that ''[i]n any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript, and the issuance of a briefing schedule, as appropriate.'' The phrase ''as appropriate'' may not clearly convey that transcripts need not be produced in every Board case that has not been summarily dismissed. For example, the Board routinely considers several types of appeals that do not have transcripts, such as where there was no hearing to transcribe in the underlying proceeding (*e.g.,* appeals of motions to reopen or reconsider decisions and appeals of certain visa decisions by DHS), the hearing in the underlying proceeding was not recorded (*e.g.,* appeals of custody redetermination decisions), or a new transcript is not necessary or germane to the procedural posture of the case (*e.g.,* interlocutory appeals; consideration of appeals remanded from Federal court). Thus, the Department is making a minor edit to 8 CFR 1003.1(e)(3) to make clear that, in any case not summarily dismissed, the Board will produce a transcript only if a transcript is otherwise warranted, which excludes the examples given above where the Board has historically not created a transcript.

III. Public Comments and Responses

A. General

The Department received 1,615 public comments on the IFR. Many commenters opposed the IFR based on policy disagreements, while several commenters wrote in support. In general, comments in opposition raised policy concerns about the IFR's narrowing of appellate review before the Board, and the burdens that the IFR would place on aliens and their counsel. Commenters also noted legal concerns based on purported violations of due process and the APA. In contrast, supportive commenters reiterated and reinforced the Department's concerns regarding the need to efficiently process appeals and reduce the Board's significant backlog, which they argued encourages illegal immigration into the United States due to lengthy adjudication delays. The Department has thoroughly reviewed and considered all comments received and responds to specific concerns raised by commenters below.[4] While the Department appreciates the policy-based opposition comments, ultimately, they are not persuasive for the reasons outlined below. Similarly, the Department disagrees with the results-oriented view of due process raised by many commenters, and the issues raised relating to the Department foregoing notice and comment are obviated by the issuance of this final rule, as discussed in Section I.D of this preamble.

B. Ineffectiveness of/Improper Motivation for IFR

1. Rule Based on Inappropriate Data and Reasoning

Comment: Commenters argued that the IFR relies on erroneous data to support its determination that it is appropriate to increase the use of summary dismissal on the basis that the appealing party rarely succeeds before the Board. Commenters stated that the cited statistics were misleading because the Department's data related to successful appeals did not accurately capture cases that were remanded to an Immigration Judge. Commenters posited that the Department counted appeals given the specific decision code of ''SUS,'' which stands for ''sustained,'' but did not count the many cases that were both sustained and remanded, coded ''REM,'' that also reflect disagreement with the decision below. In support of their assertion, commenters provided separate data purporting to show at least 450 appeals in an approximately 14-month period that had been sustained but not marked ''SUS.'' Commenters also asserted that the Department should have considered other decision codes as representative of the Board's disagreement with the Immigration Judge, referencing ''TER'' (termination) and ''ACR'' (administrative closure).

Commenters also objected to the IFR's statement that the data related to the number of sustained appeals established that ''the Board generally agrees with the outcome of the decision below,'' because cases where the Board remands a case to the Immigration Judge or terminates removal proceedings altogether do not reflect agreement with the Immigration Judge's decision. Commenters asserted that these remanded cases, which they estimated—without citing any data or evidence to support—to number in the thousands or tens of thousands, suggest that the Board identified an error that required correction before the Immigration Court. Commenters stated that such remands should be calculated as a ''substantive win'' for the appealing party because the Board is required to defer to Immigration Judges on factual issues.

More broadly, commenters stated that the Department did not sufficiently explain why the Board should relinquish its appellate review function, even if there were only a small portion of sustained appeals. Commenters claimed that the fact that the Board sustained any appeals or remanded any cases to the Immigration Judge is sufficient proof that careful appellate review is warranted. Commenters also stated that the IFR's justification based on backlog statistics is flawed and said the Department has admitted that EOIR historically has not tracked case processing times accurately and has ignored Inspector General recommendations related to data integrity.

Response: The Department disagrees with commenter assertions on this topic. As an initial point, the Department's decision to expand the use of summary dismissal rests on many grounds, not solely on the basis of the statistics with which commenters take issue. *See, e.g.,* 91 FR 5270. Even so, it is undisputed—even by opposition commenters—that the vast majority of appeals to the Board are not sustained or remanded; instead, they result in decisions upholding the underlying decisions of Immigration Judges. Thus, whether one counts Board decisions sustaining an appeal or all Board decisions resulting in a remand,[5] the

[4] The Department does not address comments seeking changes to U.S. laws, regulations, or agency policies that are unrelated to the changes made by the IFR, nor does this rule resolve issues raised by commenters that are outside the scope of this rule, including comments related to broader immigration policies, immigration enforcement activities, the scope of detention policies, and specific hiring advertisements or practices.

[5] Contrary to some commenters' assertions, the Department acknowledged in the IFR that it was not counting all remanded cases because ''the Board may remand a case for many reasons,'' 91 FR 5270 n.8, and certain types of common remands (*e.g.,* solely to update background checks or address defects in a transcript) are not indicative of the

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overall picture remains the same: the overwhelming majority of appeals to the Board—just like the overwhelming majority of appeals in court systems in the United States generally [6]—do not result in a different outcome for the appellant.[7]

Similarly, counting actions that typically do not reflect a judgment regarding the merits of an Immigration Judge's decision, such as terminations or administrative closures, does not change the overall picture. Both actions, particularly in recent years, reflect policy choices, generally tied to exercises of prosecutorial discretion, that provide no commentary on the specific issues on appeal.[8] Thus, in most cases, they reflect no judgment about the merit of the appeal, only a decision that the case should not be resolved on the merits. Contrary to commenter suggestions that an ''ACR'' decision should be considered reflective of the Board's disagreement with an underlying Immigration Judge decision, administrative closure has been used primarily as a policy tool to avoid reaching the merits in cases where a straightforward conclusion of the case would have likely resulted in an order of removal. *See generally* EOIR, Cancellation of Director's Memorandum 22–03 (Apr. 18, 2025), *https://www.justice.gov/eoir/media/1397161/dl?inline* [*https://perma.cc/SH9J-CKXL*]. Before the Board, this could have involved cases where the Appellate Immigration Judge agreed with an Immigration Judge that, on the merits, an alien was properly ordered removed, but, for policy reasons, allowed the indefinite delay of proceedings through administrative closure.

Even where not used for policy purposes, termination or administrative closure generally has no bearing on whether the Appellate Immigration Judge believes the Immigration Judge erred. Thus, codes for both administrative closure and termination were properly excluded.

Additionally, the Department disagrees with commenters' claims that remands reflect disagreement with the decision below. A remand for new background checks often means that DHS was the appellant for a grant of relief to an alien and the Board dismissed DHS's appeal, but that the length of time the Board took to decide the appeal meant that the background checks had expired and new ones were required.[9] And a remand to correct a defective transcript says nothing about the merits of a case and therefore is not a ''win'' for either party.

Remands for further factfinding are similarly not a ''win'' for either party. As commenters stated, the Board is, with limited exception, precluded from engaging in factfinding and may remand a decision to the Immigration Court where it has determined that further factfinding is needed. 8 CFR 1003.1(d)(3)(iv). A remand for further factfinding does not, by itself, signal that the Board agrees or disagrees with the Immigration Judge's ultimate conclusions pertaining to removability or relief and protection, or whether the alien or DHS will ultimately prevail before EOIR. Rather, a remand for such purpose represents only that the Board has determined that additional factfinding is required in a particular case. The Department reiterates that including these types of remands as ''wins'' for the appellant—regardless of whether the appellant is an alien or DHS—is inappropriate and misleading.

Thus, although the Department appreciates commenters' views, it does not find them persuasive. Instead, the Department has determined that the small number of cases where an appeal has been explicitly coded as sustained in recent years, as opposed to remanded, represents the most accurate and representative dataset because it captures only those cases where the Board has definitively determined that the outcome of the proceedings before the Immigration Judge should be reversed without further consideration.

Moreover, even according to some commenters' own assessments, on average over the past 25 years, fewer than 20 percent of the Board's cases were remanded to the Immigration Courts and, of that small subset, only a little more than half resulted in an ''outcome that was favorable'' to the alien. Extrapolating commenters' assessment to the current pending caseload, approximately 289,000 of the 325,774 currently pending cases will not be remanded or result in an outcome that the commenter would deem ''favorable'' to the alien.[10]

Thus, at bottom, commenters did not present any data or analyses that undermine the Department's position that the Board affirms the Immigration Judge's underlying decision in the vast majority of cases. 91 FR 5270. Therefore, the Department continues to believe that it is prudent to develop a framework for

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merits of the case. Regardless, whether all remands are counted or not, the fundamental conclusion remains the same regarding the scope of appeals which result in a change in the overall outcome of a case.

[6] *See generally* Barry C. Edwards, *Why Appeals Courts Rarely Reverse Lower Courts: An Experimental Study to Explore Affirmation Bias,* 68 Emory L. J. Online 1035 (2019), *https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1006&;context=elj-online.*

[7] Indeed, commenters neglected to place their numbers in context. Between FY 2020 and FY 2025, the Board completed at least 30,000 cases each year. *See* EOIR Workload and Adjudication Statistics, *All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/3K4F-N2CJ*]. Thus, even using commenters' data, the Department's conclusion remains valid.

[8] Between 2011 and 2017, there were various memoranda issued by DHS setting enforcement priorities and encouraging DHS attorneys to seek administrative closure of cases those memoranda deemed to be low priority. *See, e.g.,* Memorandum from Peter S. Vincent, Principal Legal Advisor, U.S. Immigration & Customs Enf't, to All OPLA Attorneys, U.S. Immigration & Customs Enf't, *Case-by-Case Review of Incoming and Certain Pending Cases* 2 (Nov. 17, 2011), *https://www.ice.gov/doclib/foia/prosecutorial-discretion/case-by-case-review-incoming-certain-pending-cases-memorandum.pdf* [*https://perma.cc/2YCT-6GTB*]. Between 2022 and 2025, DHS attorneys were similarly encouraged to seek dismissal of cases then viewed as low priority. *See* Memorandum from Kerry A. Doyle, Principal Legal Advisor, U.S. Immigration & Customs Enf't, to All OPLA Attorneys, U.S. Immigration & Customs Enf't, *Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion* 10 (Apr. 3, 2022), *https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf* [*https://perma.cc/565Z-6ABV*]. And EOIR similarly issued memoranda in 2022 and 2023 encouraging the use of administrative closure and dismissal in cases of aliens who were not priorities for removal under the then-effective DHS memoranda. *See* EOIR, *DM 22–03: Administrative Closure* 2–3 (Nov. 22, 2021) (''[I]t is important that adjudicators focus on two categories of cases: those in which the . . . [DHS] deems the respondent to be an immigration enforcement priority, and those in which the respondent desires a full adjudication of his or her claim or claims. Being able to administratively close low priority cases will help adjudicators do this.''); EOIR, *DM 23–04: Department of Homeland Security Enforcement Priorities and Prosecutorial Discretion Initiatives* 6 (Sept. 28, 2023) (''[W]here the respondent is not[a civil immigration priority], giv[e] the parties an opportunity to make requests in light of the respondent's nonpriority status. . . . [A]ppellate immigration judges should adjudicate motions to dismiss as is appropriate under the law, taking into account any objection to dismissal from the respondent.''). Those DHS and EOIR memoranda have since been canceled or otherwise superseded. *See* E.O. 14159, sec. 3(a), 90 FR 8443 (Jan. 20, 2025) (revoking Executive Orders from 2021 setting immigration priorities); EOIR, *PM 25–16: Cancellation of Director's Memorandum 23–04* (Feb. 3, 2025), *https://www.justice.gov/eoir/media/1388051/dl?inline* [*https://perma.cc/6QBZ-AXGC*]; EOIR, *PM 25–29: Cancellation of Director's Memorandum 22–03* (Apr. 18, 2025), *https://www.justice.gov/eoir/media/1397161/dl* [*https://perma.cc/SH9J-CKXL*].

[9] This may also arise where an alien is granted one form of relief or protection but appeals the denial of another form of relief or protection they sought before the Immigration Judge. If the Board affirmed the decision denying relief or protection but DHS did not cross appeal to challenge the grant of relief or protection, then background checks may have expired while the case was pending before the Board and the Board had to remand for new background checks.

[10] *See* EOIR. *Workload and Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/3K4F-N2CJ*].

administrative review that focuses Board resources on adjudicating cases that will be most impactful to EOIR due to the novel or complex issues involved.

The Department also disagrees with commenters' characterization that the Board is relinquishing its appellate review authority. On the contrary, under this rule, the Board is taking more control over its appellate review authority to focus on only those cases it deems in need of further consideration. Notably, nothing in this rule precludes the Board from adjudicating any case that the Board deems in need of correction, notwithstanding the requirement that it vote to take the case within 10 days of the appeal being filed. *See* 8 CFR 1003.1(d)(2)(ii)(A) (only requiring a ''majority of the permanent Board members vote *en banc* to accept the appeal for further review''). And, to the extent that an alien believes further administrative review of his or her case is needed beyond the parameters of this rule, the alien may file any available motions to reopen or reconsider before the Immigration Court or the Board. *See, e.g.,* INA 240(c)(6)–(7), 8 U.S.C. 1229a(c)(6)–(7). Further, where an alien has concerns over the agency's final determination, the alien may pursue any statutorily available review of the agency's determinations before the Federal courts. *See generally* INA 242, 8 U.S.C. 1252.

Separately, the Department stands by the accuracy of the IFR's statistics on EOIR's pending caseload and case processing times. As noted by commenters, in 2012, the Department's Office of Inspector General (''DOJ OIG'') found that EOIR failed to implement models for case processing that captured accurate tracking and reporting of case processing times.[11] Although the Department disagrees with some of the conclusions in the report, even accepting them as true the report in no way affects the base justifications in the IFR that EOIR has significant case backlogs in need of addressing, regardless of the case-counting methodologies employed. As such, this rule is motivated in part to clarify potentially confusing metrics by establishing clear, uniform guidance to avoid the reported inaccuracies and confusion resulting from prior methods that EOIR has used to track and report case processing times.

Comment: Commenters disagreed with the Department's claim that the IFR will only affect a ''relatively small'' number of aliens unable to find legal counsel within 10 days. Moreover, commenters stated that, even if the affected population is ''relatively small,'' any violation of the right to counsel is unacceptable.

Response: The Department is unpersuaded by commenters' assertions and data. Indeed, commenters' data, which appears to have been taken from advocacy and policy groups and did not account for the nature of how representation is reflected in EOIR's system,[12] even if it were accurate, pertains to cases pending before the Immigration Courts, not cases pending appeal before the Board. As noted in EOIR's statistics, in completed case appeals from FY 2025, a significant majority of aliens (76 percent) had representation before the Board.[13] Commenters did not meaningfully dispute that most aliens are represented when their cases are considered by the Board.

Furthermore, the Department does not view the length of time available to file an appeal as singularly impacting the likelihood that an alien will have representation. Indeed, by statute aliens are only entitled to 10 days to secure counsel at the Immigration Court level, *see* INA 240(b)(1), 8 U.S.C. 1229(b)(1), so a similar period for an appeal should be no more onerous, especially for aliens who already had representation at the Immigration Court level. Additionally, the Board appeal window begins only after the completion of removal proceedings, during which the alien will have maintained the opportunity to obtain representation, and in which the majority of aliens do in fact obtain representation.[14]

Likewise, aliens may also seek limited assistance from practitioners for preparation of legal documents, including the Notice of Appeal and legal briefs outside of the scope of full representation, through EOIR's limited appearance procedures before the Board. *See* 8 CFR 1003.38(g)(2). The Department expects that the availability of limited appearances in particular can be leveraged for assistance during the administrative appellate process, which is largely paper based.

Taken together, the opportunity to obtain counsel during the often-lengthy removal proceedings period and the availability of limited assistance forecloses any argument that the failure of some aliens to obtain counsel for a Board appeal, by itself, undermines any right to counsel.

Comment: Commenters characterized the Department's justification for the IFR as a ''deterrence'' justification and asserted that such a justification was both unfounded and improper as a policy matter. More specifically, commenters stated that there is no evidence that aliens entered the United States unlawfully based on an expectation of lengthy delays of their proceedings. Commenters stated that, even if this theory were supportable, the Board is an appellate adjudicatory body and should ensure that the procedures it establishes afford aliens due process in their adjudications beyond what the law requires.

Response: Commenters conflate the Department's reasoning in promulgating the rule (to improve adjudicatory efficiency), one of the Department's bases for issuing an IFR rather than an NPRM under the APA (a foreign affairs function which may include deterrence of illegal immigration), and the specific procedures applied by the Board in individual cases. The only deterrence-related language in the IFR was focused on the foreign affairs exception to APA procedures. *See* 91 FR 5275. Regardless, the rule's stated justifications have no bearing on the Board's case-by-case adjudications. The Board continues to follow its duty to resolve cases impartially, as required by regulation. *See* 8 CFR 1003.1(d)(1). This impartiality applies to all aspects of adjudication, including a Board member's consideration of any newly filed appeal for potential referral for *en banc* consideration. *See* 8 CFR 1003.1(d)(2)(ii). At no point does this rule require, or even suggest, that a Board member consider broader deterrent effects in adjudicating a specific case.

The Department also declines to add additional Board procedures, which

[11] *See* DOJ OIG, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review* (Oct. 2012), *https://oig.justice.gov/reports/2012/e1301.pdf* [*https://perma.cc/TPZ8-47JC*].

[12] EOIR's system only counts a case as represented when an attorney or accredited representative files a notice of appearance. However, by practice, many such representatives do not file a notice of appearance until the day of the alien's hearing. Thus, many aliens have representation but are not yet coded as such in EOIR's system because they have not yet had a hearing. Similarly, aliens newly placed in immigration proceedings are counted as ''unrepresented,'' even though they have not been given time to secure representation. In short, EOIR's data on representation at the Immigration Court level both significantly undercounts actual representation and is distorted by newer cases where the alien has not yet had time to seek representation and by the fact that a certain percentage of aliens do not want to retain representation, either because they do not want to pay for it or because they have no intention of appearing at their hearing. In EOIR's experience, most aliens who genuinely seek representation are able to obtain it.

[13] EOIR, *Current Representation Rates* (Nov. 18, 2025), *https://www.justice.gov/eoir/media/1344931/dl?inline* [*https://perma.cc/QC5J-3DD6*].

[14] *See id.* (noting that over half of aliens with cases completed by the Immigration Courts in 2025 had representation).

would negate the significant efficiency improvements made by this rule. The procedures implemented by this rule fully comply with due process, as more fully addressed in Sections C.1 & 2 of this preamble; more is not necessary.

2. Rule Will Not Effectively Address Backlog

Comment: Commenters stated that the IFR does not meaningfully address the root causes of the Board backlog. Commenters believe that the backlog is not created by the existence of full appellate review but by multiple other factors, including understaffing, expanding DHS enforcement priorities, insufficient EOIR resources, inconsistent Immigration Judge decision-making, politicized adjudications, and agency mismanagement. Commenters also disagreed with the Department's characterization that the backlog of pending appeals is a result of inefficiency. Further, commenters asserted that the IFR will not reduce the existing backlog of pending cases because it only applies prospectively. Commenters stated that a backlog is not a legal justification for shrinking individual rights and expressed that efficiency cannot come at the expense of due process. Additionally, commenters proposed several policy alternatives to the IFR that, they asserted, would reduce the backlog of pending appeals and improve efficiency.

Response: The Department shares commenters' concerns about the Board's sizeable backlog of pending appeals. The Board's backlog impairs the timely adjudication of appeals, delays aliens' ability to access judicial review in Federal courts and hinders the efficient administration of the Nation's immigration laws. However, the Department disagrees with commenters that this rule will not effectively address the backlog.

As explained in the IFR, since 2021, the only regulatory change implemented to increase case completions was a rule to increase the number of Board members to 28, despite a rapidly growing backlog of pending appeals. 91 FR 5270 (discussing Expanding the Size of the Board of Immigration Appeals, 89 FR 22630 (Apr. 2, 2024)). That measure failed to result in a meaningful reduction of the backlog of pending appeals, and the Board's current backlog exceeds 320,000 pending appeals.[15] *See id.* Even if the Board were to have additional resources and better case management, it would be unable to resolve the significant backlog of pending appeals while keeping pace with new incoming filings using the current procedures and tools available. *Id.* Accordingly, given the size of the current backlog of pending appeals and the demonstrated insufficiency of currently available procedures, the Department assessed—and continues to believe—that the streamlining changes implemented in this rule are the best way to efficiently and expeditiously resolve new appeal filings and free up adjudicatory resources to address the backlog. Commenters are correct that this rule does not apply to appeals already pending before the Board. But they are incorrect in asserting that this rule will not impact the existing backlog. The rule's streamlining measures—to wit, the implementation of default summary dismissals, condensed adjudicatory timelines, standardized filing and briefing, and more efficient transcription procedures—give the Board additional adjudicatory resources to resolve its backlog of pending appeals in a more timely and efficient manner and will prevent the backlog from continuing to grow at an unsustainable rate.

The Department acknowledges that EOIR's backlog of pending cases at the Immigration Court level is impacted by the number of initial receipts of cases from DHS, which in turn impacts the number of appeals filed with the Board. However, comments about DHS enforcement operations and its determinations about how to exercise prosecutorial authority are outside of the scope of this rulemaking and are more appropriately directed to DHS. Instead, measures such as those outlined in this rule are intended to improve EOIR's ability to efficiently complete removal proceedings and appeals even as DHS continues to enforce the immigration laws.

The Department also disagrees with comments suggesting that the Department restore the Board to a larger size to reduce the backlog. As the Department has explained, ''increasing the size of the Board has not necessarily equated to a corresponding increase in the number of cases adjudicated or a reduction in the pending caseload.'' 90 FR 15526. In reality, an increased number of Board members created difficulties in administrative oversight and coherent management and strained the Board's limited legal staff. *Id.* The Department believes that this rule's procedural changes will be a far more effective way to reduce the backlog of pending cases.[16]

Additionally, the Department continues to prioritize hiring Immigration Judges who are committed to following the law and to remaining neutral and free of bias, as well as other attorney and non-attorney support staff to aid EOIR's ongoing efforts to reduce the backlog at both the Immigration Court and Board levels. The Department is also utilizing Temporary Immigration Judges and TAIJs to provide additional support in reducing EOIR's backlog of cases and appeals. Still, the Department has determined that increased staffing alone is insufficient to fully address the Board's backlog absent the broader reshaping of the Board's procedures as implemented by this rule.

Separately, the Department appreciates commenters who provided streamlining and case management suggestions to improve the efficient processing of appeals, and the Department will continue to evaluate additional measures to maximize efficiency in the Board's internal operations. Overall, the Department believes that this rule is the best option for responding to the current, untenable situation at the Board.

The Department has fully considered all of commenters' proposed policy alternatives. Many of them—*e.g.,* changes to DHS immigration enforcement priorities—are well beyond the scope of this rule. Others—*e.g.,* hiring politically neutral Board members—are based on inaccurate factual premises, as all Board members are career positions chosen based on merit. Others—*e.g.,* expanding Immigration Judges' training or hiring more Immigration Judges who would hear more cases leading to more appeals—are poorly tailored to improving efficiency at the Board. Moreover, EOIR has been hiring more Immigration Judges and the likely resulting increase in appeals only underscores the importance of implementing this rule. Others—*e.g.,* allowing aliens to waive production of a hearing transcript—raise both due process concerns and would do little to address efficiency because DHS may still need a transcript for an appeal. Still others—*e.g.,* consulting with stakeholders outside of the notice-and-comment process—would accomplish little due to the binary polarization of

[15] EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Oct. 22, 2026), *https://www.justice.gov/eoir/media/1344986/dl?inline* [*https://perma.cc/3K4F-N2CJ*].

[16] As reflected in the reactions to expansions of the Board in 2020 and 2024, the Department notes that many commenters' views about expanding the size of the Board vary considerably depending on the Administration in power at the time of the expansion. As a result, many comments about Board expansion are inherently less persuasive.

opinions on immigration by stakeholders. Most, if not all, stakeholders in the immigration field want EOIR to adopt measures that will lead to more of their preferred case outcomes—either more or fewer aliens being allowed to remain in the United States—rather than measures that improve the efficiency and performance of EOIR itself. Further, the comment period for this rule has provided stakeholders ample ability to make their thoughts known. In sum, none of the proposals is persuasive enough to warrant changing the final rule in the ways such commenters would prefer.

Comment: Commenters stated that the Department did not consider a 2017 Booz Allen Hamilton (''BAH'') report referenced in litigation over a previous rulemaking, which commenters claimed recommended other backlog-reduction ideas, including a requirement that Immigration Judges issue written, rather than oral decisions.

Response: The Department is aware of the 2017 BAH report, commonly called a Legal Case Study (''LCS''). However, the Department has repeatedly debunked the LCS as unscientific and unsound, first in 2018, *see* EOIR, *LOP Cohort Analysis* 7 n.13 (Sept. 5, 2018), *https://www.justice.gov/eoir/file/1091801/dl?inline=* [*https://perma.cc/E96E-556M*], and, more recently, in 2025, *see* EOIR, PM 25–15, *Office of Legal Access Programs* 2 n.3 (Jan. 31, 2025), *https://www.justice.gov/eoir/media/1387916/dl?inline* [*https://perma.cc/DM54-B8DU*] (''The 2017 [LCS] was methodologically flawed due to a selection bias issue regarding its interviews with EOIR personnel and a failure to control for the biases or valences of its non-EOIR subjects. In light of these flaws, EOIR cannot necessarily validate any of the conclusions of the 2017 [LCS].''). Due to the methodological flaws in creating it, the Department does not consider any of the 2017 LCS's recommendations to be scientifically or analytically sound. Moreover, requiring written decisions—which necessarily take longer than oral decisions, slow the completion of cases, and would potentially force detained aliens to remain in custody longer—in all Immigration Court cases would delay the overall adjudication of cases at the Board, not make it more efficient.

3. Impacts to Board's Role and Functions

Comment: Commenters stated that the Board serves an important error-correction and accountability function and asserted that the IFR functionally removes the ability of most aliens to remedy errors in decisions in their cases via an appeal to the Board. Commenters stated that the purpose of administrative appeals is to have a more careful review of a particular case, and that the IFR undermines that purpose. Commenters also asserted that Immigration Judges are more likely to engage in rushed or less detailed decision-making if they believe their decisions are unlikely to be reviewed substantively by the Board.

Commenters expressed concern that the Board would issue fewer precedential decisions if considering fewer cases with full procedures. Commenters stated that precedential decisions are important to provide clarity and uniformity across immigration adjudications. However, other commenters disagreed and asserted that fewer precedential decisions would be preferable—because commenters perceived that precedential decisions tend to disfavor aliens—and expressed policy-driven concerns regarding the IFR's stated goal of focusing Board resources to permit the Board to issue more precedential decisions.

Response: The Department disagrees with commenters that this rule prevents aliens from raising alleged factual or legal errors for correction. First, nothing in this rule prevents the Board from accepting an appeal for further review and full briefing where an alien identifies errors of law or fact in the underlying Immigration Judge decision. Second, this rule does not change the availability of existing procedures for seeking error correction through a motion to reconsider. Indeed, aliens have a statutory right to file a motion to reconsider a decision determining that an alien is removable from the United States. INA 240(c)(6), 8 U.S.C. 1229a(c)(6). Such motions allow aliens to ''specify the errors of law or fact in the previous order.'' INA 240(c)(6)(C), 8 U.S.C. 1229a(c)(6)(C). To the extent that an alien feels unable to raise an error of law or fact through a Notice of Appeal, he or she may do so through a motion to reconsider. Third, this rule does not change existing Federal court review of issues over which the Federal courts have jurisdiction. *See* INA 242, 8 U.S.C. 1252. Accordingly, several avenues remain available for an alien to raise an alleged error in an Immigration Judge's decision.

Further, commenters' suggestion that Board review is necessary to correct errors that may arise as a result of concerns related to EOIR's personnel practices and training are misplaced.[17] Immigration Judges must be qualified, are evaluated through a competitive process before being selected for their role, and receive significant training before being appointed to the bench. *See* 8 CFR 1003.0(b)(1)(vii) (stating that the Director has authority to ''[p]rovide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications''), 1003.9(b)(2) (providing the Chief Immigration Judge with authority to ''[p]rovide for appropriate training of the immigration judges and other [Office of the Chief Immigration Judge] staff on the conduct of their powers and duties''), 1003.10(a) (requirement that Immigration Judges be attorneys); *see also* EOIR, Fact Sheet: Immigration Judge Training Fact Sheet (Aug. 2026), *https://www.justice.gov/eoir/page/file/1513996/dl?inline* [*https://perma.cc/Q3AK-N7ZF*]. EOIR monitors the performance of Immigration Judges and Appellate Immigration Judges and has an established process if an adjudicator's conduct falls short of EOIR's professional expectations.[18]

Finally, commenters' concerns related to the Board issuing fewer precedential decisions are unwarranted. As explained in the IFR, one goal of the streamlining measures adopted in this final rule is to allow the Board to focus on resolving cases presenting novel or complex legal issues, and the Department expects that the Board will have greater bandwidth to issue precedential decisions clarifying the law for Immigration Judges to ensure consistent adjudications. *See* 91 FR 5271 (''This change will allow the Board to focus on appeals with particularly novel or complex legal questions without becoming bogged down in mine-run or straightforward cases that may already be subject to being affirmed without an opinion or summarily affirmed.''). The Department also disagrees with the assertion that precedential cases will favor one party; the Board adjudicates cases based on the relevant facts and applicable law using the appropriate standard of review.

[17] Many of these comments are also well beyond the scope of this rule. Moreover, the Department finds insinuations by commenters that its adjudicators are commonly incompetent or unethical to be wholly unsupported.

[18] EOIR, PM 26–03, *Judicial Conduct and Professionalism* (Mar. 20, 2026), *https://www.justice.gov/eoir/media/1432036/dl?inline* [*https://perma.cc/FC8R-ZRHS*] (clarifying EOIR's Judicial Complaint Process for all adjudicators).

C. Opposition to Specific Rule Provisions

1. Summary Dismissal

a. Due Process Concerns

Comment: Commenters expressed concern that the IFR's summary dismissal procedures undermine an alien's due-process rights by prioritizing efficiency at the expense of constitutional protections. According to these commenters, the IFR's summary dismissal procedures effectively deprive aliens of due process by eliminating individualized, meaningful review of most Board appeals. Commenters claimed this procedure diminishes the Board's function from an appellate tribunal into a discretionary screening body that will essentially ''rubber stamp'' Immigration Judge decisions through summary dismissal. Commenters similarly asserted that by making meaningful review of appeals by the Board discretionary rather than a guaranteed right, the IFR sacrifices fundamental fairness for the sake of efficiency.

Commenters further stated that the IFR's summary dismissal procedures restricting meaningful review by the Board will force aliens to seek judicial review in Federal court as the only recourse to meaningful review of their cases. However, commenters also pointed out that, due to jurisdiction stripping provisions in the INA, Federal courts do not have jurisdiction to review Immigration Judge decisions on discretionary applications for relief, such as adjustment of status. Commenters explained that if cases involving discretionary applications for relief are subjected to default summary dismissal, then the decisions in those cases are final and aliens will not have an opportunity to seek meaningful review of the discretionary decisions made in their cases.

Another commenter raised due-process concerns in cases involving a bilateral or multilateral agreement as described in section 208(a)(2)(A) of the Act, 8 U.S.C. 1158(a)(2)(A) (''Asylum Cooperative Agreement'' or ''ACA''), asserting that Immigration Judge review is limited in those cases and that the Board is unlikely to accept such cases for review under the IFR's provisions, leaving only Federal court review, at which point aliens may be subject to prolonged detention.

Separately, commenters stated that the IFR undermines the purpose of the DOJ Recognition and Accreditation program and the work of nonprofit legal service providers. Additionally, commenters also stated that the Department did not adequately consider or address the fact that aliens will have more limited access to representation before the Federal courts because EOIR authorizes Accredited Representatives to provide immigration legal services before administrative bodies, but they cannot provide representation in Federal court.

Further, as several commenters noted, when an alien files an appeal before the Board, he or she is generally subject to an automatic stay of removal pending adjudication of the appeal. However, in the Federal courts, aliens are not subject to automatic stays of removal while their PFRs are pending. INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B). Therefore, if an alien's case is summarily dismissed under the IFR, and he or she seeks judicial review of his or her case before the Federal courts, the alien must file a motion requesting a discretionary stay of removal. If the alien's request for a discretionary stay of removal is denied, the alien could be removed before the Federal court issues a decision.

Response: The Department disagrees that the IFR's summary dismissal procedures violate due process. As a general matter, comments on this issue either proceeded from a flawed or inaccurate understanding of due process in immigration proceedings or highlighted issues that exist under the current regulations, which are unaffected by the rule.

As an initial point, the well-established definition of ''due process'' is notice and a meaningful opportunity to be heard. *See, e.g., Goldberg* v. *Kelly,* 397 U.S. 254, 267–68 (1970). Neither of those principles is violated by the rule. Nothing in this rule alters the substantial procedural protections available to aliens when presenting their claims before an Immigration Judge. *See generally* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). And, as discussed further below in this section, there is no constitutional due process right entitling an alien to an administrative appeal before the Board. *Dia* v. *Ashcroft,* 353 F.3d 228, 242 (3d Cir. 2003) (*en banc*); *see also Alexander-Mendoza* v. *Att'y Gen.,* 55 F.4th 197, 204 (3d Cir. 2022) (''An alien's right to administratively appeal a removal order is not grounded in the Constitution.''). Nevertheless, beyond the underlying proceedings before an Immigration Judge, which themselves guarantee due process before EOIR, aliens still have notice of the right to appeal to the Board, and they still have a meaningful opportunity to do so. That the rule no longer guarantees that the Board will take more than a certain amount of time to decide an appeal does not change those fundamental facts.

However, many commenters used the term ''due process'' in a different, outcome-determinative sense—*e.g.,* an alien who is not granted relief or protection necessarily did not receive due process.[19] Further, many commenters considered ''due process'' on a continuum related to outcomes, such that their criticisms were couched in terms of ''due process'' because, according to commenters, ''due process'' means more favorable outcomes for aliens. Yet, due process is not measured by outcome, and viewing due process through a results-oriented lens is incorrect. *See, e.g., Walters* v. *Nat'l Ass'n of Radiation Survivors,* 473 U.S. 305, 321 (1985) (noting that ''we must keep in mind . . . that the very nature of the due process inquiry indicates that the fundamental fairness of a particular procedure does not turn on the result obtained in any individual case''). Because this is not the appropriate view of due process implicated by the rule, the Department strongly disagrees with commenters' assertions that the rule violates due process.

The Department emphasizes that the summary dismissal procedures employed by this rule are simply common-sense measures to help address the backlog of immigration cases pending before the Board and ensure efficient processing of cases moving forward. These procedures increase efficiency by streamlining appellate review of Immigration Judge decisions and promote fairness through expeditious review of meritorious claims. Prior to this rule, review of such cases would have been delayed behind a backlog of meritless claims. Importantly, the rule's summary dismissal procedures affect only the Board's review process, which exists only as an exercise of the Attorney General's discretion, not as a result of any constitutional requirement. Put more directly, there is no constitutional due process right entitling an alien to an administrative appeal before the Board. *Dia,* 353 F.3d at 242 (quoting *Albathani* v. *INS,* 318 F.3d 365, 376 (1st Cir. 2003)); *Guentchev* v. *INS,* 77 F.3d 1036, 1037–38 (7th Cir. 1996); *see also Alexander-Mendoza,* 55 F.4th at 204.

Congress has afforded aliens subject to removal the right to a trial-type

[19] Indeed, few—if any—of the commenters acknowledged that the government has a compelling interest in administering and enforcing the law as well as in decisional finality, underscoring both the inappropriate, results-oriented focus of their due process arguments and the overall unpersuasiveness of their comments on this topic.

hearing (removal proceedings) before an Immigration Judge. *See* INA 240, 8 U.S.C. 1229a. Congress has also provided aliens with substantial procedural protections during removal proceedings to ensure that due process is not undermined, including notice of the charges against them, the right to be represented by counsel, and the right to examine and present evidence, among others. *See generally* INA 239, 240, 8 U.S.C. 1229, 1229a.

Thus, the provisions in the INA ensure removal proceedings are conducted at a meaningful time and in a meaningful manner to afford aliens full and fair hearings in accordance with standards of due process. The Due Process Clause of the Fifth Amendment requires nothing more. *See Antia-Perea* v. *Holder,* 768 F.3d 647, 656 (7th Cir. 2014) (''Any proceeding that meets the requirements of the [INA] also satisfies the requirements of constitutional due process.''). And, as already noted, due process does not require substantive review of every determination made by an Immigration Judge in removal proceedings. *See, e.g., Dia,* 353 F.3d at 242; *Guentchev,* 77 F.3d at 1037.

Furthermore, the Department finds commenters' assertion that aliens will be deprived of due process because they will be unable to seek meaningful review of decisions on discretionary applications for relief before the Federal courts after summary dismissal is meritless. Fundamentally, there is no constitutionally protected due process interest in purely discretionary forms of relief. *Alkotof* v. *U.S. Att'y Gen.,* 106 F.4th 1289, 1298 (11th Cir. 2024). Moreover, Federal courts retain jurisdiction to consider constitutional claims and questions of law raised in a PFR of a discretionary decision. *See* INA 242(a)(2)(D), 8 U.S.C. 1252(a)(2)(D). And to the extent a discretionary decision turns on a factual determination, aliens retain their statutory right to file a motion to reconsider with the Immigration Judge. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6).

The Department similarly disagrees with commenters' generalized due process concerns about detention and the availability of counsel before the Federal courts. Nothing in this rule affects detention decisions made by DHS, EOIR, or the Federal courts, nor prevents aliens from obtaining counsel for the PFR process. Moreover, the rule does not affect the Department's Recognition and Accreditation Program at all, nor does it prohibit Accredited Representatives from providing representation to aliens on appeal. To the extent commenters have concerns about the lack of representation in Federal court, those concerns (1) reflect the status quo, which is unchanged by the rule and (2) are beyond the authority of EOIR to address.

Lastly, although commenters may prefer an automatic stay at the Board to a discretionary stay before the Federal courts, they have not alleged any colorable argument as to why a Federal court's denial of a motion for stay amounts to a due process violation. Congress explicitly made such stays discretionary, *see* INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B), and this rule in no way affects Federal court adjudication of any such stay motions. *See generally Nken* v. *Holder,* 556 U.S. 418, 433–34 (2009) (explaining stay factors in the PFR context). Moreover, the scenario raised by commenters already existed prior to the promulgation of the IFR—*i.e.,* once the Board dismisses or denies an appeal of a removal order, then the removal order is subject to execution, absent a stay from a Federal court—and nothing in this rule would alter that situation. Further, the Department is unaware of any creditable argument that the status quo constitutes a due process violation. To be sure, aliens may not receive as lengthy a stay of removal from the Board as they currently enjoy, but a reduction in the length of a stay does not change the conclusion. If the Board's decision results in an administratively final removal order, then affected aliens will need to seek a further stay from Federal courts, just as they are required to do now in such circumstances.

Moreover, longstanding Board precedent recognizes that the stay of removal that accompanies an appeal to the Board encourages frivolous appeals. *See Matter of Holguin,* 13 I&N Dec. 423, 424 (BIA 1969). The Board has been combatting appellate delays for over 55 years, and commenters' desires for continued delays are simply unpersuasive, particularly in light of the Board's increasing backlog of cases. *See id.* at 424–25 (''Frivolous and dilatory appeals are extremely wasteful of . . . this Board's limited resources. They require needless transcription of the records of deportation hearings. They impinge upon the time and professional attention needed for truly meritorious cases, of which there are many. Effective administration of the immigration laws requires that we discourage frivolous appeals. We try to do this by expediting our consideration and decision in appeals of that sort.'').

b. Statutory Concerns

Comment: Numerous commenters expressed concern that the IFR's summary dismissal procedures violate the INA. Commenters stated that the INA creates a statutory right to ''meaningful'' administrative review before the Board, citing for example, to sections 101(a)(47)(B), 240(c)(4)(C) and (c)(5), and 292 of the Act, 8 U.S.C. 1101(a)(47)(B), 1229a(c)(4)(C) and (c)(5), and 1362, as well as Supreme Court precedent such as *DHS* v. *Thuraissigiam,* 591 U.S. 103 (2020), and *Garland* v. *Ming Dai,* 593 U.S. 357 (2021). Commenters claimed that the IFR's summary dismissal procedures violate this statutory right to appeal by treating such appeals as discretionary, with many appeals likely to be summarily dismissed without any review.

Further, some commenters claimed that certain INA provisions also provide for baseline procedural requirements. For example, commenters pointed to language in section 101(a)(47)(B) of the Act, 8 U.S.C. 1101(a)(47)(B), referencing a ''determination'' by the Board ''affirming'' an order as requiring a substantive review and decision on each appeal. Similarly, commenters argued that the statutory right to counsel ''in any appeal proceedings before the Attorney General'' in section 292 of the Act, 8 U.S.C. 1362, and the rebuttable presumption of credibility ''on appeal'' in section 240(c)(4)(C) of the Act, 8 U.S.C. 1229a(c)(4)(C), would be rendered superfluous if the Board did not conduct a substantive review in each case. Also, commenters asserted, Congress would not have set such a significant Board appeal filing fee in the One Big Beautiful Bill Act [20] if appeals were going to be summarily dismissed as the default.

Commenters further stated that the IFR's summary dismissal procedures are contrary to the INA's exhaustion requirements in section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), because the summary dismissal procedures make the Board's administrative appeal process discretionary, which conflicts with the exhaustion statute's references to exhausting all administrative ''remedies'' that are available to the alien ''as of right.'' Citing *Santos-Zacaria* v. *Garland,* 598 U.S. 411 (2023), commenters explained that this statutory language provides an administrative remedy through the Board appeal process as a matter of right, and they argued that the IFR's summary dismissal procedures violate this right by treating appeals as discretionary by default, thereby preventing aliens from receiving meaningful review of their claims.

[20] *See generally* One Big Beautiful Bill Act, Public Law 119–21, sec. 100013(d)–(e), 139 Stat. 72 (2025).

Commenters further argued that to hold otherwise would render section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), superfluous, as there are no other administrative remedies available under the INA for aliens in removal proceedings to exhaust other than a Board appeal.

Response: The Department disagrees with commenters that the IFR's summary dismissal procedures violate the INA. As an initial matter, commenters mischaracterize the appellate process contained in the rule as discretionary; it is not. The rule still allows an alien to file an appeal and requires the Board to review the appeal. It does not authorize the Board to reject an appeal out of hand without review, as a matter of discretion or otherwise. This mischaracterization compounds commenters' confusion of an alien's ability to file an appeal—which the rule does not alter—with an alien's alleged entitlement to a non-summary decision by the Board, which is not located in any text of the INA. Assuming there is a statutory right to an appeal to the Board located in the INA,[21] this rule does not alter that right. In other words, this rule's summary dismissal procedures do not address an alien's ability to file an appeal; rather, the rule modifies the Board's procedures after such an appeal has been filed.

Further, as some commenters acknowledged, the INA does not contain any explicit references to—let alone mandates for—specific Board procedures. Rather, the statute contains one explicit reference to the Board, *see* INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B), and a handful of cursory references to ''appeals'' or ''administrative appeals,'' *see, e.g.,* INA 208(d)(5)(A)(iii)–(iv), 8 U.S.C. 1158(d)(5)(A)(iii)–(iv); INA 238(a)(3)(A), 8 U.S.C. 1228(a)(3)(A); INA 240(c)(5), 8 U.S.C. 1229a(c)(5); INA 292, 8 U.S.C. 1362.

Most importantly, far from creating a detailed statutory framework for administrative appeals, these provisions are silent as to the form or structure of such appeals. Indeed, Congress could have—and can at any time—provide for specific procedures for administrative appeals, just as Congress provided extensive procedures for removal proceedings before Immigration Judges. *See* INA 240, 8 U.S.C. 1229a *et seq.* But Congress has not done so. Rather, to the extent the statute creates any right to an administrative appeal, Congress has remained silent as to the procedures for adjudicating any such appeals; those procedures are thus left to the Attorney General to prescribe by regulation. *See* HSA 1102, 116 Stat. at 2273–74; INA 103(g)(2), 8 U.S.C. 1103(g)(2); *see also Dia,* 353 F.3d at 237; *Blanco de Belbruno* v. *Ashcroft,* 362 F.3d 272, 280 (4th Cir. 2004) (''One section of the INA refers to the existence of the BIA . . . and other sections refer to an administrative appeal for asylum seekers . . . . But the INA is simply silent as to what procedures should apply to that appeal . . . . This fact suggests that the INA vests broad discretion in the Attorney General to fashion the procedures of the BIA.'').

So long as such procedures are constitutionally permissible and such regulations comply with the APA—as the Department believes the IFR and this final rule are and do—the Attorney General has the full authority to modify such procedures by regulation to address problems as they arise. *See Zhang* v. *Dep't of Justice,* 362 F.3d 155, 157 (2d Cir. 2004); *Blanco,* 362 F.3d at 280; *see also Vt. Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 524 (1978) (''Even apart from the Administrative Procedure Act this Court has for more than four decades emphasized that the formulation of procedures was basically to be left within the discretion of the agencies to which Congress had confided the responsibility for substantive judgments.'').

Under the Attorney General's authority, the Department has carefully reviewed Board processes in an attempt to address critical backlogs at the Board, just as it did over 25 years ago in its past streamlining efforts, *see, e.g.,* Executive Office for Immigration Review; Board of Immigration Appeals; Streamlining, 64 FR 56135, 56137–38 (Oct. 18, 1999), and attempted to further address in 2020, *see* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (Dec. 16, 2020). Recognizing that past streamlining efforts, while beneficial, have not kept pace with unprecedented appeal numbers, the Department understood that dramatic changes were necessary. *See* 91 FR 5268–70. Those changes include, as relevant here, shifting the administrative appellate process to expand the use of summary dismissal to allow the Board to focus its resources on issuing written opinions in cases presenting novel or complex legal issues. The Department believes that this summary dismissal change will create significant efficiencies and make a meaningful difference in addressing the Board's lengthy backlog.

Additionally, the Department disagrees that any of the statutory references or cases cited by commenters create any specific procedural requirements before the Board. Some commenters pointed to references in section 101(a)(47)(B) of the Act, 8 U.S.C. 1101(a)(47)(B), to a ''determination'' by the Board ''affirming'' an order as creating requirements for the Board to review each appeal and issue a substantive opinion. However, commenters read too much into this language, and that argument has been rejected by Federal courts previously during litigation over prior regulations streamlining Board procedures. *See, e.g., Dia,* 353 F.3d at 237 (explaining that section 101(a)(47)(B) ''says absolutely nothing about procedures to be employed by the BIA, or the right to, or manner of, review generally''). This definitional language simply explains when an order of deportation is final, which is when a Board's order is issued or, if no appeal is taken, when the appeal period ends. In no way does this language convey any substantive requirements for what such a Board order must contain, much less the procedures by which the Board must issue an order. *Atemnkeng* v. *Barr,* 948 F.3d 231, 239 (4th Cir. 2020); *Blanco,* 362 F.3d at 280; *Dia,* 353 F.3d at 237.

Furthermore, this rule is consistent with the INA's language. Under this rule's summary dismissal procedures, if the Board does not vote *en banc* to accept an appeal for full briefing and further review, the Board will dismiss the appeal without opinion by issuing an order summarily dismissing the alien's appeal. However, in no way does that suggest that the Board did not review the appeal; instead, it simply means the Board did not find it worthy of further consideration. *See* 8 CFR 1003.1(d)(2)(ii).

Commenters' references to other sections of the INA are similarly misplaced. The ability to retain counsel during the Board appeals process, INA 292, 8 U.S.C. 1362, or to maintain a rebuttable presumption of credibility on appeal, INA 208(b)(1)(B)(iii), 8 U.S.C. 1158(b)(1)(B)(iii), are discrete provisions that provide exactly what they state—no more, no less. Neither provision is affected by the IFR's summary dismissal procedures; aliens continue to have the statutory right to counsel during the Board appeals process, as well as a rebuttable presumption of credibility during the appeals process, when applicable.

[21] The Department does not concede such a statutory right exists. But even if it does, ''[b]ased on the fact that [8 U.S.C. 1101(a)(47)(B)] contains the only mention of the BIA in the INA, it seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General's discretion.'' *Dia,* 353 F.3d at 237.

Similarly, commenters argued that the INA's exhaustion statute for Federal court review in section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), requires aliens to exhaust administrative remedies available ''as of right,'' which in turn requires Board appeals to be treated as a legal entitlement with no discretion to deny review under *Santos-Zacaria,* 598 U.S. at 424–26. However, as explained in the IFR, the Department drafted the IFR with the intention that the rule ''would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed.'' *See* 91 FR 5271. Put differently, nothing about the rule affects section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), because the rule does not affect an alien's ability to seek review by the Board.

In sum, ''[a]bsent constitutional constraints or extremely compelling circumstances, the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'' *Vt. Yankee Nuclear Power Corp.,* 435 U.S. at 543 (internal quotations omitted). That is all the Department has done here.

c. Additional Concerns With Summary Dismissal

Commenters raised a number of additional miscellaneous concerns regarding the IFR's summary dismissal procedures. The Department acknowledges the comments and has thoroughly considered them; however, none is persuasive, and the criticisms in them are vastly outweighed by the efficiency benefits that the rule would provide.

Comment: Commenters stated that summarily dismissing most appeals will allow erroneous legal decisions by Immigration Judges to stand, thereby undermining EOIR's mission to adjudicate immigration cases by fairly and uniformly interpreting immigration laws, as well as likely leading to erroneous removals.

Response: If an alien's appeal to the Board is summarily dismissed, the alien may raise any alleged legal errors made by the agency before the Federal circuit courts for further review, except where Congress has expressly stated that Federal court review is not available. Additionally, the alien may file a motion to reconsider before the Immigration Court or the Board, as applicable. Under the current procedures, there is also a risk of erroneous decisions by Immigration Judges being affirmed by the Board.[22] Because the Board will still review each appeal, however, the rule does not alter the possibility of the Board making an erroneous decision. Moreover, as is the case now, erroneous decisions by the Board will still be subject to correction by Federal courts.

Comment: Commenters similarly noted that summary dismissal will functionally exhaust all appeal options for most types of claims for discretionary immigration relief.

Response: This point describes the situation currently, which is unchanged by the rule. Once the Board rules on an appeal regarding a discretionary form of relief other than asylum, there is limited recourse to Federal court. The rule does not alter that dynamic.

Comment: Commenters argued that Federal court review is not sufficient, as Federal courts have narrower jurisdiction and use more deferential standards of review than the Board, and that PFRs serve a fundamentally different purpose: to review the appellate determinations made by the Board.

Response: The scope of Federal court review, including comments related to jurisdiction and applicable standards of review, is outside the scope of the rule, and the Department declines to predict how Federal courts will interpret the provisions of the rule. The Department emphasizes, however, that this rule does not change any procedures related to seeking Federal court review or existing substantive standards that constrain Federal court jurisdiction.

Nothing in this rule affects the baseline process of filing a PFR to allege errors in the underlying proceedings. Immigration Judges will continue to issue decisions in removal proceedings, which may then be addressed by the Board through a summary dismissal order or an adjudication with briefing. Regardless of how the Board chooses to handle a specific appeal, the alien will then maintain the existing ability to further file a PFR of that decision with the relevant Federal court, which will accept briefing and provide further review of the alleged issues according to existing procedures. *See, e.g.,* INA 242(b), 8 U.S.C. 1252(b) (providing requirements and standards for PFRs).

With regard to the alleged limitations of Federal court review, the Department notes that Congress explicitly exempted from review denials of certain discretionary forms of relief and factual issues when the alien is removable on certain criminal grounds. *See* INA 242(a)(2)(B)–(D); 8 U.S.C. 1252(a)(2)(B)–(D). If Congress wished to provide specific procedures for administrative review of such claims in lieu of or in addition to Federal court review, or to provide certain standards of review for any administrative appeals, it could certainly do so; but it has not. Instead, Congress chose to explicitly limit Federal court review while leaving any administrative appellate processes and standards to the Attorney General. *See, e.g., Dia,* 353 F.3d at 237 (''[I]t seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General's discretion.''). As a result, in implementing this rule's summary dismissal procedures, the Department balanced any limitations on the availability of Federal court review, among other concerns, with the strong need to address the Board's growing backlog of overwhelmingly straightforward cases. *See* 91 FR 5271.

In doing so, the Department also notes that, in addition to PFRs in the Federal courts, Congress explicitly provided aliens with a statutory right to file a motion to reconsider an Immigration Judge's removability decision. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). As the statute clearly states, such motions are intended to address ''errors of law or fact in the previous order . . . .'' INA 240(c)(6)(C), 8 U.S.C. 1229a(c)(6)(C). Thus, to address the kinds of potential Immigration Judge errors raised by commenters, Congress provided aliens with an additional statutory process for correcting such errors.

Comment: Commenters stated that the IFR did not include a timeline for single Board members to refer a case for consideration by the Board *en banc.* Commenters asserted that this could result in a scenario where a case is automatically dismissed because the timeline to vote to consider an appeal has passed. Commenters also noted that if the Board does not have a quorum, it will be unable to vote to consider an appeal, and all cases would be summarily dismissed until a quorum is available. Commenters worried that meritorious appeals could be summarily dismissed if the Board lacks sufficient members. Alternatively, commenters claimed that without a quorum, DHS would instead refer all potential Board appeals to the Attorney General in lieu of Board review.

Response: The Department is confident that the Board will have no

[22] Indeed, legal error is inherent in any system of adjudication and is impossible to eliminate—even by an appeals court. *C.f. Brown* v. *Allen,* 344 U.S. 443, 427 (1953) (Jackson, J., concurring) (''There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final.'').

issues establishing a quorum to vote on whether to accept appeals for full briefing and further consideration and thus does not share commenters' concerns that DHS will make large numbers of referrals directly to the Attorney General to bypass the Board. Further, it is unnecessary to provide specific timelines for single member referrals in this rule, as the Department expects that the Board will implement internal case-processing procedures to ensure compliance with the timelines in this rule.

Comment: Commenters noted that the rule does not contain any standards for determining whether an issue is sufficiently novel or complex to warrant further Board adjudication.

Response: There is no universal standard for determining novelty or complexity, and the Department believes that it is an issue best reserved for the Board to determine on a case-by-case basis.

The Department also clarifies that the rule itself does not explicitly limit the Board to only adjudicating ''novel or complex'' issues and, as such, has no need to set any such regulatory standards interpreting these terms. *See* 8 CFR 1003.1(d)(2)(ii)(A) (only requiring a Board vote on whether to accept an appeal for full briefing and further consideration). Rather, the Department expects that the Board will, in its discretion, focus its resources on requesting further briefing and issuing written opinions in appeals presenting novel or complex legal or factual issues, rather than mine-run appeals involving issues sufficiently addressed by the Immigration Judge or controlled by existing Board or Federal court precedent.

Comment: Commenters raised concerns that summary dismissal will occur before briefing, which is where novel or complex legal issues often surface. Commenters also stated that Board members will have to vote whether to accept a case for adjudication without the benefit of a full record or briefing, which will prevent Board members from fully determining the legal and factual issues in the proceedings before the Immigration Judge.

Response: These comments proceeded from erroneous factual premises. First, even under current rules, issues must be raised in the Notice of Appeal—before briefing—or else they will be waived. Thus, if an issue does not surface until briefing, it will be waived anyway, and the Board will not consider it. Consequently, the commenters' concerns are misplaced.

Second, the Board will have the full record of proceedings from the Immigration Court when it considers the appeal, including the Immigration Judge's written decision, if applicable, as well as access to the hearing recordings and the Notice of Appeal, which, for purposes of notifying the Board of the legal and factual issues for review, serves a similar function to the appellant's brief, as it must identify the alleged errors made by the Immigration Judge. Should the Board decide it needs further information and orders briefing, the appellant would expand upon those issues in his or her brief. *See Matter of Valencia,* 19 I&N Dec. 354, 355 (BIA 1986) (''Depending on the complexity of the issues raised, a brief may be essential to an adequate presentation of the appeal. In all cases, however, the reasons for an appeal must be meaningfully identified on the Notice of Appeal.'').

Novel or complex issues or obvious errors in an Immigration Judge decision can be easily signaled in a Notice of Appeal. For example, underlying criminal convictions often create complex issues in immigration law, but those issues can be succinctly summarized in the Notice of Appeal sufficient to flag for the Board a specific legal issue on which the Board could determine whether to accept the appeal for full briefing and further review. If the Board then voted affirmatively, a briefing schedule would subsequently be issued to fully develop the arguments.

Comment: Commenters stated that summary dismissal would affect cases where administrative review is most necessary, such as appeals filed pro se or under emergency conditions.

Response: The Board will determine whether fulsome review is necessary, and there is no statutory, regulatory, or other legal basis to mandate that all appeals of a particular category automatically receive full review. Moreover, the Department does not believe that there is a policy justification weighing in favor of requiring full briefing of appeals filed by certain classes of aliens. The most efficient use of the Board's limited resources is to decide appeals involving novel or complex legal or factual situations. Commenters offered no data indicating that the personal characteristics of a specific alien (for example, pro se or detained) make the substantive legal basis of the alien's appeal any more likely to involve such issues. Thus, rather than treating certain categories of aliens as automatically entitled to further consideration after additional briefing, it is better policy for the Board to consider all appeals equally and determine whether the legal claims themselves merit further consideration.

Comment: Commenters also stated that the rule would favor DHS. For example, because a single Board member would decide whether to refer a case to *en banc* review solely based on the Notice of Appeal, commenters claimed that aliens will be required to fully frame issues from the outset, but DHS will not have an obligation to fully respond unless the Board orders briefing.

Response: Commenters either misunderstood the rule or were mischaracterizing it, but in either case, the comments proceeded from a false premise. The rule does not favor either party. DHS has the same obligations as an alien when it is the party filing the appeal, and the alien is in the same position as DHS when an alien files an appeal. The rule does not provide DHS with any special treatment. The Board's decision to accept a case for full briefing and further review will be based solely on the Board's determination that the case would benefit from further review, and not who the filing party is. Moreover, if a case is accepted for full briefing and further review, both parties will have the ability to file briefs explaining their position on the relevant issues on appeal. These comments are misplaced.

Comment: Relatedly, commenters expressed concerns that aliens would not have an opportunity to file a written response to DHS-filed Notices of Appeal before the Board decides whether to accept the appeal. Specifically, commenters were concerned that this would give DHS disproportionate power to frame issues in such a way that the Board will accept their appeals, thereby resulting in decisions that narrow the rights of aliens.

Response: Again, these comments mischaracterize the rule. Both parties, regardless of which one is the appellant, are subject to the same regulations and have the same responsibilities, depending on the procedural posture of the case. And the parties will have an opportunity to submit briefs in most cases not summarily dismissed by the Board,[23] so no decision will result from such appeals without the alien having an opportunity to respond to the issues raised in DHS's Notice of Appeal, an

[23] The Board's longstanding practice has been to not issue a separate briefing schedule for most interlocutory appeals, though the party against whom such an appeal is sought may always file an opposition to the appeal.

aspect of the process that commenters failed to acknowledge.

Comment: Commenters also argued that the recently increased filing fee for appeals is exceedingly high for appeals that, in a majority of cases, would be summarily dismissed by the Board, and that the Department should therefore reduce or eliminate the fee. Relatedly, commenters claimed that restrictions on fee waivers would make such waivers largely unavailable, citing the Board's recent decision in *Matter of Garcia Martinez,* 29 I&N Dec. 169 (BIA 2025).

Response: Comments on Department fees are beyond the scope of this rulemaking; however, the Department has fully considered the impact of the increased fees—as well as the continued availability of fee waivers—in promulgating this rule and has determined that such an impact on aliens does not outweigh the beneficial effects of the rule. *See* 91 FR 5270 n.10. The Department notes that Congress—not the Department—recently increased the appeal filing fee before the Board. *See* One Big Beautiful Bill Act, Public Law 119–21, sec. 100013(d)–(e), 139 Stat. 72 (2025) (''OBBBA''). As such, the Department has no ability to change this fee. The Department also disagrees with commenters that the increased fee justifies any particular type or amount of administrative review. As explained in the IFR and earlier in this section of this preamble, Congress left Board procedures to the Attorney General to address through regulation, and the Department has determined that the procedures in this rule best address the Board's overwhelming caseload. *See* 91 FR 5268.

Moreover, neither OBBBA nor this rule affects the ability of aliens to request fee waivers under existing regulations. *See* 8 CFR 1003.8(a)(3). The Department disagrees with commenters' allegations regarding the availability of fee waivers. Although this rule does not make any changes to fee waivers, the Department disagrees with commenters' characterization of the Board's decision in *Matter of Garcia Martinez,* which at base merely explains that aliens requesting a fee waiver must provide sufficient evidence of their inability to pay the requisite filing fee. *See* 29 I&N Dec. at 171–72.

Comment: Commenters further questioned the IFR's justification that the summary dismissal changes would help offset asymmetry in review available to aliens and DHS. Commenters stated that, if DHS appeals are subject to summary dismissal at the same rate as appeals from aliens, the status quo would remain the same, with one more level of review available to aliens than DHS.

Commenters raised concerns that the IFR's summary dismissal procedures will occur before transcripts are produced, which prevents aliens from identifying issues evident in the transcript, including potential due process concerns. As such, commenters stated that aliens will need access to the transcript to survive summary dismissal at the Notice of Appeal stage. Commenters also questioned whether transcripts would be produced for the PFR process before the Federal courts. If so, commenters claimed that any such transcript production could delay Federal court review by months or years.

Response: The Department reiterates that the rule applies to both parties. Thus, its requirements apply equally to DHS and an alien, and there is no expectation that one party or the other will benefit from the rule's changes.

EOIR regulations already provide for several categories of summary dismissals of appeals to the Board without the production of a transcript, *see, e.g.,* 8 CFR 1003.1(d)(2)(A), (C), (F), (G), (H), so the addition of another category does not alter the fundamental structural dynamic.[24]

Moreover, it has long been the case that issues must be raised in the Notice of Appeal or risk summary dismissal; thus, even under pre-IFR procedures, the parties could not wait until a transcript is produced to raise issues. *See* 8 CFR 3.3(b) (1997), *adopted by* Executive Office for Immigration Review; Motions and Appeals in Immigration Proceedings, 61 FR 18900, 18906 (Apr. 29, 1996); 8 CFR 1003.3(b) (2026) (''The party taking the appeal must identify the reasons for the appeal in the Notice of Appeal (Form EOIR–26 or Form EOIR–29) or in any attachments thereto, in order to avoid summary dismissal pursuant to § 1003.1(d)(2)(i).'').

To be clear, the Board does not—and did not prior to this rule—produce transcripts at the Notice of Appeal stage. Rather, aliens filing a Notice of Appeal focus on defects in the Immigration Judge's decision and, only once an appeal is accepted for full briefing and further review and docketed—and not summarily dismissed under an existing provision—is a transcript of proceedings produced, provided the appeal warrants a transcript in the first instance.[25] This rule follows that general understanding: aliens will continue to allege errors in the Immigration Judge's decision in their Notice of Appeal and, like before, if an alien believes that any errors were the result of testimonial issues necessitating review of the transcripts, he or she can explain this in the Notice of Appeal and the Board will then determine whether such issues warrant further review.

To the extent there are concerns about the potential for defective transcripts, those will always exist, regardless of this rule, and can be addressed on a case-by-case basis, as they are now. In short, none of the concerns about transcripts outweigh the efficiency benefits of the rule. Finally, as to commenters' questions about transcripts during the PFR process, EOIR will produce transcripts for PFRs if needed, and there is no expectation that such production would delay Federal court review by any significant amount of time.

Comment: One commenter expressed confusion over which EOIR determination the Federal courts will review after summary dismissal.

Response: To address the commenter's confusion over which EOIR determination Federal courts will review, the Department notes this final rule's changes to 8 CFR 1003.1(d)(2)(ii). The Department is revising 8 CFR 1003.1(d)(2)(ii) to clarify the language the Board will include in a summary dismissal order issued under that paragraph and the effect of such a summary dismissal order for Federal court review. The added language—which is similar to longstanding language applicable in cases where the Board affirms a decision without opinion—clarifies that a summary dismissal order shall be deemed to reflect the same considerations as an order where the Board affirms a decision without opinion: that the result reached in the decision was correct, without necessarily implying approval of all the reasoning; that any errors were harmless or nonmaterial; and that the issues are either squarely controlled by existing Board or Federal court precedent and do not present the application of precedent to a novel factual situation or the factual and legal issues raised on appeal are not so

[24] The Board also considers several types of appeals already that do not have transcripts, *e.g.,* appeals of motion to reopen and reconsider decisions, interlocutory appeals, appeals of custody redetermination decisions, and appeals of certain visa decisions by DHS. Commenters failed to acknowledge that these other categories of appeals are processed without any evident concerns even though they do not generate transcripts.

[25] For example, a transcript is generally not prepared for interlocutory appeals, appeals of motion to reopen decisions by Immigration Judges, custody redetermination appeals, and appeals of visa petition decisions.

substantial to warrant a written opinion. *See* 8 CFR 1003.1(d)(2)(ii)(C).

Comment: Commenters provided recommendations related to the summary dismissal provisions, asserting that the recommendations would improve transparency and preserve core adjudicatory functions while aligning with the Department's efficiency goal. Commenters suggested establishing criteria to guide the selection of cases for review with briefing, stating that while discretion is essential, the lack of any established criteria could lead to inconsistency. Commenters stated that regular sampling and assessment would allow the agency to refine its selection process.

Response: The Department considered adopting regulatory criteria to guide the Board's consideration whether to summarily dismiss appeals but ultimately determined that the Board is best suited to adopt internal procedures and criteria for selecting cases where further briefing is necessary for review. The Department agrees that regular auditing of internal procedures is useful to ensure the success of the program; however, codifying such a program through rulemaking is unnecessary, as the Department already has such standard management practices. *See, e.g.,* 8 CFR 1003.1(e) (''The Chief Appellate Immigration Judge, under the supervision of the Director, shall be responsible for the success of the case management system.'').

Comment: Commenters expressed concern that an appellate framework that consists of a Notice of Appeal followed by summary dismissal may incentivize unscrupulous attorneys to perform substandard work.

Response: The Department does not share commenters' concerns that the provisions of this rule will incentivize any attorneys to perform substandard work, as all practitioners appearing before the Immigration Courts and the Board remain subject to EOIR's professional conduct regulations. *See, e.g.,* 8 CFR 1003.101 *et seq.* Further, State bars may always analyze and address, or decline to address, a practitioner's conduct, including any alleged substandard work, according to their own rules if the practitioner is an attorney subject to their disciplinary authority.

2. 10-Day Appeal Deadline

a. Due Process Concerns

Comment: Numerous commenters asserted that by shortening the appeal deadline from 30 days to 10 days, the IFR deprives aliens of their constitutional guarantee of a full and fair hearing under the Due Process Clause of the Fifth Amendment by severely restricting their right to representation by counsel and a meaningful opportunity to be heard. Commenters asserted these impacts would be particularly acute in cases of detained aliens, pro se aliens, and unaccompanied alien children (''UACs'').

Commenters also argued that the 10-day appeal deadline imposed by the IFR deprives aliens of due process by creating another procedural barrier to meaningful review, as 10 days, according to commenters, is an insufficient amount of time for an alien to either apply for a fee waiver or to gather funds to pay the substantial filing fee for appeals. Commenters stated that other appellate tribunals provide longer deadlines to file appeals.

Response: The Department disagrees with commenters' assertion that the 10-day appeal deadline deprives aliens of due process by restricting their right to be represented by counsel or to a meaningful opportunity to be heard.

To begin, commenters misconstrued an alien's right to counsel in immigration proceedings and the alleged due process implications. Under the Fifth Amendment, aliens are guaranteed due process in immigration proceedings, *see Reno* v. *Flores,* 507 U.S. 292, 306 (1993), but the Sixth Amendment's right to counsel applies only to ''criminal prosecutions,'' U.S. Const. amend. VI. Notably, Congress has provided aliens with substantial due process protections by statute, including the ''privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in [ ] [immigration] proceedings'' including ''any appeal proceedings before the Attorney General from any such removal proceedings.'' INA 240(b)(4)(A), 292, 8 U.S.C. 1229a(b)(4)(A), 1362.

But importantly, an alien's failure to obtain counsel in immigration proceedings does not constitute a due process violation. *See Vides-Vides* v. *INS,* 783 F.2d 1463, 1470 (9th Cir. 1986). The IFR focuses entirely on the appellate process before the Board and does not address or affect an alien's statutory privilege of being represented by counsel of the alien's choosing, at no expense to the Government, regardless of whether initially placed into removal proceedings or at any other point in time during the pendency of the case. *See* INA 240(b)(4)(A), 292, 8 U.S.C. 1229a(b)(4)(A), 1362. Moreover, the IFR's 10-day appeal deadline aligns with the existing 10-day statutory timeframe aliens are afforded to find counsel prior to the initial immigration hearing after the commencement of immigration proceedings. INA 239(b)(1), 8 U.S.C. 1229(b)(1). If that timeline is sufficient to find counsel for the initial hearing, it is unclear why it would not also be sufficient for an appeal. *See generally Dakane* v. *Att'y Gen.,* 399 F.3d 1269, 1273 n.6 (11th Cir. 2005) (''[T]he Supreme Court has held that [aliens] are ensured a fundamentally fair hearing through statutory protections provided for by Congress'').

Commenters also artificially limited their due process arguments to the narrow Board appeal window, rather than acknowledging that Board appeals are only part of an often-lengthy administrative process before EOIR. Aliens placed in proceedings before an Immigration Judge are advised of their right to self-funded counsel and are often provided continuances to find counsel. *See, e.g.,* 8 CFR 1240.10(a)(1). Removal proceedings then proceed to determine removability and adjudicate any potential applications for relief or protection. Only once an Immigration Judge issues a decision does the appeal period begin to run. Throughout this entire process, aliens have the ability to retain counsel. So, arguing that the 10-day appeal period after the conclusion of removal proceedings is the only relevant period to consider due process concerns misrepresents the actual, lengthy process of such cases. Being given a reasonable amount of time to obtain counsel in a proceeding where counsel is not guaranteed does not rise to the level of a due process violation. Thus, the Department finds commenters' allegations that the IFR's 10-day appeal deadline deprives aliens of due process by restricting their right to counsel are without merit.

The Department similarly finds meritless commenters' assertion that the IFR's 10-day appeal deadline undermines due process by imposing procedural barriers that deprive aliens of a meaningful opportunity to be heard. The Department stresses that the IFR's 10-day appeal deadline does not prevent any class of aliens—*e.g.,* aliens represented by counsel, pro se aliens, detained aliens, or UACs—from seeking an appeal, paying the appeal fee, or applying for a fee waiver. The procedures for filing an appeal, just as they existed before the IFR, simply require aliens to complete the appeal form by providing, with specificity, the reasons for disagreement with the Immigration Judge's decision. Similarly, this rule does not change an alien's ability to apply for a fee waiver, which only requires completion of a simple form listing the alien's monthly income

sources and expense sources. Likewise, even for those aliens who do not qualify for a fee waiver, having to pay the requisite appeal fee should be accounted for throughout their removal proceedings and not come as a surprise.[26] None of these requirements—even under a 10-day appeal period—prevents aliens from having a meaningful opportunity to file a Board appeal. Thus, even if due process required access to an administrative appeal, none of these requirements would violate due process.

Any due process concerns regarding the 10-day deadline are further obviated by the availability of electronic filing and electronic fee payments to EOIR, including the ability of pro se aliens to electronically file the Notice of Appeal with the Board. *See generally* EOIR, Respondent Access Portal, *https://respondentaccess.eoir.justice.gov/en/* [*https://perma.cc/7W3Y-JH5R*].

Instead, the 10-day appeal deadline treats all classes of aliens equally and serves to expedite the appellate process by allowing aliens to have their appeals reviewed by the Board faster, instead of being delayed as a result of backlogged claims. This will allow aliens to receive expeditious final administrative decisions in their cases and pursue Federal court review faster which, in turn, will aid the Board in addressing its backlog of pending appeals.

Moreover, the IFR's 10-day appeal deadline only affects the Board's review process, which is wholly within the authority of the Attorney General. It does not impact any of the procedural protections afforded to aliens in immigration proceedings as set by Congress. *See* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). The Board is a regulatory creation of the Attorney General; there is no due process or statutory right entitling an alien to an administrative appeal before the Board because the Attorney General has the authority to eliminate the Board entirely and could delegate his power elsewhere. *Guentchev,* 77 F.3d at 1037 (''Even litigants in the federal courts are not constitutionally entitled to multiple layers of review. The Attorney General could dispense with the Board and delegate her powers to the immigration judges[.]'').

Comment: Commenters also stated that the Ninth Circuit previously determined that a 10-day appeal filing deadline violates the Due Process Clause, citing *Gonzales-Julio* v. *INS,* 34 F.3d 820 (9th Cir. 1994). Commenters asserted that in promulgating the IFR, the Department failed to acknowledge that precedent or explain how the IFR's 10-day deadline does not violate the same constitutional provision.

Response: The Department believes that commenters misunderstood the breadth of the Ninth Circuit's holding in *Gonzales-Julio* and, regardless, the circumstances underlying the case have changed over the intervening 30-plus years, such that any due-process concerns raised regarding a 10-day appeal deadline in that case are no longer applicable.[27] In *Gonzales-Julio,* the Ninth Circuit considered the case of an alien who lived in Hawaii and had to file a Notice of Appeal by mail with an office in San Diego, California, within 10 days and concluded that the alien's due process rights were violated. 34 F.3d at 825. But the facts presented in that case are important. At the time, the ability to electronically file an appeal did not exist; all documents had to be filed with the Office of the Chief Immigration Judge; and filing fees were paid separately to an office of the former Immigration and Naturalization Service. *Id.* at 822. Further, in cases where an alien sought a fee waiver, ''the notice of appeal [wa]s sent directly to the Office and [wa]s not filed until the fee waiver [wa]s approved.'' *Id.* Finally, ''no record [wa]s kept of when the notice of appeal [wa]s received, nor [wa]s a notice of appeal date-stamped upon receipt.'' *Id.*

Within the context of these now-outdated appeal procedures, the court concluded that ''[w]here a petitioner residing in Hawaii has only ten days to appeal an order of deportation, has no control over the delivery of the mail, and has no control over whether the appeal is filed upon receipt in the Office of the Immigration Judge (especially when a fee waiver is requested),'' the alien's due process rights were violated. *Id.* at 825. The Ninth Circuit *did not* hold that a 10-day filing deadline is per se violative of due process rights in all cases and under all circumstances. Moreover, the Ninth Circuit in *Gonzales-Julio* did not address the possibility of equitable tolling of the filing deadline, which would obviate the concerns raised, and which may be available under this rule. *See Matter of Morales-Morales,* 28 I&N Dec. 714 (BIA 2023).[28]

Shortly after the *Gonzales-Julio* decision, the Eighth Circuit considered a similar challenge from an alien asserting that the 10-day period to file an appeal violated her due process rights. *See Talamantes-Penalver* v. *INS,* 51 F.3d 133 (8th Cir. 1995). But the Eighth Circuit held ''that the ten-day filing deadline comports with due process, even as applied to aliens living in remote locations who make reasonable efforts to comply with the regulation.'' *Id.* at 135. Seemingly in recognition of the importance of evaluating the facts and circumstances of each individual case, the court explained that ''[t]he ten-day filing period arguably could be unconstitutional as applied to a petitioner in Hawaii, a somewhat 'remote' location, but constitutional as applied to a petitioner in a location not so remote from the place where the notice of appeal is to be filed.'' *Id.* at 136. In determining that the agency's procedures provided sufficient due process, the Eighth Circuit emphasized the Government's ''significant'' interest in the filing deadline, explaining that filing deadlines aid the Government in ''bring[ing] litigation to an end'' and ''determin[ing] with certainty when an alien's right to appeal is cut off and the [Immigration Judge]'s deportation order is conclusive.'' *Id.* at 137. And, as remains true today, ''[e]nforcement of this nation's immigration laws is enhanced by the speedy adjudication of cases and the prompt deportation of offenders.'' *Id.*

Accordingly, the Department does not read the Ninth Circuit's holding in

[26] EOIR notifies aliens that there may be fees associated with any filed appeals in multiple publicly available locations. *See, e.g.,* 8 CFR 1103.7; EOIR, *Types of Appeals, Motions, and Required Fees* (Feb. 1, 2026), *https://www.justice.gov/eoir/types-appeals-motions-and-required-fees* [*https://perma.cc/V8AD-VJDT*]; EOIR, *EOIR Forms & Fees* (Feb. 1, 2026), *https://www.justice.gov/eoir/eoir-forms* [*https://perma.cc/2VX5-KCUE*]; EOIR, *EOIR Payment Portal, https://epay.eoir.justice.gov/*index [*https://perma.cc/E8QS-QREY*]. Additionally, both the INA and EOIR's regulations require that Immigration Judges provide aliens with notice about the appeals process. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to ''inform the alien of the right to appeal that decision''); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to ''[a]scertain that the respondent has received a copy of appeal rights''). This ordinarily includes oral and written advisals that a fee may be required for any such appeals.

[27] As noted above, courts have determined that the Due Process Clause does not require an opportunity to file an administrative appeal in immigration proceedings. *See, e.g., Dia,* 353 F.3d at 242; *Guentchev,* 77 F.3d at 1037. The Department acknowledges that because the Government has nonetheless granted aliens the right to do so, it cannot impose procedural requirements that unduly restrict that right. *See Cleveland Bd. of Educ.* v. *Loudermill,* 470 U.S. 532, 541 (1985). For the reasons explained below, however, this rule's procedural changes do not impose any problematic burden on the pursuit of administrative appeals from decisions of Immigration Judges.

[28] The Department recognizes that the legal foundation for an administrative agency to exercise equitable authority such as equitable tolling is unclear. Nevertheless, current Board precedent allows for it, and it would mitigate many of the concerns raised by commenters about ''one-off'' situations in which the new deadline could affect the exercise of a party's appeal rights.

Gonzales-Julio as precluding the adoption of a 10-day appeal deadline in this rule. EOIR has made several changes to its appeal filing procedures since that decision that have alleviated the concerns identified by the Ninth Circuit. Most significantly, the Board implemented electronic filing in 2021 and further expanded electronic filing to allow pro se aliens to file Notices of Appeal with the Board. 91 FR 5272; *see also Irigoyen-Briones* v. *Holder,* 644 F.3d 943, 951 (9th Cir. 2011) (''To protect its important interest in proceeding expeditiously with these cases, yet avoid subjecting aliens to the risk of losing their appeals due to bad weather or delivery service error, all the Board need do is what courts and private companies routinely do: allow people to send their notices of appeal over the internet.''). Electronic filing ''allows parties to submit Notices of Appeal at any time of day from any location with internet access, removing concerns related to mail delays and the restrictions business hours create to meet filing deadlines.'' 91 FR 5272.

Similarly, appeal filing fees are also paid directly to the Board via EOIR's Payment Portal, and regulations clearly establish the Board's procedure for assessing fee waivers submitted with a Notice of Appeal. *See* 8 CFR 1003.8(a)(3) (''If the fee waiver request does not establish the inability to pay the required fee, the appeal or motion will not be deemed properly filed, provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.'').

Taken together, the availability of electronic filing for appeals and electronic payments for appeal fees represents a significant shift from the circumstances the Ninth Circuit was considering in *Gonzales-Julio,* particularly as internet access and usage has become ubiquitous even for pro se aliens. Given the ability to immediately file a Notice of Appeal from any place at any time, the Department believes a 10-day appeal deadline comports with due process. And, even if the specific circumstances presented by an alien's case could result in the violation of an alien's due process rights, the Board has the authority to equitably toll the appeal deadline, as discussed above.

b. Statutory Concerns

Comment: Commenters stated that a 10-day timeline for appeals violates the INA. Specifically, commenters stated that a 10-day timeline is insufficient for aliens to prepare their claims, including obtaining counsel and obtaining documents that they wish to submit in support of their claims. Commenters asserted that the IFR violates provisions of the INA guaranteeing aliens the right to counsel in removal proceedings, citing sections 240(b)(4) and 292 of the Act, 8 U.S.C. 1229a(b)(4) and 1362. Commenters noted that section 292 of the Act, 8 U.S.C. 1362, specifically provides aliens with a right to counsel ''in any appeal proceedings before the Attorney General from any such removal proceedings.'' Commenters acknowledged, however, that the INA does not guarantee representation in every case.

Commenters alleged that the IFR's provisions shortening appeal deadlines will violate this statutory right to counsel by interfering with aliens' ability to find counsel, particularly if the alien is detained, indigent, or appeared pro se before the Immigration Judge during removal proceedings. Commenters further stated that the shortened appeal deadlines impede counsel's ability to accept representation in a new case, request the oral record of proceedings, review the case, and prepare an appeal in the allotted time frame, thereby contravening the INA's right to counsel, which commenters claimed could reduce the availability of competent counsel.

Response: Nothing in the INA precludes the Department from establishing a 10-day deadline to file most appeals with the Board, as is supported by legislative history and prior Departmental policy. Indeed, a 10-day deadline to file an administrative appeal of an Immigration Judge decision is not unprecedented. Notably, after a reorganization consolidated Immigration Judges and the Board into the newly created EOIR, the agency issued a rule establishing ''a uniform procedure for filing administrative appeals relating to Immigration Judge proceedings.'' Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 FR 2931 (Jan. 29, 1987). As part of the uniform procedures, the regulatory deadline to file an appeal of a decision of an Immigration Judge was 10 days after service of the decision or 13 days if the decision was mailed. *See, e.g.,* 8 CFR 3.36(b) (1987); 52 FR 2935. These appeal deadlines remained in place for almost a decade, including following Congress' directive in the Immigration Act of 1990 for the Attorney General to issue regulations with respect to ''the time period for the filing of administrative appeals in deportation proceedings.'' Public Law 101–649, 545(d), 104 Stat. 4978, 5066 (1990); *see also* Executive Office for Immigration Review; Rules of Procedures, 57 FR 11568 (Apr. 6, 1992) (amending regulations to implement various provisions of the Immigration Act of 1990 but maintaining existing 10-day appeal deadline); 8 CFR 3.38(b) (1993) (''The notice of appeal of the decision shall be filed with the Office of the Immigration Judge having administrative control over the Record of Proceeding within ten (10) calendar days after service of the decision. Time will be 13 days if mailed.''), 3.1(b) (1993).

Subsequently, in passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, sec. 604(d)(5)(A)(iv), 110 Stat. 3009–546, 3009–694 (Sept. 30, 1996), Congress enacted a 30-day timeline for filing an appeal for certain asylum-related cases, which overrode the regulatory 10-day period as it applied to such cases. *See* INA 208(d)(5)(A)(iv), 8 U.S.C. 1158(d)(5)(A)(iv); *Liadov* v. *Mukasey,* 518 F.3d 1003, 1009 (8th Cir. 2008) (''Without question, the statute trumped the ten-day appeal period previously adopted in the regulations.''). At the same time, Congress remained silent with respect to timelines for filing appeals from other types of Immigration Judge decisions. Congress's silence in this regard, against the backdrop of an existing regulatory 10-day filing deadline, indicates that Congress made a determination not to intervene with respect to the 10-day filing deadlines applicable to the other remaining appeal types before the Board.

Nor has Congress taken action since then to codify additional filing deadlines for appeals beyond those specified in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv). However, DOJ subsequently amended EOIR's regulations to implement a 30-day filing deadline to appeal from Immigration Judge decisions. *See* 61 FR 18902. In that rule, DOJ stated that it was increasing the deadline for filing an appeal from 10 to 30 days in order to respond to concerns raised by the Ninth Circuit and commenters regarding the sufficiency of time to initiate the appellate process. However, as already discussed above in this section, circumstances have changed in intervening years, and the Department has therefore determined that a 10-day filing deadline is more appropriate.

The 10-day deadline to file most appeals with the Board is also wholly consistent with the INA's provisions related to obtaining counsel in Immigration Court proceedings. The INA provides aliens in removal proceedings with ''the privilege of being represented, at no expense to the

Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.'' INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A). The INA's privilege of representation extends to ''any appeal proceedings before the Attorney General from any such removal proceedings.'' INA 292, 8 U.S.C. 1362. Consistent with the INA's requirements, EOIR's regulations clearly state that an alien may be represented in removal proceedings. *See* 8 CFR 1003.16(b), 1240.3.

Nothing in the IFR nor in this final rule changes any of EOIR's regulations ensuring that aliens may be represented by counsel of their choosing, at their expense. This rule is focused on streamlining the administrative appellate process, and nothing in this rule prevents, precludes, or limits an alien's ability to seek counsel. Arguments to the contrary ignore the reality that aliens often have a significant amount of time to seek and obtain counsel prior to their Immigration Court hearing and entry of a removal order, despite the fact that the INA requires aliens be provided only 10 days to seek counsel prior to an initial hearing before an Immigration Judge. *See* INA 239(b)(1), 8 U.S.C. 1229(b)(1) (''In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings . . . , the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date.'').

Moreover, aliens often receive multiple continuances to seek representation before the Immigration Judge. *See, e.g., Matter of C–B–,* 25 I&N Dec. 888, 889–90 (BIA 2012). Further, an Immigration Judge is required to advise an alien of his or her right to representation, to inquire as to whether the alien desires representation, and to advise the alien about the availability of pro bono legal services. INA 239(a)(1)(E), 8 U.S.C. 1229(a)(1)(E); 8 CFR 1240.10(a)(1)–(2).

Indeed, many aliens are represented in proceedings before an Immigration Judge and may retain the same counsel throughout the appellate process, obviating commenters' concerns regarding finding and obtaining counsel. The Department also anticipates that, as a potential response to this rule, counsel will likely begin explaining the shortened appeal deadline to clients earlier in removal proceedings and increasing the amount of representation agreements that include administrative appeals as part of the initial agreement.

In cases where an alien is not represented before the Immigration Judge, the Department acknowledges that aliens whose cases are subject to the 10-day appeal period may face difficulties securing representation prior to the deadline for filing a Notice of Appeal with the Board.[29] *See* 91 FR 5272 n.16 (''The Department acknowledges that some aliens proceed pro se before the Immigration Judge and *may* seek counsel after an adverse decision and that in those circumstances changing the deadline from 30 to 10 days, except for asylum appeals by aliens not barred from applying, *may* impact their ability to obtain counsel to file a Notice of Appeal.''). However, such aliens likely will have had multiple opportunities to seek and secure counsel prior to the Immigration Judge's decision, particularly as Immigration Judges generally provide right-to-counsel advisals during the very first hearing in removal proceedings. Functionally, the change in appeal deadline implemented by this rule is 20 fewer days to seek counsel in an often years-long process. And an alien unable to obtain counsel prior to the deadline for filing a Notice of Appeal will also have additional time to continue seeking counsel if the Board accepts the appeal for further consideration with briefing prior to seeking Federal court review.

Difficulties in securing legal representation are not unique to aliens, and many aliens affirmatively elect to forgo legal representation for their own personal reasons. The INA does not guarantee that every alien will obtain legal counsel, nor does it require the Department to delay the efficient completion of removal proceedings beyond the statutorily delineated period of time that an alien must be provided to seek counsel prior to the beginning of removal proceedings before an Immigration Judge. *See* INA 239(b)(3), 8 U.S.C. 1229(b)(3) (''Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien . . . if the [10-day time period] has elapsed and the alien has failed to secure counsel.''). Had Congress intended to provide another minimum period of time for aliens to seek counsel prior to filing an appeal with the Board, it easily could have done so. Accordingly, this rule's changes to the appeal deadline do not violate the INA's requirements.

The Department is further unpersuaded by commenters' concerns related to counsel's ability to provide effective legal representation to clients. The Department is unaware of any reason why 10 days is an insufficient amount of time for counsel to file a Notice of Appeal that adequately identifies the issues being raised on appeal. Counsel must only preserve issues in a Notice of Appeal with appropriate specificity; the rule does not require full legal briefing at the Notice of Appeal stage.

Despite commenter assertions to the contrary, the Department considered the impact of the IFR on aliens' ability to obtain counsel for an appeal to the Board. *See* 91 FR 5272 n.16. The Department has further considered comments related to legal representation and continues to believe that ''the interest in timely adjudications outweighs'' potential concerns related to aliens' ability to obtain counsel and that ''the benefits of the reforms in this rule outweigh that potential impact, especially given that such aliens would have had time prior to the removal order to seek the assistance of counsel.'' *Id.* In short, the Department has considered all of the comments and concerns, but it continues to believe that the benefits of the rule outweigh any potential—and highly speculative—costs related to legal representation.

Comment: Commenters argued that the IFR violates section 240(b)(4)(C) of the Act, 8 U.S.C. 1229a(b)(4)(C), which requires EOIR to maintain a complete record of proceedings, and that the 10-day appeal period also conflicts with section 240(c)(6) of the Act, 8 U.S.C. 1229a(c)(6), which provides a 30-day window for motions to reconsider.

Response: This rule is wholly consistent with section 240(b)(4)(C) of the Act, 8 U.S.C. 1229a(b)(4)(C), which states that ''a complete record shall be kept of all testimony and evidence produced at the proceedings.'' Nothing in this rule affects the development of a record in removal proceedings before an Immigration Judge, on which this statutory section focuses. *See also* 8 CFR 1003.36 (''The Immigration Court shall create and control the Record of Proceeding.'').

Separately, the 10-day appeal filing deadline does not foreclose the statutory availability of motions to reconsider, and any change to the appeal filing deadline is irrelevant to such

[29] Although the representation rate is higher for appeals before the Board when compared to completed cases before the Immigration Court, it is not clear whether that is due to the nature of cases that are appealed (*i.e.,* a greater percentage of cases with representation file appeals, leading to a higher representation rate at the Board overall) or due to aliens who were unrepresented before the Immigration Courts deciding to obtain representation at the appellate stage. EOIR's experience is that the former explanation is likely correct, but regardless of the reason, the Department has considered the impact of this final rule on the population of aliens unrepresented at the trial level and ultimately determined that the efficiency benefits of this rule outweigh any potential costs.

availability. *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). Nothing in this rule changes the potential avenues for addressing alleged errors in an Immigration Judge's decision: an alien may choose to file a motion to reconsider with the Immigration Judge, an appeal with the Board, and even a subsequent motion to reconsider following a Board appeal denial. Moreover, should an alien choose to file a motion to reconsider with the Immigration Judge, the alien may appeal any Immigration Judge denial of such motion to the Board and seek further review in the Federal courts if necessary. *See, e.g.,* Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge, Question 5 (Sept. 2019), *https://www.justice.gov/eoir/file/eoir26/dl* [*https://perma.cc/P3PP-7T3H*] (providing an option to file ''an appeal from the Immigration Judge's decision *denying a motion to reopen or a motion to reconsider*. . . .'') (emphasis in original); *Ayala* v. *Sessions,* 855 F.3d 1012, 1020 (9th Cir. 2017) (reviewing Immigration Judge's denial of motion to reconsider).

Comment: Commenters argued that the IFR violates section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), which they asserted requires 30 days for an administrative appeal of any decision granting or denying asylum. Commenters argued that the INA does not have a carve-out from the 30-day appeal deadline based on the Immigration Judge's reasoning in an asylum denial. Further, commenters asserted that the Department's position in the IFR that asylum seekers whose applications are barred under section 208(a)(2) of the Act, 8 U.S.C. 1158(a)(2), are not entitled to the 30-day appeal deadline has no support in the statute. Commenters expressed that if Congress had intended for there to be a different appeal deadline for asylum applications denied under section 208(a)(2) of the Act, 8 U.S.C. 1158(a)(2), it would have specified it in the INA.

Further, commenters alleged that the Department ignored the second part of section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), which states that an administrative appeal must be filed within 30 days of a decision granting or denying asylum ''or within 30 days of the completion of removal proceedings before an immigration judge under section 240, whichever is later.'' Commenters also noted that, functionally, the appeal deadline for nearly all asylum cases will be 10 days because asylum cases almost always include claims for withholding of removal or protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S 85 (''CAT''), and the appeal deadline for those claims remains 10 days.

Commenters also stated that the IFR's exception for some asylum cases is confusing. Commenters stressed that in order for an alien or the alien's counsel to know which filing deadline applies, the alien or counsel must understand whether the Immigration Judge denied the asylum application on its merits or on a ground subject to a 10-day appeal deadline. Commenters expressed that it is unclear which deadline applies if an application is denied for multiple reasons, providing as an example an asylum case where an Immigration Judge finds that the one-year bar applies, but also finds that the alien did not demonstrate a well-founded fear of future persecution.

Commenters also stated that although the Department justified the 10-day deadline by asserting it would harmonize administrative appellate deadlines, the Department did not explain how doing the opposite for asylum appeals by implementing two deadlines contributes to this goal. Moreover, commenters asserted that the rule creates different appeal deadlines for pretermitted cases, where cases pretermitted because of an applicable ACA are subject to the 10-day deadline and cases pretermitted due to, for example, failure to pay the fee or not adequately completing the application are subject to the longer 30-day deadline, which is inconsistent with the Department's stated harmonization goal. Commenters further expressed that the IFR does not explain how disputes over the applicable deadline should be determined.

Response: The Department disagrees that appeal deadlines for cases involving asylum applications are confusing but nonetheless appreciates the opportunity to provide clarity. The INA requires that the Attorney General establish procedures for considering asylum applications ''filed under'' section 208(a) of the Act, 8 U.S.C. 1158(a). INA 208(d)(1), 8 U.S.C. 1158(d)(1). Those procedures must provide that ''any administrative appeal shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an immigration judge . . . whichever is later.'' INA 208(d)(5)(A)(iv), 8 U.S.C. 1158 (d)(5)(A)(iv). But those procedures, including the 30-day appeal deadline, do not apply where an alien is ineligible to apply for asylum at all under section 208(a)(1) of the Act, 8 U.S.C. 1158(a)(1). Said differently, if an alien is ineligible to even apply for asylum pursuant to section 208(a)(1) of the Act, 8 U.S.C. 1158(a)(1), the alien is not entitled to subsequent procedures implementing a 30-day appeal deadline. *See* 91 FR 5272 n.15.

The INA provides three such scenarios in which an alien is barred from applying for asylum: (1) the alien may be removed to a safe third country pursuant to an agreement commonly referred to as an ACA; (2) the alien does not show by a preponderance of the evidence that his or her application has been filed within one year after the date of the alien's arrival in the United States, subject to narrow exceptions; or (3) the alien has previously applied for asylum and had such application denied, subject to narrow exceptions. INA 208(a)(2)(A), (B), (C), 8 U.S.C. 1158(a)(2)(A), (B), (C).

Accordingly, in any case where an alien is deemed ineligible to apply for asylum pursuant to one of these three subparagraphs, the applicable appeal deadline, in accordance with this rule, is 10 days. This 10-day appeal period similarly applies to cases where application of these ineligibility provisions is followed by alternative substantive holdings denying asylum, as these ineligibility provisions serve as the baseline denial reason in addressing whether the alien is even eligible to apply for asylum. To use an example provided by commenters, if an Immigration Judge determines an alien is subject to the one-year bar and also concludes that the alien failed to establish a well-founded fear of future persecution, the 10-day deadline applies.

In any other asylum case, the appeal deadline remains 30 days, consistent with the INA's requirements. For clarity, in such cases, the 30-day appeal deadline attaches to the entire case, not to the asylum claim itself. Indeed, the relevant regulatory provision applies in ''cases'' where an Immigration Judge has adjudicated an asylum application and did not deny the application under 208(a)(2)(A), (B), or (C) of the Act, 8 U.S.C. 1158(a)(2)(A), (B), or (C)—not to individual claims within those cases. 91 FR 5278 (amending 8 CFR 1003.38(b)(2)). For example, in cases where an alien has applied for asylum, withholding of removal, and protection under the CAT regulations, if the alien's asylum application was not denied due to application of an ACA, failure to apply for asylum within one year of entry, or because he or she previously has been denied asylum, the alien has 30 days to appeal the decision in his or

her case, which includes all claims for relief and protection from removal.

Additionally, commenters' assertion that the Department did not consider the ''whichever is later'' statutory language is incorrect. The Department analyzed the language in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), and determined that, for clarity 8 CFR 1003.38(b) should provide that the appeal filing period begins to run with the ''date of the stating of an Immigration Judge's oral decision or the mailing or electronic notification of an Immigration Judge's written decision.'' In rare cases, an Immigration Judge might adjudicate an asylum application earlier in the proceedings and then issue a final decision fully resolving removal proceedings at a later date. In these circumstances, the appeal period under 8 CFR 1003.38(b) would not begin to run until that later date because that is the date when the Immigration Judge completes the case, rather than simply disposing of a single claim. Thus, because the appeal period would begin to run from this later date, 8 CFR 1003.38(b) is consistent with the requirement in section 208(d)(5)(A)(iv) of the Act, 8 U.S.C. 1158(d)(5)(A)(iv), that the time period in which to appeal a decision granting or denying asylum run from ''whichever [of the relevant dates] is later.'' Accordingly, the Department believes that the language as drafted complies with the INA.

The Department further disagrees with commenters that it will be unclear which deadline applies to an asylum case because it will be unclear on what basis an Immigration Judge denies an asylum application. The Department is confident that Immigration Judges will clearly articulate any basis for denying an alien's asylum application such that the applicable appeal-filing deadline will be readily apparent. Additionally, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See generally* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to ''inform the alien of the right to appeal that decision''); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to ''[a]scertain that the respondent has received a copy of appeal rights''); EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), *https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-15* [*https://perma.cc/HK27-PJAZ*] (stating that ''the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived'').

Finally, commenters are correct that the changes to appeal filing deadlines will result in different appeal deadlines for asylum cases depending on the reason for denial. But the Department has determined that the different appeal deadlines for asylum cases—which are a function of statutory requirements and, thus, cannot be altered by EOIR—do not meaningfully detract from the Department's appellate deadline harmonization goal.

c. Additional Concerns With 10-Day Appeal Deadline

Comment: Commenters opposed decreasing the time to file an appeal with the Board to 10 days, describing the new deadline as unworkable, unrealistic, and not enough time to prepare and file a Notice of Appeal. Commenters expressed concern that the 10-day appeal deadline will exacerbate existing barriers to access to justice.

Commenters also stated that the IFR did not provide any empirical evidence that the 30-day period in which to file an appeal has contributed to an increase in appeal filings or the Board's backlog, pointing out that appeals tripled between 2015 and 2025 while the deadline to file an appeal was 30 days and asserting that such increase was likely related to immigration enforcement activity and evolving substantive law. Commenters said that, absent data showing the 30-day deadline drives delay, shortening the appeal deadline risks impairing access to appellate review without corresponding efficiency gains. Commenters also stated that the IFR puts pressure on Immigration Judges who are already overwhelmed by implicitly forcing them to produce immediate written decisions and a review-ready record to make appeals possible, which commenters alleged risks incentivizing rushed oral decisions and increasing post-hearing confusion, litigation, and motions.

Commenters also stated that the IFR does not explain whether Immigration Judges will inform aliens if the 10-day or 30-day deadline applies in their cases.

Lastly, commenters believed that the use of electronic filing through the EOIR Courts & Appeals System (''ECAS'') was not sufficient to ameliorate their concerns.

Response: The Department declines to retain the 30-day appeal deadline in all cases. The Department disagrees with commenters' claims that the 10-day deadline is unworkable or unrealistic. First, as the Department explained in the IFR, other types of appeals before EOIR are already subject to a 10-day filing deadline. *See* 8 CFR 1003.6(c)(1) (10-day deadline for DHS to appeal an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)); 28 CFR 68.54(a) (10-day deadline to appeal Administrative Law Judge's decision to Chief Administrative Hearing Officer). Second, the Board's adoption of electronic filing in 2021, and the further expansion allowing pro se aliens to file Notices of Appeal with the Board, allow parties to submit a Notice of Appeal electronically, obviating the need to account for mail difficulties or delays in filing deadlines in the vast majority of Board cases. 91 FR 5272.

The Department does not find persuasive commenters' arguments that the length of the appeal deadline is unrelated to the number of appeals filed or the backlog. Several factors contribute to how many appeals are filed in any given year. Although factors like the scope of immigration enforcement activity by DHS or changes in the substantive law as a result of Federal court decisions are outside the Department's control, the Department can control its own procedures, like filing deadlines, to keep cases moving expeditiously before the Board. And the shortened appeal deadline—which applies equally to aliens and DHS—will work in concert with the expanded summary dismissal procedures to ensure that EOIR is efficiently and expeditiously completing appeals. *See* 91 FR 5272 (explaining that the 10-day deadline applies to both DHS and aliens ''so neither side will be procedurally advantaged or disadvantaged by the change'').

Further, as previously discussed, a 10-day deadline to file an administrative appeal of an Immigration Judge decision is not unprecedented: A 1987 rule set the regulatory deadline to file an appeal of a decision of an Immigration Judge at 10 days after service of the decision or 13 days if the decision was mailed. That rule was in place for almost a decade. *See, e.g.,* 8 CFR 3.36(b) (1987); 52 FR 2935.

In 1996, EOIR established a centralized process for filing Notices of Appeal directly with the Board and increased the appeal deadline to 30 days. 61 FR 18903; 8 CFR 3.38(b) (1996). The Department increased the time frame to file an appeal to address concerns ''regarding the sufficiency of time to initiate the appellate process'' and concerns raised by Federal courts related to the 10-day filing period and the requirement that parties file a Notice

of Appeal in one forum and pay the requisite fee in another forum. 61 FR 18903. But importantly, when implementing the 30-day deadline, the Department did not indicate that such a change was required by law. Rather, the deadline was implemented as a matter of policy, reflective of the Department's judgment regarding the appropriate procedures at that time. The decision to now revert the deadline to 10 days is similarly reflective of the Department's judgment that, as a matter of policy, the 10-day deadline, in combination with other streamlining measures implemented by this rule, is the best way for the Department to address present circumstances, which include a significant backlog of pending cases at the Immigration Courts and Board.

Regarding commenters' concerns that some aliens may not understand the appeal deadline applicable to their cases, the Department does not believe that determining the applicable case deadline will be a challenge, as the appeal deadline will be 10 days in most cases, except for cases involving certain asylum applications. Nonetheless, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to ''inform the alien of the right to appeal that decision''); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to ''[a]scertain that the respondent has received a copy of appeal rights''); *see also* EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), *https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-15* [*https://perma.cc/HK27-PJAZ*] (stating that ''the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived''). Commenters' concerns related to the 10-day deadline's impact on Immigration Judges are misplaced, as this rule does not alter any requirements for an Immigration Judge when issuing a decision.

Next, the Department believes that the 10-day filing deadline is a key piece of efforts to streamline immigration proceedings and that a ''deadline for filing a notice of appeal is essential for the overall working of an immigration court system in order to bring cases to a final conclusion.'' *Morales-Morales,* 28 I&N Dec. at 716. Indeed, without deadlines, an alien could attempt to delay proceedings indefinitely. *Id.* ''Moreover, '[f]iling deadlines, like statutes of limitations, necessarily operate harshly and arbitrarily with respect to individuals who fall just on the other side of them, but if the concept of a filing deadline is to have any content, the deadline must be enforced.' '' *Id.* (quoting *United States* v. *Locke,* 471 U.S. 84, 101 (1985)).

Although this final rule does not change the general 10-day filing deadline, the Department notes that if the unique circumstances in a case warrant equitable tolling pursuant to the Board's existing standards, nothing in this rule prevents the Board from accepting an untimely appeal through that mechanism. The Department believes that this existing authority is sufficient to address truly exceptional circumstances that may arise in an individual case and provides the Board with sufficient flexibility to account for the facts presented by each individual case.

Finally, to the extent that commenters expressed concerns about ECAS reliability, EOIR has provided clear guidance in the event of any technical issues affecting electronic filing. *See* 8 CFR 1003.3(g)(2) (addressing ECAS system outages for Board appeals).

Comment: Commenters questioned the interplay between the 10-day appeal filing deadline and fee waiver requests. Specifically, commenters requested clarity on what happens in cases where a fee waiver is denied and whether the pre-existing 15-day cure period in 8 CFR 1003.8(a)(3) will still apply, as commenters stated it is unclear how the Board will construe this regulation in light of the 10-day deadline.

Response: Neither the IFR nor this final rule alters existing Board practice with respect to fee waivers. Aliens seeking a waiver of the appeal filing fee must file a fee waiver request, Form EOIR–26A, alongside the Notice of Appeal. 8 CFR 1003.8(a)(3). If the fee waiver request does not demonstrate an inability to pay, the appeal will not be considered properly filed, ''provided the Board grants 15 days to re-file the rejected document with the filing fee or new fee waiver request and tolls any applicable filing deadline during the 15-day cure period.'' *Id.* Accordingly, if an alien files a fee waiver request and Notice of Appeal prior to the 10-day deadline, if the fee waiver is denied, the alien will have 15 days to pay the filing fee or correct the filing.

Comment: Commenters stated that, in some cases, the Immigration Judge will signal an intention to rule a particular way from the bench but will expand on their reasoning through a written decision that is later mailed or uploaded. Commenters cited the precedential Board decision *Matter of Iskandarani,* 29 I&N Dec. 26 (BIA 2025), which, according to commenters, held that if the Immigration Judge issues an oral decision that is later memorialized in writing, the appeal deadline clock begins to run on the date of the oral decision. Commenters recommended that, because the alien's Notice of Appeal—which will generally be their only communication with the Board—must be filed within 10 days, the filing deadline should not start to run with the issuance of the oral decision.

Response: Commenters misinterpreted the Board's holding in *Iskandarani,* which merely held that when an Immigration Judge renders an oral decision, the appeal deadline begins on that date, regardless of any summary of the oral decision later provided to the alien. *See* 29 I&N Dec. at 28 (''An oral decision is not transformed into a written decision merely because the Immigration Judge prepares a memorandum summarizing the oral decision.''). When an Immigration Judge issues an oral decision, that is the official decision of the Immigration Judge for appeal purposes. Immigration Judges may also provide the parties with a summary of the oral decision's holding, generally on an EOIR-provided template. But any accompanying summary is just that—a summary of the oral decision.

As such, this rule does not change EOIR's existing regulations governing the issuance of Immigration Judge decisions or EOIR's existing practice related to calculating when the time for an appeal begins to run. Immigration Judges may issue decisions orally or in writing. 8 CFR 1003.37(a). When issuing a decision orally, the Immigration Judge must state the decision in the presence of the parties, and ''a memorandum summarizing the oral decision shall be served on the parties.'' *Id.* In those cases, the time in which to file an appeal is calculated ''from the date of the stating of an Immigration Judge's oral decision.'' 8 CFR 1003.38(b). As noted by commenters, the Board has held that the beginning of the appeal period in such cases ''is unaffected by the subsequent mailing of a memorandum summarizing the oral decision.'' *Iskandarani,* 29 I&N Dec. at 28.

The Department does not believe that the shortened appeal deadline presents concerns related to the issuance of oral decisions where aliens are represented. The alien and his or her representative will be present for the issuance of an oral decision, and representatives also have access to the hearing recording containing the oral decision through ECAS. The Department is confident that Immigration Judges will explain the

bases for their decisions with clarity sufficient for aliens to identify any alleged errors of fact or law for Board appeals. Any subsequent written memorandum summarizing the oral decision is not intended to provide separate bases for appeal, although it may provide further explanation of points raised in the oral decision that may be used in any Notice of Appeal. *See id.* (noting that the memorandum summarizing the oral decision was not a separate written decision).

The Department has considered that, in some cases, the shortened appeal deadline may be less than optimal for certain unrepresented aliens to file a Notice of Appeal within 10 days when a decision is rendered orally. But in all cases, the alien will be present when an oral decision is issued, and the Department expects that Immigration Judges will deliver decisions to unrepresented aliens in a manner they understand, and aliens may use that knowledge when preparing and submitting a Notice of Appeal, consistent with longstanding practice. Aliens will also have additional time in which to review the decision if seeking further review in Federal court.

Congress entrusted decisions related to the conduct of removal proceedings to the Attorney General's discretion. And given the unprecedented scope of the backlog of appeals pending before the Board, the shortened appeal deadline is necessary to ensure the efficient and expeditious processing of appeals; the benefit of implementing such changes outweighs any costs. *See* 91 FR 5276.

Comment: Commenters argued that two comparative 10-day appeal deadlines cited in the IFR—8 CFR 1003.6(c)(1) related to appeals of certain custody-related stays and 28 CFR 68.54(a) related to certain appeals before the Office of the Chief Administrative Hearing Officer—were not comparable to regular Board appeals because the former is only available to DHS and the latter is necessary under the relevant statutory framework.

Response: The Department cited those two EOIR provisions in the IFR to make the basic point that a 10-day appeal deadline is not unusual in EOIR administrative proceedings. *See* 91 FR 5272 (noting only that the 30-day Board appeal deadline ''differs from other EOIR administrative appellate deadlines''). Separate from that point, the Department explained that a 10-day Board appeal deadline begins after an appellant's claim has already been fully considered by EOIR at the Immigration Court and was broadly intended to improve the efficient consideration of Board appeals, particularly in light of the expansion of electronic filing with EOIR. *See id.*

3. Issue Waiver in Notice of Appeal

Comment: Commenters raised concerns with the IFR's appeal-waiver language in 8 CFR 1003.38(b)(3), which states that ''[a]ny issue not raised in the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR–26) shall be deemed waived.''

Commenters argued that, particularly in combination with the 10-day filing deadline, this language risks forfeiture of meritorious issues on appeal, and that the risks would be greater for certain groups. Other commenters claimed that the appeal form now requires an entire page of legal arguments as to why the appeal is being filed, which, they asserted, transforms the Notice of Appeal into a legal brief.

Response: The Department disagrees with commenters' concerns regarding the IFR's waiver language in 8 CFR 1003.38(b)(3). Pre-existing regulations limit the Board to ''resolv[ing] the questions before it.'' *See* 8 CFR 1003.1(d)(1). To place an issue before the Board, aliens must provide the basis for their appeal for the Board to consider. *See* 8 CFR 1003.3(b) (''Statement of the basis of appeal.''). Similarly, pre-existing regulatory language already requires that a notice of appeal include sufficient specificity. Under current regulations, the notice must ''specifically'' identify the findings of fact, the conclusions of law, or both, that are being challenged, including, if applicable, ''specific'' contested facts and ''specific'' factual and legal findings. 8 CFR 1003.3(b). These requirements were not altered by the IFR and are well established. In short, the IFR does not change expectations or legal requirements regarding what information must be included in a Notice of Appeal and what the consequences are for omitting that information.

This rule's waiver language in 8 CFR 1003.38(b) therefore merely states the obvious: a failure to raise an issue in the Notice of Appeal necessarily waives that issue. Although a shortened appellate period might require identifying those issues more quickly, stating the basis for an appeal is a baseline prerequisite without which the Board (or any appellate body) cannot function. Moreover, well-established Board precedent already treats issues not raised on appeal as waived, *see, e.g., Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012), the rule merely incorporates that precedent.

Commenters appeared to obliquely express concerns that the appeal-waiver language will indirectly cause aliens to fail to exhaust their administrative remedies for purposes of a subsequent petition for review pursuant to section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1). However, those concerns are not persuasive for several reasons. First, the Board already deems issues not raised on appeal to be waived, and aliens already encounter exhaustion hurdles pursuant to section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1). The rule does not alter that dynamic, nor does it prohibit aliens from arguing that they have exhausted their administrative remedies under the statute. Second, Federal circuit courts of appeal will ultimately set the binding interpretation of section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), just as they do now. Because this provision of the rule merely codifies in regulation the status quo, the Department does not believe there is a basis for a circuit court to change its view of section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1); however, that is ultimately a question for those courts, and the Department cannot predict whether the new rule will cause them to revisit prior interpretations of that statute. The Department has merely considered the interaction between the rule and that statutory provision and found any concerns to be unavailing. Third, administrative exhaustion is inherently a fact-specific question. As such, the Department cannot state a general position on whether section 242(d)(1) of the Act, 8 U.S.C. 1252(d)(1), will bar review of an issue without reference to the specific facts of a particular case. Even general hypotheticals raised by commenters—*e.g.,* pro se aliens—resist a generalized statement due to the nearly infinite number of factual permutations among a backlog of over 3 million cases.

Furthermore, contrary to commenters' concerns, this rule does not address the Board's longstanding specificity requirements with regard to issues raised on appeal. *See* 8 CFR 1003.1(d)(2)(i)(A) (stating that the Board may summarily dismiss any appeal or portion of any appeal in any case in which ''the party concerned fails to specify the reasons for the appeal on Form EOIR–26 or Form EOIR–29 (Notices of Appeal) or other document filed therewith''); 8 CFR 1003.3(b) (reiterating same).

As explained by the Ninth Circuit, ''[t]he purpose of the BIA's strict specificity requirement is to ensure that the BIA is adequately apprised of the issues on appeal so that the BIA is not left to search through the record and

speculate on what possible errors the [petitioner] claims.'' *Singh* v. *Gonzales,* 416 F.3d 1006, 1010 (9th Cir. 2005) (cleaned up). Thus, ''when the BIA receives ample specific advice about the reasons for an appeal, the BIA can deal promptly with appeals and focus resources on nonfrivolous appeals to reach a correct resolution.'' *See id.*

This is a common sense understanding of the appellate process. For example, Federal courts follow the principle of party presentation, in that they ''rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.'' *See United States* v. *Sineneng-Smith,* 590 U.S. 371, 375 (2020). Similarly, the Board must be sufficiently apprised of the issues on appeal so that it can properly exercise its duties.

To be clear, this rule does not change the level of specificity required, it merely codifies the existing requirement that aliens must affirmatively raise issues on appeal to the Board or else risk waiver. In raising any relevant issues on appeal, existing specificity requirements apply. Just as before the IFR, aliens are not required to file a lengthy brief on each issue at the time the Notice of Appeal is filed. Rather, the appeal form must simply include enough specific information so that the Board can review the issues being appealed and, under this rule's procedures, determine whether to accept the appeal *en banc* for full briefing and further review. *See* Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge, Sec. 6, (Sept. 2019), *https://www.justice.gov/eoir/file/eoir26/dl* [*https://perma.cc/P3PP-7T3H*] (''State in detail the reasons for this appeal.''); *see also Nolasco-Amaya* v. *Garland,* 14 F.4th 1007, 1012 (9th Cir. 2021) (alien must ''provide meaningful guidance to the BIA by informing it of the issues contested on appeal; a generalized and conclusory statement about the proceedings before the [Immigration Judge] does not suffice'') (cleaned up).

The pre-existing instructions for the Form EOIR–26 appeal form provide clear guidance on what such specificity entails: ''Give specific details why you disagree with the Immigration Judge's decision. Specify the findings of fact, the conclusions of law, or both, that you are challenging. If a question of law is presented, cite supporting legal authority. If the dispute is over the findings of fact, identify the specific facts you are challenging.'' Form EOIR–26 Instructions, Section F (Sept. 2019), *https://www.justice.gov/eoir/file/eoir26/dl* [*https://perma.cc/P3PP-7T3H*].

4. Briefing Schedules

Comments: Commenters raised concerns regarding the IFR's briefing changes, including the simultaneous 20-day briefing schedule, the general prohibition on reply briefs, and the limitations on briefing extensions.

Commenters argued that, taken together, these changes would not leave aliens with sufficient time to fully present their arguments nor rebut arguments made by DHS counsel, though they did not explain why DHS would not be similarly disadvantaged. They also claimed that the Department did not consider the purposes underlying prior briefing schedules.

Commenters also noted that these briefing changes would force attorneys to compress complex briefing into truncated timelines, which would be further compounded if the attorneys were taking on representation for the first time on appeal to the Board. Commenters contended that limiting extensions to only ''exceptional'' circumstances of the alien—and not counsel—would reduce the amount of representation on appeal. Commenters also asserted that these changes would be particularly challenging for pro se and detained aliens, as well as UACs. Commenters suggested that the IFR not taking into account workload concerns for purposes of extending briefing schedules would impose difficulties on attorneys. Overall, commenters posited that the result of these briefing provisions would be to negatively impact the Board's ability to produce well-reasoned decisions.

Commenters argued that sequential briefing and reply briefs would benefit the Board under the summary dismissal provisions of this rule, since the rule focuses Board resources on cases with novel or complex legal issues. Commenters suggested that if the Department was to move forward with simultaneous briefing in all cases, reply briefs would serve a more important purpose than they did previously. Commenters also stated that the Department did not acknowledge that reply briefs serve an important role before other appellate bodies, including Federal courts. Commenters claimed the tradeoff in quality for expediency is not worthwhile and would lead to erroneous decision-making in cases the Board does decide to adjudicate.

Finally, commenters noted possible alternatives to these briefing changes, including increasing EOIR staffing levels and expanding the use of motions to reopen or reconsider before an Immigration Judge.

Response: The Department has considered commenters' concerns regarding the IFR's briefing schedule changes but does not believe that any stated concerns outweigh the rule's benefits.

First, the Board has long used simultaneous briefing for detained cases without incident. *See* Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 FR 54878, 54904 (Aug. 26, 2002) (implementation of simultaneous briefing for detained aliens). Moreover, since the simultaneous briefing requirement of the IFR went into effect in March 2026, there has been no notable change in the quality of briefs or the handling of cases. Of course, in reviewing the comments on this rule, the Department understands that an attorney would wish to request as much time as possible to file and respond to briefs. But, as the *Amica* court noted in litigation over the IFR, ''Plaintiffs offer no evidence . . . that [the pre-IFR simultaneous briefing requirement in detained cases has] proven unworkable.'' 822 F. Supp. 3d at 167. Similarly, since March 2026, there is scant evidence that simultaneous briefing has proven unworkable. The Department agrees with the *Amica* court: the Board has longstanding expertise in adjudicating administrative appeals and has found simultaneous briefing sufficient to address the relevant issues on appeal. As explained in the IFR, simultaneous briefing ''provides both parties sufficient opportunity to address any issues needed to be resolved on appeal or to identify any reasons for opposing the appeal, while balancing the need to expeditiously resolve the case.'' 91 FR 5273.

As to reply briefs, the Board retains the discretion to accept further briefing as needed. *See* 8 CFR 1003.3(c). Thus, under this rule, once the Board has accepted a case for full briefing and further review, the Board can review the evidence and briefs provided and determine whether the facts of the particular case warrant additional briefing. Allowing reply briefs as standard practice merely delays adjudication in the many cases where the Board does not require further argument. Moreover, as with simultaneous briefing, the general prohibition on reply briefs has not proven unworkable or problematic since it went into effect in March 2026.

Third, limitations on briefing extensions are necessary to ensure that the Board efficiently perfects the record so that Board members can begin adjudicating appeals within the

prescribed timelines. *See generally* 8 CFR 1003.1(e)(8) (Board adjudication timeline requirements). Notwithstanding EOIR's longstanding policy that briefing extensions are disfavored, under the prior ''good cause'' standard, *see, e.g.,* 8 CFR 1003.3(c)(1) (2002) (''The Board, upon written motion, may extend the period for filing a brief or a reply brief for up to 90 days for good cause shown.''), attorneys often came to feel entitled to a briefing extension as a matter of course, even when the basis was entirely foreseeable and raised only at the last minute. In the IFR, the Department tightened the standard to ensure that briefing extensions are provided only when truly necessary. The Department also believes that prohibiting ''workload concerns'' as a reason for an extension is consistent with both common sense and an attorney's responsibility not to take on more work than the attorney can reasonably handle. *See, e.g.,* 8 CFR 1003.102(q)(1) (stating that a ''practitioner's workload must be controlled and managed so that each matter can be handled competently''); *see also* ABA Model Rules of Professional Responsibility, Rule 1.3, comment 2 (''A lawyer's work load must be controlled so that each matter can be handled competently.''). Indeed, in the Board's experience, many attorneys routinely seek briefing extensions citing workload concerns, suggesting an alarming pattern of problematic behavior. A de facto entitlement to a briefing extension could inadvertently encourage practitioners to take on more cases than they can handle and violate their professional responsibility obligations.

The Department also clarifies a potential point of confusion: under this rule, the briefing schedule only begins once the Board has determined not to summarily dismiss an appeal and instead has accepted it for full briefing and further review. For example, in a case where the Board accepts an appeal for such briefing and review and transcripts are ordered, attorneys will often have a significant amount of time to prepare a brief. As such, the Department does not share commenters' concerns that a stricter standard for briefing extensions will result in fewer represented aliens or lower-quality briefing. Further, the Department has not been presented with evidence that such concerns have materialized since March 2026 when that portion of the IFR went into effect.

Taken together, the IFR's briefing provisions fully allow the Board to make well-informed and well-reasoned decisions. And, despite commenters' claims to the contrary, in no way do these procedures rise to the level of a due process violation. *See, e.g., Gutierrez* v. *Holder,* 662 F.3d 1083, 1091 (9th Cir. 2011) (explaining that, to violate due process, procedures must be ''so fundamentally unfair that the alien was prevented from reasonably presenting his case''); *Singh* v. *Ashcroft,* 362 F.3d 1164, 1168 (9th Cir. 2004) (finding due process violation where alien was prevented from filing a brief after Board mailed briefing schedule to wrong address).

Under these changes, aliens fully retain their ability to file a brief in cases accepted for full briefing and further consideration by the Board, thus satisfying their opportunity to raise alleged issues with the Immigration Judge's decision. Moreover, due process does not require reply briefs. Initial briefs are intended to raise any alleged issues at the Immigration Judge level and provide the parties with the opportunity to be heard; the Board can choose to request further briefing if additional clarification is needed. And simultaneous briefing in detained cases has been in effect at the Board for decades without issue—and no court, to the Department's knowledge, has deemed simultaneous briefing in such cases a due process violation.

Separately, the Department does not believe commenters' proposed alternatives would be viable substitutes for the rule's briefing-schedule changes. Although EOIR is increasing its staffing, including administrative support staff at the Board, ultimately, hiring is controlled by the Congressional budget process and is well beyond the scope of this rule. Additionally, the increased usage of motions practice before the Immigration Courts would not impact the efficiency of the Board, which is the subject of this rule.

Lastly, in response to commenters' claims that the ''exceptional circumstances'' briefing extension language only applies to aliens and not their counsel, the Department reiterates for clarity this rule's language that workload concerns, travel plans, or similar concerns within the control of either party ''or their representatives'' do not constitute exceptional circumstances. 8 CFR 1003.3(c)(1). This language is clear that exceptional circumstances may therefore apply to counsel but must still meet the requisite exceptionality as described in section 240(e)(1) of the Act, 8 U.S.C. 1229a(e)(1).

5. Transcription Procedures

Comment: Some commenters raised concerns about the IFR's elimination of Immigration Judge transcript review in 8 CFR 1003.5. Commenters asserted that removing the ability of Immigration Judges to review hearing transcripts for Board appeals will leave errors uncorrected on the record and heighten the risk of mistakes in the record. Commenters also contended that this change would place a burden on aliens to request copies of the Digital Audio Recordings (''DAR'') of their proceedings. As a result, commenters argued, this would lead to erroneous Board decisions and, in turn, incorrect removal orders.

Response: The Department disagrees regarding the effects of eliminating Immigration Judge transcript review. Immigration Judge transcript review in EOIR's regulations is a vestige of outdated technology at the Immigration Courts from a time when hearings were manually recorded on tapes. *See* 67 FR 54878–901 (2002 rulemaking adding Immigration Judge transcript review timelines). Now, EOIR's courtrooms use advanced digital recording technology, which produces significantly better recordings and lessens the potential for mistakes in subsequent transcription.[30]

And, to the extent there are potential mistakes in any transcriptions, there are longstanding procedures for addressing such mistakes, rather than having busy Immigration Judges take time away from their dockets to pore over transcripts for typographical errors. *See* EOIR Policy Manual, pt. III, ch. 3.2(f)(3) (Mar. 18, 2026), *https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia/chapter-3-2* [*https://perma.cc/HWM3-9QDP*]. Obvious defects should be brought to the attention of the Board's Clerk's Office. *Id.* Where the Clerk's Office does not or cannot remedy the defects and the party believes the defect to be significant to the party's argument or the adjudication of the appeal, the party should identify the defect and argue its significance with specificity in the appeal brief for the Board to consider. *Id.* Further, there is no practical purpose to Immigration Judge transcription review. Immigration Judges cannot make substantive changes to transcripts without potentially violating due process, and requiring Immigration

[30] Press Release, *EOIR Completes Digital Audio Recording Implementation* (Sept. 2, 2010), *https://www.justice.gov/sites/default/files/pages/attachments/2015/08/20/eoircompletesdar09022010.pdf* [*https://perma.cc/EMK4-QSY9*] (''This new system improves the quality of recordings and transcriptions through the use of more microphones throughout each courtroom.'').

Judges to review transcripts solely to correct typographical errors is a waste of adjudicatory resources.

Additionally, commenters' argument regarding the necessity of requesting a copy of the DAR is unrelated to the transcription-review change described above. As it relates to transcription, this rule makes only a small modification to remove Immigration Judge transcription review during the transcript production process at the Board. Once produced, that transcript is made available to the parties and any transcription errors can then be addressed by the parties. None of this happens at the initial Notice of Appeal stage, so commenters' arguments regarding the availability of a copy of the DAR at that point are irrelevant to this rule.

Finally, the Department is making a minor, technical edit to 8 CFR 1003.1(e)(3) to avoid confusion regarding the production of transcripts. That section currently states that ''[i]n any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript, and the issuance of a briefing schedule, as appropriate.'' There may be confusion surrounding the concluding phrase ''as appropriate'' and whether it modifies ''transcript,'' leaving the incorrect impression that the provision requires the production of a transcript in all cases. However, the Board has for many years considered several types of appeals that do not have transcripts. Thus, the Department is making a minor edit to 8 CFR 1003.1(e)(3) to make it clear that the Board will produce a transcript only in cases not subject to summary dismissal and where a transcript is otherwise warranted, which excludes those where the Board has historically not created a transcript.

6. Other Procedural Changes

Comment: A few commenters disagreed with the IFR's changes to remove the Chief Appellate Immigration Judge's ability to extend adjudication deadlines or hold certain cases. Commenters stated that this change eliminates flexibility, particularly in managing complex or time-sensitive appeals. Commenters also argued that removing the ability to hold a case pending resolution of a Federal court case, including a Supreme Court case, would create inefficiencies, stating that aliens would effectively have to file a motion to reopen or an additional appeal after the new controlling decision is issued.

Separately, another commenter raised concerns with the IFR's harmonization of the 90- and 180-day Board adjudication timelines to both start from when the record is complete. The commenter stated that these timelines will prolong the backlog because this rule only applies prospectively to new cases. The commenter also claimed that further assignment of cases not meeting the deadlines to the Chief Appellate Immigration Judge or Deputy Chief Appellate Immigration Judge will only lead to rushed decisionmaking.

Response: This rule was promulgated to address significant backlogs facing the Board, with a particular aim of reducing any delays in adjudicating cases before the Board. One means to that end is reducing rarely used mechanisms that provide for delays in certain circumstances. Fundamentally, in light of the significant backlog facing the Board, appeals must be adjudicated within the timelines provided, *see* 8 CFR 1003.1(e)(8), or else the Board will never be able to gain control of its caseload. Moreover, in removing the hold provision, the Department recognizes a simple maxim—cases ready to be adjudicated should be adjudicated—and not delayed pending some uncertain outside action beyond the agency's control. Otherwise, as the Department learned from the past use of administrative closure, for example, delays can quickly compound into crises. *See* EOIR, PM 25–29, *Cancellation of Director's Memorandum 22–03* (Apr. 18, 2025), *https://www.justice.gov/eoir/media/1397161/dl?inline* [*https://perma.cc/SH9J-CKXL*] (''Administrative closure merely 'kicks the can down the road,' increasing the overall backlog while leaving ripple effects—*e.g.* multiple continuances and lost adjudication time—in its wake, which further exacerbate the backlog.'').

With regard to the harmonization of the adjudication timelines, the commenter misread the effect of this rule. The adjudication timelines and further referral processes already existed in EOIR's regulations. For consistency, this rule merely modifies the date on which the record is deemed complete for these adjudication timelines to begin running.

Finally, as with other changes made by the IFR that were allowed to go into effect in March 2026, these changes have not created any notable issues or concerns with Board procedures or case processing.

7. Terminology

Comment: Commenters disagreed with the IFR's replacement of ''noncitizen'' and ''unaccompanied child'' with ''alien'' and ''unaccompanied alien child,'' respectively. Commenters claimed the use of the term ''alien'' is pejorative and is a rhetorical move towards more dehumanizing language as compared to neutral, immigration-status focused words like ''noncitizen.''

Response: The terms ''noncitizen'' and ''unaccompanied child'' are inconsistent with the statutory language. ''Alien'' is the statutory term defined in the INA and uniformly used throughout title 8 of the United States Code. *See generally* INA, 8 U.S.C. 1101 *et seq.* (using the term ''alien,'' not ''noncitizen,'' when referring to persons who are not citizens or nationals of the United States). Similarly, the term ''unaccompanied alien child'' has a specific statutory definition, *see* 6 U.S.C. 279(g)(2), that is not fully captured by the term ''unaccompanied child.'' Retaining the terms ''noncitizen'' and ''unaccompanied child'' would be inconsistent even within EOIR's regulations, as, without amendment, chapter V of title 8 of the CFR would sometimes refer to aliens as ''noncitizens'' and other times as ''aliens.'' *See generally* 8 CFR Ch. V. The terms ''noncitizen'' and ''unaccompanied child'' are also inconsistent with DHS regulations, which continue to use the term ''alien.'' *See generally* 8 CFR Ch. I. Further exacerbating the risk of confusion, the term ''noncitizen'' is not a precise synonym for the term ''alien.'' *See* EOIR PM 25–07, *Cancellation of Policy Memorandum 21–27,* 4 & n.4 (Jan. 29, 2025), *https://www.justice.gov/eoir/media/1387446/*dl?inline [*https://perma.cc/HU2H-V2TF*]. The INA defines the term ''alien'' to mean a person who is neither a citizen nor a national of the United States. INA 101(a)(3), 8 U.S.C. 1101(a)(3). The term ''noncitizen'' does not recognize the full scope of people who are ''aliens'' because the term ''noncitizen'' includes ''national[s] of the United States,'' who are individuals ''who, though not [ ] citizen[s] of the United States, owe[ ] permanent allegiance to the United States.'' INA 101(a)(22), 8 U.S.C. 1101(a)(22). Thus, a plain-language understanding of the term ''noncitizen'' is incongruous with its usage in the CFR prior to this amendment.

Indeed, caselaw shows that these imprecise terms do not in fact have a well-settled meaning, and their use risks creating confusion through imprecision, in addition to improperly suggesting that longstanding and well-defined statutory terms are imbued with pejorative meaning. *See Khan* v. *Garland,* 69 F.4th 265, 272 (5th Cir. 2023) (Ho, J., concurring) (''[I]n the context of immigration law, we use 'alien,' not to disparage one's

character—or to denote one's planetary origin—but to describe one's legal status.''). By contrast, the term ''alien'' has a long-established usage and settled understanding. *Id.* (describing the term ''alien'' as ''a centuries-old legal term found in countless judicial decisions'' dating back to the 1800s). The legal status of alienage is fundamental to EOIR's authority to exercise jurisdiction over an individual and is at the core of all proceedings, including findings of removability and orders of removal, as well as forms of eligibility for relief and protection from removal.

As Judge Bea, himself a naturalized citizen, stated in his concurrence in *Avilez* v. *Garland:* ''These distinctions matter. Words matter. Our federal immigration statutes concern themselves with aliens. This word is not a pejorative nor an insult.'' 69 F.4th 525, 544 (9th Cir. 2023). Judge Bea went on to state that ''when used in its statutory context,'' the world ''alien'' ''admits of its statutory definition, not those definitions with negative connotations that can be plucked at will from the dictionary.'' *Id.*

Regulations should reflect the statutes they implement and apply, so using the same terms avoids any confusion over the relevant populations being addressed by regulation. Any suggestions that such changes are the result of animus are unfounded. Any concerns about that language are more appropriately directed to Congress.

D. Effects of Rule

1. Impacts to Federal Courts

Comment: Commenters asserted that the IFR's changes will, in effect, shift a large portion of the Board's work and the backlog of pending appeals to the Federal courts as the only remaining mechanism available to aliens to substantively challenge an Immigration Judge's decision. Commenters stated that this shift will result in increased habeas petitions and remands back to the Board, thus inundating the Federal court system with more PFRs and increasing the likelihood of judicial error. Commenters argued that this shift violates due process, the INA, and the Trafficking Victims Protection Reauthorization Act (''TVPRA''). Commenters also posited that this rule would shield agencies from the Equal Access to Justice Act (''EAJA'') by accelerating removals and creating defective records that would inhibit successful challenges to unlawful detention and prevent the recovery of attorneys' fees.

Commenters anticipated, without citing any evidence, that aliens whose appeals are summarily dismissed will file PFRs at a higher rate than those whose appeals are dismissed on the merits.

Commenters argued that an increased immigration caseload before the Federal courts would ultimately result in the less efficient resolution of cases because the Federal courts would be overwhelmed by the volume of the cases coming before them, which could total in the millions of cases. Specifically, commenters explained that without transcripts, Federal courts may lack the factual record necessary to evaluate credibility findings, evidentiary rulings, or the basis for the Immigration Judge's decision, thus generating delays and procedural complications.

Commenters also asserted an increase in PFRs with Federal courts would require the Department to assign more attorneys, or attorneys outside of the Office of Immigration Litigation, to handle the surge in PFRs. Concomitantly, commenters alleged that this surge in PFRs would be accompanied by a significant reduction in the number of attorneys available to represent aliens on appeal because appearances before Federal courts are subject to specific requirements that are not applicable to practice before EOIR.

Response: As an initial matter, the Department notes that Congress created a statutory scheme for Federal court review of removal orders, *see* INA 242, 8 U.S.C. 1252, and to the extent that commenters have concerns about the impacts to Federal courts within that statutory scheme, including the amount of time to consider such appeals, docketing practices before the Federal courts, development of the record before the Federal courts, or decisions issued by the Federal courts, such concerns are both wholly speculative and outside of the scope of this rulemaking.

Commenters' views about a potential surge in Federal court PFRs are illogical and unfounded. Although the initial rate at which PFRs are filed may temporarily increase due to this rule, that rate would stabilize over time as courts and practitioners became accustomed to the new procedures. More importantly, the overall number of PFRs over time would not be expected to change, and commenters did not advance a persuasive argument as to why it should. As the IFR explained, even if all appeals were adjudicated with full briefing, there would be two general outcomes: (1) some cases would be decided in the alien's favor, in which case no PFR would be filed because Board decisions in the alien's favor cannot be reviewed by Federal courts; and (2) some cases would be decided adversely to the alien, in which case an alien might file a PFR. *See* 91 FR 5272 n.14. The summary dismissal provisions of this rule do not change those two expected outcomes. In cases where the Board summarily dismisses an appeal where the Immigration Judge's decision was erroneously adverse to the alien, the Board's decision not to further consider the appeal would mean that the alien might file a PFR to contest the adverse agency action, just as they could have prior to the IFR after an adverse Board decision. Meanwhile, in cases where the Board summarily dismisses an Immigration Judge's decision that was erroneously favorable to the alien and adverse to DHS, the failure of the Board to correct the decision would mean no PFR would be filed, because, as just noted, there is no Federal court review of cases erroneously decided in the alien's favor. Thus, although it is possible that this rule might change the timing of PFRs, the Department anticipates that there would be minimal to no impact on the volume of PFRs over time.

Moreover, even if there were an increase in PFRs, it would be more appropriately viewed as a byproduct of this rule's increasing efficiencies and should not be considered a negative result. Specifically, because the Department expects EOIR to render final administrative adjudications more swiftly due to this rule's provisions, aliens will much more efficiently be able to raise any available challenges to the agency determination for resolution before the Federal courts. Specific concerns related to the Department's staffing, including in the Office of Immigration Litigation, are outside the scope of this rulemaking, but the Department notes it has considered the impact of this rule's changes on Department resources necessary to handle immigration matters in Federal court. Likewise, the Department has similarly considered any impacts to the availability of private counsel and finds any concerns regarding potential unavailability at the PFR stage wholly speculative. Additionally, any resource constraints faced by the Federal courts in adjudicating cases within their Congressionally mandated jurisdiction, *see* INA 242, 8 U.S.C. 1252, are both outside the scope of this rulemaking and outside the control of the Department.

With respect to commenters' concerns about potential impacts to EOIR, such as predictions of dramatic increases in remands to the agency, these concerns are both speculative and unsupported by current operations. As stated in the IFR, on substantive review the Board generally agrees with Immigration Judge

decisions in the overwhelming majority of cases—a conclusion that is unchallenged by commenters. Thus, even before this rule, Federal courts were already often considering the Immigration Judge's reasoning when considering PFRs. Accordingly, the Department does not expect there to be a dramatic shift in the number of cases remanded to the agency where the Board summarily dismisses an appeal, similarly leaving the Immigration Judge's decision undisturbed. And even if there were to be a modest increase in the number of remands to the Board, the IFR's fundamental changes to make the appellate process more efficient outweigh the negatives of any such increase.

Comment: Commenters also expressed concern with the sufficiency of the record to be reviewed by the Federal courts. Specifically, commenters stated that the Federal courts would largely conduct the first substantive appellate review of cases without the benefit of prior briefing by the parties or legal analysis by the Board, which would deprive the Federal courts of the agency's analysis that, in commenters' view, is needed to undertake meaningful judicial review.

According to commenters, because the Board creates transcripts only in cases that are not summarily dismissed, the administrative record received by the Federal courts will not contain a transcript of the underlying proceedings or the Immigration Judge's oral decision, thereby preventing the appellate court from reviewing testimony or the basis for the order of removal. Lastly, commenters argued that the rulemaking should explain how transcripts and oral decisions will be provided after an alien files a PFR.

Response: The Department will comply with all statutory requirements for submitting the appellate record for cases being considered by the Federal courts. *See, e.g.,* INA 242(b)(2), 8 U.S.C. 1252(b)(2); Fed. R. App. P. 17(b). It will also provide transcripts in all cases where it otherwise would have provided a transcript if the Board had decided the case under prior procedures. The specific transcription process, including contract services and the provision of transcripts internally to submit the administrative record, are beyond the scope of this rulemaking, and the Department declines to specify them.

Further, the Department notes that the statute also sets forth requirements for parties before the Federal courts, such as the required submission of briefs. *See* INA 242(b)(3)(C), 8 U.S.C. 1252(b)(3)(C); *see also* Fed. R. App. P. 28, 31 (setting briefing requirements). Thus, irrespective of whether briefs have been submitted to the Board, the Federal courts will have the benefit of briefing for all issues subject to Federal court review. Moreover, any relevant agency record will be available for purposes of review before the Federal courts and, to the extent that aliens have concerns over the adequacy of the record, such arguments can be directed to the Federal courts, which can hold the case for the filing of the complete record or remand where the record is incorrect or incomplete.

Comment: Commenters posited that aliens could bypass the Board altogether and file a PFR directly with a Federal court, as the INA requires aliens to exhaust only administrative remedies that are available as of right, and not contingent on permission or discretion. *See Santos-Zacaria,* 598 U.S. at 424. Thus, according to commenters, the Federal courts would become the default venue for review, flooding the Federal courts with PFRs and stays of removal, and resulting in extensive backlogs.

Response: Any concerns regarding interpretations of the INA's exhaustion requirements are properly raised before the Federal courts, to whom such requirements apply. *See* INA 242(d)(1), 8 U.S.C. 1252(d)(1). As the Department explained in the IFR, when an appeal is summarily dismissed under the provisions added by this rule, the Department intends that the Immigration Judge's decision become the final agency decision for purposes of Federal court review, unless the Attorney General exercises discretion to review under 8 CFR 1003.1(h). In any PFR of a final removal order under section 242(a)(1) of the Act, 8 U.S.C. 1252(a)(1), following a summary dismissal by the Board, the Department expects that the Federal courts would review the substance of the Immigration Judge's decision as the basis for the final order. Thus, this rule does not change any existing understanding regarding when a removal order becomes final or when a PFR must be filed.

Comment: Some commenters suggested possible alternatives, arguing, for example, that if the Federal courts are the appropriate venue to adjudicate appeals, then the entirety of immigration proceedings should be removed from the control of the Department. Commenters also suggested that if the Department eliminated the Board's jurisdiction over appeals of motions to reopen and reconsider, aliens would be able to file a PFR of such decisions directly with the Federal courts, which would result in only a comparatively minimal increase in PFRs.

Response: Commenters' recommendations are beyond the scope of this rulemaking and the Department's authority. Congress has provided for a system of administrative hearings for immigration cases, and the Department cannot change that system. *See generally* INA 240, 8 U.S.C. 1229a (establishing administrative procedures for removal proceedings); *cf. Strengthening and Reforming America's Immigration Court System: Hearing before the Subcomm. on Border Sec. & Immigration of the S. Comm. on the Judiciary,* 115th Cong. 1 (2018) (written response to Questions for the Record of James McHenry, Director, Executive Office for Immigration Review) (''The financial costs and logistical hurdles to implementing an Article I immigration court system would be monumental and would likely delay pending cases even further.''). Because commenters' claims are unfounded in law or practice and well beyond the scope of this rulemaking, the Department declines to make any revisions to the rule on the basis of such claims.

Commenters' recommendations to remove Board jurisdiction over appeals of Immigration Judge denials of motions to reopen or reconsider are outside of the scope of this rulemaking, which addresses the procedures for filing and consideration of appeals before the Board and does not address the Board's jurisdiction.

2. Harm to Specific Populations

Comments: Commenters asserted that the Department did not consider the IFR's impact on specific vulnerable populations, including pro se aliens; detained aliens; indigent aliens; alien children, including UACs, those eligible for Special Immigrant Juvenile visas (''SIJ''), and U.S. citizen children with at least one parent without legal immigration status; aliens with mental illnesses or disabilities; aliens at risk of gender-based violence or human trafficking; non-English speaking or low-literacy aliens; communities of color; asylum-seekers; and pro bono organizations or providers. In general, commenters argued that the IFR would disproportionately harm these populations by denying them access to legal counsel, meaningful review of their proceedings, and a reasonable opportunity to fully assert their claims on appeal.

First, commenters stated that the Department did not consider the impact of the IFR's shorter deadlines, lack of guaranteed merits review, and limited briefing opportunities on pro se aliens.

Commenters additionally highlighted the difficulty of accessing the Federal courts for a pro se alien, who, according to commenters, would be unable to navigate the complex and stringent procedural requirements of filing a PFR. Commenters claimed that due to the lack of automatic stays of removal in Federal court, pro se aliens will struggle to successfully seek a stay of removal on appeal. Commenters also contested the IFR's assumption that pro se aliens have access to its electronic filing system to file a Notice of Appeal, stating that only attorneys and Accredited Representatives can access ECAS and that EOIR is still phasing enrollment for the analogous Respondent Access Portal, so pro se aliens are only eligible to register if they receive an official notice of eligibility by mail. Relatedly, commenters noted that the Form EOIR–26, Notice of Appeal, is not available through the Respondent Access Portal. Commenters also asserted that, even for those aliens who have enrolled in the Respondent Access Portal before the Immigration Judge issues the decision, the Respondent Access Portal does not grant unrepresented aliens access to the DAR of the proceedings.

Second, commenters stated that detained aliens will be adversely and disproportionately impacted by the IFR and the shortened appeal timeline. Specifically, commenters argued that detained appellants may be unable to, or severely limited in, timely appealing an Immigration Judge decision due to restrictions in accessing counsel, phones, mail, legal libraries, and writing materials, all of which could stifle the filing of timely and legally sufficient Notices of Appeal. Commenters claimed that detained respondents are subject to pervasive technological and communications issues, including expensive and unreliable telephone calls to discuss legal matters, lack of access to email and electronic messaging, barriers to in-person visits, and delays in mail related to their legal proceedings, thus interfering with their timely receipt of notice of an Immigration Judge's decision and their ability to file their Notice of Appeal or conduct legal research to file briefs.

Third, commenters stated that indigent aliens with limited financial resources will be unable to procure the financial support necessary to afford filing fees and representation within the shortened appeal period proposed by the IFR, particularly in light of the recently increased cost of filing appeals, and may lack computers for electronic record review or filing. Commenters asserted that the combination of high filing fees, shortened deadlines, and representation costs creates layered financial barriers that undermine meaningful access to appellate review for any aliens, but especially indigent aliens.

Fourth, commenters argued that the IFR will negatively impact children. Specifically, commenters stated that the IFR will significantly reduce UACs' and alien children's ability to secure counsel in time or to sufficiently represent themselves before the Board. Commenters added that the IFR creates a confusing two-tiered system for appeal windows that is compounded by the statutory protections in place for UACs and alien child asylum seekers and ignores the heightened risk of errors in cases with UACs and alien children. Commenters generally stated that UACs and alien children lack the developmental capacity, legal knowledge, financial resources, and practical ability to navigate the changes delineated in the IFR.

Commenters further claimed that the IFR will adversely impact U.S. citizen children with at least one parent without immigration status and children eligible for SIJ visas. Commenters asserted that, due to the increased removals of aliens as a result of the IFR, U.S. citizen children with at least one parent will suffer mental health and long-term developmental impacts ''as they fear one or both parents could be arrested, detained, or deported.'' Further, such U.S. citizen children, according to commenters, also risk being suddenly placed in State child welfare systems if their caregivers are detained, further exacerbating these issues. Additionally, commenters claimed that increased instances of family separation due to the IFR will prevent children eligible for SIJ visas from ''seeking protection from abuse, abandonment, or neglect'' if the caregiver whose care they are living under is ordered removed.

Fifth, commenters asserted that aliens with mental illnesses or disabilities and aliens dealing with trauma-related difficulties will struggle to meet tighter appeal deadlines and identify issues on appeal due to their diminished capacity and lack of legal sophistication.

Sixth, commenters contended that this rule would disproportionately impact low-literacy and non-English-speaking aliens. Commenters posited that, in addition to completing the requirements for appeal, aliens who do not speak or read in English must also obtain translations or interpretation of the Immigration Judge's decision to understand the status of their case and the options available to them, which would be impossible to do within the IFR's appeal timeframe. Commenters noted that aliens must also translate their claims to complete the Form EOIR–26, Notice of Appeal, which is only offered in English and must be filled out in English. Commenters claimed that aliens who speak rare languages face additional barriers and will not have time to access interpretation or translation of documents under the IFR.

Seventh, commenters generally asserted that the IFR would negatively impact communities of color, leading to greater racial and economic disparities and undermining access to justice. One commenter claimed that the IFR would disproportionately impact Southeast Asians, who are uniquely situated within the immigration enforcement system due to the intersection of forced displacements, resettlement conditions, and criminalization. That commenter argued that the IFR will accelerate deportations of Southeast Asians by reducing critical safeguards against legal error.

Eighth, commenters argued that the IFR will negatively impact asylum seekers due to limitations on appeals resulting in the removal of individuals eligible for asylum without meaningful appellate oversight. Some commenters claimed that asylum seekers would lack time to gather evidence and build their cases on appeal. Commenters worried that the two distinct deadlines for asylum appeals will cause confusion for asylum seekers already navigating a complex system. Specifically, commenters emphasized that the IFR is silent as to whether aliens will be provided with notice of which deadline applies to their asylum appeal. Some commenters noted that asylum-seeking alien children will lack an opportunity for meaningful review of their cases and the opportunity to challenge legal error when their applications are denied based on ACA grounds, the one-year filing bar, or other application bars because ten days is an insufficient amount of time for a child to prepare a claim or find an attorney.

Lastly, commenters stated that organizations that serve pro se and indigent aliens are already strained, and that this rule will diminish their capacity to effectively and ethically represent clients by creating a conflict between procedural compliance and ethical duties. Commenters further argued that practice before the Federal courts is extremely different from practice before EOIR and few organizations have sufficient staff admitted to the bars of Federal courts of appeals to handle PFRs.

With regard to possible alternatives to reduce the impact on the populations noted above, some commenters suggested incorporating safeguards into the IFR, including automatic extensions for detained aliens and acceptance of a ''short form protective'' Notice of Appeal followed by a supplemental statement of issues, in recognition of the significant logistical barriers to communicating with counsel, reviewing records, and securing required signatures.

Response: The Department has considered the impact of the rule on all of the populations raised by commenters and has thoroughly reviewed the concerns raised. In general, the commenters' concerns relate to the hypothetical experiences of individuals in unusual, isolated circumstances, or policy disagreements that already exist under the current regulations. The commenters' concerns about these hypothetical scenarios and differing policy views are not persuasive. Furthermore, the Department has concluded that even if the concerns raised are factually accurate and accurately reflect the law and practice, those concerns—both singularly and cumulatively—are nonetheless outweighed by the salutary efficiency benefits of the rule.

The agency recognizes that no rule can cover every single possible scenario regarding an alien population currently in immigration proceedings of approximately 3.5 million, each of whom is differently situated in terms of background, education level, immigration status, English proficiency, personal characteristics, sophistication, representation status or desire for representation, and availability of relief. Many of these permutations have been raised by commenters, and there will inevitably be others, too. However, the potential existence of unique cases, which can be addressed through other means on a case-by-case basis, is insufficient to outweigh the efficiency benefits generated by this rule. In short, the agency has considered all of the commenters' concerns and acknowledges that there may be individual cases in which commenters' concerns are validated; however, as a policy matter, those concerns are outweighed by the benefits of the rule.

This rule is intended to streamline administrative appellate review by the Board and will benefit aliens, including particularly vulnerable groups, by removing obstacles to timely adjudications. *See* 91 FR 5270. Moreover, this rule does not distinguish between individuals based on race, nationality, ethnicity, or any other protected characteristic. As detailed in the IFR, the Department is changing the regulations to provide the Board with more flexibility in reviewing appeals, allowing the Board to focus its limited resources on addressing the backlog of pending appeals and, going forward, ensure that aliens benefit from efficient adjudication of appeals.

In doing so, the Department considered the impact that the IFR would have on specific populations, including those highlighted by commenters above. *See* 91 FR 5270 n.9–10; *id.* at 5272 n.16; *id.* at 5273. The Department considered the potential effects of the IFR's changes, including on the populations mentioned by commenters, but ultimately determined that the changes would provide significant benefits that outweigh the potential costs. *See* 91 FR 5276. The Department discusses the impact on those populations below; for a more detailed discussion of the specific provisions referenced by commenters and relevant due process and statutory concerns, please see Section III.C of this preamble.

The Department recognizes that pro se aliens can face difficulties while navigating the immigration system, as compared to those with counsel. *See* 91 FR 5272 n.16. These difficulties are to be expected with respect to any unrepresented individual in a legal setting. As a general matter, the Department notes the statutory right to self-funded counsel, *see* INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A), and the ability to seek pro bono legal counsel.[31] The Department also notes that many aliens voluntarily choose to forgo counsel for personal reasons and that commenters did not explain why those who deliberately choose to proceed without counsel should receive special solicitude.

The IFR explicitly considered the impact on unrepresented aliens and their access to counsel. *See* 91 FR 5272 n.16. As explained in Section III.C of this preamble, the rule is entirely focused on the administrative appellate process and does not change any alien's right or ability to obtain or confer with counsel when initially placed into removal proceedings or at any other point in time. And, in fact, the Department notes that a clear majority of aliens appearing before the Board have representation. For those who do not, various regulations implement an alien's right to self-funded counsel and to seek pro bono counsel by requiring Immigration Judges to advise aliens of that right and the availability of pro bono legal services. *See* 8 CFR 1240.10(a)(1), (a)(2); *see also* 8 CFR 1003.61(b) (requiring the Director of EOIR to maintain the List of Pro Bono Legal Service Providers and update it not less than quarterly). The Department notes that aliens are entitled by statute to only 10 days to seek counsel before their case may proceed at the trial level, which mirrors the IFR's 10-day appeal window. *See* INA 239(b)(1), 8 U.S.C. 1229(b)(1).

Furthermore, pro se aliens have the ability to request continuances to obtain counsel while in proceedings. Additionally, a pro se alien unable to obtain counsel prior to the deadline for filing a Notice of Appeal will have additional time to seek counsel if the Board accepts the appeal for consideration with briefing prior to filing a PFR with the Federal courts. *See* INA 242(b)(1), 8 U.S.C. 1252(b)(1). The Department, therefore, continues to anticipate that the rule would have any potential impact only on the relatively small number of pro se aliens who may not be able to find legal counsel, or secure limited document assistance, after diligent attempts to do so, in time to file a Notice of Appeal. Commenters did not provide evidence that this population of pro se aliens would be especially larger than the current number of unrepresented aliens before the Board,[32] and having considered that impact, the Department finds it is outweighed by the efficiency benefits associated with the rule.

Separately, the Department finds that commenters were speculating as to the impact that the rule's provisions will have on pro se aliens' ability to adequately file a Notice of Appeal. Functionally, the change in the appeal deadline implemented by this rule is 20 fewer days to seek counsel in proceedings that often have taken years to complete. Nor are the filing or briefing deadlines impediments to effective representation. There is no reason that pro se aliens should be unable to file an adequate and timely Notice of Appeal identifying the relevant issues to be considered on appeal with the requisite specificity—just as pro se aliens do under the current regime. Contrary to commenters' characterizations, there is no change in the IFR requiring that issues must be raised with a high level of exactitude.

[31] *See, e.g.,* EOIR, *PM 21–08, Pro Bono Legal Services* (Dec. 10, 2020), *https://www.justice.gov/eoir/book/file/1446651/download* [*https://perma.cc/U6ZW-FX8U*].

[32] *See generally* EOIR, *Current Representation Rates* (Nov. 18, 2025), *https://www.justice.gov/eoir/media/1344931/dl?inline* [*https://perma.cc/QC5J-3DD6*].

Rather, the Notice of Appeal must simply include enough specific information that the Board can review the issues being appealed and, under this rule's procedures, determine whether to accept the appeal for further review with briefing. *See* Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge, Sec. 6, (Sept. 2019), *https://www.justice.gov/eoir/file/eoir26/dl* [*https://perma.cc/P3PP-7T3H*] (''State in detail the reasons for this appeal.''); *see also Nolasco-Amaya,* 14 F.4th at 1012 (an alien must ''provide meaningful guidance to the BIA by informing it of the issues contested on appeal; a generalized and conclusory statement about the proceedings before the [Immigration Judge] does not suffice'') (cleaned up).

With regard to commenters' concerns about the availability of electronic filing for pro se aliens, the Department notes that the Respondent Access Portal allows for the electronic filing of the Notice of Appeal.

Although commenters expressed concerns regarding pro se aliens or new counsel having to file a Notice of Appeal without having access to the oral decision being challenged, the Department notes that, as discussed in Section III.C.2 of this preamble, when issuing a decision orally, the Immigration Judge must state the decision in the presence of the parties. *See* 8 CFR 1003.37(a). The alien, therefore, will be present for the issuance of an oral decision, and the Department is confident that Immigration Judges will clearly and adequately orally explain any basis for their decision, taking into consideration the circumstances of the alien. Aliens may then use that knowledge when preparing and submitting a Notice of Appeal.

The IFR further maintains Board discretion over briefing extensions and supplemental briefing. *See* 91 FR 5277. Further, as noted above, pro se aliens benefit from a statutory right to file a motion to reconsider an Immigration Judge's decision to address ''errors of law or fact in the previous order. . . .'' *See* INA 240(c)(6), 8 U.S.C. 1229a(c)(6). In addition, exceptional situations may be addressed on a case-by-case basis through the Board's consideration of equitable tolling.

Next, the Department has considered the potential that the rule—despite the safeguards just mentioned—may impact some pro se aliens' ability to file their appeal or PFR as a result of the generally shortened Board appeal deadline, the comparative complexity of PFRs, and the lack of automatic stays of removal in Federal courts. Although commenters may prefer an automatic stay at the Board to a discretionary stay before the Federal courts,[33] Congress, as discussed in Section III.C.1.a of the preamble, explicitly made such stays discretionary, *see* INA 242(b)(3)(B), 8 U.S.C. 1252(b)(3)(B), and this rule in no way affects Federal court adjudication of any such stay motions. Ultimately, the Department believes that the interest in timely adjudications outweighs these potential concerns.

The Department further acknowledges commenters' concerns regarding the IFR's impact on pro se detained aliens but does not believe that the rule makes it more challenging for pro se detained aliens to access legal representation or to file a timely appeal, as explained above with regards to pro se aliens more broadly. To the extent that commenters believe detained aliens should have improved access to counsel, faster communication, and better access to legal resources while in detention, those issues lie outside the scope of this rulemaking. The difficulties highlighted by commenters relate largely to challenges that existed prior to the IFR and by virtue of an alien's detention or lack of representation, which remain unaffected by this rulemaking. Additionally, EOIR, DHS, and detained aliens, as well as the broader public, have a heightened interest in the efficient resolution of such cases, including any administrative appeals, given the potential liberty interests implicated when an alien is in detention during the pendency of a case before EOIR, as well as heightened costs to the Government. As such, it is even more important that a case involving a detained alien does not remain pending with the Board for longer than necessary. This rule's provision for summary dismissal, except in those cases in which the Board has determined further briefing and administrative review is needed to address novel or complex situations, will help promote these policy interests.

With regard to indigent or low-income aliens, this rule does not affect an alien's ability to request fee waivers under existing regulations, as discussed in Section III.C.2 of this preamble. *See* 8 CFR 1003.8(a)(3). The Department emphasizes that the recent statutory changes in filing fees and the applicability of a waiver for certain fees are beyond the purview of the Department and beyond the scope of this rulemaking.[34]

Relatedly, the Department recognizes the categorization of UACs and the unique protections afforded them under the law, including in the TVPRA and within the immigration system. *See, e.g.,* INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C) (stating that an Asylum Officer has initial jurisdiction over the asylum claims of UACs); 8 U.S.C. 1232(d)(8) (''Applications for asylum and other forms of relief from removal in which a [UAC] is the principal applicant shall be governed by regulations which take into account the specialized needs of [UACs] and which address both procedural and substantive aspects of handling [UACs]' cases.''); 8 U.S.C. 1232(c)(5) (TVPRA's provision that ''[t]he Secretary of Health and Human Services shall ensure, to the greatest extent practicable . . . that all unaccompanied alien children who are or have been in the custody of the Secretary or the Secretary of Homeland Security, and who are not described in subsection (a)(2)(A), have counsel to represent them in legal proceedings.''). The Department acknowledges that the Government is statutorily required to ''ensure, to the greatest extent practicable'' that UACs are represented in Immigration Court, though that does not categorically require access to counsel in every removal proceeding. *See* 8 U.S.C.1232(c)(5). But the IFR is consistent with these laws and regulations, including the TVPRA; nothing in this rule is implicated by, or conflicts with, the provisions therein because those statutes and regulations do not relate to the Board's appellate procedures.

The Department recognizes commenters' concerns that UACs may not have the autonomy or understanding of proceedings to assert their claims on appeal or to seek adequate representation, but these obstacles existed prior to the changes made by the IFR, and the existing protections that serve this population are intended to address such obstacles. Further, with respect to the effects of trauma on children and concerns about re-traumatization, the Department is confident in the ability of Immigration Judges and the Board to follow appropriate safeguards available for children in processing appeals. Adjudicators receive training and guidance related to special considerations in cases involving

[33] Moreover, several circuit courts of appeals have local rules or practices under which the filing of a PFR and a timely stay motion does effectively trigger an automatic stay. *See, e.g.,* National Immigration Litigation Alliance, *Courts of Appeals Rules Governing Judicial Motions to Stay Removal, https://immigrationlitigation.org/wp-content/uploads/2025/01/2023.11-Circuit-Stay-Rules-FINAL-FINAL.pdf* [*https://perma.cc/7R93-JC4Y*]. This rule does not affect those rules or practices.

[34] *See* OBBBA, Public Law 119–21, sec. 100013(d)–(e), 139 Stat. 72 (2025).

children.[35] The Board also has the ability to exercise discretion in extending deadlines and granting supplementary briefing to aid in accounting for these special considerations.

The Department additionally recognizes the difficulties faced by aliens with mental impairments, disabilities, and associated competency issues. However, this rule does not in any way alter existing protections for aliens with mental impairments and other competency issues. Notably, the Board's decision in *Matter of M–A–M–,* 25 I&N Dec. 474 (BIA 2011), continues to provide applicable guidelines for assessment of competency issues in proceedings before EOIR. Furthermore, this rule in no way impacts existing programs like the National Qualified Representative Program (''NQRP'') for detained aliens who are found mentally incompetent.[36] The Department believes that the existing protocols, in conjunction with the Board's discretionary authority to extend filing deadlines in appropriate situations and the various exceptions provided by the rule, are sufficient to ensure fairness towards aliens with mental competency issues. The Department finds commenters' assertions regarding victims of human trafficking facing difficulties in meeting the appeal deadline and the resulting loss of critical information that would help dismantle human trafficking networks to be highly speculative given the resources and protections in place for such individuals.[37]

With respect to commenters' concerns that low-literacy and non-English-speaking aliens may be impacted by the IFR's changes due to the need to procure translations of documents and interpretation of communications, the Department notes that nothing in the IFR prevents an alien from coordinating with counsel, an interpreter, or a translator, if the alien chooses, as needed to pursue an appeal. To the extent the concern relates to the alien's evidence, most commenters failed to acknowledge that all evidence submitted in an immigration hearing, regardless of who submits it, is to be submitted in English or with an English translation. *See* 8 CFR 1003.33. As such, evidence filed with the Immigration Courts that serves as the basis for appeal will already have a translation. Additionally, nothing in the statute or regulations requires that evidence of record be written or explained in the alien's native language. *Cf. Singh* v. *Holder,* 749 F.3d 622, 626 (7th Cir. 2014) (''[I]n the immigration context, personal service in English to a non-English-speaker typically satisfies due process because it puts the alien on notice that further inquiry is needed, leaving the alien to seek help from someone who can overcome the language barrier.''); *Ojeda-Calderon* v. *Holder,* 726 F.3d 669, 675 (5th Cir. 2013) (''Due process allows notice of a hearing to be given solely in English to a non-English speaker if the notice would put a reasonable recipient on notice that further inquiry is required.'').

The Department also acknowledges that certain other populations may have unique vulnerabilities while navigating the immigration system. The Department notes that the rule and its exceptions apply equally to all aliens, regardless of nationality, race, ethnicity, or other demographics of concern identified by the commenters. Further, as explained in this section, adjudicators receive training to help them account for the harm that any particular alien, regardless of the alien's group, may face. *See* EOIR, *Fact Sheet: Immigration Judge Training Fact Sheet* (Aug. 2026), *https://www.justice.gov/eoir/page/file/1513996/dl?inline* [*https://perma.cc/Q3AK-N7ZF*]. Adjudicators can apply that training when exercising their discretion. As described above, the Board maintains the ability to exercise discretion in extending deadlines and granting supplementary briefing to account for special considerations on a case-by-case basis through the Board's consideration of equitable tolling. The Board can also grant aliens additional time to seek counsel if the Board accepts an appeal for consideration with briefing prior to the alien filing a PFR with the Federal courts. *See* INA 242(b)(1), 8 U.S.C. 1252(b)(1). The Department also has confidence in the Board's ability to follow all relevant laws and policies, described above, that aim to protect vulnerable groups.

The Department further disagrees with commenters that it will be unclear which deadline applies to an asylum case because aliens will not know on what basis an Immigration Judge denied an asylum application. The Department is confident that Immigration Judges will clearly articulate any basis for denying an alien's asylum application such that the applicable appeal-filing deadline will be readily apparent. Additionally, the Department expects that Immigration Judges will advise aliens of the applicable appeal deadline as part of the obligation to advise an alien of his or her appeal rights. *See* INA 240(c)(5), 8 U.S.C. 1229a(c)(5) (requiring the Immigration Judge, if ordering an alien removed, to ''inform the alien of the right to appeal that decision''); 8 CFR 1240.10(a)(3) (requiring the Immigration Judge to ''[a]scertain that the respondent has received a copy of appeal rights''); *see also* EOIR, Policy Manual, pt. II, ch. 3.15(h) (Feb. 10, 2026), *https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-15* [*https://perma.cc/HK27-PJAZ*] (stating that ''the Immigration Judge informs the parties of the deadline for filing an appeal with the Board, unless the right to appeal is waived''). The Department notes commenters' concerns regarding the additional strain that the rule will potentially place on pro bono providers and organizations who serve pro se and indigent aliens. To the extent that commenters posited hypothetical scenarios about particular pro bono service providers, law student clinics, or particular types of cases, the Department notes that if such scenarios materialize in practice, then the Board can consider whether any of the factors referenced by the commenters warrant additional briefing or extensions. The intent of this rule is to streamline the appellate process and avoid undue delays. Because lengthy delays in immigration proceedings often dissuade pro bono representation, especially by law student clinic volunteers, ensuring expeditious adjudication of appeals may in fact encourage more pro bono representation.[38]

[35] *See, e.g.,* EOIR PM 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (Dec. 20, 2017), *https://www.justice.gov/eoir/file/oppm17-03/download* [*https://perma.cc/J6LG-SHY6*] (recognizing unique circumstances presented by immigration cases involving children and providing guidance for those cases); *see also* EOIR, *Policy Manual,* pt. II, ch. 3.21 (Feb. 10, 2026), *https://www.justice.gov/eoir/policy-manual-eoir/part-II/icpm/chapter-3-21* [*https://perma.cc/RS8P-YQ4A*] (delineating safeguards for juvenile appearances in Immigration Court).

[36] *See* EOIR, *National Qualified Representative Program* (July 23, 2025), *https://www.justice.gov/eoir/national-qualified-representative-program-nqrp* [*https://perma.cc/3F46-DJ95*].

[37] *See, e.g.,* EOIR PM 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children (Dec. 20, 2017), *https://www.justice.gov/eoir/file/oppm17-03/download* [*https://perma.cc/J6LG-SHY6*] (delineating human trafficking protocols for EOIR); *see* INA 101(a)(15)(T)–(U), 8 U.S.C. 1101(a)(15)(T)–(U) (T and U visa provisions).

[38] Human Rights First, *In the Balance: Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems* (Apr. 2016) at 16, *https://humanrightsfirst.org/wp-content/uploads/2022/11/HRF-In-The-Balance.pdf* [*https://perma.cc/8CV2-WB9R*] (finding, based on a 2016 survey of pro bono coordinators, that ''nearly 75 percent of pro bono professionals indicated that delays at the immigration court are a significant or very significant negative factor in their ability to accept a case.''), *id.* at 18 (finding that ''[l]aw school clinics also report wasted resources and concerns about

Further, nothing in this rule requires the diversion of resources or alteration of the mission of any low cost or pro bono legal service providers, including nonprofit organizations, pro bono volunteers, clinics and law students, and Government-funded representatives, beyond what is already required by existing regulations and professional responsibility requirements. For example, Immigration Judges already possess the authority to set shorter application filing deadlines. *See* 8 CFR 1003.31(h). Further, practitioners are already prohibited from taking on more work than they can handle competently. 8 CFR 1003.102(q)(1). Thus, pro bono organizations already operate under the conditions outlined in this rule. Although the Department acknowledges that nonprofit organizations, pro bono volunteers, and Government-funded representatives may prefer longer deadlines—as most legal representatives do, especially when additional delays benefit their clients—the Department is confident that such representatives will be able to handle such deadlines, just as they do in other courts and just as they handle all regulatory changes inherent across Government agencies, and will continue to be able to provide assistance and resources to aliens in proceedings before EOIR. It is not the Department's responsibility to account for the staffing requirements, training, expertise, or opportunities for appearances of pro bono providers, organizations, and volunteers before the Board, in its rulemaking. Nevertheless, the Department has considered the concerns raised by commenters and has determined that they do not outweigh the benefits of this rulemaking.

Lastly, commenters made a number of recommendations regarding changes or alternatives to various provisions of the rule that, they suggested, would reduce the impact on the populations noted above, including a longer appeal deadline for aliens due to heightened burden in comparison with DHS, incorporating automatic extensions for detained aliens, acceptance of a ''short form protective'' Notice of Appeal followed by a supplemental statement of issues, and a ''carve-out'' for UACs and youth under the age of 21, requiring mandatory, non-discretionary further review with briefing in their appeals. The Department appreciates the recommendations submitted by commenters, but the Department has determined that none is preferable to the rule. In light of existing protections in place for these populations, the strong need to address the lengthy backlogs at the Board outweighs the interests advanced by commenters' suggestions.

In short, the Department disagrees that the sorts of speculative challenges raised by the commenters are sufficient to outweigh the benefits obtained from this rule's implementation. The IFR neither singles such aliens out for particularized treatment under the Board's procedures, nor does it restrict or alter any of the avenues noted above that may assist pro se, detained, or otherwise vulnerable aliens. Further, the Department has difficulty responding to commenters' generalized statements about various populations, trauma experienced by those populations, and other asserted difficulties because appeals are adjudicated on a case-by-case basis based on their specific facts. Given the limited available avenues for relief or protection and the risk of loss or degradation of evidence with the passage of time, the Department believes the significant efficiency benefits of the rule, on balance, far outweigh the speculative concerns raised by commenters. Moreover, in the event that there are ''one-off'' scenarios that do occur involving aliens in these groups, existing Board procedures—*e.g.,* the use of equitable tolling—can address such situations on a case-by-case basis.

3. Rule Violates International Law

Comment: Commenters argued that the IFR violates the United States' obligations under international law because it violates aliens' due process rights. Commenters also stated that the rule will have a discriminatory impact on aliens on the basis of national, ethnic, or social origin by limiting access to due process and appeals in Immigration Court, but not for non-Immigration Court matters. Commenters asserted that it would be a breach of international human rights obligations for the Department to subordinate equality and due process to its policy objectives.

Commenters also expressed concern that the IFR would exacerbate existing concerns about EOIR policies not complying with the United States' international obligations against refoulement. Specifically, commenters said that the IFR's provisions would prevent appropriate adjudications of claims for protection and limit meaningful appeal and review of asylum claims, thereby restricting access to asylum.

Commenters further expressed concern that the IFR precludes Board review of withholding-only proceedings. Commenters asserted that under the IFR, claims for both withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), and protection under the regulations implementing the CAT will be decided by Immigration Judges with no substantive appellate review available. Commenters cited *Riley* v. *Bondi,* 606 U.S. 259 (2025), in which the Supreme Court determined that the deadline to file a PFR for aliens in withholding-only proceedings is within 30 days of the prior removal order being reinstated. Thus, commenters stated, to obtain Federal court review in most withholding-only cases, an alien must file a PFR shortly after re-entering the United States or shortly after being arrested in the interior and having an old order reinstated. Commenters stated that most aliens are not able to locate counsel to file a PFR in that timeframe, and, in any event, until an alien has retained counsel, it is not logical to assume that they would wish to preserve their right to seek review of a withholding of removal or CAT decision before they have even filed for that protection (and in many instances before they have even received a reasonable fear interview placing their claims before an Immigration Judge).

Commenters noted that, under the IFR, the Board will continue to hear appeals in other matters where Federal court review is not available, including bond appeals and appeals of DHS visa decisions, but not withholding-only proceedings. Commenters argued that this prohibition on review does not make sense in the context of protection claims that are specifically designed to evaluate eligibility for mandatory forms of protection and comply with international human rights laws.

Response: This rule is consistent with international law, including the United States' treaty obligations, and, as stated in Section III.C of this preamble, the Department does not believe that this rule violates due process rights in any way.

Three primary documents govern the rights of refugees and corresponding obligations of states in international law: the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (''Refugee Convention''); the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (''Refugee Protocol''), which incorporates Articles 2 through 34 of the Refugee Convention; and Article 3 of the CAT. Together, these documents

clients' re-traumatization when they repeat their stories to new students.''); *see also* EOIR, *PM 21–08, Pro Bono Legal Services* (Dec. 10, 2020) at fn. 4, *https://www.justice.gov/eoir/media/1387501/dl?inline* [*https://perma.cc/H53U-TE7X*].

provide a framework for states to provide protection to aliens fleeing persecution or torture and establish the principle of non-refoulement, which prohibits states from returning refugees to territories in specific circumstances.

These treaties, however, do not prescribe or impose any particular minimum procedures for implementation of non-refoulement obligations. Although the United States is a party to the Refugee Protocol [39] and the CAT, these treaties are not directly enforceable in U.S. law. *See INS* v. *Stevic,* 467 U.S. 407, 428 & n.22 (1984); *Al-Fara* v. *Gonzales,* 404 F.3d 733, 743 (3d Cir. 2005) (''The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.''); *Omar* v. *McHugh,* 646 F.3d 13, 17 (D.C. Cir. 2011) (explaining that the CAT ''is non-self-executing and thus does not itself create any rights enforceable in U.S. courts''). Instead, the United States has implemented its obligations through domestic legislation and implementing regulations. The United States has implemented the non-refoulement provisions of the Refugee Convention through the withholding of removal provisions at section 241(b)(3) of the Act, 8 U.S.C. 1231(b)(3), rather than through the asylum provisions at section 208 of the Act, 8 U.S.C. 1158. *See INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 429, 440–41 (1987).[40] The United States has implemented its obligations under Article 3 of the CAT's non-refoulement provisions through regulations. *See* Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, sec. 2242(b), 112 Stat. 2681–761, 2681–822 (codified at 8 U.S.C. 1231 note) (''FARRA''); *see also, e.g.,* 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, 1208.18.

This rule does not change or limit ultimate eligibility for asylum, statutory withholding of removal, or CAT protection and accordingly does not implicate the United States' non-refoulement obligations under international law. As explained in Section III.C of this preamble, none of the provisions contained in the IFR and adopted as final in this rule would prevent appropriate adjudication of claims for relief or protection, nor do they limit meaningful appeal or review of such claims. Instead, the rule is intended to reduce the backlog preventing such claims from being efficiently adjudicated.

Furthermore, the rule does not violate the nondiscrimination requirement in Article 3 of the Refugee Convention, which prohibits discrimination on the basis of ''race, religion or country of origin.'' 19 U.S.T. at 6264, 189 U.N.T.S. at 156. As discussed in Section III.D.2 of this preamble, the rule does not discriminate on the basis of any of the protected characteristics described in Article 3. For the same reason, the rule does not violate other antidiscrimination principles described in other international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, arts. 2–5, Dec. 21, 1965, T.I.A.S. No. 94–1120, 660 U.N.T.S. 195 (signed and ratified by the United States), and the International Covenant on Civil and Political Rights, arts. 2–3, Dec. 16, 1966, T.I.A.S. No. 92–908, 999 U.N.T.S. 171 (signed and ratified with reservations, understandings, and declarations by the United States).

Neither is the rule inconsistent with Article 16 of the Refugee Convention or other international agreements to which the United States is a signatory. *See* Refugee Convention, art. 16, 189 U.N.T.S. 137 (Jul. 28, 1951). Article 16 of the Refugee Convention relates to access to courts, providing, in part, that refugees ''shall have free access to the courts of law on the territory of all Contracting States.'' *Id.* Commenters argued that the IFR imposes impediments on judicial review of EOIR decisions in the courts of appeals, thus impermissibly preventing refugees from freely accessing the courts. As discussed in Section III.C.1 of this preamble, however, the IFR's summary dismissal procedures do not affect access to the courts of appeals. Rather, they affect only the Board's review process, which is wholly within the authority of the Attorney General, as the Board is a regulatory creation of the Attorney General and its existence is not mandated by Congress. *See Alexander-Mendoza,* 55 F.4th at 197 (''An alien's right to administratively appeal a removal order is not grounded in the Constitution.''); *Dia,* 353 F.3d at 242 (''Quite clearly, '[a]n alien has no constitutional right to any administrative appeal at all.' '').

Lastly, the Department disagrees with commenters' assertions that the IFR's summary dismissal provisions violate international law by further limiting substantive appellate review of statutory withholding of removal and protection under the CAT regulations in withholding-only proceedings, given the Supreme Court's holdings in *Riley.* As relevant to Board appeals, nothing in this rule prevents an alien from filing a Board appeal in a relevant withholding-only proceeding. As explained in the IFR, the Department intended that the rule ''would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed.'' *See* 91 FR 5271.

And regardless of how the Board chooses to handle a specific appeal, the alien will then maintain their existing ability to further file a PFR of that decision in the relevant Federal court. *See, e.g.,* INA 242(b), 8 U.S.C. 1252(b) (providing requirements and standards for PFRs). Whether any timing issues regarding reinstatement of a prior removal order preclude such Federal court review is, however, outside the scope of this rule. In *Riley,* the Supreme Court recognized logistical concerns regarding when a removal order becomes final for purposes of Federal court review in withholding-only proceedings but ultimately determined the court ''must nevertheless follow the statutory text and [ ] prior precedents.'' 606 U.S. at 272.

E. APA Concerns

Comment: Commenters raised APA concerns over the IFR's justifications for foregoing standard notice and comment procedures, including concerns over the availability and duration of the comment period prior to the IFR's issuance. Commenters argued that the APA's procedural and foreign affairs exceptions did not apply to the IFR and that the Department's invocation of these exceptions was improper. Commenters also stated that a regulatory flexibility analysis should have been conducted under the Regulatory Flexibility Act (''RFA''), specifically on the impact of the IFR on nonprofit organizations serving aliens in immigration proceedings.

[39] *See Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 169 n.19 (1993) (''Although the United States is not a signatory to the [1951 Refugee] Convention itself, in 1968 it acceded to the United Nations Protocol Relating to the Status of Refugees, which bound the parties to comply with Articles 2 through 34 of the Convention as to persons who had become refugees because of events taking place after January 1, 1951.'' (citation omitted)).

[40] As the Supreme Court explained, asylum ''does not correspond to Article 33 of the [Refugee] Convention, but instead corresponds to Article 34[,]'' which provides that contracting countries ''shall as far as possible facilitate the assimilation and naturalization of refugees.'' *Cardoza-Fonseca,* 480 U.S. at 441 (quoting Refugee Convention art. 34, 19 U.S.T. at 6276, 189 U.N.T.S. at 176); *see also* United Nations High Commissioner for Refugees (''UNHCR''), *Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* 16 para. 25 (2019 ed.) (''[T]he granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol''). Article 34 of the Refugee Convention ''is precatory; it does not require the implementing authority actually to grant asylum to all those who are eligible.'' *Cardoza-Fonseca,* 480 U.S. at 441.

Commenters claimed that the APA exceptions should be read narrowly, and that the IFR's justifications interpreted these exceptions too broadly. Other commenters claimed that the IFR did not adequately address the consequences of the IFR's changes on the accuracy, uniformity, and fairness of the Board's decisions, nor consider less restrictive alternatives. Commenters likewise claimed that future Administrations would use the same justifications in rulemakings, which would have a negative effect on the quality of such rulemakings.

Separately, commenters stated that the original 30-day comment period was not sufficient for such a significant rule.

Response: Commenters' concerns regarding APA procedures echo those raised in recent litigation over the IFR. *See Amica,* 822 F. Supp. 3d at 168. However, as explained in Section I.D of this preamble, the Department's publication of this final rule addresses these procedural concerns. The IFR contained a request for comments, and the Department has fully considered and responded to such comments in this final rule. Thus, the APA's notice and comment procedures have been fully satisfied. *See Little Sisters,* 591 U.S. at 682–86 (''Formal labels aside, the rules contained all of the elements of a notice of proposed rulemaking as required by the APA.'').

Further, as discussed at length in Sections III.B. and III.C of this preamble, the final rule has addressed concerns about its effect on the accuracy, uniformity, and fairness of the Board's decisions and considered alternatives; thus, it has addressed those concerns as they pertain to the IFR. The Department also finds commenters' concerns about applying similar APA exception-related justifications to other rulemakings to be outside the scope of this rulemaking; such concerns can and should be raised in response to those rulemakings, as applicable.

With regard to the comment period duration, the Department extended the comment period to include an additional 30-day period in addition to the original 30-day period. *See* 91 FR 9705. Thus, the Department has no concerns that the total 60-day period was insufficient. This view is supported by the more than 1,600 comments received, including dozens of lengthy, detailed comments from interested advocacy organizations.

Finally, with regard to commenters' claims that the Department did not adequately address the IFR's impact on accuracy, uniformity, and fairness of Board decisions, commenters' concerns are vague and relate to aspects of the law outside the Department's control. For example, commenters expressed concern that, beyond correcting errors in individual cases, the Board serves an important function to develop, clarify, and harmonize immigration law, and that increased Federal court involvement in review of such decisions will raise the likelihood of acute inter-circuit conflict. However, EOIR cannot control which decisions are subject to an alien's choice to seek Federal court review, nor can it accurately predict how the different circuits will rule on issues as they percolate. Even so, the Board will continue to clarify and harmonize immigration law through precedential decisions in cases where the *en banc* Board determines that further review and clarification is necessary.

Comment: Commenters also claimed that the IFR is arbitrary and capricious under the APA because it failed to consider important impacts on affected populations. Commenters stated that the rule would place significant burdens on aliens and their counsel by shortening appeal timelines and reducing the availability of substantive Board decisions through summary dismissal and limiting briefing. Taken together, these changes would make it difficult to present fully developed arguments to the Board, would reduce the availability of counsel, and would have a particularly detrimental impact on vulnerable populations, such as detained aliens, among others.

Commenters also noted that the IFR's changes were occurring in the context of other changes to the Immigration Court system, including increased fee amounts, recent Board decisions tightening standards for relief, and personnel changes at EOIR, among others, that, according to commenters, raised the risk of higher Immigration Judge error rates going uncorrected under the IFR's provisions.

Response: In issuing this rule, the Department explicitly considered the various impacts the rule may have on interested parties. *See* 91 FR 5270 n.9 (''The Department has considered the potential impacts of these amendments individually and in context with the other amendments made by this rule on aliens and attorneys appearing before EOIR.''). The Department further discusses such impacts in Section III.D.2 of this preamble. The types of concerns raised by commenters are commonly raised in response to EOIR rulemakings, and the Department is adept in considering the effects of regulatory changes on affected populations. *See, e.g.,* Securing the Border, 89 FR 81156 (Oct. 7, 2024) (addressing similar categories of commenters' concerns, including concerns related to APA procedures, due process, effect on vulnerable populations, etc.). In this rulemaking, the Department ultimately determined that significant changes are needed to address the Board's significant backlog, and these changes outweigh any potential negative effects on aliens and their counsel, among others.

The Department also believes that commenters overstated the effect of the changes in considering the potential burdens of the rule. Certainly, the summary dismissal procedures mark a significant revision to Board processes. However, the basic process remains the same: aliens may still file an appeal with the Board and, if that appeal is denied, the alien may file a PFR with the Federal courts or file a motion to reconsider. Far from foreclosing the ability to correct significant Immigration Judge errors, the summary dismissal procedures are intended simply to separate straightforward cases with no—or harmless or nonmaterial—errors from those which require more attention by the Board.

Likewise, a 10-day appeal period of course necessitates quicker action than a 30-day appeal period. But the 10-day appeal period simply applies to the filing of a Notice of Appeal, which focuses on providing a concise explanation of the basis for appeal. Thus, the Department determined that, on balance, the efficiency savings of shortening the appeal period outweighed the burdens on aliens and their counsel in meeting the shortened deadline. Moreover, the Department also ensured the rule applies prospectively to limit any potential effects on aliens and their counsel whose cases are currently in the appellate process. Accordingly, these changes should not undermine any reliance interests of either an alien or DHS. *See* 91 FR 5271 (''Because there is no right to a merits adjudication of any appeal in the first instance, and because the rule does not change the process for aliens who submitted an appeal with the expectation of receiving a different process, this change will not undermine any reliance interests of either an alien or DHS. Indeed, there is no evidence that DHS initiates a case in immigration proceedings or an alien brings a claim for relief or protection from removal based on the availability of an appeal to the Board if they lose, nor is there any logical reason that either party would do so.'')

F. Miscellaneous

Comment: Commenters claimed that the IFR would erode public confidence in the integrity of the immigration adjudication system and that the system is harmful and dehumanizing.

Response: The Department strongly disagrees with commenters. On the contrary, the Department believes that the full and efficient enforcement of the Nation's immigration laws will inspire confidence in EOIR and the Immigration Court system. Undoubtedly, prior practices and poor agency management have undermined public confidence in EOIR and eroded the integrity of EOIR as an impartial adjudicatory agency.[41] But the agency has recently made strides in restoring EOIR's integrity as a preeminent administrative adjudicatory agency through the return of adjudicator impartiality and the rescission of policies unfounded in law. This final rule promotes efficiency in the agency's appellate process and provides for prompt final determinations in immigration proceedings, thus taking another step toward reducing the backlog, enabling the prompt removal of aliens with no lawful basis to remain in the country, allowing for swifter corrections of Immigration Judge errors that result in wrongful removal orders, and strengthening public confidence in immigration decisions. *See, e.g., Hernandez-Rodriguez* v. *Pasquarell,* 118 F.3d 1034, 1042 (5th Cir. 1997) (citing *Abudu* v. *INS,* 485 U.S. 94, 106–08 (1988)) (''Both the public and the Board have significant, cognizable interests in the finality of immigration proceedings.'').

Comment: Commenters raised concerns about the IFR's impact on public defenders advising their alien clients in State criminal court proceedings regarding the immigration consequences of criminal convictions. Specifically, commenters asserted that the IFR would significantly restrict the number of precedential decisions by the Board interpreting criminal statutes, which would in turn make it more difficult for attorneys to advise their alien clients regarding the immigration consequences resulting from a criminal conviction. Commenters also asserted that the IFR's impact of expediting the removal of aliens would lead to even more unresolved State criminal cases where the alien is removed from the United States prior to resolution of the criminal matter. Commenters stated that the IFR may lead to inconsistent decisions among Immigration Judges regarding criminal issues and cited circuit splits between Federal courts interpreting the impact of criminal convictions.

Response: The Department does not expect that the streamlining measures adopted in this final rule will impact attorneys' ability to advise alien clients regarding the immigration consequences of a criminal conviction. This rule in no way impacts or alters existing precedent from the Board or Federal courts nor materially alters the role that precedential authority plays in immigration proceedings. The Department further notes that one purpose of this rule is to free up resources to permit the Board to focus on cases presenting novel or complex legal issues—like, for example, novel criminal issues or interpretation of a criminal statute—which may lead to an increase in precedential decisions. *See* 91 FR 5271. This rule does not change any existing obligations attorneys have to their alien clients.

Regarding concerns related to inconsistent Immigration Judge decisions interpreting criminal statutes, those concerns exist under current procedures, and this final rule does not preclude the Board from reviewing such decisions and issuing a precedential decision to provide clarity and ensure consistent adjudications. In fact, the streamlining measures implemented in this rule will enable the Board to better focus its resources on issuing decisions to resolve such inconsistencies. Further, to the extent there are circuit splits on any issue, Immigration Judges and the Board are bound by the caselaw of each relevant Federal Circuit.

Comment: Commenters noted inconsistent Board appeal deadline language in EOIR's Policy Manual.

Response: The Department is working to update all relevant EOIR materials related to changes made by this rule. To the extent that the Department has not yet updated any specific materials, the provisions of this rule supersede any such materials.

Comment: Commenters alleged that the rule is inconsistent with 8 CFR 1003.1(a)(5), which states that *en banc* proceedings are ''not favored.''

Response: Although this rule is not inconsistent with the referenced regulatory section, which is focused on full *en banc* Board adjudications, the Department understands that the language may be confusing because the Board's regular *en banc* process involves several steps. Accordingly, in response to the comment, and to avoid confusion, the Department is deleting the relevant language from 8 CFR 1003.1(a)(5).

Comment: Commenters asserted that the IFR limited EOIR's termination authority in most cases other than those involving UACs and questioned how this change improves efficiency.

Response: Commenters misunderstood the IFR's changes to 8 CFR 1003.1(m)(2)(iii). The only changes made to that regulatory provision by the IFR and finalized in this rule are updating the term ''unaccompanied children'' to ''unaccompanied alien children'' and updating the cross-reference to the relevant statutory provision, 6 U.S.C. 279(g)(2), rather than a now-rescinded regulatory provision. Nothing in this rule changes termination authority.

Comment: Commenters noted that the IFR is silent on the Department's obligations under the National Environmental Policy Act (''NEPA''). Commenters recommended that the Department add a categorical exclusion to its NEPA procedures to strengthen the legal foundation of the rule and bolster what commenters asserted is the Department's position that the IFR does not require an environmental assessment. More broadly, commenters suggested that the Department could adopt a categorical exclusion for rules that do not increase immigration to the United States.

Response: The Department appreciates commenters' suggestion related to establishing a categorical exclusion in Department NEPA procedures for rules that do not increase immigration to the United States. While outside the scope of this rulemaking, the Department will consider adopting such an exclusion to apply in future rulemakings to ensure compliance with NEPA when applicable.

Comment: Commenters recommended amending 8 CFR 1003.1(d)(6) to impose firmer deadlines for background-check-related requirements. Specifically, commenters suggested that an alien's failure to comply with background-check requirements at the Board should be treated as automatically abandoning the underlying application for relief, absent a showing of good cause. Commenters stated that the good cause exception will ensure that aliens who face unusual or unpredictable hardships can proceed with their case while incentivizing aliens to comply with background-check requirements in a timely manner. According to commenters, this policy would be less likely to be abused than the existing policy at 8 CFR 1003.1(d)(6)(iii)

[41] *See* EOIR, PM 25–02, *EOIR's Core Policy Values* (Jan. 27, 2025), *https://www.justice.gov/eoir/media/1386541/dl?inline* [*https://perma.cc/LE74-NRTK*]; EOIR, PM 25–04, *Cancellation of Policy Memorandum 21–16* (Jan. 27, 2025), *https://www.justice.gov/eoir/media/1386546/dl?inline* [*https://perma.cc/8ZLM-9H5X*] (explaining management problems at the Board).

authorizing the discretionary authority to continue holding cases.

Response: The Department declines to make the suggested changes to background-check procedures, which are outside the scope of this rulemaking. However, the Department may consider such a suggestion in a future rulemaking.

Comment: Commenters also proposed a number of alternatives to improve Board processing, including divesting the Board of jurisdiction to consider any appeal by DHS, any interlocutory appeal, any appeal of a bond decision, any appeal of the denial of a motion to reopen or motion to reconsider, and any appeal of the denial of a visa petition or nonimmigrant waiver. Commenters stated that the INA only requires an appeal as of right for aliens ordered removed, so the Department could eliminate all other types of appeals. Commenters noted that DHS could still request that Immigration Judges certify their decisions to the Board under 8 CFR 1003.7.

Commenters also suggested allowing aliens to waive preparation of a transcript if the Immigration Judge issued a written decision and a transcript would be unnecessary to resolve the appeal, stating this could avoid delays related to transcription. Commenters further suggested allowing aliens to consent to summary affirmance of an Immigration Judge's decision if they intend only to raise challenges to the validity or constitutionality of a statute or regulation or arguments asking the Board to overturn a precedential Board decision.

Commenters also recommended requiring all motions to reopen to be filed with an Immigration Judge, regardless of the most recent decision on the merits, as Immigration Judges may be better suited to evaluate new or disputed factual claims. Commenters also suggested alternatives to benefit certain populations, including extending deadlines for underrepresented individuals and making notices more accessible and available in multiple languages.

Commenters suggested that the Department adopt performance metrics or reporting practices to evaluate the effectiveness of the new procedures adopted in this rule. Commenters recommended that metrics should consider timeliness, throughput, and indicators of adjudicatory quality, such as outcomes in subsequent judicial review, consistency across adjudicators, and reversal rates. According to commenters, transparency in reporting these metrics would enhance accountability and provide a basis for data-driven adjustments over time. Commenters also encouraged the Department to develop pathways for error correction in cases that present a higher risk of material error that may not initially be selected for consideration with briefing, such as an internal flagging system or review trigger. Commenters stated that the Department should commit to ongoing review of the rule's implementation and effects to enable any necessary improvements should unintended consequences emerge.

Response: The Department appreciates suggestions to improve efficiency and streamline appeal processing and to evaluate the impact and effectiveness of this rule once implemented. The Department has considered these suggestions and determined that the streamlining measures adopted in this rule best address the efficiency needs at this time. Although the Department is declining to implement these suggestions as part of this rulemaking, most of which were beyond the scope of the IFR, the Department will continue to consider efficiency measures for adoption in potential future rulemakings, including those suggested by commenters. Further, although the Department declines to formally adopt any evaluative metrics as part of this rule, the Department will continue to assess the effectiveness of this rule as it is fully implemented.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Department is issuing this final rule after a 60-day notice and comment period, with full consideration of the over 1,600 comments provided, and a 30-day delay of the effective date. These procedures satisfy the requirements of the APA. *See* 5 U.S.C. 553(c)–(d).

B. Regulatory Flexibility Act

Under the RFA, a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment procedures under 5 U.S.C. 553(b) or other law. *See* 5 U.S.C. 603(a), 604(a). To that end, the Department promulgated the IFR without prior notice and comment after determining the IFR related to agency procedure and involved a foreign affairs function, thus exempting the IFR from an RFA analysis under 5 U.S.C. 603 or 604. The Department continues to maintain the applicability of these exemptions to notice-and-comment procedures in promulgating the IFR.

However, even assuming that this rule is not exempt from notice-and-comment procedures and therefore not exempt from the requirements of the RFA, the Department has reviewed this rule in accordance with the RFA. The Acting Director of EOIR, under rulemaking authority delegated by the Attorney General, certifies that this rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

First, the rule regulates aliens, and aliens are not ''small entit[ies]'' as defined by the RFA. *See* 5 U.S.C. 601(6) (defining ''small entity'' as having the same meaning as ''small business,'' ''small organization,'' and ''small government jurisdiction'' as defined in 5 U.S.C. 601(3)–(5)). Second, to the extent that legal service organizations qualify as ''small entities,'' this rule does not directly regulate them and would not be expected to have a direct effect on them. Third, even if the rule does have an effect on legal services organizations, any economic effects of this rule on such organizations would not be significant under the RFA. The rule will not economically impact representatives of aliens in immigration proceedings. It does not limit the fees they may charge or the number of cases a representative may ethically accept under the rules of professional responsibility.

For example, this rule's changes to summary dismissal procedures focus on which cases the Board chooses to accept for full briefing and further review, but does not affect the overarching process for filing an appeal itself. At the conclusion of proceedings before the Immigration Judge, aliens (or their counsel) will continue to file a Notice of Appeal with the Board, specifying the reasons for appeal and indicating whether they intend to file a brief at a later date. As such, no changes are required by the parties to comply with this new process.

Similarly, this rule's changes to shorten the appeal period and to require simultaneous briefing without reply briefs will require legal service providers to adjust to these new timelines. However, the Department expects legal service organizations to quickly acclimate without substantial disruption, as the baseline process for filing an appeal remains the same and simultaneous briefing has long been standard for detained cases. Moreover, in non-detained cases, although parties have generally been granted 21 calendar days to file briefs, as stated in the IFR, the Board has long had the authority to set shorter briefing schedules at its discretion, 91 FR 5273 (citing 8 CFR

1003.3(c) (2023)), a possibility for which counsel should have already been prepared to accommodate prior to issuance of this IFR and final rule. The delayed effective date and prospective application of the IFR and this final rule, as well as delays caused by litigation, have also provided legal service organizations with further notice of and opportunity to prepare for these changes without substantial impacts to their current operations, including existing clients who have already filed their appeals. Thus, any costs incurred in adapting to the new timelines are not expected to be significant under the RFA.

Moreover, this rule does not limit or otherwise dictate the fees that legal service providers may charge or the number of cases the organization may ethically and competently accept. *See Mid-Tex Elec. Co-op., Inc.* v. *FERC,* 773 F.2d 327, 342–43 (D.C. Cir. 1985) (concluding ''an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule'' and stating that legislative history of the RFA ''gives rise to an inference that Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy'').

Finally, this approach is consistent with previous similar rulemakings regarding immigration regulations intended to regulate aliens and streamline immigration proceedings in which the Attorney General certified that such rule would not have a significant economic impact on a substantial number of small entities. *See, e.g.,* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 444, 453 (Jan. 3, 1997) (certifying that the rule would not have a significant impact on a substantial number of small entities because it ''affects only Federal government operations by codifying statutory amendments to the Immigration and Nationality Act primarily regarding the examination, detention, and removal of aliens from the United States'' and did not impose reporting or compliance requirements on small entities).

In particular, this determination is consistent with the Department's prior determination regarding much more sweeping changes to procedures before the Board. *See* 67 FR 54900 (''The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it affects only Departmental employees, aliens, or their representatives who appear in proceedings before the Board of Immigration Appeals, and carriers who appeal decisions of [DHS] officers. Therefore, this rule does not have a significant economic impact on a substantial number of small entities.''). The Department is unaware of any challenge to that determination regarding its 2002 rulemaking which significantly streamlined Board operations and made much greater changes to Board procedures, including altering the Board's standard of review for credibility determinations, than this final rule. The Department thus believes that the experience of implementing that prior, broader rule also supports its conclusion that there is no evidence that this final rule will have a significant impact on a substantial number of small entities as contemplated by the RFA.

The Department's experience implementing these previous rulemakings further supports its analysis of this rule under the RFA and certification that the rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

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

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

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

Overall, the Department believes this rule will provide significant benefits to adjudicators, parties before the Board, the U.S. immigration system overall, and the broader public, which outweigh the potential costs. For example, the rule's procedural changes to Board practices are intended to better promote the efficient completion of removal proceedings. Such changes benefit both aliens with meritorious claims, who will obtain relief or protection faster, and DHS, which will be able to remove aliens with meritless claims more quickly. Combined, such changes provide significant benefits to the functioning of the country's immigration system overall and to the public as a whole.

The Department does not believe there are any apparent definitive costs of this rule. However, the Department fully considered the various potential costs raised by commenters in response to the IFR, including potential social and economic consequences if an increased number of aliens are removed. These costs include, for example, any potential costs to aliens ordered removed after not being able to file a Board appeal under this rule's streamlined procedures, increased workload for attorneys due to a shortened Board appeal filing period, and increased filing fees associated with any increase in PFRs to the Federal courts.

The Department believes that concerns about these costs are speculative and lack a factual basis. However, even taking any proffered costs as legitimate, on balance, the Department continues to believe that the significant efficiency benefits associated with this rule outweigh the potential costs.

Regarding Executive Order 14192, this rule is a ''regulation[ ] issued with respect to a[n] . . . immigration-related function of the United States'' and is therefore exempt from the requirements of Executive Order 14192 under section 5(a) of that Order.

E. Executive Order 14294 (Overcriminalization of Federal Regulations)

When an agency promulgates regulations with criminal regulatory offenses that are potentially subject to criminal enforcement, Executive Order 14294 requires the agency to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not create a criminal regulatory offense and so is exempt from Executive Order 14924's requirements.

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the

distribution of power and responsibilities among the various levels of government. Thus, the Department has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement under section 6 of Executive Order 13132.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards under sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35), and its implementing regulations, 5 CFR part 1320. However, the Department notes that EOIR is making nonsubstantive changes to EOIR forms and form instructions to address the changes implemented by this rule.

I. Congressional Review Act

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

List of Subjects

8 CFR Part 1003

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

8 CFR Part 1208

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

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons stated in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by Attorney General Order Number 6260–2025, the IFR amending 8 CFR parts 1003, 1208, and 1240 that was published at 91 FR 5267 on February 6, 2026, is adopted as final with the following changes:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362, 1801, 1802, 1808, 1812; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

■ 2. Amend § 1003.1 by:
■ a. Revising the third sentence of paragraph (a)(4);
■ b. Removing the last sentence of paragraph (a)(5);
■ c. Revising paragraph (d)(2)(ii);
■ d. Revising the paragraph heading and first sentence of paragraph (e)(3); and
■ e. Revising paragraph (e)(8)(ii).

The revisions read as follows:

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

(a) * * *

(4) * * * A temporary Board member shall have the authority of a Board member to adjudicate assigned cases, including summary dismissal authority pursuant to paragraph (d)(2) of this section, except that temporary Board members shall not have the authority to vote on any matter decided by the Board *en banc.* * * *

* * * * *

(d) * * *

(2) * * *

(ii) *Consideration by the Board*—(A) *Summary dismissal generally.* Except for appeals pursuant to paragraphs (b)(5), (6), (7), and (14) of this section, and notwithstanding any other provision of this part (except for paragraph (d)(6) of this section), for all appeals of any decision issued on or after December 17, 2026, the Board shall summarily dismiss the appeal without opinion unless a majority of the permanent Board members vote *en banc* to accept the appeal for further review after briefing. Nothing in this paragraph (d)(2)(ii) shall restrict the application of the provisions of paragraph (d)(2)(i) of this section or the authorities in paragraph (h) of this section.

(B) *Summary dismissal timeline.* Such dismissals shall be made by a single Board member without further consideration, unless the single Board member refers an appeal for consideration by the Board *en banc.* If such a referral is made, the Board shall vote *en banc* on whether to consider the appeal for further review no later than 10 days after the appeal is filed. If the Board fails to vote *en banc* within that time, the appeal shall be summarily dismissed without opinion under this paragraph (d)(2)(ii). Subject to paragraph (d)(6) of this section, all dismissals under paragraph (d)(2)(i) or (ii) of this section shall be effectuated through the issuance of a written order no later than 15 days after the appeal is filed.

(C) *Issuance of summary dismissal order.* If the Board determines that the appeal should be dismissed without opinion, the Board shall issue an order that reads as follows: ''The Board dismisses, without opinion, the appeal from the Immigration Judge's decision. The decision below is, therefore, the final agency determination. *See* 8 CFR 1003.1(d)(2)(ii).'' An order to summarily dismiss without opinion issued under this paragraph (d)(2)(ii) shall not include further explanation or reasoning and will be deemed to reflect the same considerations as a determination by the Board under paragraph (e)(4)(i) of this section: that the result reached in the decision under review was correct; that a summary dismissal without opinion does not necessarily imply approval of all of the reasoning of that decision; that any errors in the decision under review were harmless or nonmaterial; and that either the issues on appeal are squarely controlled by existing Board or Federal court precedent and do not involve the application of precedent to a novel factual situation, or the factual and legal issues raised on appeal are not so substantial that the case warrants the issuance of a written opinion in the case.

* * * * *

(e) * * *

(3) *Review with briefing.* In any case that has not been summarily dismissed, the case management system shall arrange for the prompt completion of the record of proceeding and transcript (if a transcript is otherwise warranted), and the issuance of a briefing schedule, as appropriate. * * *

* * * * *

(8) * * *

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

* * * * *

■ 3. Amend § 1003.106 by adding a sentence following the first sentence of paragraph (c) to read as follows:

§ 1003.106 Right to be heard and disposition.

* * * * *

(c) * * * The appeal must be filed with the Board within 10 calendar days of the decision issued under paragraph (b) of this section. * * *

* * * * *

Sirce E. Owen,

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

[FR Doc. 2026–23320 Filed 11–16–26; 8:45 am]

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Part III

Department of Labor

Employment and Training Administration

20 CFR Part 656

Modernizing the Labor Market Test and Improving Protections for U.S. Workers in the PERM Immigrant Visa Program; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

[DOL Docket No. ETA–2026–0133]

RIN 1205–AC29

Modernizing the Labor Market Test and Improving Protections for U.S. Workers in the PERM Immigrant Visa Program

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (Department or DOL) proposes to amend its regulations regarding the certification of job opportunities offered by employers seeking to employ aliens on a permanent basis in the United States. This Notice of Proposed Rulemaking (NPRM or proposed rule) strengthens the standards by which the Department receives and reviews employers' applications for permanent labor certification and improves the integrity of the overall employment-based immigrant visa program to more effectively protect the wages and job opportunities of U.S. workers similarly employed in the United States. Among the issues addressed in this proposed rule are eliminating further administration of Schedule A, which exempts certain job opportunities from the statutorily required labor market test; strengthening the minimum standards of recruitment to ensure all employers seeking labor certification access the broadest pool of high-quality U.S. workers using the latest technologies and methods; enhancing safeguards for U.S. workers impacted by layoffs, including those laid off by employers using third-party staffing companies and establishing standards for employers to report layoffs; expanding requirements for employers to provide U.S. workers with notice of filing (NOF) applications for permanent labor certification; improving employer compliance with program requirements and consideration of qualified U.S. workers that is comparable to job opportunities for which permanent labor certification is not required; and codifying the Department's practice of electronically receiving, processing, and issuing final determinations on employer requests for prevailing wages and permanent labor certifications. The changes in this proposed rule are consistent with the Secretary of Labor's (Secretary) statutory responsibilities to certify that there are not sufficient workers in the United States who are able, willing, qualified, and available to fill the petitioning employer's job opportunity at the time of application for a visa and admission to the United States, and that the employment of such alien will not adversely affect the wages and working conditions of similarly employed workers in the United States.

DATES: Interested persons are invited to submit written comments on all aspects of this proposed rule and the changes to the information collection on or before January 19, 2027.

ADDRESSES: You may submit comments electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments. A plain language summary of the proposed rule is also available on that website.

Instructions: Comments should be confined to issues pertinent to the NPRM, identify the agency's name and public docket number ETA–2026–0133, explain the reasons for any recommended changes, and reference the specific section and wording being addressed, where possible.

Please be advised that the Department will post comments that relate to this NPRM to *https://www.regulations.gov,* including any personal information provided. The *https://www.regulations.gov* website is the Federal e-Rulemaking Portal and all comments posted there are available and accessible to the public. Please do not submit comments containing trade secrets, confidential or proprietary commercial or financial information, personal health information, sensitive personally identifiable information (for example, social security numbers, driver's license or state identification numbers, passport numbers, or financial account numbers), or other information that you do not want to be made available to the public. Should the agency become aware of such information, the agency reserves the right to redact or refrain from posting such personally sensitive or other sensitive information. The agency also reserves the right to redact or refrain from posting such comments that contain threatening language or language that is obscene, indecent, or profane. Please note that depending on how information is submitted, the agency may not be able to redact the information and instead reserves the right to refrain from posting the information or comment in such situations.

FOR FURTHER INFORMATION CONTACT: For further information, contact Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, email: *OFLC.Regulations@dol.gov.*

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I. Acronyms and Abbreviations

AIE Area of intended employment
ALJ Administrative Law Judge
BALCA Board of Alien Labor Certification Appeals
BLS Bureau of Labor Statistics
CBA Collective bargaining agreement
CDR Center Director Review
CFR Code of Federal Regulations
Chief ALJ Chief Administrative Law Judge
CMSA Consolidated Metropolitan Statistical Area
CO Certifying Officer

DHS Department of Homeland Security
DOJ Department of Justice
DOL Department of Labor
DOL–OIG DOL Office of Inspector General
DOS Department of State
EEOC Equal Employment Opportunity Commission
E.O. Executive Order
ETA Employment and Training Administration
FEIN Federal Employer Identification Number
FLAG Foreign Labor Application Gateway
FR Federal Register
FRFA Final Regulatory Flexibility Analysis
FRN Federal Register notice
FY Fiscal year
HR Human resources
IMMACT 90 Immigration Act of 1990
INA Immigration and Nationality Act
IRCA Immigration Reform and Control Act of 1986
IRFA Initial Regulatory Flexibility Analysis
MSA Metropolitan Statistical Area
NAICS North American Industry Classification System
NOF Notice of Filing
NOIR Notice of Intent to Revoke
NORD Notice of Reconsideration Decision
NPC National Processing Center
NPRM Notice of Proposed Rulemaking
OEWS Occupational Employment and Wage Statistics
OFLC Office of Foreign Labor Certification
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
O*NET Occupational Network
OPT Optional Practical Training
PERM Permanent Labor Certification Program
PRA Paperwork Reduction Act
PWD Prevailing Wage Determination
RFA Regulatory Flexibility Act
RFI Request For Information
Secretary Secretary of Labor
SOC Standard Occupational Classification
Stat. United States Statutes at Large
STEM Science, Technology, Engineering, and Mathematics
SVP Specific Vocational Preparation
SWA State Workforce Agency
TFR Temporary Final Rule
UMRA Unfunded Mandates Reform Act
U.S. United States
U.S.C. United States Code
USCIS U.S. Citizenship and Immigration Services

II. Revisions to 20 CFR Part 656

A. Statutory Framework

The Immigration and Nationality Act (INA or the Act), as amended by the Immigration Reform and Control Act of 1986, assigns responsibilities to the Secretary relating to the admission and employment of certain aliens who intend to work and live permanently in the United States. The Act prohibits the admission of certain employment-based immigrants to perform skilled or unskilled labor as permanent residents unless the Secretary has determined and certified to the Secretaries of Homeland Security and State that (1) there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and (2) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.[1] *See* section 212(a)(5)(A)(i), 8 U.S.C. 1182(a)(5)(A)(i). In addition, the Act specifies that for aliens who are members of the teaching profession, referring to college and university teachers, and those possessing exceptional ability in the sciences or the arts, the Secretary must consider only equally or more qualified United States (U.S.) workers as qualified for the job opportunity offered.[2] *See* section 212(a)(5)(A)(ii), 8 U.S.C. 1182(a)(5)(A)(ii). For all other job opportunities requiring the Secretary's determination and certification, each prospective U.S. worker who possesses the minimum qualifications required for the job opportunity and who will be available at the time and place needed to perform the services or labor required is considered available.

The INA provides for five ''preference'' categories, or immigrant visa classes, only two of which—the second and third preference employment categories (commonly called the EB–2 and EB–3 immigrant visa classifications)—generally require a labor certification.[3] An employer seeking to sponsor an alien worker for an immigrant visa under the EB–2 or EB–3 preference categories generally must file a visa petition with the Department of Homeland Security (DHS) on the alien's behalf, and the petition must include a labor certification from the Secretary.[4] Further, the Department of State (DOS) may not issue a visa unless the Secretary has issued a labor certification in conformity with the relevant provisions of the INA.[5] The INA provides one exception, which applies only to certain aliens eligible for the EB–2 visa classification. If the Secretary of Homeland Security determines it is in the national interest to waive the permanent job offer requirement—permitting the alien to self-petition under the EB–2 visa classification—the Secretary's certification is not required for admission to the United States.[6] *See* section 203(b)(2)(B); 8 U.S.C. 1153(b)(2)(B). All other EB–2 and EB–3 aliens cannot be admitted to the United States without being sponsored for permanent employment with a U.S. employer that first obtains the Secretary's statutory certification for the job offered. *See* section 203(b)(2)(A), (b)(3)(C); 8 U.S.C. 1153(b)(2)(A), (b)(3)(C).

Within the Department, the Secretary has delegated authority to make the required determination and issue the related certification to the Assistant Secretary for the Employment and Training Administration (ETA).[7] The Assistant Secretary for ETA, in turn, has delegated that authority to the Office of Foreign Labor Certification (OFLC). As a result, OFLC reviews requests for permanent labor certification, issues certifications, and carries out other statutory responsibilities as required by 8 U.S.C. 1182(a)(5)(A).

B. Current Regulatory Framework

A U.S. employer sponsoring an alien for permanent admission based on the

[1] Although this provision references the Attorney General, the authority to adjudicate immigrant visa petitions was transferred to the Director of the Bureau of Citizenship and Immigration Services (an agency within DHS)—now known as U.S. Citizenship and Immigration Services (USCIS)—by the Homeland Security Act of 2002, Public Law 107–296, 451(b) (codified at 6 U.S.C. 271(b)). Under 6 U.S.C. 557, references in federal law to any agency or officer whose functions have been transferred to DHS shall be deemed to refer to the Secretary of Homeland Security or other official or component to which the functions were transferred.

[2] *See* 69 FR 77326, 77357–77358 (Dec. 27, 2004) (discussing legislative history and intent related to its amendments to INA section 212(a)(5)(A)(ii)).

[3] *See* 8 U.S.C. 1153(b)(2)–(3), 1182(a)(5)(D). Section 1153(b)(2) governs the EB–2 classification of immigrant visas granted to aliens who are either professionals holding advanced degrees (master's degree or above or foreign equivalent degree, or a bachelor degree or foreign equivalent degree plus five years of progressive experience in the specialty) or persons of ''exceptional ability'' in the sciences, arts, or business. To gain entry in this category, the alien must have prearranged an offer of employment with a U.S. employer that meets the requirements of labor certification, unless the work he or she is seeking admission to perform is in the ''national interest,'' such as to qualify for a waiver of the job offer (and hence, the labor certification) requirement under 8 U.S.C. 1153(b)(2)(B). Section 1153(b)(3) governs the EB–3 classification of immigrant work visas granted to aliens who are either ''skilled workers,'' ''professionals,'' or ''other'' (unskilled) workers, as defined by the statute. To gain entry in this category, the alien must have a prearranged offer of employment with a U.S. employer that meets the requirements of labor certification, without exception.

[4] 8 U.S.C. 1154(a)(1)(F), 1182(a)(5)(A) and (D).

[5] 8 U.S.C. 1153(b)(2), (b)(3)(C), 1201(g).

[6] *See* 6 USCIS Policy Manual Vol. 6, Pt. F, Ch. 5, Advanced Degree or Exceptional Ability (discussing EB–2 eligibility and evidence guidance, including national interest waiver of the job offer), *https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5#footnotelink-3* (last accessed Apr. 13, 2026).

[7] DOL Secretary's Order No. 6–2010, *Delegation of Authority and Assignment of Responsibility,* 75 FR 66268 (Oct. 27, 2010).*https://www.federalregister.gov/documents/2010/10/27/2010-27139/delegation-of-authority-and-assignment-of-responsibility-secretarys-order-6-2010.*

EB–2 or EB–3 visa classifications must demonstrate that the job requirements qualify for the visa classification it seeks, that the alien qualifies for the job opportunity, and—as it relates to a labor certification for the permanent labor certification program or PERM labor certification program—that qualified U.S. workers are not available to fill the position and that employment of the alien will not adversely affect wages and working conditions of similarly employed U.S. workers.

The Department's regulations, 20 CFR part 656, implement the statutory provisions that govern the permanent labor certification (''PERM labor certification'') process and set forth the responsibilities of U.S. employers who seek to permanently employ aliens covered by the statutory labor certification requirements.

On May 6, 2002, the Department published an NPRM that proposed to streamline the permanent labor certification program.[8] A final rule implementing significant revisions to the permanent labor certification program was published on December 27, 2004, and took effect on March 28, 2005.[9] In addition, on February 13, 2006, the Department published an NPRM designed to enhance program integrity and reduce the incentives and opportunities for fraud and abuse in the permanent labor certification program.[10] The Department subsequently published a final rule on May 17, 2007, which took effect on July 16, 2007, commonly referred to as ''the PERM fraud rule.'' [11] This rule prohibited, among other things, the substitution of beneficiaries on permanent labor certification applications and resulting certifications; established a 180-day validity period for the use of approved labor certifications filed in connection with an I–140 Immigrant Petition with USCIS; prohibited the sale, barter or purchase of permanent labor certifications and applications; required employers to pay the costs of preparing, filing and obtaining certification, and strictly prohibited transferring such cost to the alien beneficiary; and established procedures for debarment of employers from the permanent labor certification program.[12]

To receive a PERM labor certification under current regulations, the employer must first obtain a prevailing wage determination (PWD), conduct a good faith test of the domestic labor market for qualified U.S. workers, and post a NOF to employees before submitting an *Application for Permanent Employment Certification* (the current Form ETA–9089) to OFLC for review and processing. A request for a PWD, which is collected through the *Application for Prevailing Wage Determination* (the current Form ETA–9141), enables OFLC to review the duties, requirements, and worksite location(s) of the job opportunity and provide the employer with the applicable prevailing wage rate(s).[13] The employer must offer a wage that equals or exceeds the PWD determined by OFLC and guarantee that the wage the employer will pay to the alien will equal or exceed the prevailing wage that is applicable at the time the alien begins work or from the time of admission to take up the certified employment. The PWD ensures that the recruitment of U.S. workers based on the employer's job opportunity offers at least the average wage paid to similarly employed workers in the specific occupation in the area of intended employment (AIE) or the applicable collective bargaining agreement (CBA) rate, and if the employer permanently hires aliens at the wage rate offered, doing so will not adversely affect workers similarly employed in the United States.[14]

The statutorily required NOF, which must be provided to bargaining representative(s) or posted in conspicuous locations at all worksite locations, as applicable, helps inform the employer's employees of the job offered to the alien in the PERM labor certification process and provides U.S. workers and others with an opportunity to contact OFLC with information concerning the application.[15] The existing test of the domestic labor market generally involves the employer following a prescribed list of recruitment requirements, such as placing a job order with the State Workforce Agency (SWA) for 30 days and print newspaper advertisements on two different Sundays, which are intended to apprise U.S. workers of the job opportunity and give them an opportunity to apply.[16] Together, these pre-filing requirements enable the employer to provide information essential to OFLC's ability to reach the statutorily required determinations when reviewing an *Application for Permanent Employment Certification.*

Upon completion of pre-filing requirements, the employer typically submits the *Application for Permanent Employment Certification* electronically to OFLC using the Foreign Labor Application Gateway (FLAG) system, which contains a series of attestations made by the employer, guaranteeing the employer has taken or will take steps to comply with the PERM labor certification process under 20 CFR part 656. After performing an initial review of the application, OFLC may grant or deny a PERM labor certification, request further information, select one or more applications for audit examination, and/or require the employer to undergo additional recruitment of U.S. workers under OFLC's supervision.

Where a PERM labor certification is approved, OFLC issues a Form ETA–9089—*Final Determination: Permanent Employment Certification Approval* (Final Determination), to the employer and the authorized attorney or agent, as applicable, that can be used to file an Immigrant Petition with USCIS. If, however, OFLC denies a PERM labor certification, the employer may appeal the denial. An employer currently has the option of requesting the Department's reconsideration or requesting review before the Board of Alien Labor Certification Appeals (BALCA or the Board). Presently, the employer must request reconsideration or BALCA review no later than 30 days from the date of the denial.[17] Where OFLC upholds its denial decision on reconsideration, an employer may further seek BALCA review within 30 days of the decision on reconsideration. If the employer does not pursue an appeal or if the employer's appeal is unsuccessful in overturning the denial decision, the employer may file a new *Application for Permanent Employment*

[8] *See* NPRM, *Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System,* 67 FR 30466 (May 6, 2002).

[9] *See* Final Rule, *Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System,* 69 FR 77326 (Dec. 27, 2004).

[10] *See* Notice of Proposed Rulemaking (NPRM), *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity,* 71 FR 7656 (Feb. 13, 2006).

[11] *See* Final Rule, *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity,* 72 FR 27904 (May 17, 2007).

[12] *See* Final Rule, *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity,* 72 FR 27904 (May 17, 2007).

[13] *See* 20 CFR 656.40.

[14] *See* 20 CFR 656.40(b)(2).

[15] *See* Immigration Act of 1990, Pub. L. 101–649, sec. 122(b); 8 U.S.C. 1182 note; 20 CFR 656.10(d).

[16] The required recruitment steps for PERM are determined by the type of occupation: 20 CFR 656.17 is for non-professional and professional occupations, and 20 CFR 656.18 is an option for college and university teachers identified through a competitive recruitment and selection process.

[17] *See* 20 CFR 656.24(g)(1) and 656.26(a).

Certification with OFLC that meets the requirements of 20 CFR part 656.

The PERM labor certification program is largely an attestation-based program, requiring the employer to attest that it has completed the required steps for the PERM labor certification process, met the conditions of employment on the application, and retained all applications and supporting documentation demonstrating compliance with program requirements. For example, the employer attests that the position has been open to any U.S. worker; U.S. workers who did apply were rejected for lawful, job-related reasons; the pay offered is at least the prevailing wage rate; and the job opportunity's terms and conditions are not contrary to federal, state, or local law.[18] The Department has integrity measures in place to protect and strengthen the PERM labor certification program. OFLC conducts pre-certification audits to ensure employer compliance with the requirements of 20 CFR part 656. During audit review, OFLC currently requests all applications and supporting documentation to verify, among other requirements, that the employer posted the required NOF to its employees and conducted all applicable pre-filing recruitment steps, as required and as attested to on its application, and that no qualified U.S. worker was available for the job opportunity for which the employer seeks PERM certification.[19] In addition to audits, OFLC has the discretion to require an employer to conduct supervised recruitment to ensure an adequate and more current test of the U.S. labor market is performed to determine whether qualified U.S. workers are available to fill the employer's job opportunity.[20]

With respect to program integrity measures, if OFLC discovers after issuing a certification that certification was not justified, OFLC may take further action, such as revocation. Additionally, if the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the PERM program, OFLC will refer the matter to other government entities, as appropriate, for investigation, and send a copy of the referral to the DOL Office of Inspector General (DOL–OIG). In these cases, or if the Department is notified by other government entities that an employer, attorney, or agent is under investigation for possible fraud or willful misrepresentation in connection with the PERM program, OFLC may suspend processing of any *Application for Permanent Employment Certification* involving such employer, attorney, or agent for an initial period of up to 180 calendar days and may extend the suspension of processing until completion of any investigation and/or judicial proceedings. Where OFLC finds the employer, attorney, agent, or any combination thereof, has violated the regulatory requirement(s) under 20 CFR part 656, OFLC may pursue debarment action(s) in accordance with the standard and procedures set forth in 20 CFR 656.31(f) for a reasonable period of not more than 3 years.[21]

C. Recent Administrative Action Related to the Permanent Labor Certification Process

Beginning in 1965 and for the purpose of reducing delays in processing an alien's requests for an employment-based immigrant visa, the Department established through rulemaking, schedules or listings of occupations where the Secretary could pre-certify whether sufficient qualified workers in the United States were available to fill the employer's need for permanent labor.[22] One such schedule, referred to as Schedule A, set forth a list of occupations that the Secretary designated as in short supply of qualified U.S. workers, which permitted employers to bypass the statutory labor certification requirement prior to filing an Immigrant Petition requesting admission of an alien to perform permanent skilled or unskilled labor.[23] During the ensuing thirty years, the occupational listings in Schedule A were periodically reviewed and only revised eight times, the last time in 2004.[24]

On December 21, 2023, the Department published a request for information, *Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations.*[25] The Department published the request for information to allow the public to provide input, including data, statistical metrics or models, studies, and other relevant information, on how the Department may establish a reliable, objective, and transparent methodology for revising Schedule A to include STEM and other non-STEM occupations where there may exist shortages of qualified U.S. workers, consistent with requirements of the INA. Specifically, the Department sought public comment on evaluating the utility of expanding Schedule A to include STEM and non-STEM occupations for which there may be an insufficient number of ready, willing, able, and qualified U.S. workers. Through the request for information, the Department requested input on the appropriate data sources and methods for determining whether labor shortages exist and asked the public how the Department could establish a reliable, objective, and transparent methodology for identifying both STEM and non-STEM occupations that are experiencing labor shortages.

The Department received over 2,000 comments in response to the request for information. The comments received ranged from opposition to the continuation of Schedule A to support for its expansion. Those opposed to the continuation and/or expansion of Schedule A characterized Schedule A as unnecessary, undermining statutory intent, a mechanism to bypass immigration rules, and/or harmful to U.S. workers. Additionally, none of the commenters who expressed support for Schedule A provided the Department with a suitable rationale or administratively feasible methodology to expand or maintain the current occupations listed on Schedule A. Several commenters supported either limiting or reducing Schedule A occupations, and provided some examples and citations, but they also did not provide a suitable rationale or administratively feasible methodology to determine which occupations to retain or remove from Schedule A. Although a handful of commenters

[18] *See* ETA Form 9089, U.S. Dept. of Labor, p. 9, *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/9089form.pdf.*

[19] *See* 20 CFR 656.20.

[20] *See* 20 CFR 656.21.

[21] *See* 20 CFR 656.32 and 20 CFR 656.31.

[22] NPRM, *Availability of and Adverse Effect Upon American Workers,* 30 FR 14494, 14494 (Nov. 19, 1965), *available at https://www.govinfo.gov/content/pkg/FR-1965-11-19/pdf/FR-1965-11-19.pdf.*

[23] The 1965 regulation also proposed establishing Schedule B, which set forth a list of occupations for which the Secretary pre-determined were in sufficient supply of U.S. workers and, thus, the statutorily required certification could not be made on the employer's request.

[24] *See, e.g.,*31 FR 16412 (Dec. 23, 1966), 33 FR 12808 (Sept. 10, 1968), 36 FR 2462 (Feb. 4, 1971), 42 FR 3440 (Jan. 18, 1977), 45 FR 83933 (Dec. 19, 1980), 52 FR 20593 (June 2, 1987), 56 FR 54920 (Oct. 23, 1991), and 69 FR 77326 (Dec. 27, 2004). The most recent revisions to Schedule A listings in 2004 only added aliens of exceptional ability in the performing arts to Group II; the other revision in 2004 was procedural and clarified the professional qualifications for eligible nurses under Schedule A.

[25] *See* Request for Information, *Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations,* 88 FR 88290 (Dec. 21, 2023).

made concerted efforts to respond to questions posed in the request for information, responses received from commenters overall did not provide sufficient substantive information that would allow the Department to proceed with proposing changes to the regulations governing Schedule A. While many commenters successfully identified potential specific sources of economic or labor data that could be used, the commenters almost uniformly failed to specify which precise data markers or thresholds should be established or used to determine whether there was a labor shortage covering a particular geographic area warranting inclusion on Schedule A.

In terms of identifying STEM occupations, one consistent recommendation was that the Department should mimic DHS's ''STEM Designated Degree Program List for the Optional Practical Training (OPT) STEM extension'' to define STEM for purposes of identifying occupations for expanding Schedule A. However, the commenters failed to explain how a program which determines eligibility for aliens to engage in a limited period of post-graduation employment in the United States is applicable to the PERM program. The DHS STEM Designated Degree Program List enumerates the fields of study that DHS designates as STEM for purposes of the 24-month STEM OPT extension described at 8 CFR 214.2(f)(10)(ii)(C). It has nothing to do with labor shortages and the comments did not address how the process for updating OPT is applicable to defining labor shortages within those degree fields and related occupational classifications. There are considerable substantive differences between the OPT and PERM program requirements, so while many commenters suggested that DHS' program for updating OPT would be useful for PERM, these commenters did not explain how it could be shaped to meet the very different nature of the two programs, and the respective objectives of each program. Commenters also suggested adding numerous non-STEM industries to Schedule A, but the commenters likewise failed to provide information that would sustain a factual determination that there is a labor shortage of those occupations in any particular geographic area.

In the absence of a reliable, objective, and transparent methodology for updating Schedule A or the relevant substantive information needed to develop such a methodology, the Department decided it could not add new occupations to Schedule A nor demonstrate that the occupations currently listed in Schedule A are still shortage occupations. The Department is now proposing through this rulemaking to eliminate Schedule A, which is explained further below in section III.C.

D. Need for Rulemaking

It is the policy of the Department to vigorously enforce all laws within its jurisdiction governing administration of the PERM labor certification program, which informs USCIS' approval of EB–2 and EB–3 immigrant visa petitions. The Department has not updated its regulations associated with the PERM labor certification process in nearly 20 years and changes in labor market dynamics, including increases in remote work, advances in electronic methods of recruiting highly qualified talent, high rates of turnover or layoffs in certain sectors of the U.S. economy, necessitate a need to strengthen the program's standards and procedures. Further, with the Trump Administration's executive actions to strengthen the nation's southern border, enhance interior enforcement efforts, and promote economic growth, employers may increasingly turn to legal labor pathways—like permanent and temporary employment work visas, and the Department must ensure that employers first access and consider the broadest pool of qualified and available U.S. talent before seeking to sponsor and hire an alien for permanent employment in the United States.[26]

This proposed rule is also part of a broader Government effort to more faithfully enforce the immigration laws of the United States as set out by Congress.[27] In coordination with other federal agencies, the Department has launched major investigations and intensified enforcement actions, particularly related to third-party staffing firms in the technology sector, to combat fraud and abuse involving the PERM labor certification process and the H–1B visa classification where the majority of nonimmigrant workers are often sponsored for permanent employment in the United States.[28] In collaboration with other federal law enforcement partners, the DOL–OIG has uncovered widespread schemes in which employers and labor brokers submitted fraudulent applications, exploited aliens through coercive wage-kickback arrangements, and undercut American workers by flooding the market with below-wage labor. Where these federal law enforcement partners are investigating fraud or willful misrepresentations involving the PERM program, the Secretary has initiated suspensions of current and future filed PERM applications by certain employers.[29] Meanwhile, U.S. workers continue to face a challenging and disadvantageous labor market.[30] U.S. workers in computer-related occupations—particularly recent U.S. college graduates—are facing high unemployment and underemployment

[26] *See, e.g.,* Executive Order No. 14159, *Protecting the American People Against Invasion,* 90 FR 8443 (Jan. 29, 2025); *see also,* Executive Order No. 14431 (Sept. 18, 2026) Enhancing Program Integrity and interagency coordination in the administration of the H–1B Nonimmigrant Visa Program 91 FR 60501 (Sept. 18, 2026).

[27] *See, e.g.,* The White House, ''President Trump Is Delivering for American Workers'' (Sept. 1, 2025), *https://www.whitehouse.gov/articles/2025/09/president-trump-is-delivering-for-american-workers/;* Lori Chavez-DeRemer, ''100 Days In, Trump's Golden Age Puts American Workers First,'' U.S. Dep't of Labor (Apr. 30, 2025), *https://blog.dol.gov/2025/04/30/100-days-in-trumps-golden-age-puts-american-workers-first;* The White House, ''The Trump Effect: Higher Pay for American Workers'' (June 6, 2025), *https://www.whitehouse.gov/articles/2025/06/trump-effect-higher-pay-for-american-workers/;* The White House, ''Trump Administration Celebrates Successes for America's Workers'' (Aug. 26, 2025), *https://www.whitehouse.gov/articles/2025/08/trump-administration-celebrates-successes-for-americas-workers/;* The White House, ''America First Trade Policy'' (Jan. 20, 2025), *https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy;* The White House, ''Report to the President on the America First Trade Policy: Executive Summary'' (Apr. 3, 2025), *https://www.whitehouse.gov/fact-sheets/2025/04/report-to-the-president-on-the-america-first-trade-policy-executive-summary.*

[28] *See, e.g.,* DOL, Office of the Secretary, DOL Press Release, *US Department of Labor launches Project Firewall to protect America's highly skilled workforce* (September 25, 2025), *https://www.dol.gov/index.php/newsroom/releases/osec/osec20250919;* Office of Inspector General, OIG Press Release, *U.S. Department of Labor, Office of Inspector General Launches Investigation into H–1B Visa Fraud and Human Trafficking to Protect American Workers* (July 8, 2026), *https://oig.dol.gov/public/Press%20Releases/OIG-Press-Release-070826.htm.* The term ''third-party staffing'' firms is similar to the concept of ''outsourcing'' firms that employ a business model involving the use of H–1B visas to bring relatively low-cost aliens into the United States and then contracting them out to other U.S. companies seeking their services; a business model that is also used in the immigrant visa program.

[29] See, *e.g.,* DOL, Employment and Training Administration, DOL Press Release, *US Departments of Labor, Justice announce enforcement actions against Cloudera Inc. for alleged Immigration and Nationality Act violations (May 12, 2026), https://www.dol.gov/index.php/newsroom/releases/eta/eta20260512;* DOL [@Sonderling47, @DOLOIG]. (2026, September 8). *Fighting fraud is a TEAM SPORT. @Sonderling47 and I are for real. @Cognizant's PERM filings are suspended. @DOLOIG is on the hunt. Threats to American workers will NOT be tolerated. Alongside @WHFraudTF, we're following facts, fraud and finances. Handcuffs await.* X. *https://x.com/USLaborIG/status/2097321316995232030.*

[30] Presidential Proclamation 10973, Restriction on Entry of Certain Nonimmigrant Workers (Sept. 19, 2025), *https://www.whitehouse.gov/presidential-actions/2025/09/restriction-on-entry-of-certain-nonimmigrant-workers/.*

rates.[31] In FY 2025, job opportunities in computer and technology related occupational classifications constituted the vast majority of H–1B and PERM jobs certified by DOL.[32] Further, employers in the technology sector are laying off large numbers of their U.S. workers while simultaneously filing applications requesting DOL certification for temporary H–1B and/or permanent workers.[33] As noted in Presidential Proclamation 10973 of September 18, 2026, *Restriction on Entry of Certain Nonimmigrant Workers,* certain employers, including information technology (IT) staffing and outsourcing firms, have abused the system to suppress wages and displace American workers, flooding the domestic labor market with an abundant supply of low-paid entry-level workers and making it more difficult for American workers and recent graduates, especially in science, technology, engineering, and math (STEM) fields, to find employment.[34]

Through its program experience, the Department observes that many employers seeking to employ H–1B workers in these skilled positions, including those who engage in layoffs or utilize third-party staffing firms, are often concurrently sponsoring foreign nationals for PERM labor certification where a good faith test of the domestic labor market is a prerequisite to obtaining a certification from the Secretary, as Congress intended. In light of these circumstances, the Department is concerned that current regulations governing the PERM labor certification process do not require employers to conduct a sufficiently robust labor market test—one that utilizes methods that align with modern recruitment practices—and creates incentives for some employers to use different, potentially discriminatory, procedures for considering qualified U.S. applicants that they would otherwise not employ for the same or comparably similar job opportunities not subject to PERM labor certification.

Accordingly, this proposed rule seeks to strengthen the integrity of the PERM labor certification process to improve the program's protections for the U.S. workforce while ensuring that, consistent with statutory obligations, employers with true workforce shortages can access legal immigrant labor possessing the highest quality talent, without undue cost or administrative burden. In particular, and as discussed in detail within this preamble, this rule proposes the following major changes to the Department's PERM labor certification regulations, followed by a section-by-section discussion of all proposed changes:

Modernizing Recruitment To Attract High-Quality American Talent

- Establishes a single set of recruitment requirements for all occupations and, except as permitted by Congress, eliminates the Department's continued management of Schedule A that administratively exempts certain occupations from the statutory labor certification requirement. Additionally, this rule proposes replacing PERM's print-intensive and self-selective menu of recruitment options with a modern set of electronic recruitment requirements that leverages use of the employer website(s), job search website(s), social media platform(s), and other job fairs or on-campus recruiting methods. These provisions will better align PERM's labor market test with modern recruitment practices and ensure employers conduct a more robust labor market test to access the broadest pool of qualified and available U.S. workers.[35]
- Expands the length of time advertisements are available to prospective U.S. applicants, including the job order placed with the SWA, to a period of no less than 90 calendar days or the total number of days the employer has customarily advertised for job opportunities in the same occupational classification during the most recent 12 months that did not require PERM labor certification, whichever is longer. This proposed rule also requires that all recruitment be completed no more than 60 calendar days and no fewer than 30 calendar days before the expected filing of the application with the submission of a recruitment report to DOL. Finally, this rule clarifies the minimum advertising content for all recruitment efforts and extends long-standing optional competitive recruitment procedures for college and university teachers, with minor updates, to professional athletes and professional sports team coaches. These provisions will provide U.S. workers with a fair chance to apply for permanent job opportunities and ensure that employer advertising and consideration of qualified U.S. workers is performed in the same manner as other job opportunities for which PERM labor certification is not required.

Improving Safeguards for U.S. Workers Impacted by Layoffs

- Prohibits employers who have laid off U.S. workers in the same or similar occupation and at the place(s) of employment within the most recent 2 years from the date on which the employer requests PERM labor certification.
- Expands the current requirement that employers engaging in layoffs consider qualified U.S. workers to a post-filing requirement—from the date on which the employer requests PERM labor certification through the date on which the Form I–140 petition is approved by USCIS or the final determination date, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later. If such layoffs occur, requires employers to document and provide such documentation to DOL that it has offered the job opportunity to those laid-off U.S. workers and, where not rejected

[31] *See, e.g.,* Federal Reserve Bank of New York, The Labor Market for Recent College Graduates: Labor Market Outcomes of College Graduates by Major in 2024, (released Feb. 4, 2026, based on data from 2024), *https://www.newyorkfed.org/research/college-labor-market#--:explore:outcomes-by-major* (last visited Mar. 23, 2026); Suzanne Blake, ''A Popular College Major Has One of The Highest Unemployment Rates,'' Newsweek (May 23, 2025), *https://www.newsweek.com/computer-science-popular-college-major-has-one-highest-unemployment-rates-2076514* (last visited Mar. 16, 2026); Natasha Singer, ''Goodbye, $165,000 Tech Jobs. Student Coders Seek Work at Chipotle,'' N.Y. Times (Aug. 10, 2025).

[32] Based on a review of OFLC H–1B and PERM Program Selected Statistics for FY 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance,* 8 of the top 10 H–1B jobs and 7 of the top 10 PERM jobs certified by DOL were in computer and technology related occupational classifications.

[33] *See, e.g.,* Lawmakers seek answers from major US firms over H–1B visa use amid layoffs, Reuters (Sept. 25, 2025), *https://www.reuters.com/business/finance/us-lawmakers-scrutinize-tech-firms-over-h-1b-visa-use-amid-other-job-layoffs-wsj-2025-09-25/;* Simon Hankinson, ''Amid Big Tech Layoffs, Demand Still High for Foreign Workers With H–1B Visas. Something Doesn't Add Up,'' The Heritage Foundation (Mar. 6, 2023), *https://www.heritage.org/jobs-and-labor/commentary/amid-big-tech-layoffs-demand-still-high-foreign-workers-h-1b-visas;* David North, ''Tech Employers Lay Off Workers, but Get New Rounds of H–1Bs,'' Center for Immigration Studies (Dec. 7, 2023), *https://cis.org/North/Tech-Employers-Lay-Workers-Get-New-Rounds-H1Bs;* and Hira and Costa, ''Tech and outsourcing companies continue to exploit the H–1B visa program at a time of mass layoffs,'' Economic Policy Institute (Apr. 11, 2023), *https://www.epi.org/blog/tech-and-outsourcing-companies-continue-to-exploit-the-h-1b-visa-program-at-a-time-of-mass-layoffs-the-top-30-h-1b-employers-hired-34000-new-h-1b-workers-in-2022-and-laid-off-at-least-85000-workers/.*

[34] Presidential Proclamation 10973, Restriction on Entry of Certain Nonimmigrant Workers (Sept. 18, 2026), *https://www.whitehouse.gov/presidential-actions/2026/09/restriction-on-entry-of-certain-nonimmigrant-workers-faad/.*

[35] *See* Gafner, Jocelyne, ''20 Years of Job Hunting: How Getting a Job Has Changed and What It Means for You,'' (Nov. 14, 2024), *https://www.indeed.com/career-advice/news/indeed-20-years* (noting that the process of finding a job is starkly different today compared to twenty years ago due to changes in technology).

for a lawful, job-related reason(s), the U.S. worker was offered the job opportunity. Additionally, this rule prohibits third-party staffing companies from placing the alien(s) with another employer engaging in layoffs where there are indicia of an employment relationship between the alien and that other employer during the same layoff timeframe. These provisions will safeguard the rights of U.S. workers impacted by layoffs when such employers are concurrently seeking PERM labor certification from DOL and admission under an EB–2 or EB–3 visa classification from DHS.

- Establishes an affirmative obligation for employers engaging in layoffs, including the placement of the alien(s) with another employer engaging in layoffs, to affirmatively notify DOL and, where a Form I–140 petition is pending for the alien(s), DHS not later than 5 business days after such layoff(s) occurs, and continually update their recruitment reports throughout the expanded layoff timeframe. The notification will trigger the INA 204(b) consultation process between the departments whereby DOL will determine the adequacy of the employer's compliance with the post-certification obligation to consider laid off U.S. workers, and inform USCIS of the continued validity, or revocation of the underlying labor certification based on DOL's assessment of the employer's compliance. These provisions will provide greater transparency to DOL and DHS, as applicable, on employers engaging in layoffs who are concurrently seeking PERM labor certification and better align the consideration of U.S. workers impacted by layoffs with the Department's statutory mandate to certify an insufficient number of qualified U.S. workers available at the time of application for a visa and admission of the alien(s) into the United States to perform the skilled or unskilled services for permanent employment.

Strengthening Employer Compliance and Program Integrity

- Revises the standards and procedures for employers to provide notice to U.S. workers and the bargaining representative(s), as applicable, of filing the application by clarifying the requirements for providing such notice electronically to U.S. workers, including the intended placement of the alien(s) at third-party worksite locations, and expanding the timeframe to begin within 10 business days before the application is filed and remain available to U.S. workers through the date on which the Form I–140 petition is approved or the date of determination, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later. These provisions will better align with the statutory requirement and strengthen program integrity by permitting any person or employee of the employer, particularly those impacted by layoffs during the post-filing adjudication process of the application or who may have information related to fraud or misrepresentations, to take action and report such information bearing on the application to OFLC for appropriate action.
- Clarifies the definitions of ''employer'' and ''attorney'' and ''agent,'' the use of these terms in the filing of an application, and enhances the obligations employers seeking to employ aliens must declare, under penalty of perjury, to assure compliance with terms and conditions of employment and program requirements, including the recruitment and consideration of U.S. workers in ''good faith'' and in a manner that is comparable to job opportunities that do not require PERM labor certification. These provisions will strengthen protections for similarly employed U.S. workers by providing better clarity regarding the responsibilities of employers and their authorized attorneys or agents, as applicable, and promote greater program compliance.
- Enhances the Department's debarment authority by holding agents and attorneys, and their successors in interest, accountable for their own misconduct independent of the employer's violation(s) and extending debarment from the PERM labor certification program to all of the Department's labor certification and labor condition application programs. Prohibiting debarred entities from filing any new applications with OFLC or receiving any approvals from OFLC during the debarment period strengthens the debarment penalty, when imposed. Any application requesting PERM labor certification filed by debarred entities during the period of debarment will be denied without review. These provisions will improve program integrity and prevent unscrupulous employers from circumventing the PERM labor market test requirements.

Modernizing the Prevailing Wage and PERM Application Process

- Establishes a single point of entry by requiring that employers, except in limited circumstances, electronically file applications requesting PWDs and PERM labor certifications and all supporting documentation through a centralized electronic system maintained by DOL and permits the use of electronic signatures meeting valid signature standards. These provisions will minimize unnecessary costs and burdens on DOL and employers, improve the quality of applications, reduce the frequency of delays associated with deficient applications, and better facilitate information sharing with other federal agencies.
- Requires electronic methods for the OFLC Certifying Officer (CO) to send notices and requests to employers and issue PWDs and PERM labor certification decisions directly to USCIS. These provisions will codify OFLC's standard operating procedures to minimize delays, reduce unnecessary administrative costs for the employer and DOL, and expedite the delivery of final decisions to employers and their authorized attorneys or agents, as applicable, and to other federal agencies, while maintaining program integrity.

The Department invites all interested parties to participate in this rulemaking by submitting comments on all aspects of this rule, as described above. Comments that include written data, sources, and specific feedback on all aspects of this proposed rule would be most helpful to the Department.

III. Summary of Proposed Revisions to 20 CFR Part 656

A. Discussion of Proposed Technical and Summary Changes to 20 CFR Part 656

The Department proposes to revise various terms and phrases used throughout the regulation. These revisions are intended to improve readability, accuracy, or clarity and increase consistency within part 656 and across OFLC regulations and program administration. These modifications are explained below.

The Department proposes to use the term ''*Application for Permanent Employment Certification,*'' the current Form ETA–9089 form title, when referring to Form ETA–9089 and the related Form ETA–9141, *Application for Prevailing Wage Determination,* which contains information about the job opportunity necessary to the CO's review of the employer's request for permanent labor certification. This term would replace the form number throughout part 656 for clarity, and create consistency with other OFLC programs, with one exception—where Form ETA–9089 is used in section 656.3

for the definition of *Application for Permanent Employment Certification.*

The Department proposes to replace the term ''Form ETA 750'' throughout part 656, with *Application for Permanent Employment Certification.* ''Form ETA 750'' has been eliminated as the form's use is no longer needed and the information collection has been discontinued. Consistent with directions provided to the public when implementing the form changes, the persons and entities that used the Form ETA 750 now must use the Form ETA–9089, which is now true for all *Applications for Permanent Employment Certification* processed under part 656.[36] The use of the terms ''Form ETA–9089'' and ''Form ETA 750'' is being deemphasized to ensure the continuing accuracy of the regulation regardless of changes to the form, the form number, or its associated appendices and related information collections.

The Department proposes to change the term ''labor certification'' to ''permanent labor certification'' throughout part 656 for clarity. This change would more clearly distinguish the type of labor certification program addressed in part 656—permanent (*i.e.,* immigrant)—from the labor certifications addressed in OFLC's regulations in part 655—temporary (*i.e.,* nonimmigrant).

The Department proposes to change the terms ''alien labor certification'' and ''alien employment certification'' to ''permanent labor certification'' for internal consistency throughout part 656.

The Department proposes to use the term ''permanent employment'' throughout part 656 wherever the term ''employment'' alone could be unclear and to ensure consistency with the definition of ''permanent employment'' in section 656.3.

The Department proposes to use the term ''U.S. worker,'' rather than ''United States worker,'' throughout part 656 to ensure consistency throughout the regulation and with the definition in section 656.3.

The Department proposes additional changes throughout the text to correct typographical errors and improve clarity and readability, including the use of acronyms, such as using ''DOL'' for ''Department of Labor'' or ''Department,'' ''BALCA'' or ''Board'' in place of ''Board of Alien Labor Certification Appeals,'' or ''CO'' for ''Certifying Officer,'' where appropriate. Such changes are non-substantive and do not change the meaning of the current text. Substantive changes to the current regulatory text are discussed in the corresponding section of the preamble.

As warranted, the Department is proposing to retitle numerous sections to align with the subject matter as it has been reorganized, which includes retitling or removing the title for various paragraphs, subparagraphs, clauses, etc.

B. Discussion of Proposed Revisions to 20 CFR Part 656, Subpart A

Under this proposed rule, subpart A would be expanded and renumbered from 20 CFR 656.1 through 656.3 to now include 20 CFR 656.1 through 656.7. Section 656.5, which currently is in subpart B, would be relocated to be repurposed under subpart A.

1. Proposed 20 CFR 656.1, Purpose and Scope

The Department is proposing to revise part 656, subpart A, and rename subpart A, ''*General Provisions.*'' The Department proposes to reorganize and revise the content of current paragraphs (a) and (b) in proposed paragraph (a) in addition to revising the remaining language that will be placed under proposed paragraph (b). Specifically, paragraph (a) will be subtitled ''Purpose'' and paragraph (b) will be subtitled ''Scope.'' The Department is proposing to add new language on the scope of this subpart at proposed section 656.1(b). The Department believes that this reorganization and proposed revisions will make this subpart clearer and easier to follow.

For proposed section 656.1(a), which discusses the purpose of this subpart and the Department's responsibilities under the INA, the Department proposes to eliminate content from current section 656.1(a) that restates the INA and to relocate content from current section 656.1(b) that describes the purpose of part 656 to proposed section 656.1(a), with revisions. After relocating content from current paragraph (b) to proposed paragraph (a), the Department proposes revisions to update terminology and to better address the purpose of part 656, which is to establish the requirements and procedures by which the Department makes determinations in connection with requests for permanent labor certification and certifies its determination to DHS and DOS. For example, the Department is proposing to revise the language at current section 656.1(b), which states that the regulations ''set forth procedures through which such immigrant labor certifications may be applied for, and granted or denied,'' and replace it with language stating that part 656 establishes ''the requirements and the procedures by which the Department of Labor makes a determination in connection with applications for permanent employment certification and certifies its determination to the Department of Homeland Security and Department of State.'' In addition, the Department proposes to retain the current sections containing the two statutory requirements for the Secretary's determination and certification—at current and proposed sections 656.1(a)(1) and (2)—with revisions to update terminology and improve readability. The Department believes that this proposed language simplifies the explanation for the regulations by using plain English, to make them easier to understand by the general public, and addresses the necessary details more thoroughly than the previous regulatory text.

The Department is also proposing new language at section 656.1(b), which discusses the scope of this part. The proposed language in this paragraph reiterates that part 656 contains the procedures that govern the PERM process. In addition, the new language proposed in section 656.1(b) makes clear that this part establishes standards and obligations regarding the terms and conditions with which employers must comply for permanent labor certification and sets forth integrity measures for ensuring employers' good faith recruitment of U.S. workers.

The Department is also taking this opportunity to remind stakeholders that compliance with the requirements contained in this part is the minimum standard for granting permanent labor certification. Compliance with this part does not establish compliance with, and is not a defense to separate liability under, Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), 8 U.S.C. 1324b, or any other Federal, State, or local law governing employment. As discussed in this proposed rule, information obtained by the Department under this part may be provided to other federal enforcement agencies, including the Equal Employment Opportunity Commission (EEOC) and the Department of Justice,

[36] Forms ETA–750A and ETA–750B were used to process professional athlete applications and National Interest Waiver applications, prior to the Department eliminating these forms. The Department received approval to discontinue the use of the Form ETA–750A and ETA–750B, on October 25, 2022. *See* Office of Information and Regulatory Affairs, ICR—OIRA Conclusion, No. 202102–1205–001, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202102-1205-001.* The Department stopped accepting the Form ETA–750A and –750B, after a transition period, upon implementing PERM processing in the Foreign Labor Application Gateway, in Summer 2023.

Civil Rights Division, Immigrant and Employee Rights Section (DOJ–IER).

The Department is also proposing to eliminate section 656.1(c), which currently describes how stakeholders may send written correspondence or queries regarding the Department's regulations under part 656. The address provided in this section is no longer accurate and, rather than continually having to update an office or physical location address through future regulatory changes, the Department prefers to provide current contact information to stakeholders through more efficient means that allow for faster updates to the public, such as on OFLC's website and on its form instructions. Further, given OFLC's proposal to transition to full electronic processing, providing a street address would be less relevant, and the Department prefers to offer stakeholders alternative means of communication using email and online portal platforms.

2. Proposed 20 CFR 656.2, Statutory Authority and Burden of Proof

The Department proposes to revise the heading of section 656.2 of subpart A from ''Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder'' to ''Statutory Authority and Burden of Proof'' and the content of this section by removing and replacing the content of current paragraph (a), revising the content of current paragraph (b), and eliminating current paragraph (c).

The proposed revisions to section 656.2 are consistent with the Department's efforts in this rulemaking to simplify part 656 by removing unnecessary statutory restatements and content that extends beyond the Department's authority. The topics addressed in proposed section 656.2 are the delegation of the Secretary's statutory authority to issue permanent labor certifications and carry out other responsibilities required by 8 U.S.C. 1182(a)(5)(A) and the burden of proof when an employer requests permanent labor certification. In proposed sections 656.2(a) and (b), the Department proposes new and revised content that more clearly and simply states the delegation of the Secretary's statutory authority to OFLC and the employer's burden of proof.

Currently, section 656.3 defines relevant components of DOL. However, part 656 does not clearly address the delegation of the Secretary's authority within DOL. The proposed new language at 656.2(a) states in plain English that the Secretary's authority to issue permanent labor certifications and carry out other responsibilities required by 8 U.S.C. 1182(a)(5)(A) has been delegated to OFLC. Within OFLC, the OFLC Administrator makes determinations on *Applications for Permanent Employment Certification* and designates staff (*e.g.,* a CO) to share this responsibility. The proposed provision is consistent with the Department's current practice in the permanent labor certification program and with the Department's temporary labor certification program regulations.[37] In addition, the proposed changes offer clarity about the delegation of authority to OFLC, the OFLC Administrator, and COs and closes a regulatory gap in part 656.

Under this proposed rule, the OFLC Administrator and COs will continue to exercise the Secretary's authority to review *Applications for Permanent Employment Certification* and, where the employer establishes eligibility to receive certification of an *Application for Permanent Employment Certification* (*i.e.,* all statutory and regulatory requirements are met), to issue the PERM labor certification to DHS or DOS.

3. Proposed 20 CFR 656.3, Definition of Terms

This rule proposes several changes to section 656.3, which includes the definitions of the terms used in part 656. Throughout this section, the Department proposes changes to add definitions for terms used throughout part 656 but not previously defined in 656.3; to align the definitions across the Department's administration of employment-based visa programs, specifically the H–2A, H–2B, and H–1B visa classifications; and to improve accuracy and clarity of definitions.

First, the Department is proposing to add the definition of *Administrative Law Judge (ALJ)* to this section. While this definition is already included at sections 655.5 and 655.103 for the H–2B and H–2A programs, respectively, the Department is proposing to include the same definition at section 656.3, as it is also used in this section.

The Department is also proposing to add definitions of *Actual minimum requirements* and *Business Necessity* to this section. These terms are currently used at sections 656.17(h) and (i) to explain the CO's assessment of job duties and requirements on the *Application for Permanent Employment Certification,* but they are not currently defined. Current section 656.17(i)(1)—at section 656.19(d) in this proposed rule—states that the job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity. In that provision, the Department outlines scenarios for which employers are required to demonstrate certain requirements as a business necessity (*e.g.,* a foreign language requirement or a combination of occupations). Current section 656.17(h)(1)—at section 656.19(c) in this proposed rule—extends beyond those enumerated scenarios, providing that job requirements must be those normally required for the occupation and must not exceed the Specific Vocational Preparation (SVP) level assigned to the occupation as shown in the Occupational Network (O*NET) Job Zones, unless the employer justifies the requirements as arising from business necessity.

The proposed definition of ''actual minimum requirements'' states that they are the minimum requirements for education, experience, training, skills, licenses, or other requirements that are necessary to perform the employer's job opportunity in a normally acceptable manner. In addition, consistent with current section 656.17(h), the proposed definition also provides that the employer's stated actual minimum requirements must be normal to the occupation and must not exceed the SVP for the Standard Occupational Classification (SOC) code applicable to the employer's job opportunity, unless justified as arising from business necessity. Through O*NET, the Department makes occupational information available to the general public, such as the academic preparation (*e.g.,* Bachelor's degree) and SVP (*e.g.,* career and technical education, training, and experience) normally required for average performance in an occupation. Under the proposed rule, the CO would continue to use the occupational information in the O*NET as one source to assess the normalcy of the employer's asserted actual minimum requirements. To help guard against employers ''tailoring'' the requirements of a permanent position to the specific qualifications of a foreign national, the Department is also proposing a revision to its review of applications by comparing the actual minimum requirements stated in the *Application for Permanent Employment Certification* to the requirements stated in the employer's postings for job opportunities in the same or substantially comparable occupational classifications that were not subject to

[37] *See* 20 CFR 655.2(a) (Authority and role of the Office of Foreign Labor Certification (OFLC)) for the H–2B program and 655.101(a) (Authority and role of the Office of Foreign Labor Certification) for the H–2A program.

PERM labor certification for the 12 months preceding the date on which recruitment began for the job opportunity stated in the *Application for Permanent Employment Certification.* In the event of an audit and where the PERM job opportunity imposes materially more stringent job requirements, including any combination of education, experience, training, skills, licenses, or other requirements, than the employer's most recent efforts to recruit U.S. workers for non-PERM positions, the employer will be required to submit written justifications for each material difference under the business necessity standard.

Current section 656.17(h)(1)—proposed section 656.19(d)(1)—states that to establish ''business necessity'' an employer must demonstrate that the job duties and requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform the job in a reasonable manner. The Department proposes to include this definition in proposed section 656.3.

The proposal to define these terms in proposed section 656.3 is to make the terms and their meaning easier to locate. The proposed definitions are consistent with the Department's longstanding practice with some revisions to reflect both the Department's program experience reviewing applications and the experience of other federal agencies enforcing the current regulatory framework. The Department invites comments about whether and how these terms could be further clarified or defined to strengthen program integrity and ensure qualified U.S. workers are provided first access to these job opportunities and fairly considered for hire.

The Department proposes to revise the definition for *Agent* to make it similar to the definition of agent included in the Department's H–2B and H–2A regulations at sections 655.5 and 655.103, respectively.

The Department proposes only minor revisions to the definition of the term *Applicant,* such as deleting the reference to the form number. Under both the current and proposed rules, the term *Applicant* means a U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Permanent Employment Certification.* The current definition of *Applicant* identifies the form number for the *Application for Permanent Employment Certification,* a detail that is not relevant to this definition. By deleting unnecessary information, the Department's proposal simplifies part 656.

The Department also proposes revising the currently defined term *Application* for clarity and better align with the Department's current approach to information collection. The Department proposes to change the term from *Application* to *Application for Permanent Employment Certification* and revise the definition to include the form number, which could be helpful for identifying the required form. In addition, the proposed definition clarifies the term *Application for Permanent Employment Certification* encompasses both the Form ETA–9089 and the Form ETA–9141, *Application for Prevailing Wage Determination,* and includes a reference to appendices and potential successor forms. When the Department last revised Form ETA–9089 in preparation for adding the PERM labor certification program process to the FLAG system in June 2023, the Department took steps to reduce duplicative information collected from employers through Form ETA–9141 and Form ETA–9089 and leverage efficiencies available in the FLAG system. As a result, the Department removed duplicative fields from the Form ETA–9089 and instead incorporates the information collected on the Form ETA–9141 into the CO's review under section 656.40. The proposed definition continues to include the purpose of the form, with minor revisions for conformity with terminology used throughout the proposed rule, which is to secure a permanent labor certification determination from the Department.

The Department is also proposing to revise the definition of *Area of intended employment (AIE)* to increase consistency of defined terms across the Department's programs, while simplifying the definition by deleting old terminology. The Department proposes to eliminate language in the current definition that includes the Primary Metropolitan Statistical Area and the Consolidated Metropolitan Statistical Area (CMSA), which are no longer commonly used when describing an AIE. The Department proposes not to replace CMSA with an updated term—Combined Statistical Area (CSA)—so that the definition proposed in section 656.3 aligns with the same term's definition in the H–2A and H–2B programs, at sections 655.103(b) and 655.5, respectively. The proposed revision of the definition of AIE is not intended to change the CO's assessment of normal commuting distance, for example, in employer-provided surveys submitted with an *Application for Prevailing Wage Determination.*

The Department proposes minor revisions to the definition of *Attorney,* which includes adding clarification that an attorney who is under suspension, debarment, expulsion, or disbarment from practice before any court may not represent an employer under this part.

DOL is also proposing minor revisions to *Barter,* such as deleting the references to form numbers from the definition.

The Department proposes minor revisions to the definition of *Board of Alien Labor Certification Appeals (BALCA or Board),* which includes deleting the reference to BALCA's location.

The Department proposes to define the term *Business Day* to mean any day other than a Saturday, Sunday, or Federal holiday, and notes that use of the terms ''business day'' and ''working day,'' wherever used in this part, have the same meaning. The Department notes that this proposed definition follows the convention used in other programs, which calculate deadlines by reference to Federal holidays as defined at 5 U.S.C. 6103 and roll due dates to ''the next business day if the due date falls on a Saturday, Sunday or Federal holiday'' (*e.g.,* 20 CFR 655.11 (H–2B)). Fed. R. Civ. P. 6(a) follows this convention too.

DOL proposes revising the definition of *Certifying Officer (CO)* to add that the OFLC Administrator is the national CO and that other COs may be designated by the OFLC Administrator, similar to definition at sections 655.5 and 655.103.

The Department proposes adding a definition of *Chief Administrative Law Judge (Chief ALJ)* to this subpart to align with the definition of Chief Administrative Law Judge in sections 655.5 and 655.103.

DOL proposes adding a definition of *Department of Homeland Security (DHS)* to this subpart to state that this agency is established by 6 U.S.C. 111.

The Department proposes adding a definition of *Employee* to this subpart to align with the definition provided in sections 655.5 and 655.103.

The Department proposes revising the definition of *Employer* for clarity and improve alignment with similar definitions in sections 655.5 and 655.103. The revised definition describes an employer as an individual or entity (including a partnership, association, corporation, cooperative, firm, joint stock company, trust, public institution, or other organization with legal rights and duties), rather than a ''person'' followed by a nonexclusive list of entity types. The definition continues to require an ''employer'' to

possess a valid Federal Employer Identification Number (FEIN) and a social security number cannot be used in lieu of an FEIN. In addition, the definition continues to require that the ''employer'' offer full-time, permanent employment at a place within the United States and to have a place of business (physical location) in the United States to which U.S. workers can be referred for employment. In addition to having a place of business in the United States to which U.S. workers may be referred for employment, the NPRM adds that an ''employer'' must also have a means by which it may be contacted for employment. The Department proposes to remove the explicit exclusion of independent contractors from the definition of ''employer,'' and add, instead, that an ''employer'' must have—or will have after hiring—an employment relationship (such as the ability to hire, pay, fire, supervise, or otherwise control the work of the employee) with respect to a worker, which includes the alien and U.S. worker applicants, as it relates to this program. Additionally, in proposed paragraph (2), the Department retains the language excluding ''persons who are temporarily in the United States'' and the associated list of examples from the definition of ''employer.'' Finally, the Department is proposing a new paragraph (3) to exclude foreign missions from this definition. As defined by the Foreign Missions Act under 22 U.S.C. 4302(a)(3), a foreign mission means ''any mission or entity in the United States involved in diplomatic, consular, or other activities that is substantially owned or effectively controlled by a foreign government, or by an organization representing a territory or political entity that has been granted diplomatic or other official privileges and immunities under the laws of the United States, or that engages in some aspect of the conduct of the international affairs of such territory or political entity, including any real property of such a mission.'' The Department notes that foreign missions have special accommodations while operating in the United States and are not subject to the same level of obligations and accountability (*e.g.,* immunity from suit under the Foreign Sovereign Immunities Act) and their employee compensation is exempted from federal, state, and local income and other taxes as domestic employers, which may undermine the ability of federal agencies to investigate, audit, and enforce compliance with PERM requirements. Thus, the Department invites public comments on this proposed revision to exclude foreign missions, as defined by the Foreign Missions Act under 22 U.S.C. 4302(a)(3), the definition of ''employer'' for purposes of obtaining PERM labor certification from DOL.

The Department invites comments about whether additional revisions to the definition of ''employer'' should be made for clarity or to avoid unintended results, such as leaving any doubt that self-petitioning (*i.e.,* being both employer and employee) on an *Application for Permanent Employment Certification* is prohibited.

The Department also proposes eliminating the current definition of *Employment* from this section. The Department is proposing several modifications related to term ''employment'' throughout this proposed rule and does not believe the limited definition in this section is useful.

The Department is proposing to add a definition of *Familial relationship* to clarify the types of relationships between an employer, or its employees, and the alien that must be disclosed on the *Application for Permanent Employment Certification.* The proposed definition is intentionally broad as it is designed to ensure the integrity of the labor certification process by requiring the disclosure of all relationships that could influence the employer's recruitment or suggest the absence of a bona fide job opportunity. In addition, the proposed definition retains the current requirement that the employer must prepare and maintain documentation of the relationship(s), for submission upon request by the CO, in compliance with proposed 656.10(e)(2). For job opportunities subject to such review under proposed section 656.10(e)(2), the Department reiterates that familial relationships must be disclosed on the *Application for Permanent Employment Certification.* Failure to disclose familial relationships, currently and under the proposed rule, may be grounds for a finding of material misrepresentation.

The Department is proposing to add the definition of *Federal holiday* as a legal public holiday as defined at 5 U.S.C. 6103. This definition aligns with the definition of Federal holiday in sections 655.5 and 655.103.

The proposed rule would eliminate the definition of *Immigration Officer*—a term used to identify adjudicators within USCIS—from this section. This deletion would further the Department's goal of removing regulatory text from current part 656 that discusses topics that are under the purview of another agency.

The Department is proposing to add the definition of *Immigrant Petition* to part 656, which will define this as the USCIS Form I–140, *Immigrant Petition for Alien Workers,* or successor form, and accompanying documentation required by DHS for employers seeking to employ foreign persons under an employment-based immigrant visa.

The Department is proposing minor revisions to the definition of *Job opportunity* to clarify that a job opportunity must be full-time employment at a place in the United States to which U.S. workers can be referred. Consistent with long-standing practice and in the event of an audit, the employer must be prepared to document the permanent and full-time nature of the position by furnishing position descriptions and payroll records for the job opportunity involved in the *Application for Permanent Employment Certification.*

The Department is proposing to add definitions of *Job offer, Job order,* and *Layoffs* to align with similar definitions in sections 655.5 and 655.103 that cover H–2B regulations.[38] While these definitions are included elsewhere in DOL regulations specific to other OFLC programs, they are not currently included in section 656.3, despite the terms being repeatedly used throughout part 656. The Department is also proposing to add the definition of *Metropolitan Statistical Area (MSA)* to this part to align with the definition in sections 655.5 and 655.103.

The Department proposes to delete the terms *Nonprofessional occupation* and *Professional occupation* from section 656.3, since this proposed rule does not distinguish between nonprofessional occupations and professional occupations in the filing and recruitment requirements sections.

The Department proposes to retain its current definition of the term *Non-profit or tax-exempt organization,* with one change. The Department proposes to delete the reference to section 656.40, as it could be misunderstood as limiting the definition to PWD purposes.

The proposed rule would add the term *Offered wage* in section 656.3. The proposed definition of *Offered wage* is the salary or wage, or salary or wage range, offered by the employer for the job opportunity. In addition, the definition clarifies that the offered wage must be included in the employer's *Application for Permanent Employment Certification* and advertisements and

[38] 20 CFR 655.103 includes definitions of job offer and job order, but not layoffs.

must equal or exceed the highest of the prevailing wage or Federal, State, local minimum wage. The proposed definition is consistent with a similar definition at section 655.5 and conforms with other provisions in this proposed rule, such as section 656.17(e)(2)(iv) (advertisement content) and section 656.13(c) (offered wage assurances), where the Department discusses wage requirements further.

The Department proposes to retain the definitions of *Office of Foreign Labor Certification* and *O*NET* in section 656.3, with minor conforming changes.

The proposed rule also would add the term *OFLC Administrator,* defined as the primary official of OFLC, or, within the context of the regulation, the OFLC Administrator's designee. In addition, the Department proposes adding a definition of *National Processing Center (NPC)* to identify and clarify the term for the offices within OFLC out of which the COs operate and adjudicate *Applications for Permanent Employment Certification.*

The proposed rule would add the terms *Permanent employment* and *Permanent labor certification* to the definitions at section 656.3. Through the proposed definition of *Permanent employment,* the Department clarifies that a ''permanent'' job opportunity is employment of indefinite duration, in which an employee will ordinarily have an expectation of continued employment that will not end in the near, definable future. In addition, the definition clarifies that to establish a job opportunity offered in an *Application for Permanent Employment Certification* as ''permanent,'' an employer would be required to establish, at a minimum, that it: (1) has a bona fide need for a worker to fill a job opportunity whose services or labor are performed year-round, except for job opportunities such as members of the teaching profession and professional athletes, for which less than year-round performance is normal to the occupation; and (2) the employer will not require breaks or periods of inactivity, except where such periods stem from an established employer policy for leave that applies to other employees similarly employed by the employer. The Department invites comments on other occupations in which permanent employment does not require performance in all months of the year. The proposed definition of the term *Permanent labor certification* explains that it is a certification made by the OFLC Administrator for an employer seeking to file an Immigrant Petition with DHS to employ an alien under an immigrant visa, pursuant to section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A), and this part. The definition clarifies that the certification is based on the *Application for Permanent Employment Certification* and all supporting documentation.

The Department proposes adding a definition for *Place of employment.* The proposed definition aligns with a similar definition in section 655.5 and emphasizes that the actual work under the job order will be performed at the worksite(s) or physical location(s) indicated in the *Application for Permanent Employment Certification.*

In addition to adding ''place of employment'' as a defined term, the Department is considering changes to how this term is applied to *Applications for Permanent Employment Certification* both for job opportunities that will require work in various locations either throughout a geographic area or throughout the United States, where some locations cannot be anticipated at the time of filing, and which, currently, are commonly referred to as job opportunities for ''roving'' and ''peripatetic'' work (used synonymously herein), and for job opportunities covering modern concepts such as telework. The Department has determined that the current policy guidance does not adequately reflect the geographic area(s) where the job opportunity will be performed in some instances, such as for roving and telework employment where the worker reports to employer-designated worksite(s), routinely, to perform tasks but the location may change across a local or regional area. The current guidance does not allow the Department to fully assess U.S. worker availability and adverse impact on wages and working conditions in such scenarios.

The Department is considering new approaches, which may be adopted through this rulemaking, to better approximate the geographic area for roving and peripatetic job opportunities, and to notify U.S. workers who would be impacted by roving work, remote work, and telework job opportunities. There are various modern employment scenarios due to technological advancements, whether roving, remote, or telework (including hybrids thereof), for which the Department seeks better ways to identify the geographic area of such job opportunities for purposes of better apprising U.S. workers of the job opportunities available and further ensuring that the employment of aliens for such job opportunities will not adversely affect U.S. workers.

Employers have followed the 1994 policy guidance provided in Field Memorandum No. 48–94, *Policy Guidance on Alien Labor Certification Issues,* in which the then-ETA Administrator for Regional Management, Barbara Ann Farmer, instructed employers to indicate ''various unanticipated locations throughout the U.S.'' on the permanent labor certification application and use the employer's main or headquarters office for recruitment and other program requirements linked to the location where work is to be performed (*e.g.,* current requirements for PWD, NOF, job order placement with the SWA).[39] Currently, when completing the worksite information for the *Application for Permanent Employment Certification,* employers indicate ''various unanticipated locations throughout the U.S.'' on the application, and, also, identify the employer's main or headquarters location on the application. This has allowed the Department to collect some available details on job opportunities identified as involving unanticipated worksites throughout the U.S., and to base the wage assessment on the employer's main or headquarters location. Based on the Department's program experience in recent years, however, the employment scenarios that exist in the current labor market are not adequately covered by the current policy guidance and the employer's main or headquarters office may not always be the most appropriate physical location to use for PERM labor certification program purposes. The Department seeks better approaches to protect U.S. workers from adverse effects from these employment scenarios under the PERM program.

Place of Employment for Roving or Peripatetic Situations

For these jobs, the nature and requirements of the job's functions necessitate changes of worksite locations within the United States, likely frequent changes, and often of undetermined duration and scenario, to perform tasks or assignments for the employer either at the employer's own offices or worksite locations, and/or, at third-party or client locations at the employer's direction. This may include traveling to the employer's facilities to perform tasks, traveling to third-party sites or client sites to perform tasks, or other travel within set or varying geographic locations to perform work tasks or assignments for the employer. This, also, may include jobs for which the nature of the job opportunity requires travel to locations throughout the United States, whether local or non-

[39] *See* Field Memorandum No. 48–94, *Policy Guidance on Labor Certification Issues* (May 16, 1994) (on file with DOL).

local, whether regional or national, from location to location to perform work for the job as a part of the worker's normal or routine duties, or the job duties require the employee to spend most work time at one location, but there is occasional travel for short or brief periods of work at other locations.

For a roving or peripatetic job opportunity under this NPRM, the Department proposes that the place of employment used for compliance with part 656 requirements would be the employer's nearest business office in the United States that is closest to where the work will be performed, not the location in the United States where the worker may reside, or travels from, to perform work, assignments, or tasks for the employer. Therefore, for completion of the *Application for Prevailing Wage Determination,* the employer would add the known physical address(es) of the employer's nearest business office(s) as the place(s) of employment or worksite(s), and for the *Application for Permanent Employment Certification,* for the place(s) of employment or worksite location(s). In addition, the employer would continue to add the phrase ''various unanticipated locations throughout the U.S.'' along with the physical address(es) of the employer's nearest business office(s) to the work to be performed. This would replace the current requirement from the *Farmer memo* where the employer adds to the *Application for Permanent Employment Certification* ''various unanticipated locations throughout the U.S.'' and adds the employer's main or headquarters address for the place of employment information. This proposed change is intended to better capture the geographic area or region for the work, to better apprise U.S. workers of the job opportunity, and to give better insight into any regional aspect(s) of the work to be performed, rather than listing only the employer's main or business headquarters. The collection of the nearest employer's office will, in many instances, provide U.S. workers with a better idea of the geographic area for travel or residence associated with the job duties. In such scenarios involving roving work, the employer would be required to provide all known places of employment (*i.e.,* the phrase ''various unanticipated locations throughout the U.S.'' and the employer's nearest business office(s) for the work to be performed) that the employer knows of at the time it initiates the PERM application process. For a roving or peripatetic job opportunity, the employer's obligations regarding the NOF, the prevailing wage, and working conditions would be based on the employer's nearest office location(s) to where the work will be performed.

As an example, if an employer has offices in Atlanta, GA and Charlotte, NC and the job opportunity is for roving work in locations in the State of Georgia, the employer would identify the physical address for its Atlanta, GA office location, and all known locations for the work to be performed, as the place(s) of employment on the *Application for Prevailing Wage Determination* and *Application for Permanent Employment Certification* as well as indicating ''various unanticipated locations throughout the U.S.'' on the *Application for Permanent Employment Certification* to comply with part 656 requirements. The Department proposes use of the employer's nearest office as the place of employment in efforts to reach as many U.S. workers as possible and inform U.S. workers of the geographic or regional area. Nonetheless, the Department recognizes that an employer's closest office may not be close—*e.g.,* an employer may only have one office on the west coast, while the job opportunity is in Miami, FL, at a third-party client location. The Department invites comments from the public that provide practical approaches for identifying the place(s) of employment on the *Application for Prevailing Wage Determination* and *Application for Permanent Employment Certification,* where work cannot be easily tied to an employer's nearest office or geographic region.

Place of Employment for Remote Work and Telework (and Hybrid Telework) Situations

For purposes of this NPRM, a job opportunity is considered remote when the job opportunity will not be performed at the employer's office or worksite location(s), nor at a third-party client location where the worker is assigned, but, rather, will be performed offsite or virtually by the worker (*e.g.,* at the worker's residence, a co-working space, shared workspace, or another place of the employer or worker's discretion, that is not under the control or operation of the employer). Also, for purposes of this NPRM, a job opportunity is considered to be a telework (or a hybrid telework opportunity) when the employer divides some combination of work time for the job opportunity between tasks performed at the employer's office(s) or worksite location(s), place(s) of business, or third-party or client worksite(s), with offsite or virtual work (*e.g.,* at a worker's residence or a co-working space).

For remote work, where the worker will not routinely travel to different locations to perform work, assignments, or tasks for the employer, and the work can be performed virtually at any fixed site location, the place of employment for purposes of the *Application for Prevailing Wage Determination* and the *Application for Permanent Employment Certification* would be the city, state, county (*i.e.,* county, borough, parish, township), ZIP code, and Bureau of Labor Statistics (BLS) area for the alien subject to the *Application for Permanent Employment Certification.* Therefore, on the *Application for Permanent Employment Certification,* for the place of employment or worksite location, the employer would add the alien's city, state, county (*i.e.,* county, borough, parish, township), ZIP code, and BLS area within the United States, rather than a residential address, or the employer's address. This would replace the current requirement to list a full address for a remote job opportunity. For remote work, the Department proposes to require the employer to post the NOF electronically, if there is no applicable bargaining representative to be notified. *See* discussion in proposed section 656.14. In addition, both the NOF and recruitment would be required to notify U.S. workers that the job opportunity is a remote job opportunity, without geographic restrictions on where in the United States the worker may reside.

The Department also recognizes that fully remote employment presents distinct and novel questions under the PERM program, including whether positions that do not require physical presence at an employer's worksite should qualify for labor certification. The Department is considering whether to exclude fully remote positions from eligibility for PERM labor certification to protect U.S. workers and advance the objectives of the program. The Department solicits comments on whether, and to what extent, fully remote positions should be eligible for certification, including whether a categorical exclusion, minimum onsite-work requirement, or other restriction would be appropriate. Fully remote positions also raise questions about the appropriate geographic basis for determining the prevailing wage, particularly where employees may work from anywhere in the United States. The Department solicits comments on whether the prevailing wage should be based on, or the highest of, the alien's location, the employer's nearest physical location, or another geographic

measure (*e.g.,* national prevailing wage), and what safeguards are most appropriate for apprising prospective U.S. applicants of the job opportunity and necessary to protect U.S. workers similarly employed in higher-wage labor markets.

For telework situations, where the worker splits time between the employer's worksite location and the worker's virtual telework site, but does not routinely travel to different employer locations or client-site or third-party locations to perform roving or peripatetic work, the place of employment for purposes of the *Application for Prevailing Wage Determination* and the *Application for Permanent Employment Certification* would be the physical location where the worker is expected to perform the job opportunity, rather than a residential address. The NOF and recruitment would be required to notify U.S. workers that the job opportunity is a telework opportunity in efforts to fully apprise U.S. workers of the applicable telework flexibilities.

Examples of Roving Employment and Peripatetic Work

Roving and peripatetic job opportunities may function as technicians doing brief work at different locations, or short-term consultants for third-party clients on a project-to-project basis, while others may require independent work within a third-party client's organization for longer term periods, based on a contract-for-services agreement. Some employers may assign a worker for rotations or assignments at its own location(s) or at third-party client's location(s), perhaps within a particular geographic area or region of the United States, or where the worker will provide services to a variety of third-party clients, while other job opportunities may assign a worker to an employer's location or a single third-party client site for an extended period. Some examples may include computer technicians, pharmaceutical sales representatives, consultants, sales representatives, plumbers, maintenance workers, and project engineers, etc.

Examples of Remote and Telework

For some job opportunities, employees may perform some or all of their job duties virtually. Workers who exclusively perform their job duties from their personal residence or shared or cooperative workspace are sometimes referred to as ''remote workers.'' Workers who perform their duties both on-site and from their personal residence or shared or cooperative workspace are generally referred to as ''teleworkers.''

An example of a remote job opportunity is where the employer performs onboarding activities or orientation at the employer's location, but then, daily work is performed virtually at the worker's residence. The employee may relocate for reasons unrelated to projects or clients.

An example of telework is where the employer determines that a worker must report to the employer's office, or a third-party worksite, for three days per week and the worker can perform work virtually at the worker's residence two days per week, or some combination of virtual and in-person work. In telework cases, the employee may relocate when assigned to new projects or clients after the *Application for Permanent Employment Certification* is filed in order to commute to the new on-site location. In these scenarios the place where work is performed may be untethered from the employer's own office locations, including the employer's main or headquarters office, but is tethered to physical business address(es).

Prospective/Speculative Employment

While the NPRM proposes to update guidance for appropriately identifying and applying the place(s) of employment for the types of job opportunities discussed above to accommodate modern work scenarios and business advancements, the Department reminds employers that the job opportunity for which the employer seeks permanent labor certification must be a bona fide job. An *Application for Permanent Employment Certification* cannot be based on temporary employment, speculative employment, or a scenario where work does not yet exist.

The Department will question instances that appear to be contrived or abusive of the PERM program. Further, as is the case with the Department's H–1B program requirements, roving and peripatetic work must not be used as ''strikebreaker'' work (*i.e.,* placing aliens at worksites where U.S. workers are striking) to disadvantage U.S. workers.

Solicitation of Public Comments

The Department solicits public comments on how the NPRM's approaches for identifying the known place(s) of employment on *Applications for Permanent Employment Certification* for roving, remote and telework job opportunities can be improved to better apprise U.S. workers and to protect the wages and working conditions of similarly employed U.S. workers to support the Department's statutory obligations.

The Department's proposed rule includes the current term *Prevailing wage determination (PWD)* with revisions to simplify the definition. The definition removes references to Schedule A and sheepherder petitions, as the Department proposes to eliminate Schedule A and alternative procedures for sheepherders under this rule. The proposed definition continues to indicate the PWD is issued by an OFLC NPC. It clarifies that the PWD issued provides the prevailing wage for the job opportunity that is the subject of the *Application for Permanent Employment Certification.*

The Department proposes to relocate the definition of the term *Professional Athlete* from its current location in section 656.40 to the definitions at section 656.3.

The proposed rule retains, with minor changes, the term *Purchase,* defined as the transfer of ownership of a permanent labor certification application or certification from one person to another by voluntary act and agreement, based on valuable consideration, and term *Sale,* defined as agreement between two parties, called, respectively, the seller (or vendor) and the buyer (or purchaser) by which the seller, in consideration of the payment or promise of payment of a certain price in money terms, transfers ownership of a permanent labor certification application or certification to the buyer.

The proposed rule makes minor technical edits to the current definitions for *Secretary of Homeland Security, Secretary of Labor,* and *Secretary of State.* It also proposes technical edits to the definition of *State Workforce Agency (SWA)* to be consistent with the Department's H–2A regulations at 655.103.

The Department proposes to remove *Specific Vocational Preparation (SVP)* as a defined term. SVP is a component of the occupational information O*NET provides to the general public, which OFLC uses to assess whether an employer's job opportunity reflects duties, qualifications, and requirements that are normal for the occupation. The current definition of O*NET, which the Department proposes to retain in section 656.3, provides a link where interested parties can find additional information about O*NET, including SVP. By removing SVP as a defined term and deferring to current O*NET information, the Department can ensure that part 656 will stay consistent and current with the meaning and usage of SVP in O*NET.

The proposed rule adds the term *Strike* to section 656.3, using the same

definition as the Department uses at section 655.103. *Strike* would be defined as ''[a] concerted stoppage of work by employees as a result of a labor dispute, or any concerted slowdown or other concerted interruption of operation (including stoppage by reason of the expiration of a collective bargaining agreement).''

The proposed rule would add the term *Substantially comparable,* as a defined term at 656.3. The Department's regulations currently address this term at section 656.17(i)(5)(ii) and state that a ''substantially comparable'' job or position is ''a job or position requiring performance of the same job duties more than 50 percent of the time.'' In the definition added at section 656.3, the Department proposes changes to the definition for clarity and improved identification of substantially similar jobs or positions. The definition would require a ''substantially similar'' job or position to share ''more than a majority (*i.e.,* 51 percent or more) of the same duties performed.'' In addition, the proposed definition would continue the CO's current practice of reviewing the duties disclosed in the *Application for Permanent Employment Certification* as the starting point for comparison. The proposed definition continues to notify the employer that additional documentation (*e.g.,* organizational charts and position descriptions, the amount and percentage of time spent performing the duties, payroll records) may be required to justify a determination that two jobs or positions are substantially comparable or not. The additional documentation, if necessary to the CO's assessment, would be submitted to the CO upon request.

For clarity, the Department notes that ''substantially comparable'' and ''substantially equivalent'' are distinct terms, used for distinct assessments. ''Substantially comparable,'' as discussed here, involves the CO's comparison of the duties of multiple jobs or positions to determine whether the jobs or positions are different, while ''substantially equivalent''—addressed in current section 656.17(h)(4) and the proposed definition in section 656.19(d)(4)—involves the CO's assessment of an employer's stated primary and alternative minimum requirements for the job opportunity described in the *Application for Permanent Employment Certification.* The Department invites comments about how to further clarify these terms.

The proposed rule would revise the term *United States* and add the term *Wages* to align with definitions in sections 655.5 and 655.103. The Department also proposes to add *U.S. Citizenship and Immigration Services (USCIS),* an operational component of DHS, as a defined term.

For the term *U.S. Worker,* the Department proposes to reorganize and modify the current definition. As proposed, a *U.S. worker* for purposes of the permanent labor certification program would be a U.S. citizen or national of the United States; an individual who is lawfully admitted for permanent residence in the United States, is admitted as a refugee under 8 U.S.C. 1157, is granted asylum under 8 U.S.C. 1158.

To provide greater clarity regarding how the Department will administer and enforce program integrity provisions (*e.g.,* revocation, debarment) under this part, the proposed rule adds the terms *Fraud, Material, Pattern or Practice, Willful,* and *Willful Misrepresentation.* The Department proposes to define the term *Fraud* as a false representation of a material fact, or the concealment of a material fact, made with knowledge of its falsity and with the intent to deceive the Department, DHS, DOS, or another Government entity, or to obtain a benefit under this part or the Act to which the person is not entitled. The proposed definition for the term *Material* refers to a fact, statement, representation, or omission that has a natural tendency to influence, or is capable of influencing, a decision of the Department under this part or a decision of DHS or DOS on an Immigrant Petition or visa application that relies on a permanent labor certification, regardless of whether it actually influenced the decision. In circumstances where the Department could have discovered the truth through its own independent inquiry, a misrepresentation will not be considered immaterial. This proposed definition is consistent with *Kungys* v. *United States,* 485 U.S. 759, 770 (1988) (a ''misrepresentation is material if it 'has a natural tendency to influence, or was capable of influencing, the decision of' the decisionmaking body'' (quoting *Weinstock* v. *U.S.,* 231 F.2d 699, 701 (D.C. Cir. 1956)). The same test governs 18 U.S.C. 1001. *United States* v. *Gaudin,* 515 U.S. 506, 509 (1995). BALCA'') uses a similar standard, holding that whether ''misrepresentations were material is whether they had a natural tendency to influence the decision of the [agency].'' *Bestkey Sols., Inc.,* 2014–PER–01248, slip op. at 4. (Apr. 6, 2018) (quotation omitted). However, reaching a conclusion that a material misrepresentation was made in the application does not require a change in the final adjudication of the case. Injeti v. *U.S. Citizenship and Immigration Servs.,* 737 F.3d 311, 316 (4th Cir. 2013) (''finding that a misrepresentation is material does not require concluding that it necessarily would have changed the relevant decision''); *United States* v. *Stelmokas*, 100 F.3d 302, 317 (3d Cir. 1996) (''Materiality, after all, refers to the effect of a representation on a decision maker regardless of the nature of the decision. In other words, no matter what is being decided, the misrepresentation is material under Kungys if it has the natural tendency to affect the decision.'').

With regard to potentially noncompliant conduct by an employer, attorney, or agent that could lead to debarment under 656.31, the Department is proposing to define *pattern or practice* as a course of conduct in which the act or omission in question is repeated, routine, or regular, rather than an isolated, sporadic, or accidental act. Such conduct may be established involving two or more *Applications for Permanent Employment Certification,* whether filed by or on behalf of the same employer or different employers, and, in the case of an attorney or agent, by conduct across the applications of different clients. This proposed definition is based on principles in *Int'l Bhd. of Teamsters* v. *United States,* 431 U.S. 324, 336, 388 n.16 (1977) (construing Title VII § 707, 42 U.S.C. 2000e–6) noting that a pattern or practice is conduct that is ''the regular rather than the unusual practice,'' ''more than the mere occurrence of isolated or 'accidental' or sporadic . . . acts.''

In addition, the Department is proposing to define *Willful* as knowingly, deliberately, and voluntarily, or in reckless disregard of the requirements of this part or of the truth or falsity of a representation, as distinguished from an act or omission that is accidental, inadvertent, or merely negligent. In the Department's proposal, a person acts willfully with respect to a requirement of this part when the person knows of the requirement or shows reckless disregard for whether the person's conduct complies with it. The Department is proposing this definition for consistency with 20 CFR 655.805(c), which states that a '''willful failure' means a knowing failure or a reckless disregard with respect to whether the conduct was contrary to [the statute or regulations].'' (citing *McLaughlin* v. *Richland Shoe Co.,* 486 U.S. 128, 133 (1988) (''willful'' refers to conduct that is ''voluntary,'' ''deliberate,'' or ''intentional,'' and not merely ''negligent'' and further confirms a willful violation occurs if an employer ''either knew or showed reckless

disregard for the matter of whether its conduct was prohibited''); *Trans World Airlines, Inc.* v. *Thurston,* 469 U.S. 111, 128 (1985) (defining willfulness under the Age Discrimination in Employment Act to mean the employer ''either knew or showed reckless disregard'' for whether its conduct was prohibited)).

A *willful misrepresentation* is proposed as constituting a false representation of a material fact, made willfully or with reckless disregard, in connection with an *Application for Permanent Employment Certification,* a prevailing wage determination, or any other document, form, or communication submitted under this part. The Department also proposes to clarify that the intent to deceive is not an element of willful misrepresentation. *Mwongera* v. *INS,* 187 F.3d 323, 330 (3d Cir. 1999) (stating that the government ''does not need to show intent to deceive; rather, knowledge of the falsity of the representation will suffice''); *Forbes* v. *INS,* 48 F.3d 439, 442 (9th Cir. 1995) (same). It is sufficient that the person knew the representation was false or made it with reckless disregard for its truth or falsity, and made it voluntarily. The proposed definition is consistent with *Matter of Kai Hing Hui,* 15 I&N Dec. 288, 289–90 (BIA 1975) (a misrepresentation is willful if made deliberately and voluntarily with knowledge of its falsity). ''[T]he intent to deceive is no longer required before the wilful [*sic*] misrepresentation charge comes into play.'' *Id.* at 290.

Overall, the terms and definitions included in this proposal will clarify program requirements to improve employer compliance, strengthen program integrity, and enhance consistency across programs.

4. Proposed 20 CFR 656.4, Persons and Entities Authorized To File

The Department proposes adding a new section at 656.4 to address persons and entities authorized to file an *Application for Permanent Employment Certification* with OFLC and the employer's signature requirements, including when represented by an attorney or agent. The proposed new section would update and expand employer signature requirements in the PERM labor certification program, while providing consistency with the Department's H–2B program regulations at 20 CFR 655.7 and improving program integrity by requiring the employer to affirm its accountability for documentation submitted to the Department.

Proposed new paragraph (a) of section 656.4 clarifies that an employer may file the *Application for Permanent Employment Certification* or may authorize an agent or attorney, as defined at section 656.3, to do so on the employer's behalf. This paragraph would codify current program practices, as either the employer, or its agent or attorney, are allowed to file applications.

In paragraph (b), the Department proposes to require the employer to sign the *Application for Permanent Employment Certification* and all documentation submitted to the Department, regardless of whether the employer is represented by an attorney or agent. Requiring the employer to sign the *Application for Permanent Employment Certification* is a current practice under section 656.17(a)(1). Similarly, the employer's signature on the recruitment report is currently required under section 656.17(g)(1). Most employers would not experience a change in practice under this proposal, but those employers selected for audit or supervised recruitment, for example, would be required to sign all additional submissions to the CO.

Requiring employers to sign all documents submitted to the Department may expand signature requirements for some employers, but it does not expand program obligations. Under current section 656.10(b)(1), employers currently must attest to taking full responsibility for the accuracy of any representations made to the Department by an attorney or agent when signing the application form. Continuing current practice, the Department will not permit an agent or attorney to sign for the employer, even if the employer seeks to delegate authority to the agent or attorney, such as through a Power of Attorney or similar document. It has been established by BALCA that the employer is responsible for ensuring the accuracy of the application and all other submissions.[40] The Department proposes to codify a signature requirement on all documents submitted as a means of ensuring employer accountability and, thereby, improving program integrity.

5. Proposed 20 CFR 656.5, Requirements for Attorneys and Agents

As noted above, the Department proposes expanding subpart A to include sections 656.5, 656.6, and 656.7. In section 656.5, the Department proposes to repurpose the section that currently contains Schedule A, which is the only current provision in subpart B.[41]

The proposed section 656.5 addresses the requirements for agents and attorneys. Specifically, the Department proposes to address documentation requirements for agents and attorneys who file *Applications for Permanent Employment Certification* with OFLC on behalf of employers, as well as attorney and/or agent involvement in the consideration of U.S. workers during the PERM labor certification program's labor market test.

In paragraph (a), the Department proposes adding a new document retention requirement for agents and attorneys. Agents and attorneys would be required to retain documentation—an original agreement or other document—that demonstrates the employer authorized them to submit the *Application for Permanent Employment Certification* on the employer's behalf and otherwise represent the employer in connection with all aspects of that application. Adding this documentation requirement for agents is consistent with the Department's current document retention requirements for agents who participate in the H–2A and H–2B temporary labor certification programs, and expanding it to attorneys in the PERM program regulations would advance the Department's continued efforts to strengthen the integrity of the PERM program.[42] In recent years OFLC has experienced situations that have prompted the need to propose this requirement. For example, there have been PERM and/or PWD applications filed on behalf of employers that have not retained the professional services of attorneys or agents nor have authorized the filing of those applications. In addition, there have been other instances where OFLC has reviewed applications that fail to disclose information pertaining to attorneys and/or agents that have been retained by the employer or work for the employer for purposes of providing legal or professional services in connection with a PERM application.[43] These instances, along with other issues OFLC has experienced while processing applications, and the fact that requiring the retention of such agreements is an existing practice and requirement established for other programs, have

[40] *E.g., Rubicon Global Holdings,* 2023–PER–00050, slip op. at 4 (Aug. 30, 2024) (holding employer responsible for error counsel made on Form ETA–9089); *see also Island Concrete Form LLC,* 2019–PER–00058 (July 28, 2022) (holding employer responsible for error counsel made submitting an incomplete draft NOF in an audit response).

[41] *See infra* Section B of this NPRM for further discussion on the current Schedule A provision at 20 CFR 656.5 and subpart B.

[42] *See* 20 CFR 655.8(a) (H–2B) and 20 CFR 655.133(a) (H–2A).

[43] *See generally Dwight M. Molina,* 2022–PED–00004 (May 29, 2025).

prompted the need to propose the establishment of this requirement in this program. The Department proposes to require agents and attorneys to retain this documentation for the same proposed record retention period as would apply to employers who file *Applications for Permanent Employment Certification* under proposed section 656.10(h)—a period of 5 years from the date on which the Immigrant Petition is approved, denied or withdrawn. Or, if the employer does not proceed to file an Immigrant Petition, agents and attorneys would be required to retain all records associated with the *Application for Permanent Employment Certification* for a period of 5 years from the expiration of the labor certification or from the date of denial or withdrawal.

To be clear, the Department is proposing to require that any agreement the employer and its agents or attorneys might have entered into for purposes of filing a PERM application be retained to be provided to the Department, upon request, in order to substantiate the nature and scope of its relationship with the agent and/or attorney and the services to be rendered, as it relates to the entire PERM recruitment and application process. OFLC is not proposing to regulate the content of these representation agreements, as that is determined and controlled by the parties involved; OFLC is merely proposing that such agreements be retained and produced upon request, because it assumes that an agreement was entered into in order for the employer to authorize its attorney or agent to file a PERM application on its behalf. Moreover, the scope of the agreement must be specific enough to clearly delineate the role and responsibilities of the attorney and/or agent to ensure the agent or attorney does not act in a manner that goes beyond what was permitted or authorized, such as the consideration of U.S. workers who apply for the job opportunity unless they qualify as the employer's representative, as provided in proposed section 656.5(b). OFLC wants to further remind employers that legal representation or securing an agent for purposes of filing an *Application for Permanent Employment Certification* is not required, and participation in the PERM program is voluntary.

For the PERM labor certification program, the agent or attorney would not be required to submit evidence of their authority to represent the employer when submitting the *Application for Permanent Employment Certification* to OFLC at the time of filing. Rather, the agent or attorney would be required to retain the evidence and be prepared to provide it to OFLC upon request, for example, in the event of an audit or if the need to request proof of representation arises while the CO is processing the application.

In addition, the Department proposes to relocate the provision that addresses alien, attorney, or agent involvement in considering U.S. workers who apply or are referred to the employer during the recruitment period, from current section 656.10(b)(2) to proposed section 656.5(b), without any substantive changes, apart from removing explanatory policy language from the proposed regulatory text to simplify the rule. The Department proposes to add a paragraph heading to 656.5(b), ''Consideration of U.S. workers,'' for clarity. The Department would continue to put attorneys and agents on notice in proposed paragraph (b)(1) that the alien, and agents or attorneys of the employer or the alien, may not participate in interviewing or considering U.S. workers for the job offered to the alien, with one exception stated in proposed paragraph (b)(2). The Department proposes to change the regulatory content relocated from current section 656.10(b)(2)(i) to proposed section 656.5(b)(1) by removing the policy statement below from regulatory text:

> It is contrary to the best interests of U.S. workers to have the [foreign worker] and/or agents or attorneys for either the employer or [foreign worker] participate in interviewing or considering U.S. workers for the job offered the [foreign worker]. As the beneficiary of a labor certification application, the foreign worker cannot represent the best interests of U.S. workers in the job opportunity. The foreign worker's agent and/or attorney cannot represent the foreign worker effectively and at the same time truly be seeking U.S. workers for the job opportunity.

Although the Department's policy statement above remains in effect, removing it from regulatory text conforms with the Department's goal of simplifying the PERM labor certification regulations. As a result, proposed section 656.5(b)(1) continues to prohibit the alien and/or the alien's agent and/or attorney from interviewing or considering U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (2) of this section, while the preamble explains the reason the Department is retaining the prohibition in the proposed rule.

The Department continues to recognize in paragraph (b)(2) that, in some cases, an employer may have an agent or attorney who acts as the employer's representative in recruitment, normally, for job opportunities such as the one specified on the *Application for Permanent Employment Certification.* Only if the agent or attorney normally acts as the employer's representative in recruitment for such job opportunities when unconnected to labor certification may that agent or attorney be involved in interviewing or considering U.S. workers during permanent labor certification program recruitment.

6. Proposed 20 CFR 656.6, Successors in Interest

The Department proposes to add a new section to its PERM program regulations at 656.6 to address successors in interest to an employer, attorney, or agent who has violated PERM labor certification program requirements. The language proposed in this section mirrors the Department's current H–2A program regulations for successors in interest at 655.104. Specifically, this section proposes to define ''successors in interest,'' clarify liability for successors in interest, and explain the effect of an employer, attorney, or agent's debarment on a successor in interest. The Department has determined that this proposal, similar to the H–2A program regulations, would improve program integrity by enabling the Department to hold entities accountable for their misconduct.

Proposed paragraph (b) provides a non-exhaustive list of factors the Department would use to identify a successor in interest. These factors would enable the Department to compare and contrast key information for a new employer, attorney, or agent who files an *Application for Permanent Employment Certification* against information for a previous filer who violated program requirements, during the violator's debarment period. Key information encompassed in this assessment includes: substantial continuity of the same business operations; use of the same facilities; continuity of the workforce; similarity of jobs and working conditions; similarity of supervisory personnel; whether former management or ownership retains a direct or indirect interest in the new enterprise; similarity in machinery, equipment, and production methods; and similarity of products and services. In addition, the Department would consider whether the predecessor has the ability to provide relief for their violation(s). For purposes of debarment, the Department also would consider whether—and, if so, the extent to which—the employer,

attorney, or agent's ownership, management, supervisors, and others associated with them were involved in the violation(s) at issue. If, after engaging in this assessment, the Department were to find substantial continuity or similarity between the two, the Department would deem the new employer, attorney, or agent to be a successor in interest to the predecessor. As proposed, no one factor would be dispositive. All the circumstances would be considered as a whole.

Proposed paragraph (a) clarifies that successors in interest could be liable for the duties and obligations of the predecessor employer, agent, or attorney, regardless of whether they have succeeded to all the rights and liabilities of the predecessor. The Department emphasizes that this liability and enforcement standard is tailored specifically to prevent the evasion of PERM program obligations and debarment. It does not alter, displace, or satisfy the distinct substantive standards applied by DHS when determining whether an entity qualifies as a valid successor in interest for purposes of immigrant visa petition adjudication under Title 8 of the Code of Federal Regulations. In addition, proposed paragraph (c) would permit the CO to deny an *Application for Permanent Employment Certification* filed by or on behalf of a successor in interest of a debarred entity during the period of debarment, without review beyond the successor in interest assessment. The CO would issue the denial solely on the basis that it was filed by a successor in interest to a debarred employer, agent, or attorney. Similarly, OFLC would revoke a PERM labor certification issued to a successor in interest to a debarred employer, agent, or attorney solely on that basis. The employer, agent, or attorney would have the option to appeal such a denial or revocation, pursuant to the procedures for appeals of CO determinations in proposed section 656.26.

This proposal would bolster the Department's ability to impose sanctions on program violators. It would prevent debarred employers, attorneys, and agents from circumventing debarment by obscuring their identity through reincorporation, restructuring, or other means. The Department could look behind the name or FEIN on a new filing to assess the employer, attorney, or agent as a successor in interest to a debarred entity. Adding this section would improve program integrity and promote greater compliance with program requirements.

7. Proposed 20 CFR 656.7, Transition Procedures

The Department proposes to add a new section 656.7 to clarify which set of regulations—the 2004 PERM Final Rule,[44] as amended, or this proposed rule, once finalized—an employer would be required to satisfy when filing an *Application for Permanent Employment Certification* or *Application for Permanent Prevailing Wage Determination* with OFLC. In this section, the Department proposes to use the date an employer submits an *Application for Permanent Employment Certification* to determine which set of rules govern that application, meaning that an *Application for Permanent Employment Certification* or *Application for Prevailing Wage Determination* must satisfy the regulations applicable on the date submitted and OFLC will process the application in accordance with those regulations. This proposed transition approach would ensure that each *Application for Permanent Employment Certification* or *Application for Prevailing Wage Determination* is subject to only one regulatory framework.

The Department recognizes that an employer's compliance with program requirements begins before filing an *Application for Permanent Employment Certification,* with pre-filing recruitment of U.S. workers and obtaining the required PWD. Under current pre-filing recruitment requirements, an employer's recruitment compliance efforts could begin as much as 180 calendar days before the employer intends to file an *Application for Permanent Employment Certification.*[45] Requesting a PWD could begin earlier than 180 calendar days before filing the *Application for Permanent Employment Certification* or it could be the employer's last action before filing.[46] To provide continuity for employers who were already engaged in pre-filing recruitment activities on the date the Department publishes the new rule and an opportunity for both employers and OFLC to adjust to the new requirements, the Department is considering a transition period.

The Department is proposing a 90-day transition period—consisting of a 60-day delayed effective date plus an additional 30 calendar days for transition. The Department used this approach when publishing the current PERM labor certification program regulations and proposes the same approach for this proposed rule, once finalized. Using a 90-day transition period would support a smooth transition between current and new requirements. It would enable employers who had already begun pre-filing recruitment for compliance with the current rule to complete all required recruitment activities—including placement of a job order with the SWA—at least 30 calendar days before filing an *Application for Permanent Employment Certification* under the current regulatory framework. In addition, it would provide opportunity for the Department to engage with stakeholders seeking to understand the new rule, to train staff, and to prepare and troubleshoot systems for processing under the new rule.

As proposed, the new rule would go into effect 60 calendar days after publication, the Department would be granting 30 additional calendar days for transition from the old rule to the new rule, and all *Applications for Permanent Employment Certification* or *Application for Prevailing Wage Determination* filed on or after the 90th day after publication would be subject to the new rule. OFLC would review an *Application for Permanent Employment Certification* or *Application for Prevailing Wage Determination* submitted no more than 29 days after the effective date of the new rule using current regulations at part 656. Beginning 30 days after the effective date of the new rule, any *Application for Permanent Employment Certification* or *Application for Prevailing Wage Determination* filed with OFLC would be subject to the new rule.

The Department invites comments on the length of the proposed transition period, and ways to facilitate transition from the current regulations to the new rule, once finalized.

C. Discussion of Proposed Revisions to 20 CFR Part 656, Subpart B

The Department is proposing to eliminate the provisions for Schedule A in this subpart because it lacks the authority to establish an exception to the INA's labor market test; and, further, even if it possessed this authority the Department can no longer justify

[44] *See* Employment and Training Admin., Final Rule, *Labor Certification Process for the Permanent Employment of Aliens in the United States,* 69 FR 77326 (Dec. 27, 2004).

[45] Currently, employers following the basic pre-filing recruitment process at section 656.17 must conduct required recruitment activities within the 180-calendar-day period before filing; none of the required recruitment activities may have taken place more than 180 calendar days prior to filing the application.

[46] *See* 20 CFR 656.40(c). The proposed rule retains the requirement that the employer begin pre-filing recruitment or file the *Application for Permanent Employment Certification* within the validity period of the PWD.

continuing to waive the labor market test for jobs that it has been unable to prove are subject to a national shortage of qualified U.S. workers using a reliable, objective, and transparent methodology or prove should otherwise be exempted from the statutory labor certification requirement, apart from a determination from the Secretary of Homeland Security that it is in the national interest to waive the permanent job offer requirement.

During the mid-1960s, in an effort to reduce administrative processing delays associated with the admission of aliens for permanent employment, the Department first established, by regulation, a mechanism for pre-certifying jobs for which U.S. workers were purportedly in short supply nationwide, which became known as Schedule A of the PERM labor certification program.[47] Currently, Schedule A is set forth in the Department's PERM labor certification regulations at 20 CFR 656.5 and enumerates a list of occupations for which the Department predetermined that the statutory requirements have been met.[48] The occupations currently listed in Schedule A are divided into two groups. Group I consists of physical therapists and professional nurses; Group II consists of aliens who possess exceptional ability in the sciences, arts, or performing arts.[49] An employer seeking to hire an alien in an occupation listed in Schedule A is able to forego the labor market test for U.S. worker availability that is normally required for PERM labor certification. The employer bypasses filing an *Application for Permanent Employment Certification* with the Department and instead files an uncertified *Application for Permanent Employment Certification* directly with USCIS at the time the employer files its Form I–140 petition.[50]

Prior to 2004, the occupational listings in Schedule A were reviewed and modified multiple times to reflect changing economic and labor market conditions and to prevent adverse effects on the wages or working conditions of U.S. workers. Schedule A has been revised eight times, the last time in 2004.[51] The most recent revisions to Schedule A listings in 2004 only added aliens of exceptional ability in the performing arts to Group II; the other revision in 2004 was procedural and clarified the professional qualifications for eligible nurses under Schedule A.[52] The two occupations listed in Group I of Schedule A have been unchanged for over 30 years.

In addition, the Department has determined that the existence of Schedule A—both Group I and Group II—is incompatible with the plain language of the INA. Regarding Schedule A, generally, and Group I, specifically, the INA requires that before ''*any* alien'' may be admitted into the United States to perform skilled or unskilled labor, the Secretary must certify that there are no qualified workers in the United States that are able and willing to perform the work. 8 U.S.C. 1182(a)(5)(A)(i)(I) (emphasis added). The INA does not exempt workers in a particular occupation from this requirement, nor does it provide the Department with the authority to exempt any occupations from this requirement. Had Congress wanted to empower the Department to establish an exemption from the labor certification requirement it would have clearly done so. Instead, the statute includes no such authority. To the extent that Group II implements the exception embedded in 1182(a)(5)(A)(i)(I) and defined in (A)(ii)—a slightly modified labor market test for members of the teaching profession and aliens with exceptional ability in the sciences or arts—such implementation is consistent with the statute.[53] The statute, however, does not exempt those occupations from the labor certification requirement.

Since Schedule A does not require the employer to file an *Application for Permanent Employment Certification* with OFLC, the Department does not have comprehensive data on how many employers utilize Schedule A and the types of work performed thereunder.[54] In response to growing stakeholder interest in modifying Schedule A and President Biden's October 2023 Executive Order 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,* the Department published an RFI,[55] seeking public comment on evaluating the utility of expanding Schedule A to include STEM or non-STEM occupations, input on the appropriate data sources and methods for determining whether labor shortages exist, and if so, how the Department could establish a reliable, objective, and transparent methodology for identifying STEM and non-STEM occupations that are experiencing labor shortages and use that methodology to make regular updates to Schedule A. As previously discussed, the Department received over 2,000 comments in response to the RFI, none of which in whole or in part provided the Department with information and evidence upon which the Department could rely to establish a consistent and reliable methodology for regularly reviewing and updating Schedule A occupations. In the absence of such a methodology, the Department can no longer confirm that a nationwide shortage of workers exists to reasonably justify keeping the existing occupations in Schedule A or expanding Schedule A to other occupations—even assuming it had the authority to exempt certain occupations from the required labor market test, the Department has no reasonable basis upon which to determine that a national shortage of workers exists in any occupation. The RFI process solidified the Department's growing belief that Schedule A, first established as an administrative measure to reduce processing delays, should be eliminated and all job opportunities subject to part 656 must undergo a labor market test for the reasons explained below. Consequently,

[47] *See* ''Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A To Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations,'' 88 FR 88290 (Dec. 21, 2023); *see also* 30 FR 14979 (Dec. 3, 1965) (publishing initial Schedule A).

[48] *See* INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A) (stating, ''Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.'').

[49] *See* 20 CFR 656.5(b) and 656.15(d); *see also* ''Final Rule, Labor Certification Process for the Permanent Employment of Aliens in the United States,'' 42 FR 3440 (Jan. 18, 1977) (establishing the initial framework for Group II).

[50] *See* 8 CFR 204.5(k)(4)(i); 8 CFR 204.5(l)(3)(i); *see also* 20 CFR 656.15.

[51] *See, e.g.,* 31 FR 16412 (Dec. 23, 1966), 33 FR 12808 (Sept. 10, 1968), 36 FR 2462 (Feb. 4, 1971), 42 FR 3440 (Jan. 18, 1977), 45 FR 83933 (Dec. 19, 1980), 52 FR 20593 (June 2, 1987), 56 FR 54920 (Oct. 23, 1991), and 69 FR 77326 (Dec. 27, 2004).

[52] 69 FR 77326, 77333.

[53] *See* 8 U.S.C. 1182(a)(5)(A)(i)(I) and (A)(ii) (determination of the availability of U.S. workers rests on whether there are not U.S. workers equally qualified as the alien seeking to enter the United States.

[54] *See* 88 FR 88290, 88291 (Dec. 21, 2023). Nurses and physical therapists have been the sole occupations on Schedule A since the 1990s (56 FR 54920, 54922 (Oct. 23, 1991)) (removing other occupations from Schedule A but retaining nurses and physical therapists).

[55] *See* ''Labor Certification for Permanent Employment of Foreign Workers in the United States; Modernizing Schedule A to Include Consideration of Additional Occupations in Science, Technology, Engineering, and Mathematics (STEM) and Non-STEM Occupations,'' 88 FR 88290 (Dec. 21, 2023).

the Department is unable to confidently conclude that Schedule A does not undermine INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A), which requires a PERM labor certification from the Department confirming the Secretary's determination that there are insufficient U.S. workers who are able, willing, qualified and available for the job the alien seeks and employment of the alien will not adversely affect the wages and working conditions of U.S. workers in similar jobs.[56] Being unable to justify the continued presence of the current occupations on Schedule A, the Department likewise cannot justify continuing to waive recruitment for U.S. workers as it no longer possesses evidence that there is a nationwide shortage of U.S. workers able, willing, qualified, and available to work as physical therapists or professional nurses, as required for their placement on Schedule A. Further, the INA does not authorize the Department to make a finding of such a shortage or to use such a finding to exempt certain occupations from the requirements of the PERM program.

With regard to Schedule A, Group II, the Department further notes that even if a methodology could be identified to update Schedule A, the Department would still pursue elimination of Schedule A, Group II. Schedule A was intended for *occupations* for which the Department could identify a shortage of available U.S. workers, not individuals or classes of aliens.[57] Group II focuses on the aliens' qualifications and how the aliens possess exceptional ability. As written now, the regulation does not focus on the occupations, which as stated, was the primary concern for Schedule A.

It appears that the Department added Group II to Schedule A in connection with Congress' October 20, 1976 amendments to the INA at section 212(a)(5)(A)(ii), which required an ''equally qualified'' assessment for U.S. workers applying for positions requiring exceptional ability in the sciences or the arts, as a mechanism to route these applications to DHS, where DHS would then assess whether the alien possessed the exceptional ability claimed and compare the alien's qualifications to those of U.S. workers available for the job opportunity.[58] Continuing current practice, the Department will not assess the alien's ''exceptional ability.'' DHS has the authority and experience to assess whether the alien possesses ''exceptional ability.'' However, the Department has determined that it better serves and protects U.S. workers to first have employers seeking to employ aliens under current Schedule A Group II conduct a labor market test, with the CO assessing the employer's consideration of U.S. workers, and then allow DHS to make the ''exceptional ability'' determination, if the employer pursues an Immigrant Petition.

Even if the Department does not adopt its proposal to delete the content of section 656.15 in its entirety and reserve the section, some regulatory text would be deleted from 656.15, consistent with the Department's goal of eliminating regulatory text covering topics outside the scope of the Department's jurisdiction. For example, current sections 656.15(c) and 656.15(d) list documentation to be submitted to USCIS with the I–140 petition, for use in USCIS' assessment of whether the alien possesses the requisite exceptional ability. DHS addresses documentation requirements for USCIS' assessment of exceptional ability in its regulations at 8 CFR 204.5(k)(3)(ii). At best, sections 656.15(c) and (d) of the Department's regulations create confusion to the extent there are differences between those sections and DHS' regulations. At worst, they hamper USCIS' ability to assess exceptional ability claims. With the proposed elimination of section 656.15(c) and (d) content, USCIS' regulations at 8 CFR 204.5(k)(3)(ii) would clearly—and solely—govern.

While some employers may have relied on Schedule A to reduce burden when hiring aliens (*i.e.,* avoiding time and cost burden associated with pre-filing recruitment and OFLC's *Application for Permanent Employment Certification* review process), the Department also has determined that this reliance interest does not outweigh the Department's interest in rigorous adherence to the requirements of the INA and Congress' mandate to protect the wages and working conditions of U.S. workers.

Therefore, the Department asserts that a labor market test should be conducted for these job opportunities to satisfy the Department's obligations under the INA. The Department has experience assessing U.S. worker availability using the ''equally qualified'' standard of current section 656.24(b)(2)(ii), which the Department applies to pre-filing recruitment for college and university teacher positions. In this rule, as discussed below, the Department proposes to expand section 656.24(b)(2)(ii) to encompass pre-filing recruitment for job opportunities offered to aliens claimed to have exceptional ability in the sciences or the arts and eliminate Schedule A, Group II. Under this proposed rule, the employer would identify the job opportunity on the *Application for Permanent Employment Certification* as offered to an alien of claimed exceptional ability. The employer would conduct pre-filing recruitment following the requirements of proposed section 656.17 and prepare a recruitment report and all other supporting documentation demonstrating compliance with the requirements of proposed section 656.17(f) for submission with its *Application for Permanent Employment Certification.* OFLC would review the employer's pre-filing recruitment activities conducted pursuant to 656.17 and those recruitment results to assess the availability of U.S. workers at least as qualified as the alien. However, OFLC would not assess whether the alien qualifies for the EB–2 immigrant visa classification as an alien of exceptional ability; that determination resides with USCIS. If the employer files a Form I–140 Petition asserting exceptional ability under the EB–2 immigrant visa classification, and USCIS denies it after determining the alien's qualifications do not rise to the level of exceptional ability pursuant to the requirements in the relevant DHS regulations at 8 CFR 204.5(k), the employer could file a new *Application for Permanent Employment Certification* without the assertion of exceptional ability.

As a result, the Department is proposing to eliminate Schedule A for Group I, both at the current section 656.5, in related provisions at section 656.15, and elsewhere as necessary. Employers seeking to permanently employ aliens currently covered in Group I of the current Schedule A would follow the standard PERM labor certification process, including the pre-filing recruitment requirements of

[56] *See* INA section 212(a)(5)(A), 8 U.S.C. 1182(a)(5)(A), which states, ''Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that—(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.''

[57] *See* 69 FR 77335 (Dec. 27, 2004) (declining to expand Schedule A to include classes of workers that commenters suggested (*e.g.,* key employees with special or unique skills), noting that the core premise of Schedule A is pre-certification of occupations).

[58] *See* ''Labor Certification Process for the Permanent Employment of Aliens in the United States; Implementation of the Immigration Act of 1990; Final Rule,'' 56 FR 54920, 54922 (Oct. 23, 1991).

proposed section 656.17, the filing instructions of proposed section 656.10, the processing requirements of proposed section 656.19, and all other PERM regulatory requirements that apply to all other occupations, without exception. As required by statute, a recruitment report and all other supporting documentation submitted for a job opportunity formerly classified under Schedule A, Group II, will be assessed under section 656.24(b)(2)(ii), using the same standard as that which applies to *Applications for Permanent Employment Certification* for college or university teachers, while a recruitment report for a job opportunity formerly classified under Schedule A, Group I, will be assessed under section 656.24(b)(2)(i), which applies to all other occupations.[59] The Department notes that aliens claiming to have exceptional ability in business are not currently listed in Schedule A, Group II, or in the statutory provision at 8 U.S.C. 1182(a)(5)(A)(ii), which establishes the alternative assessment for U.S. worker availability at section 656.24(b)(2)(ii); recruitment results for such job opportunities would continue to be subject to section 656.24(b)(2)(i).

In light of the foregoing, the Department proposes to eliminate the provision that classifies aliens of exceptional ability, defined in Group II of current section 656.5, under the umbrella definition of Schedule A. Employers seeking to permanently employ aliens currently covered in Group II of the current Schedule A would follow the standard PERM labor certification process (*i.e.,* proposed sections 656.10, 656.17, and 656.19, and all other PERM regulatory requirements that apply to all other occupations); however, the recruitment report submitted for a case currently covered in Group II will be assessed under section 656.24(b)(2)(ii), as required by the INA, using the same standard that applies to *Applications for Permanent Employment Certification* for college or university teachers.[60]

As the Department has determined that there is no need to classify either Group I or Group II under Schedule A and is proposing to delete these provisions, the Department further proposes the deletion of the current section 656.5 of part 656, subpart B in its entirety. The Department's proposal would result in subpart B not containing any regulatory sections, so the Department proposes to reserve current part 656, subpart B in full for future rulemaking.

The elimination of Schedule A would enable the Department to better ensure that U.S. workers have an opportunity to apply for available job opportunities, and adhere to the statutory requirements to protect U.S. workers assigned to it, as intended by Congress under the INA.

D. Discussion of Proposed Revisions to 20 CFR Part 656, Subpart C

In subpart C, the Department proposes adding two new sections at 20 CFR 656.13 and 656.14. The Department is also proposing to delete the language currently contained in sections 656.15 and 656.16, so they can be reserved. Under this proposed rule, several sections of subpart C would be retained but repurposed and/or revised, as discussed below.

1. Proposed 20 CFR 656.10, Application Filing Requirements

The Department proposes to clarify the process for filing an *Application for Permanent Employment Certification,* in part, by reorganizing the PERM labor certification program's regulatory framework to reflect program requirements by processing stage, rather than by occupation. This approach is consistent with the Department's existing H–2A and H–2B temporary labor certification program regulations and will help clarify and simplify the PERM labor certification program regulations.[61] In keeping with this reorganizational approach, the Department proposes to centralize the filing requirements for *Applications for Permanent Employment Certification* at section 656.10, as discussed below. In addition, the Department proposes certain changes to the information and documentation required at the time of filing and modifications to regulatory language in conformity with other proposals in this rulemaking. The filing requirements proposed in section 656.10 would apply to all employers seeking to permanently employ an alien in a job opportunity that requires a PERM labor certification, regardless of occupation. These proposed changes are explained below.

To accomplish the centralization of filing requirements in section 656.10, the Department proposes to move paragraphs both out of and into section 656.10. The proposed rule would move the current paragraphs (b) (representation), (c) (attestations), and (d) (notice) out of section 656.10, as they address topics other than filing requirements. The content of these paragraphs would be relocated and addressed in other sections of the proposed rule, including sections 656.3, 656.4(b), 656.5(b), 656.13, and 656.14. Under the proposed rule, regulatory content that would move into revised section 656.10 include language currently provided for under: sections 656.17(c) (filing date); 656.17(l) (documentation related to alien influence over the job opportunity); and 656.19(b) (documentation for live-in household domestic service workers). Following these organizational changes, proposed section 656.10 will focus only on filing requirements and will also address the related topics of filing date, submission of incomplete applications, and record retention.

Specifically, in proposed paragraphs (a) (What to file) and (d) (Original signature) of section 656.10, the Department addresses what all employers would be required to submit to OFLC. Consistent with current practice, proposed sections 656.10(a)(1) and 656.10(d) would require the employer to submit a complete *Application for Permanent Employment Certification* with original signature(s)[62] that includes a PWD obtained in advance pursuant to section 656.40[63] and information provided in all other required fields. Proposed section 656.10(a)(1) highlights certain key employer information that must be provided (*i.e.,* legal name(s), trade name(s), valid FEIN, valid place of business [physical location] in the United States, and a means by which prospective U.S. applicants may contact the employer for employment) on the *Application for Permanent Employment*

[59] *See* 8 U.S.C. 1182(a)(5)(A)(i) and (ii). The statutory provisions governing assessment of U.S. worker availability for job opportunities are further discussed and explained in the preamble for proposed section 656.24.

[60] *See* 8 U.S.C. 1182(a)(5)(A)(ii). The statutory provisions governing assessment of U.S. worker availability for job opportunities involving college or university teachers and persons of exceptional ability are further discussed and explained in the preamble for proposed section 656.24.

[61] *See* 20 CFR 655.15 and 20 CFR 655.121.

[62] Employers and their attorneys or agents, if applicable, sign the *Application for Permanent Employment Certification,* and submit an electronic (scanned) copy of signed form (until the OFLC Administrator directs use of a verifiable electronic signature method). The form with the original signature(s) must be retained for compliance with the proposed section 656.10(h).

[63] Employers are only required to identify the tracking number for the PWD (Form ETA–9141) associated with the *Application for Permanent Employment Certification* when completing the Form ETA–9089 in the FLAG system. The FLAG system incorporates the PWD into the *Application for Permanent Employment Certification,* auto-filling certain required fields on the Form ETA–9089 for the employer and providing both Form ETA–9089 and Form ETA–9141 information for CO review in FLAG. *See Application for Permanent Employment Certification Form ETA–9089—General Instructions,* Section E Job Opportunity and Wage Information, available at *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/ETA-9089-General-Instructions-Expires%2002-28-29.pdf.*

Certification. In the current rule, the definition of *Employer* in section 656.3 requires the employer to have a FEIN and ''a location within the United States to which U.S. workers may be referred for employment'' and the Form ETA–9089 and instructions identify those, plus employer name, trade name (if applicable), and contact information for the employer, as required. To improve clarity that this key employer information is required at the time of filing—collected through required form fields—the Department proposes to include this content in proposed section 656.10(a)(1) and add legal name, trade name(s), and means by which prospective U.S. applicants may contact the employer for employment to proposed section 656.10(a)(1), consistent with required form fields and H–2A program regulations.[64] If the employer does not use a trade name, ''N/A'' as an affirmative response is required, consistent with current form instructions.

In proposed sections 656.10(a)(2) through (4), the Department proposes additional records and documentation that employers must submit concurrently with the *Application for Permanent Employment Certification.* The proposal would change both the timing and frequency of employers' submission to OFLC of records and documentation demonstrating compliance with its notice to and consideration of U.S. workers.

For recruitment-related documentation, the current rule requires that employers retain copies of records and documentation to show compliance with pre-filing recruitment requirements (*e.g.,* copies of advertisements and resumes for U.S. workers who applied for the job opportunity) and a recruitment report describing the recruitment steps undertaken and the results achieved, including the lawful, job-related reason for not hiring any of the U.S. workers who applied. *See* current sections 656.10(f) and 656.17(g)(1). The current rule does not require employers to submit this documentation to the NPC, unless requested by the CO.

Similarly, employers prepare and retain evidence of the notice they provide to employees of the filing of the *Application for Permanent Employment Certification*—through bargaining representative(s) or posted notice to employees—and information about contacting DOL with information about the application, under the current rule. *See* current sections 656.10(d) and (f). For employers not subject to supervised recruitment, the employer provides or posts the NOF before filing the *Application for Permanent Employment Certification* and retains evidence of it for submission, upon request by the CO. If the CO imposes supervised recruitment during application processing, the CO may order the employer to update the NOF with revised information, consistent with the CO's ordered content for additional advertising.

For employers subject to supervised recruitment when filing future *Applications for Permanent Employment Certification* under the current rule, the CO instructs the employer not to provide or post the NOF until the CO has an opportunity to approve its content, along with advertising content, during the supervised recruitment process. While this practice ensures the NOF contains correct information, the Department has determined that delaying NOF posting until after filing the *Application for Permanent Employment Certification* is contrary to statute, which requires NOF at the time of filing.[65] Even if the initial NOF posted contains imperfect information, which the CO orders the employer to revise during supervised recruitment, the pre-filing NOF informs employees that the employer is filing an *Application for Permanent Employment Certification* and ensures that employees have an opportunity to provide information or concerns to DOL about the job opportunity described in the NOF. The proposed rule would require the notice to the bargaining representative(s) or NOF posting to begin within 10 business days before the employer files the *Application for Permanent Employment Certification* in all cases. *See* proposed sections 656.10(a)(2) and 656.14(f).

The Department also proposes to add clarifying language in proposed section 656.21(c)(7) to put employers subject to supervised recruitment on notice that the CO may require them to update the NOF during processing with revised content.

In addition, proposed section 656.10(a)(2) would require all employers to submit documentation demonstrating their compliance with NOF requirements concurrently with the *Application for Permanent Employment Certification.* Similarly, proposed sections 656.10(a)(3) and (4) would require employers to submit documents and records evidencing compliance with all pre-filing recruitment requirements, including resumes and applications for U.S. workers who applied for the job opportunity, concurrently with the *Application for Permanent Employment Certification.*[66]

Requiring submission of the NOF, documentation of recruitment activity and results, and the recruitment report prior to the issuance of a PERM labor certification decision will enhance transparency about the employer's efforts to conduct a good faith test of the domestic labor market and bolster program integrity efforts, with minor impact to burden. Further, the proposed change would strengthen the incentives for employers to comply with program requirements and ensure the Department's final determinations are more frequently based on actual evidence of a lack of qualified U.S. workers. While currently all employers must prepare and retain this documentation, only some employers are required to submit it to the NPC before the CO issues a final determination. Under the current rule, the CO certifies applications in the vast majority of circumstances without having reviewed the employer's consideration of U.S. workers; the CO relies on the employer's attestations alone. As proposed, the CO has discretion to review some or all recruitment reports prior to issuance of a final determination. In the event a recruitment report raised concerns regarding the employer's compliance with recruitment requirements or consideration of U.S. workers, the CO could review the supporting documentation (*e.g.,* copies of advertisements, U.S. worker resumes and applications) to further assess the content, location, and timing of the employer's advertising of the job opportunity and its consideration of the U.S. workers who applied or were referred for the job opportunity, without unnecessary correspondence or subjecting the application for full audit examination. Thus, the Department expects that this additional review of readily-available documents will enable the CO to reach a final determination based on evidence, as opposed to attestations, without additional processing. For example, if the employer's advertisements included a lower wage offer or higher qualifications than indicated on the *Application for*

[64] *See* 20 CFR 655.121(a)(1).

[65] *See* Immigration Act of 1990, Pub. L. 101–649, title I, sec. 122, 104 Stat. 4994 (Nov. 29, 1990).

[66] In the event the CO imposes supervised recruitment on an employer for future applications under proposed 656.21, recruitment for the employer's impacted *Applications for Permanent Employment Certification* would occur post-filing. As a result, the employer would not have a recruitment report to submit with an application subject to supervised recruitment.

Permanent Employment Certification, the application could be denied on that basis without a lengthier audit examination process.

The Department also would like to emphasize that employers are already required to prepare the NOF and recruitment reports and maintain copies of them, along with supporting documentation, to be provided to the CO upon request, so no additional burden would result from the proposed change to the requirements beyond the burden associated with uploading that documentation in the FLAG system at the time the employer files the application, which, in the Department's opinion, constitutes a *de minimis* burden that results in a negligible burden increase.

In addition, this proposal would increase consistency across the Department's temporary and permanent labor certification programs, while accommodating program differences and supporting processing efficiency. For example, similar to the H–2B and CW–1 temporary labor certification programs, this proposal would require submission of the employer's recruitment report for CO review before the CO issues a final determination.[67] However, the timing of recruitment report submission before final determination would be different, based on when required recruitment activities are completed—pre-filing for the PERM labor certification program and during application review for the H–2B and CW–1 programs. Because recruitment—and a final recruitment report—must be completed pre-filing, requiring submission of the employer's recruitment report at the time of filing the *Application for Permanent Employment Certification* is an appropriate programmatic difference, which furthers the Department's processing efficiency goals. As proposed for the PERM labor certification program, the CO would be able to review employers' NOFs and recruitment reports—and related supporting documentation—before reaching final determinations without additional, unnecessary correspondence.

Timeliness for Filing

The Department is proposing a single filing timeframe requirement for submission of *Applications for Permanent Employment Certification* to OFLC in proposed section 656.10(b). An employer would be required to submit the complete *Application for Permanent Employment Certification,* with all documentation and information required at the time of filing, within 30 calendar days after the employer completes all pre-filing recruitment requirements. Together with proposed section 656.17(d), this would mean an employer must complete all recruitment activities between 30 to 60 calendar days before the employer expects to file the *Application for Permanent Employment Certification* and then file the application between 1 and 29 calendar days after the last recruitment activity ends. This 30-day timing requirement would apply to both employers who engage in the pre-filing recruitment procedures set forth in proposed section 656.17 and employers who engage in the optional pre-filing recruitment procedures for college and university teachers or professional athletes and professional sports team coaches set forth in proposed section 656.18. Currently, employers filing under section 656.17 must submit the application within 180 calendar days of beginning pre-filing recruitment activities and NOF posting, while employers filing under section 656.18 must do so within 18 months of the alien's selection, which is often many months before the actual filing of the application.[68]

The Department proposes this filing timeframe change to simplify part 656 and better provide the CO with more current information about the availability of U.S. workers for job opportunities that are the subject of an *Application for Permanent Employment Certification.* Under the current rule, an employer's recruitment and recruitment results can become stale before the employer submits its *Application for Permanent Employment Certification.* The Department considers the current timeframes—180 calendar days and 18 months in current sections 656.17 and 656.18, respectively—longer than necessary to enable employers to prepare their recruitment reports after completing pre-filing recruitment requirements. The Department considers the proposed 30-day timeframe after completion of pre-filing recruitment to be a reasonable period for preparation of recruitment reports for submission with the *Application for Permanent Employment Certification* and those recruitment reports would provide better information about the current availability of U.S. workers to the CO. In addition, as proposed, employers would file the *Application for Permanent Employment Certification* in closer proximity to the labor market test, which would ensure that U.S. workers who may have availability for the job opportunity are made aware of the job in closer proximity to the filing of the *Application for Permanent Employment Certification,* rather than many months ahead of time, and the recruitment report provided to the CO reflects current labor market results.

The Department invites comments on the proposed filing timeframe requirement that is consistent with the Department's goal of simplifying part 656 and ensuring recruitment activities and the report of recruitment results are not stale when submitted to the NPC. In particular, the Department invites comments about whether the 30-day timeliness requirement should be applied to *Applications for Permanent Employment Certification* filed using the proposed competitive recruitment and selection process of proposed section 656.18 based on the last advertisement date or the date of the organizational or administrative body's final report making the recommendation or selection of the alien. *See* proposed section 656.18(a)(2).

Location and Method of Filing

In paragraph (c), the Department proposes to require electronic filing for *Applications for Permanent Employment Certification* submitted to OFLC, except in limited circumstances. This proposal does not constitute a change for those employers who file *Applications for Permanent Employment Certification* using the Department's FLAG system, available at *https://flag.dol.gov/.* FLAG continues to be the OFLC Administrator's designated electronic filing method for *Applications for Permanent Employment Certification.* Consistent with the Department's approach when mandating electronic filing in temporary labor certification programs, the Department proposes similar procedures in the PERM labor certification program under paragraphs (c)(2) and (3), through which an employer may request authorization to file by mail by demonstrating to the OFLC Administrator that they are unable or limited in their ability to use or access electronic filing. An employer may contact the NPC in writing to the address designated in a notice published in the **Federal Register**, or for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number) for assistance in using, accessing, or filing any form or documentation required under this part, including the *Application for Permanent Employment Certification.*

[67] *See* 20 CFR 655.48 and 655.446.

[68] *See* 20 CFR 656.10(d)(3)(iv); 656.17(e)(1)(i) and (ii); 656.17(e)(2); and 656.18(c).

This proposal—and the parallel proposal in section 656.40(a)(2) to require electronic filing for *Applications for Prevailing Wage Determination*—would bring consistency across the foreign labor certification and labor condition application programs administered by the Department. If adopted, employers would submit all applications electronically to OFLC through the FLAG system, unless a limited exception applied.

Based on extensive experience administering permanent and temporary labor certification programs, the Department has determined that mandating electronic filing reduces costs (*e.g.,* mailing fees) and burdens for most employers and for the Department, reduces the frequency of delays related to filing applications, improves the quality of information collected, promotes administrative efficiency and accountability, and increases consistency across labor certification programs. For employers and their authorized representatives, the Department's proposal to require electronic filing would improve customer experience by permitting more prompt processing of applications and reducing paperwork burdens and mailing costs. Electronic filing provides system prompts, which include warnings that an application is incomplete or obviously inaccurate and provides employers with an immediate opportunity to correct the errors or upload the missing documentation. Mandatory electronic filing furthers efficiency in communications between the Department and the employer and its representatives.

The Department anticipates that requiring e-filing will not require a change of practice for the vast majority of employers. Based on fiscal year (FY) 2021–FY 2025 data, approximately 99.61 percent of PERM labor certification applications were filed electronically.[69] Almost all of the remaining 0.39 percent of PERM labor certification applications filed by mail also disclosed valid email addresses on the application form, thereby suggesting that employers and, if applicable, their authorized attorneys and agents have access to the internet and are likely capable of filing electronically.

Additional Documentation Required for Certain Applications

After eliminating the content of current paragraph (e), as discussed below, the Department proposes to repurpose paragraph (e) to address additional documentation requirements for certain job opportunities. The Department proposes to relocate the content of current sections 656.19(b) (documentation for live-in household domestic service workers) and 656.17(l) (documentation related to alien influence over the job opportunity) to proposed sections 656.10(e)(1) and (e)(2), respectively, and add new regulatory content in proposed section 656.10(e)(3) to codify, with minor changes, the current practice for employers seeking to permanently employ professional athletes or professional sports team coaches, who meet the definition set forth in section 656.3.

After relocating the content of current section 656.19(b) to proposed section 656.10(e)(1), the Department proposes non-substantive changes for readability and changes to simplify documentation, while better ensuring the employment contract fully discloses all appropriate information about live-in household domestic service jobs offered. Under the current rule, the employer must prepare and retain both a statement describing the household living accommodations, which contains the information listed in current section 656.19(b)(1), and an employment contract, which contains information listed in current section 656.19(b)(2). The proposed rule would eliminate the separate statement describing household living accommodations and relocate its required content to the employment contract, resulting in one document that contains all required information about the job offered. This proposal simplifies documentation requirements, while better ensuring that the alien is apprised of the household living accommodations information. In addition, the proposed rule would reduce the number of copies of the employment contract the employer must retain. Currently, an employer seeking to permanently employ an alien in a live-in household domestic service job opportunity must retain two copies of the employment contract, but the proposed rule would only require retention of one.[70]

The Department's proposed section 656.10(e)(1)(i) eliminates two key pieces of information from the content required of employment contracts for live-in household domestic service job opportunity (*i.e.,* the wage offer and description of duties required under current section 656.19(b)(2)(i) and (v), respectively). However, the two pieces of information are still required. The proposed language that introduces the enumerated list in proposed section 656.10(e)(1)(i) states that the employment contract must ''contain[ ], at a minimum, the same material terms of employment specified on the *Application for Permanent Employment Certification* and the following information and employment guarantees.'' By requiring the employment contract to contain the same material terms of employment as the *Application for Permanent Employment Certification,* the Department ensures not only that the employment contract will continue to contain the wage offer and description of duties, but also any other material terms of employment the employer specified on the *Application for Permanent Employment Certification,* which could not be adequately captured in a static list. Moreover, through this approach, the Department would better ensure that the employment contract contains all essential information and is consistent with the *Application for Permanent Employment Certification* used to test the U.S. labor market.

Proposed section 656.10(e)(2) retains content of the additional documentation requirements found in current section 656.17(l) (Alien influence and control over job opportunity) with one change to simplify the rule by eliminating redundant language and, otherwise, only minor changes to conform with terminology used throughout this proposed rule. Proposed section 656.10(e)(2) eliminates the phrase ''must be able to demonstrate the existence of a bona fide job opportunity, *i.e.,* the job is available to all U.S. workers,'' which appears in current section 656.17(l). This is not a requirement limited to job opportunities involving closely held corporations or partnerships in which the alien has an ownership interest; or familial relationships between the stockholders, corporate officers, incorporators, or partners, and the alien; or the alien as one of a small number of employees. It is a requirement applicable to all *Applications for Permanent Employment Certification* under both the current and proposed rules. The current rule addresses the requirement in section 656.10(c)(8) as well as section 656.17(l), while the proposed rule addresses this requirement in proposed section 656.13(a).

Under proposed section 656.10(e)(3), employers filing *Applications for Permanent Employment Certification* for professional athletes or professional

[69] DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (last accessed May 6, 2026).

[70] *Compare* current section 656.19(b)(2) (''Two copies''), *with* proposed section 656.10(e)(1)(i) (''A copy'').

sports team coaches would be required to prepare and maintain the following documentation, consistent with longstanding practice: (1) a copy of the executed written contract, signed and dated by the employer and alien, covering the entire year or period that indicates the specific payment(s) made to the alien; (2) an employment letter stating that the alien will work a minimum of ten (10) hours per week during the off-season period; and (3) for an alien being sponsored for permanent employment as a professional athlete, a copy of a letter or response, whether electronic or print, from the Players' Association (*e.g.,* NBA, NHL, NFL, MLB) or applicable trade union(s) stating that it was provided notice from the employer, as required by section 656.14(a)(1), and has no objection to the filing of the *Application for Permanent Employment Certification.* The Department recognizes that Players' Association and trade union(s) may vary in their responsiveness to an employer's notice and request for confirmation of ''no objection'' to the filing of an *Application for Permanent Employment Certification.* The Department invites comments about whether and how an employer could document compliance with this notice and request requirement, in the absence of a response from the Players' Association or applicable trade union(s).

The Department does not propose to change the timing of submission for this additional documentation. Employers filing applications subject to the additional documentation requirements under proposed section 656.10(e) would continue to prepare and maintain the additional documentation required for the job opportunity in their record retention file and only submit it upon request. However, by locating the additional documentation requirements in proposed section 656.10, the Department clarifies that—both currently and under the proposed rule—preparation and retention of the additional documentation is a filing requirement, meaning it must be prepared and already saved in the employer's record retention file at the time of *Application for Permanent Employment Certification* submission. No new burden would be incurred by employers as a result of this change.

Filing Date

The Department proposes to relocate the filing date provision currently in section 656.17(c) to the centralized filing requirements in proposed section 656.10(f), with modifications to conform with other proposed regulatory changes herein. The proposed paragraph continues to deem the date OFLC accepts for processing a complete *Application for Permanent Employment Certification* to be the ''filing date.'' For an electronically filed application, the ''filing date'' is the date the application is submitted and accepted in the electronic system based on the time of acceptance in the Eastern time zone of the United States. For an application submitted by mail under the procedures proposed at section 656.10(c)(2) and (3), the ''filing date'' would be the postmark date affixed to the employer's *Application for Permanent Employment Certification* submission, provided that the NPC determines the application is complete. This would be a change for applications submitted by mail. Currently, the filing date is the date the NPC accepts the application for processing and affixes a date stamp on the submission. However, the current approach is less straightforward than establishing the filing date using the postmark and delay between delivery and affixing a date stamp has resulted in denials for noncompliance with timing requirements (*e.g.,* recruitment dates within the 180 days prior to the filing date) that BALCA has overturned.[71] In the interest of simplicity, efficiency, and certainty, the Department proposes to use the postmark date as the filing date for complete applications submitted by mail.

Completeness

Current section 656.17(a)(1) provides that incomplete applications will be denied. In the proposed section 656.10(g), the Department proposes, instead, to return incomplete applications to employers unprocessed.

Under the proposed rule, a complete application consists of a Form ETA–9089, *Application for Permanent Employment Certification,* with all required fields completed with valid information, a valid PWD, and the employer's recruitment report for the job opportunity offered on the *Application for Permanent Employment Certification,* as outlined in proposed section 656.10(a). Despite form instructions and FLAG system prompts designed to ensure employers submit complete *Applications for Permanent Employment Certification,* the Department receives applications missing required information. The Department has received applications where the employer overrode system prompts or entered nonsensical or placeholder information (*e.g.,* the employer's point of contact as a movie or cartoon character or ''TBD'' (to be determined) or ''Test Subject'' as the alien's name) in order to circumvent system prompts meant to ensure only complete, valid applications are submitted. The Department anticipates that it will continue to receive such applications, which slow processing of legitimate, complete applications filed by employers with a genuine need for workers. With this rule's proposed addition of the employer's recruitment report and other recruitment related documentation as an application filing requirement, the Department also anticipates that an unscrupulous employer may try to circumvent these requirements by uploading into FLAG something other than their recruitment documentation to likewise evade system checks. Without, for example, a valid recruitment report or documentation demonstrating compliance with the advertising requirements or a signed Form ETA–9089, Appendix E, the application will be deemed incomplete.

Under the proposed rule, incomplete *Applications for Permanent Employment Certification* submitted to the NPC will not be processed. Rather, when an incomplete *Application for Permanent Employment Certification* is discovered—which would occur when the application is assigned to an analyst for review, as provided in proposed section 656.19(a)—the NPC would return the application unprocessed. As the CO will not reach any substantive determinations before returning an incomplete application unprocessed, proposed section 656.10(g) clarifies that an employer cannot request reconsideration or review pursuant to section 656.26 after an application is returned by the NPC unprocessed due to incompleteness. In addition, the ''filing date'' of the incomplete application would not be retained and cannot be claimed for purposes of establishing a priority date. Rather, the employer may file a new *Application for Permanent Employment Certification* that is complete and satisfies all requirements of part 656 and the filing date would be the date the NPC accepts the new complete application for processing, in accordance with proposed section 656.10(f).

The Department recognizes that the proposed consequences for submission of an incomplete application are more strict than under the current rule. However, in light of the Administration's broad efforts to combat visa fraud and abuse and ensure the broadest pool of qualified U.S. workers

[71] *E.g., Dorbin Metal Strip Manufacturing Co., Inc.,* 2022–PER–00043 (Dec. 26, 2023) (remanding application for further processing when a delay in date stamping caused the application to be untimely).

have fair access to these job opportunities before a permanent labor certification is granted, the Department considers the consequences appropriate to safeguard limited resources and facilitate the processing of complete, genuinely filed applications.

Likewise, recognizing the consequence of returning an application unprocessed, the Department only intends to exercise this authority in situations where it is clear that the application is incomplete. For example, when a document other than the recruitment report is submitted, when the included PWD is invalid, when the employer is listed as a fictional entity, or when required fields include placeholders like ''TBD.'' This provision is not intended to allow the Department to make substantive denials without permitting reconsideration or review by BALCA. The provision is intended to permit OFLC to avoid spending time reviewing and drafting denials for applications which fail to meet the basic standards of a legitimate, complete application.

Record Retention Requirements

The Department proposes to retain the employer's record retention requirements, but it is seeking to relocate this provision from current section 656.10(f) to proposed section 656.10(h), with a change to the timeframe that would be required for employers to retain all documentation. Currently, employers are required to retain a copy of the *Application for Permanent Employment Certification* and all supporting documentation to demonstrate compliance with program requirements for a 5-year period, with the 5-year period beginning on the date the *Application for Permanent Employment Certification* was filed. The Department proposes to retain the 5-year period of retention, but to count the 5-year period of retention from the date on which the Immigrant Petition is approved, denied, or withdrawn. If the employer does not proceed to file an Immigrant Petition, it would be required to retain all records associated with the *Application for Permanent Employment Certification* for a period of 5 years from the expiration of the labor certification or the date of denial or withdrawal.

The current record retention timeframe overlaps with application processing timeframes and, in doing so, it fails to provide a full 5-year record retention period. By starting the record retention clock with the final determination for denied or withdrawn applications or the expiration of a certified application, or from the date on which the Immigrant Petition, if any, is approved, denied, or withdrawn, essential records will be available for the full period intended, which allows the Department, and other partner agencies, to request and obtain these records, if necessary, in order to conduct further review, investigations or any integrity actions.

Applicability of Section 656.10

The Department reiterates for clarity that the filing procedures proposed in section 656.10 would apply to all employers required to obtain a PERM labor certification from OFLC for purposes of submitting an I–140 petition to USCIS. This would include job opportunities currently covered under Schedule A and certain sheepherders, consistent with the Department's proposals to eliminate current alternative regulatory procedures at sections 656.15 (Schedule A) and 656.16 (Sheepherders).

With this proposed change, employers seeking to permanently hire aliens to perform job opportunities currently defined as Schedule A or as qualifying sheepherders under part 656 would continue to obtain a PWD from OFLC but, going forward, also would be required to engage in pre-filing recruitment and submit their application to OFLC, rather than to USCIS, along with their recruitment report.

Similarly, the filing requirements in proposed section 656.10 would apply to employers seeking to permanently employ aliens as professional athletes or professional sports team coaches in job opportunities subject to the EB–2 or EB–3 visa classifications requirements, including those currently covered by Schedule A, which would require a PERM labor certification under this proposed rule.[72]

Eliminated Provision

The Department proposes to eliminate section 656.10(e) of the current rule in its entirety. The proposed elimination of current section 656.10(e) is consistent with the Department's goal of simplifying its PERM program regulations.

Current section 656.10(e)(1) states that the public may submit evidence to the CO that may have bearing on an *Application for Permanent Employment Certification.* This provision duplicates the function of the NOF, which similarly invites any person to provide information or other documentation bearing on an *Application for Permanent Employment Certification* to OFLC for consideration in reaching the determinations required for PERM labor certification. *See* proposed section 656.14(d). The type of information or other documentation to be submitted to OFLC using the contact information provided in the NOF is the same as that described in current 656.10(e)(1)—information on available workers, information on wages and working conditions, and information on the employer's failure to meet the terms and conditions for the employment of aliens and similarly employed workers. In addition, as discussed below in connection with the Department's proposed expansion of NOF visibility, the proposed elimination of current section 656.10(e)(1) would simplify the regulation without impact to program integrity.

The Department also proposes to eliminate current section 656.10(e)(2), which discusses the submission of evidence to DHS. Although the Department is aware that DHS accepts and considers such information, the elimination of current section 656.10(e)(2) is consistent with the Department's intent to simplify part 656 by eliminating regulatory content that discusses another agency's processes.

2. Proposed 20 CFR 656.11, Substitutions and Modifications to Applications

In this rulemaking, the Department proposes to retain current section 656.11's prohibitions on substituting aliens and modifying *Applications for Permanent Employment Certification,* with revisions to update terminology, eliminate outdated language, and improve clarity. For example, proposed revisions replace ''application'' with ''*Application for Permanent Employment Certification,*'' among other minor revisions.

The Department also proposes removing references to July 16, 2007, which are no longer necessary. Prior to the establishment of current section 656.11, the Department allowed employers to substitute an alien named on a permanent labor certification with another prospective alien. Labor certification substitution occurred either while the PERM labor certification application was pending with the Department or, by the Department's delegation to DHS, when a Form I–140 petition was submitted or was pending with DHS based on an approved PERM labor certification. This practice was

[72] The proposed rule, including section 656.10, does not apply to all professional athletes. Some professional athletes may be eligible for the EB–1 visa classification based on extraordinary ability in athletics or a national interest waiver of the EB–2 permanent labor certification requirement. *See* 8 CFR 204.5(h)(1) Compliance with part 656 is not required for those job opportunities.

permitted due to the length of time it took to obtain a PERM labor certification and Form I–140 petition approval.

On May 17, 2007, the Department issued the Final Rule, *Labor Certification for the Permanent Employment of Aliens in the United States; Reducing the Incentives and Opportunities for Fraud and Abuse and Enhancing Program Integrity* (''2007 Fraud Rule''), through which the Department eliminated the practice of allowing the substitution of aliens on PERM labor certifications through rulemaking.[73] In the 2007 Fraud Rule, the Department established that substitution or change to the identity of an alien was prohibited on any application filed with the Department for PERM labor certification and on any resulting certification.[74] *See* current 20 CFR 656.11(a). The 2007 rule also revised current section 656.30(c)(2) to state that a PERM labor certification is only valid for the alien named on the original PERM labor certification application.[75]

Further, the 2007 Fraud Rule clarified that requests for modifications to an application, where the application was filed after the final rule's effective date, would not be accepted. *See* current 20 CFR 656.11(b). The Department explained that it had implemented technological changes in the PERM program to alert applicants to technical grounds for deniability, thus eliminating the need for many modifications.[76]

The Department has no intention of changing section 656.11(b) to permit substantive changes to an *Application for Permanent Employment Certification,* while in process or after certification, if certified. A substantive change is one that would correct an error that would lead to denial, if not corrected. The employer has the burden of proof to establish eligibility for a PERM labor certification and the responsibility to submit a complete and accurate *Application for Permanent Employment Certification.*

The Department has considered how it might appropriately permit minor modifications to an *Application for Permanent Employment Certification* while it is pending with the NPC. By minor modifications, the Department refers to errors that have no bearing on the CO's assessment of the employer's compliance with program requirements. An error is not minor—and its correction would not be a minor modification—if its correction would prevent denial. In addition, the Department has no interest in permitting correction of errors that clearly could have been prevented with closer attention, such as ridiculous errors (*e.g.,* place holders or cartoon characters) or multiple errors—even if arguably clerical—in the same application. Rather, the Department would consider allowing correction of isolated instances of purely clerical errors for which correction could be appropriate to avoid wasted resources of withdrawing and refiling for both the employer and the NPC.

The Department invites comments about whether part 656 should be revised to permit any minor modifications and, if so, the conditions under which minor modifications could be permitted without impact to program integrity or program efficiency. Helpful comments will discuss time period limitations for requesting a minor modification (*e.g.,* within the 30 calendar days after filing or prior to the issuance of a final determination by the CO); the scope of minor modifications with examples (*e.g.,* correcting a birthdate, visa classification or phone number for the alien or replacing an agent or attorney information with a new representative's information) and identifying form fields that do not contain substantive information, as substantive information could not be modified.

3. Proposed 20 CFR 656.12, Improper Commerce and Payment

Through the 2007 Fraud Rule, the Department imposed clear limitations on the acquisition and use of a pending or approved permanent labor certification application to reduce the incentives and opportunities for fraud and abuse in the permanent labor certification program and to propose measures to enhance the integrity of the permanent labor certification program.[77] The 2007 Fraud Rule revised section 656.12(a) to create a complete ban on the sale, barter, and purchase of labor certification applications and certifications. The revisions applied to applications filed on or after the effective date of the 2007 Fraud Rule regardless of whether the labor certification application involved was filed under the regulations of 20 CFR part 656 in effect before March 28, 2005, or, on or after, March 28, 2005.[78]

Under this proposed rule, the Department proposes to eliminate the transition procedures in the introductory part of section 656.12 related to the 2004 PERM Final Rule[79] and the 2007 Fraud Rule because the transition procedures in this section are obsolete.

The current section 656.12 states that it applies to applications ''under this part'' and ''certifications resulting from those applications,'' while stating in sections 656.12(a) and (c) that those provisions only apply to ''*approved* permanent labor certifications.'' The Department's proposed introductory language serves to clarify that the provisions of section 656.12 apply to any *Application for Permanent Employment Certification* and any PERM labor certification. The proposed terminology changes serve to better frame the scope of various possible outcomes for *Applications for Permanent Employment Certification* (*e.g.,* certification, withdrawal, invalidation, revocation) and continue to place employers on notice that their *Applications for Permanent Employment Certification* and PERM labor certifications under part 656 are subject to the provisions of section 656.12.

4. Proposed New 20 CFR 656.13, Assurances and Obligations of Employers

The Department is proposing the creation of a new section at 656.13 to enumerate by topic the assurances and obligations under the PERM program to which an employer must attest compliance. Organizing all existing and newly proposed required attestations into one section will improve clarity and navigation within part 656 and part 656 with similar regulatory provisions the Department has in the H–1B, H–2A and H–2B programs.[80] By clearly stating the employer's legal obligations in one provision of the regulations, the Department has determined this approach will make it easier for employers to find, understand, and comply with the program requirements. Further, the proposed changes in section 656.13 would enhance protections for U.S. workers, including protection of U.S. worker wages, and promote consideration of U.S. workers for job opportunities, notably by expanding contact and consideration requirements in layoff situations and preventing employers from laying off U.S. workers to create the perception of available vacancies and filing an *Application for Permanent Employment Certification* with the intention of

[73] *See* current 20 CFR 656.11.

[74] *See* 72 FR 27903, 27907 (May 17, 2007).

[75] *See* 72 FR 27903, 27907 (May 17, 2007).

[76] *See* 72 FR 27903, 27907 (May 17, 2007).

[77] *See* 72 FR 27903 (May 17, 2007).

[78] *See* 72 FR 27903, 27907 (May 17, 2007). This rule became effective on July 16, 2007.

[79] *See* 69 FR 77326 (Dec. 27, 2004).

[80] *See* 20 CFR 655.20 and 20 CFR 655.135.

replacing laid off U.S. workers with aliens. *See* proposed 656.13(e) and (f).

For proposed section 656.13, employers will be required to read and agree to comply with essential program requirements and worker protections for both U.S. and aliens when submitting an application under part 656, which will improve program integrity. Under penalty of perjury, employers will attest that they have read and reviewed every page of the *Application for Permanent Employment Certification,* including all applicable appendices and supporting documentation, and to the best of their knowledge the information contained therein is true and accurate. In addition, employers will assure they understand that knowingly and/or willfully furnishing materially false information in the preparation of this form and any supplement thereto or to aid, abet, or counsel another to do so is a federal offense punishable by fines, imprisonment, or both under 18 U.S.C. 2, 1001, 1546, 1621. The clearer requirements will also enhance the Department's program integrity efforts, as clearer requirements provide a more straightforward path for enforcement of program requirements.

Specifically, the Department is proposing to take existing required attestations, currently codified at section 656.10(c), and replace and relocate them to this new proposed section 656.13, while further replacing the language of the existing attestations to strengthen program integrity. The Department proposes to replace and relocate regulatory content explaining the nature and effect of attestations from current section 656.10(c) to the introductory language of proposed section 656.13. In addition, the Department is proposing to relocate other existing obligations from current sections 656.10, 656.12, 656.17, and 656.20 to proposed section 656.13, again further revising them to create clear employer attestations in efforts to clarify and/or update compliance requirements. Finally, the Department also proposes new attestations to reflect new requirements through this proposed rule. The proposals in this rule strengthen U.S. worker protections and bolster program integrity by holding employers who choose to participate in the PERM program accountable to the Department, and to their responsibilities to both U.S. workers and aliens, with regard to the employer's filing of the *Application for Permanent Employment Certification* and participation in the PERM program.

Proposed new section 656.13(a) continues to require an employer seeking to permanently employ an alien to attest that the job opportunity is a bona fide, full-time, permanent position and adds that the terms and conditions of employment must comply with all applicable laws and regulations, consistent with current sections 656.10(c)(7) and (1). This proposed revision continues current sections 656.10(c)(5), (8), and (9) attestations, requiring the employer to attest that the job opportunity has been and is open to any qualified U.S. worker, any U.S. worker who applied was rejected for lawful, job-related reasons, and the job opportunity does not involve unlawful discrimination. The Department proposes to expand this attestation so that the job opportunities that are the subject of *Applications for Permanent Employment Certification* remain open to the employer's laid off-employees in the place(s) of employment in the same or similar occupation throughout the period in which the employer is establishing its sponsorship of an alien for permanent employment in the United States—between filing the *Application for Permanent Employment Certification* and the date the Form I–140 petition is approved by USCIS or the date of determination, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later, which would form the basis for the alien's application for a visa and admission to the United States as a permanent resident.[81] In addition, the provision adds language explicitly requiring employers to comply with Title VII of the Civil Rights Act of 1964, which prohibits workplace discrimination in the terms, conditions, or privileges of employment because of race, color, religion, sex, or national origin. Nothing in Title VII, ''makes it illegal to discriminate on the basis of citizenship or alienage.'' *Espinoza* v. *Farah Mfg. Co.,* 414 U.S. 86, 95 (1973). The provision also adds language requiring compliance with the Antidiscrimination Provision of the Immigration and Nationality Act, 8 U.S.C. 1324b, which prohibits discrimination because of citizenship status against protected individuals and, for employers not covered by Title VII, because of national origin. That law states that it is an unfair immigration-related employment practice to discriminate against a citizen or national of the United States based on their citizenship status. 8 U.S.C. 1324b(a)(1), (3).

Separately, and under the Department's own authority in 8 U.S.C. 1182(a)(5)(A)(i)(II), proposed section 656.13(a)(5) requires employers to offer U.S. workers terms, conditions, and privileges of employment no less favorable than those offered to the alien. Compliance with the PERM requirements is a floor; it does not establish compliance with Title VII or 8 U.S.C. 1324b, and a departure from the PERM requirements may be relevant evidence in an enforcement action or private suit under those laws. This provision will prohibit an employer from rejecting any qualified U.S. worker over a prospective alien based on any cost justifications or basis, including differences in any term, condition, or privilege of employment, and compensation and fringe benefits between any qualified U.S. worker and a prospective alien. This proposed provision is necessary to ensure the integrity of the PERM program by prohibiting situations where the job offer is designed to match the skills of a particular alien. Unduly restrictive job postings have a chilling effect on the number of qualified U.S. workers who respond to job vacancy postings, and the Department will prohibit this practice with this proposal. These proposals strengthen U.S. worker protections and bolster program integrity by holding U.S. employers who participate in the program accountable to the Department and U.S. workers beyond the processing of the *Application for Permanent Employment Certification.*

Under proposed section 656.13(b), the Department continues the attestation required under current section 656.10(c)(6) to require the employer to attest that the job opportunity is not vacant due to a strike or employees being locked out in the course of a labor dispute involving a work stoppage. The proposal, however, expands the strike provision of the current regulation to clarify that it covers ''all places of employment'' included on the *Application for Permanent Employment Certification,* including third-party employers' locations. Through this proposed revised provision, the Department will improve program integrity and strengthen protections for U.S. workers.

To protect the integrity of the PERM labor certification program, deter fraud, and comply with the Department's statutory obligation to protect the wages of U.S. workers, the Department is proposing in section 656.13(c) to revise and clarify the already-required attestations in current sections

[81] INA section 212(a)(5)(A)(i)(I) (stating that the Secretary certifies that there are not ''sufficient workers . . . at the time of application for a visa and admission to the United States'').

656.10(c)(1) through (4). For example, current section 656.10(c)(1) requires the employer to attest that it has offered, and will continue to offer, a wage that equals or exceeds the PWD. Proposed section 656.13(c) would more clearly state the employer's attestation that it has offered, and will continue to offer, a wage that equals or exceeds the highest of the Federal, State or local minimum wage or the PWD issued to the employer. The proposed paragraph clarifies that the offered wage requirement includes consideration of Federal, State, and local minimum wage rates, which is an existing requirement—for compliance with local, State, and Federal laws—under current section 656.10(c)(7). In addition, added content about the potential for an updated PWD reflects the potential for OFLC to obtain a new PWD, for example, during supervised recruitment. Further, this proposed provision adds new language stating that the offered wage cannot result in less favorable treatment of current or prospective U.S. workers in any terms, conditions, and privileges of employment, including compensation and fringe benefits, as compared with the alien (*i.e.,* must not be lower than the wage the employer pays, and the wage the employer advertises, for similarly situated positions). A violation of this certification is a serious matter that will result in denial and may result in revocation, debarment, and referral under 656.31 and 656.32. The Department solicits comments on this proposed provision, including how this attestation could be worded more clearly to ensure that wage compensation and other benefits for U.S. workers similarly employed are not adversely affected by the prospective employment of the alien(s) in the job opportunity. The proposed attestation continues to specify that the offered wage cannot be based on commissions, bonuses or other incentives, unless the employer guarantees an offered wage earned on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage. The Department proposes expanding the attestation to accommodate the possibility of the Department issuing a new or revised PWD (*e.g.,* post-filing supervised recruitment) and, if so, the employer would be required to update its wage offer, unless notified otherwise by the Department.

The Department also proposes to continue to require the employer to attest that it has enough funds available to pay the offered wage for work performed in the job opportunity at the time of *Application for Permanent Employment Certification* submission. The Department proposes to revise this attestation for clarity and to include the citation to DHS's requirements regarding the employer's ability to pay at 8 CFR 204.5(g)(2), as USCIS will assess the employer's compliance during I–140 Petition review. These revisions would better apprise employers of this requirement, while avoiding duplicative regulatory provisions. In addition, citing to DHS's regulations would reduce the potential for confusion about the assessment to be performed when the employer files the I–140 Petition.

Under proposed section 656.13(d), the employer must attest that it has conducted, and will continue to conduct, recruitment of U.S. workers in good faith and in the same manner it normally recruits and considers U.S. workers in the same job opportunities that it does not request PERM labor certification, while also ensuring that its recruitment meets the standards set forth in proposed section 656.17. Through this proposed provision, the Department would require that the employer recruit U.S. workers in good faith and follow the same methods they would typically use for similar job opportunities where they do not seek PERM labor certifications for aliens, including when those methods they typically use for similar job opportunities exceed the requirements in proposed section 656.17. Where, how, and for how long an employer advertises a job opportunity in connection with the PERM labor certification program must be at least equal to the employer's practices for similar job opportunities unrelated to a PERM labor certification. Similarly, the employer's application process for candidates who apply for the employer's job opportunity that is the subject of the PERM application, must not disadvantage U.S. workers or be less available to U.S. workers than the employer's standard for same job opportunities that are unrelated to a request for PERM labor certification. Additionally, if required, interviews must be conducted by phone or arranged through other means (*e.g.,* virtual meetings, cloud calls, or other platforms or applications that facilitate communication without involving physical presence) to minimize costs for U.S. workers and facilitate the process should the applicant, for example, be unable to travel or be physically present at the employer's location for an interview. Further, the employer's representative who interviews or considers U.S. workers for the job offered to the alien must be a U.S. worker and one who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien which do not involve labor certifications. Lastly, employers are prohibited from giving preferential treatment to aliens over U.S. workers concerning any requirements for applications and interviews related to the PERM application process.

These attestations are necessary because there have been several reports of employers creating separate recruitment processes for PERM applications that deter U.S. workers from applying for job opportunities.[82] In one instance, the Department of Justice (DOJ) found that an employer did not advertise positions it sought to fill through the PERM program on its external job website, even though its standard practice was to post other job positions on this website.[83] The employer also required all applicants for PERM-related positions to mail paper applications, even though the company permitted electronic applications for other positions.[84] These provisions

[82] *See, e.g.,* ''Civil Rights Division Sues Cloudera for Excluding U.S. Workers from Applying to High-Paying Technology Jobs,'' Dept. of Justice (Apr. 28, 2026), *https://www.justice.gov/opa/pr/civil-rights-division-sues-cloudera-excluding-us-workers-applying-high-paying-technology* (alleging Cloudera intentionally created a separate recruitment and hiring process to deter U.S. workers from applying); Gooding, Dan, ''Tech Companies Accused of Bending H–1B Rules with Newspaper Job Listings,'' Newsweek (Aug. 16, 2025), *https://www.newsweek.com/h1b-job-ads-green-cards-targeted-immigrant-workers-2113714* (noting that newspaper ads were telling applicants to send resumes to immigration or ''global mobility'' departments); and MacGillis, Alec, ''The Tech Recruitment Ruse That Has Avoided Trump's Crackdown on Immigration,'' ProPublica, (June 3, 2025), *https://www.propublica.org/article/trump-immigration-h1b-visas-perm-tech-jobs-recruitment* (reporting that PERM newspaper ads were not intended to find applicants, but to sponsor the current H–1B tech worker).

[83] *See* ''Justice Department Secures $25 Million Landmark Agreement with Apple to Resolve Employment Discrimination Allegations Based on Citizenship Status,'' Dept. of Justice, (Nov. 9, 2023), *https://www.justice.gov/archives/opa/pr/justice-department-secures-25-million-landmark-agreement-apple-resolve-employment* (finding that Apple engaged in a pattern or practice of citizenship status discrimination in recruitment for positions it hired through PERM, and that these less effective recruitment practices deterred protected workers from applying to positions that Apple preferred to fill instead with PERM beneficiaries).

[84] *See* Id.; *see also* ''Justice, Labor Departments Reach Settlements with Facebook Resolving Claims of Discrimination Against U.S. Workers and Potential Regulatory Recruitment Violations,'' Dept. of Justice (Oct. 19, 2021), *https://www.justice.gov/archives/opa/pr/justice-labor-departments-reach-settlements-facebook-resolving-claims-discrimination-against* (alleging that Facebook used recruiting methods designed to deter U.S. workers

would clarify expectations for employer conduct during the PERM application recruitment process.

Currently, if the employer has a layoff in the AIE within six months of filing the *Application for Permanent Employment Certification,* the employer must document that it has notified and considered all of the employer's potentially qualified laid off U.S. workers for the job opportunity to be offered in an *Application for Permanent Employment Certification. See* current section 656.17(k). The proposed rule would convert the existing layoff obligation into an employer attestation and relocate the provision to the newly proposed section 656.13(e) with revisions. As proposed, section 656.13(e)(1) would address layoffs prior to the employer's filing of an *Application for Permanent Employment Certification,* while section 656.13(e)(2) would address post-filing layoffs.

The Department's proposals regarding layoffs and consideration of laid-off U.S. workers are intended to provide U.S. workers additional protections against improper hiring conduct by employers [85] and prevent employers from laying off U.S. worker(s) and creating vacancies which are then filled with aliens using the PERM process.[86]

As proposed, an employer would be required to attest that it has not laid off any U.S. worker(s) in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification* in the area of intended employment of the place(s) of employment within 2 years prior to filing the application. The Department proposes to change the current term to describe similar occupations from ''occupation for which certification is sought or in a related occupation'' in current section 656.17(k) to ''same or similar occupation'' in proposed section 656.13(e), for readability. The Department does not intend for this proposed revision to change the employers' consideration of their laid-off employees post-filing of the *Application for Permanent Employment Certification* and reminds employers that their obligation is to consider all potentially qualified laid-off U.S. workers for job opportunities that are the subject of a pending or certified *Application for Permanent Employment Certification.* The Department invites comments on this proposed change and ways to improve clarity.

If the employer could not make this attestation (*i.e.,* if it had engaged in such a layoff), the employer would be prohibited from filing the *Application for Permanent Employment Certification,* under the proposed rule.

The proposed 2-year timeframe during which layoffs would be prohibited supports the Department's goals in this rulemaking. Specifically, this proposal would enhance safeguards for laid-off U.S. workers and increase protection against employment discrimination for an extended period of time, while preventing misuse of the PERM labor certification program.

The Department proposes a 2-year period because the current 180-day layoff timeframe prior to the employer filing an *Application for Permanent Employment Certification* may not adequately capture the relationship between an employer's layoffs and its subsequent efforts to obtain permanent labor certification. Workforce planning, recruitment, the PERM process, and related business decisions can unfold over an extended period, allowing a shorter restriction to be avoided simply by delaying the filing of an application. A 2-year period would provide a more meaningful safeguard against such circumvention while also allowing sufficient time for employers to rehire or retrain recently laid-off U.S. workers if demand for the same or similar occupations returns. This proposal seeks to ensure employers do not circumvent program requirements nor abuse the system for seeking to hire alien workers by conducting layoffs that are timed with respect to application or petition timeframes to avoid scrutiny or further having to justify the hiring of alien workers despite the employer experiencing layoffs. The Department seeks comment on whether 2 years is the appropriate period and whether a shorter or longer period would better accomplish these objectives.

The Department also believes the proposed period could encourage employers to invest in retraining existing workers as workforce needs change and could increase opportunities to rehire laid-off U.S. workers when demand for an affected occupation returns. For example, without access to the PERM labor certification program for 2 years, employers would be more likely to invest in training their existing workforce in new technology or other changes, rather than replacing them with aliens who received that training elsewhere. For layoffs that occur due to changed market conditions, this proposal could result in increased re-hiring of laid-off U.S. workers, if an employer's need for the occupation that was affected by layoffs returns.

In addition, simultaneously laying off U.S. workers and recruiting in the same or similar occupation(s) of the PERM application (or doing so in close proximity) is inherently problematic for the statutorily required determinations the Department must make in order to issue a PERM labor certification. An employer's layoff of U.S. workers who are available and willing to work at the place(s) of employment and who, until the layoff, were performing work for the employer in the occupation, or a similar occupation, at the place(s) of employment would preclude the Department from making the statutorily required determinations necessary to issue a PERM labor certification. In addition to furthering U.S. worker protections and program integrity, the proposed 2-year pre-filing anti-layoff provision aligns with the Department's goal of streamlining processing by preventing the filing of an *Application for Permanent Employment Certification* where the employer's own actions have increased U.S. worker availability for the job opportunity that is the subject of the *Application for Permanent Employment Certification.*

Proposed section 656.13(e)(2) addresses layoff situations after an employer files their *Application for Permanent Employment Certification.* As proposed, this provision would apply to an employer's layoff of any U.S. workers in the same or similar occupation that is the subject of the

from applying to certain positions, such as requiring applications to be submitted by mail only).

[85] There are numerous reports of employers laying off U.S. workers and then hiring aliens to replace them. *See, e.g.,* Costa, Daniel and Hira, Ron, ''Tech and outsourcing companies continue to exploit the H–1B visa program at a time of mass layoffs,'' Economic Policy Institute (Apr. 11, 2023), *https://www.epi.org/blog/tech-and-outsourcing-companies-continue-to-exploit-the-h-1b-visa-program-at-a-time-of-mass-layoffs-the-top-30-h-1b-employers-hired-34000-new-h-1b-workers-in-2022-and-laid-off-at-least-85000-workers/* (finding that the top 30 H–1B employers hired 34,000 new H–1B workers in 2022 and laid off at least 85,000 workers in 2022 and early 2023); Belanger, Ashley, ''Amazon blamed AI for layoffs, then hired cheap H1–B workers, senators allege,'' Ars Technica (Sept. 25, 2025), *https://arstechnica.com/tech-policy/2025/09/amazon-blamed-ai-for-layoffs-then-hired-cheap-h1-b-workers-senators-allege/,* (Amazon laid off tens of thousands of workers, then hired more than 10,000 foreign H–1B employees in 2025);Lambert, Fred, ''Tesla must face lawsuit alleging it replaced laid-off US workers with H–1B Visa Holders,'' Electrek, (Feb. 25, 2026) *https://electrek.co/2026/02/25/tesla-must-face-lawsuit-alleging-it-replaced-laid-off-us-workers-with-h-1b-visa-holders/,* (Tesla laid off thousands of U.S. workers in 2024 while simultaneously requesting more than 2,000 H–1B visas).

[86] While the majority of these reports focus on H–1B workers, nearly 60% of PERM applications are filed on behalf of individuals currently in H–1B status and approximately 73% of all PERM applications are filed for workers currently employed on temporary, non-immigrant visas focused on highly skilled, professional workers, making such studies highly relevant to PERM. DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (accessed May 13, 2026) data.

Application for Permanent Employment Certification in the place(s) of employment—including the placement of the alien with another employer, subject to proposed section 656.13(f)—after the filing of the application through the date on which the Form I–140 petition is approved by USCIS or the date of determination, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later. If any such layoff occurs, the employer would be required to notify the NPC (and USCIS in the case of a pending Form I–140 petition) not later than 5 business days after such layoff(s) occurs. This new notification requirement after such layoff(s) occurs ensures program integrity by informing and allowing OFLC and USCIS, if applicable, to take appropriate action with the employer's *Application for Permanent Employment Certification,* and/or the employer's pending Form I–140 petition, respectively. The Department notes that the notification required by this provision will trigger the INA 204(b) consultation process whereby DOL will determine the adequacy of the employer's compliance with the post-certification obligation to consider laid off U.S. workers, and inform USCIS of the continued validity, or revocation of the underlying labor certification based on DOL's assessment of the employer's compliance.

In addition, the proposal would require the employer to offer the job opportunity that is the subject of the *Application for Permanent Employment Certification* to the laid-off U.S. worker(s) and document in an updated recruitment report whether the U.S. worker(s) refused the job opportunity, the employer rejected the U.S. worker(s) for the job opportunity for lawful, job-related reasons, or the employer hired the U.S. worker(s).

Under this proposed rule, the employer must seek to re-hire laid off U.S. worker(s) by offering the job opportunity to any potentially qualified laid off U.S. worker(s) before continuing with a PERM application. Failure to fill the job opportunity that is the subject of the *Application for Permanent Employment Certification* by re-hiring a laid-off U.S. worker who is qualified and available could raise an evidentiary inference of citizenship status discrimination, national origin discrimination or discrimination in any other class listed in anti-discrimination provision at proposed section 656.13(a)(4). Through this proposed requirement, the Department would protect against U.S. worker displacement and ensure that an employer's laid off U.S. workers have access to the job opportunity while the *Application for Permanent Employment Certification* and Form I–140 petition are pending, before the employer uses the PERM labor certification to permanently employ an alien.

The Department seeks stakeholder comments regarding layoffs and what constitutes reasonable time periods and requirements for employers filing *Applications for Permanent Employment Certifications* before, during, and after layoffs.

This proposed provision would also protect against U.S. worker displacement and ensure that an employer's laid off U.S. workers have access to the job opportunity while the *Application for Permanent Employment Certification* and Form I–140 petition are pending, before the alien uses the PERM labor certification and I–140 petition to apply for permanent residence.

Further, the Department proposes to require an employer who has laid off any U.S. worker(s) in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification* in the area of intended employment of the place(s) of employment during the period set forth in proposed section 656.13(e)—including the placement of the alien with another employer, subject to proposed section 656.13(f)—to notify OFLC (and USCIS in the case of a pending Form I–140 petition), in writing or by any other method the Department might specify in a FRN (or as specified by USCIS in the case of a pending Form I–140 petition), not later than five business days after such layoff(s) occurs. This new notification requirement after such layoff(s) occurred ensures program integrity by informing and allowing OFLC and USCIS, if applicable, to take appropriate action with the employer's *Application for Permanent Employment Certification,* and/or pending Form I–140 petition, respectively.

The Department also proposes a new attestation in proposed section 656.13(f) that would require the employer filing the *Application for Permanent Employment Certification* to attest that they have not and will not place the alien with another employer where there are indicia of an employment relationship between the alien and the other employer, and the other employer has laid off U.S. workers who are employed in the same or similar occupation within the 2 years prior to filing of the application through the date the Form I–140 petition is approved by USCIS or the date of determination, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later. Although the Department recognizes that the alien's assignments may change after filing, the Department proposes to require the employer to identify on the application any third-party entities and sites to which the alien is assigned at the time of filing. This collection will improve the information available to the Department regarding third-party assignments and compliance with proposed section 656.13(f). This proposed provision would improve the integrity of the PERM program by ensuring U.S. workers will not be displaced by aliens, whether the aliens work directly for the employer or are employed by a secondary employer, such as a contractor.

For consistency across programs, the Department is proposing to use the criteria set forth in the Department's H–1B program regulations at 20 CFR 655.738(d)(2) to assess indicia of an employment relationship between the other employer and the alien. Under 20 CFR 655.738(d)(2), the relationship between the alien and the other employer need not constitute an ''employment'' relationship, but other relevant indicia of an employment relationship may be considered, including: which employer has the right to control when, where, and how the alien performs the job; who furnishes the tools, materials, and equipment; where the work is performed, who sets the hours of work and the duration of the job; and whether the work performed is part of the other employer's regular business. The Department is considering whether to propose the implementation of a contract requirement between employers, which could align with the contract requirements in the H–1B program. Although the Department is not proposing a contract requirement in this rule, the Department welcomes comments on this consideration.

This proposed rule also codifies current requirements that employers and their agents, attorneys, and/or employees have not offered, and will not offer, for sale, barter or purchase *Applications for Permanent Employment Certification,* including applications certified by the Department, and have not sought or received, and will not seek to receive, payment of any kind from the worker(s) for any activity related to obtaining a PERM labor certification. The Department is proposing to relocate the language contained in current section 656.12, while also seeking to make some clarifying changes. *See* proposed section

656.13(g). This provision includes payment of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing an *Application for Permanent Employment Certification,* except when the work benefits the person or entity making the payment, based on an established business relationship with the employer. This provision serves to prevent fraud and abuse by those who unlawfully take advantage of the PERM labor certification program. The proposed rule, however, would continue to allow aliens to pay their own costs in connection with a PERM labor certification, including attorneys' fees, except where the same attorney represents both the alien and the employer, such costs must be paid by the employer. Under the proposed rule, payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor. Adding this provision to section 656.13 would serve as an additional guard rail to deter program abuse and bolster the integrity of the program. *See* proposed section 656.13(g).

The Department proposes to require employers to attest they will comply with applicable Federal, State, and local employment-related laws and regulations, including, but not limited to, employment-related health and safety laws, and all applicable provisions of the Fair Labor Standards Act, 29 U.S.C. 201, *et seq. See* proposed section 656.13(h). The Department proposes this attestation to put employers on notice that compliance with these laws is a condition of certification and to strengthen coordination of enforcement among Federal agencies with authority to ensure compliance with program requirements and combat fraud and abuse. The Department also requires employers to attest that they and their agents and attorneys are prohibited from holding or confiscating workers' passports, visas, or other immigration documents pursuant to 18 U.S.C. 1592(a). This proposal will provide protection for aliens' rights from unscrupulous employers, such as those who take away aliens' passports with the intent to trap and coerce the worker and undermine the integrity of the program by deterring those workers from coming forward to report labor and employment-related issues to the Department and the government at large.

Proposed section 656.13(i) would require employers to attest to compliance with record retention requirements. Employers would continue to be required to retain all documents and records demonstrating compliance with part 656 for a period of 5 years, which the Department proposes to count from the date on which the Immigrant Petition is approved or denied or withdrawn. If the employer does not proceed to file an Immigrant Petition, it would be required to retain all records associated with the Application for Permanent Employment Certification for a period of 5 years from the expiration of the certification or denial or withdrawal. *See* proposed section 656.10(h).

Proposed section 656.13(j) adds a new attestation, which would require employers to attest that they will fully cooperate with any audit, supervised recruitment, compliance review, evaluation, or inspection conducted by DOL related to compliance with part 656, or by other government agencies investigating PERM practices. This proposal will deter fraud and abuse and improve the integrity of the PERM program because employers are put on notice of the Department's expectations and understand their obligations and responsibilities in the event of an audit examination or investigation.

Consistent with current practice, failure to attest to compliance with any of the required assurances and obligations would result in a denial of the *Application for Permanent Employment Certification* and a false certification would subject the employer to audit, supervised recruitment, debarment, referral, and criminal penalties under 18 U.S.C. 1001.

5. Proposed New 20 CFR 656.14, Notice of Filing

The NOF, required by the Act, is intended to make U.S. workers employed by the sponsoring employer aware that their employer is pursuing an *Application for Permanent Employment Certification* for a particular job opportunity, and enable them to provide information directly to the Department if any of the material terms or conditions of employment being offered to the alien are different from or adversely affect those offered or provided to U.S. workers in similar positions, or if they have any other evidence or information bearing on the prospective employment of an alien in the job opportunity at the place(s) of employment that the Department should consider. U.S. workers can also provide information to the Department of any qualified and available U.S. workers who have not been considered for the job opportunity, such as during a layoff that may occur at any time prior to the filing of the application through approval of the Form I–140 petition by USCIS.[87]

First, the Department proposes relocating the current regulatory text in section 656.10(d) to a new section at 656.14, with additional modifications to reorganize the section for clarity. The Department also proposes revising the standard for providing the NOF requirements to enhance transparency, strengthen program integrity, and acknowledge the widespread use of electronic tools by employers to disseminate other notices of employment-related guarantees or conditions (*e.g.,* Fair Labor Standards Act minimum wage requirements, Equal Employment Opportunity protections), especially due to remote or other hybrid telework environments.

The Department is proposing that after the language currently contained in sections 656.10(d)(i) and (ii) is relocated to the newly added section 656.14's paragraphs (a)(1) and (2), conforming changes be made. Specifically, the Department is proposing revisions that would clarify employers' obligations for the NOF when the employer seeks to apply for a PERM labor certification to permanently employ an alien in the United States. Proposed new section 656.14(a) would still require, if requested by the CO, employers to submit documentation showing that the NOF was posted. The proposed revisions would eliminate regulatory text listing the sections to which the NOF requirement applies (*i.e.,* 656.15, 656.16, 656.17, 656.18, and 656.21), in favor of regulatory text that indicates that the NOF requirement applies to all applications under part 656, consistent with statute and other proposed regulatory changes. The proposed move to section 656.14 would streamline the current regulatory text by making it clear that the NOF is a general requirement; accordingly, the new regulatory text would eliminate the need for updates in the future should there be additional changes to the organization of part 656.

The Department makes minor revisions in proposed section 656.14(a)(1) to specify that the NOF, when given to a bargaining representative(s), must be in writing, either electronically or by mail. The employer must also provide a copy of the *Application for Permanent Employment Certification* to the

[87] *See* Immigration Act of 1990, Public Law 101–649, title I, sec. 122, 104 Stat. 4994 (Nov. 29, 1990).

bargaining representative. Proposed section 656.14(a)(1) clarifies that employers must maintain documentation of where and when the employer's NOF was sent to the bargaining representative(s). These proposed revisions strengthen the NOF requirements to bolster the integrity of the PERM labor certification program and better align with similar notice requirements in the temporary labor certification programs.

In proposed 656.14(a)(1), the Department proposes to change the circumstances in which notification of bargaining representative(s) is required. Under the current rule, an employer must notify a bargaining representative, if there is a bargaining representative for the employer's employees in the occupational classification for which certification of the job opportunity is sought ''in the employer's location(s) in the area of intended employment.'' As proposed an employer would be required to notify the bargaining representative(s) for the employer's employees located at the place(s) of employment'' listed on the *Application for Permanent Employment Certification.* This change—to require notice to bargaining representative(s) at the place(s) of employment—would ensure the bargaining representative(s) of similarly employed U.S. workers at all place(s) of employment listed on the *Application for Permanent Employment Certification* must receive notice and resolves potential misinterpretation of the singular term ''the area of intended employment'' in the current provision. This approach better ensures the employer's employees receive notice of the filing of the *Application for Permanent Employment Certification,* even if those place(s) of employment are in more than one AIE. As discussed in relation to the definition of ''place(s) of employment'' in proposed section 656.3, workforce mobility has increased over the past two decades and the place(s) of employment listed on an *Application for Permanent Employment Certification* may encompass more than one AIE. The proposed change would ensure that all bargaining representatives representing employees in the occupational classification at the place(s) of employment receive direct notice of the filing of the *Application for Permanent Employment Certification* and can assess impact to U.S. workers. In addition, the proposed change would increase consistency of notification to the employer's employees at the place(s) of employment, whether or not there is a bargaining representative, as both the current and proposed rules require physical or electronic posting of the NOF for employees at the location where work will be performed. The Department does not consider this proposed change to impact the employer's burden, as any increase in notice to bargaining representative(s) under proposed section 656.14(a)(1) would be offset by the corresponding decrease in posted notices under proposed section 656.14(a)(2). Even if some employers would experience some increased burden due to having to perform this notification and maintain applicable records of performance, the benefits maintaining the documentation for the notices the employer provides to any applicable bargaining representatives outweigh that increased burden. The Department also makes revisions in proposed section 656.14(a)(2) for situations where there is no bargaining representative(s) for any of the employer's employees located at the place(s) of employment. Currently, the employer must post the NOF physically at the place of employment, but the regulation does not specify the required number of posting locations required. Proposed section 656.14(a)(2) specifies that employers must post the NOF ''in at least 2 conspicuous locations to all employees located at the place(s) of employment in which the work will be performed by the alien.'' Posting the NOF physically in at least two conspicuous locations at all places of employment involved, as defined in proposed section 656.3, would allow individuals who work or traverse through different locations more opportunity to see the posting and would enhance the visibility of the NOF to employees. Furthermore, requiring posting at *all* places of employment better executes the function of the notice—which is to inform people that the filing is taking place and solicit information bearing on the filing. Restricting it to one location would inherently deprive some of the employer's employees of notice.

In addition, current section 656.10(d)(1)(ii) requires the NOF to be posted physically and, if applicable, ''. . . in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of similar positions in the employer's organization.'' In contrast, proposed section 656.14(a)(2) would require electronic posting of the NOF as an alternative to physical posting—not as an additional requirement—under certain conditions. For employers who maintain internal or external website(s) that are ''known and readily accessible to all employees, and customarily used by the employer for notices to employees about terms and conditions of employment,'' the Department proposes that prominently displaying the NOF on those websites, in lieu of physical postings, would satisfy the statutory notice requirement under proposed 656.14(a)(2). The Department asserts that posting the NOF electronically would be particularly effective for businesses with employees who frequently telework or travel, and who may not see the NOF if it is only posted physically in the workplace.

The Department also proposes, in new section 656.14(g), changing the timing and duration of the NOF posting. Currently, the NOF must be posted for at least 10 consecutive business days during the 30- to 180-day period before the employer files the *Application for Permanent Employment Certification*.[88] The Department proposes to eliminate the strict duration requirement from current section 656.10(d)(1)(ii) and timeframe requirement from current section 656.10(d)(3)(iv). Under proposed section 656.14(g), the NOF would be posted during the 10 business days before the employer files the *Application for Permanent Employment Certification* and continue to be displayed through the date on which the Form I–140 petition is approved by USCIS or the date of determination, if the *Application for Permanent Employment Certification* or Form I–140 petition is denied or withdrawn, whichever is later. The Department has determined that increasing the duration of the NOF's display and requiring display contemporaneous with *Application for Permanent Employment Certification* filing and OFLC and USCIS processing would provide U.S. workers with different work schedules, who may be on leave, who may be impacted by layoffs, or may be hired during the *Application for Permanent Employment Certification* or Form I–140 petition process more opportunity to see the NOF and provide relevant information to OFLC and, if applicable, USCIS. This longer timeframe allows the Department to receive information it may not have previously received, which in turn, better informs the CO's decision-making and enhances program integrity. This improves transparency and protects U.S. workers by informing U.S. workers and other interested parties of the job opportunity offered in the *Application for Permanent Employment Certification* and the employer's obligations under part 656. In addition, although the statute is silent on the length of time

[88] 20 CFR 656.10(d)(1)(ii), 656.10(d)(3)(iv).

that the NOF should be available to U.S. workers, these proposed changes better align with the statute's minimum standard that ''no certification may be made [by the Secretary] unless the [employer applying] for certification has, at the time of filing the application, provided notice of the filing.'' [89]

Proposed section 656.14(a)(2) would also revise the description of how and where the NOF must be posted for clarity and to simplify regulatory language. For example, the Department adds ''[t]he notice must be of sufficient size'' to existing language that states the NOF must be ''clearly visible, and unobstructed while posted and must be posted in conspicuous places.'' In addition, the Department proposes to update the description of appropriate locations to post a NOF from ''locations in the immediate vicinity of the wage and hour notices required by 29 CFR 516.4 or occupational safety and health notices required by 29 CFR 1903.2(a)'' to ''conspicuous places where the employees of the employer would normally expect to see such employment-related notices,'' while retaining that employees should be able to ''readily read the posted notice on their way to or from their place of employment.'' The Department also proposes to retain the current NOF documentation requirements and clarify that the documentation must identify when the notice was posted, in addition to where it was posted. These proposed revisions would ensure that NOFs are displayed appropriately, where and how employees will see them and the employer's documentation will better verify compliance with all NOF posting requirements, including timing and duration.

The Department also proposes adding a new provision at section 656.14(b), which extends the NOF requirements to third-party worksites, if applicable. For employers planning to place an alien under an *Application for Permanent Employment Certification* at a third-party worksite, regardless of whether the place(s) of employment is(are) owned or operated by the employer or by some other person or entity, NOF posting at the third-party worksite would be required. The Department asserts that this proposed provision would enhance transparency and conform with the Department's goal of modernizing the PERM labor certification program by recognizing common employment scenarios that involve third parties and contractors. Further, requiring posting of the NOF at the third-party worksite(s) would enhance program integrity, so that U.S. workers at the third-party worksite are also aware of the filing of an *Application for Permanent Employment Certification* and can provide both DOL and USCIS with any relevant information about the application. This could be particularly important in the event the other employer engages in layoffs where the alien has or will be placed. To enable the Department to verify compliance with this requirement, the Department proposes to require employers to disclose third-party worksites applicable to the *Application for Permanent Employment Certification* at the time of filing.

The Department proposes to relocate the language included in current section 656.10(d)(2) and (3) to proposed section 656.14(c), with minor technical revisions to eliminate an unnecessary regulatory cross reference and to make a conforming change for consistency.

The Department is proposing to relocate current section 656.10(d)(3) to a proposed new section 656.14(d), and make further minor technical revisions, such as replacing ''Certifying Officer'' with ''OFLC Administrator'' to clarify responsibilities, as these terms are defined in section 656.3.

The Department is proposing to relocate the content of current section 656.10(d)(4), which lists required NOF content requirements, to proposed new section 656.14(e) with minor revisions to update the language and section references. In addition, the Department proposes to eliminate current sections 656.10(d)(5) and (d)(6), which separately address NOF content requirements for college or university teacher job opportunities and sheepherder job opportunities. The Department proposes to apply proposed section 656.14(e) to all NOFs, regardless of the job opportunity that is the subject of the *Application for Permanent Employment Certification.*

This proposed section would continue NOF content requirements for *Applications for Permanent Employment Certification* currently subject to processing under current section 656.17. Currently, employers filing *Applications for Permanent Employment Certification* in compliance with the requirements of section 656.17 must include the information required for advertisements in current section 656.17(f), the offered wage, and the notice and solicitation of evidence that effectuate the purpose of the NOF. Similarly, proposed section 656.14(e) would require the notice to contain the information required for advertisements in proposed section 656.17(e)—which, as proposed, would include a requirement to state the offered wage—and the notice and solicitation of evidence language of proposed 656.14(d).

The proposed NOF content provision, designed to implement a single standard for all NOFs, regardless of the occupation, would result in one change for employers filing under section 656.18. Currently, such employers are not required to include the offered wage in their NOFs; neither current section 656.18(d)(3) (notice and solicitation of evidence bearing on the application) nor current section 656.18(b)(3) (advertising content requirements) require it. Under the proposed rule, reflecting the Department's efforts to simplify the regulations and processing, employers filing under proposed 656.18 would be subject to the same advertisement content requirements as other job opportunities at proposed 656.17(e) and, therefore, the same NOF content requirements in proposed 656.14(e).

Regarding current section 656.10(d)(6), the Department proposes to eliminate the regulatory text, consistent with the proposed elimination of Schedule A and sheepherder procedures at sections 656.15 and 656.16.[90]

The Department invites comments to inform how to appropriately ensure the broadest visibility possible of NOFs for job opportunities, such as remote or domestic service job opportunities, where the place of employment is the employer or employee's residence and other job opportunities where the employer's similarly employed employees may not see a physical posting of a NOF, unless the proposed expanded timeframe for NOF posting is adopted (*e.g.,* long-haul trucking). As proposed, physical posting of the NOF at the place of employment would be permitted for an employer who does not maintain internal or external website(s) that are ''known and readily accessible to all employees, and customarily used by the employer for notices to employees about terms and conditions of employment.'' For remote job opportunities physical posting of the NOF at the place of employment—a residence where no other employees work—would not provide the notice and solicitation of information from the employer's employees that Congress intended. The Department has similar

[89] Immigration Act of 1990, Public Law 101–649, title I, sec. 122, 104 Stat. 4994 (Nov. 29, 1990).

[90] Further clarification on the procedures for handling *Applications for Permanent Employment Certification* for those positions currently identified under Schedule A and the sheepherder procedures under this part at 20 CFR 656.15 and 656.16 is provided at the discussion sections for those provisions, below.

concerns with NOF postings for other job opportunities that involve residential places of employment (*e.g.,* domestic service) or business places of employment that similarly employed employees may not visit regularly or often (*e.g.,* long-haul trucking). Should electronic posting of the NOF be required for such job opportunities in all cases? If electronic NOF posting is required of an employer who does not use an electronic means for notices to employees about terms and conditions of employment, what electronic methods (*e.g.,* websites, emails, text messages) and/or posting locations should be required for the NOF? For example, should the Department require an electronic posting on one or more of the employer's internal and external websites, consistent with the pre-filing recruitment requirements in proposed section 656.17(b)(2)? Based on feedback received, the Department will consider adding an additional requirement in the final rule to address this issue.

In addition, as discussed in connection with the proposed elimination of section 656.10(e)(1), the Department is considering ways to better solicit information bearing on an *Application for Permanent Employment Certification* from the public. For example, the Department could post a copy of the NOF, which contains information about the job offered and solicits information from interested parties, on a publicly accessible web page that OFLC manages for broad visibility. Leveraging the NOF as a vehicle for soliciting information bearing on an *Application for Permanent Employment Certification* would not add burden for the employer, apart from a *de minimis* burden to upload an already-prepared document in FLAG, and would be more effective at reaching interested parties than retaining current section 656.10(e)(1).

The Department solicits comments about how NOF visibility—and solicitation of information beyond the place(s) of employment and related word-of-mouth dissemination—could be expanded, without additional burden to the employer or significant impact to application processing efficiency, and will consider adding additional requirements in the final rule based on the feedback it receives from commenters.

6. 20 CFR 656.15, Reserved

As explained in the preamble discussion for current section 656.5 of subpart B, the Department has determined not to retain Schedule A in this proposed rule. Therefore, the Department is proposing to remove the provisions discussing filing procedures, documentation, and determinations discussed in current sections 656.15(a) through (f) for Schedule A occupations and reserve this section.

7. 20 CFR 656.16, Reserved

The current regulation designates section 656.16 for requirements for employers who seek to permanently employ sheepherders under part 656. Under this rule, the Department proposes to eliminate the alternative procedures for sheepherders. Under the proposed rule, all *Applications for Permanent Employment Certification* for sheepherders would be submitted to OFLC following the filing procedures in proposed section 656.10 after the employer completed pre-filing recruitment requirements in proposed 656.17 and satisfying all other normal PERM labor certification requirements.

Employers who seek to permanently employ an alien as a sheepherder have long been authorized to file an uncertified *Application for Permanent Employment Certification* directly with DHS, along with a PWD, provided that the alien could document legal employment as a nonimmigrant sheepherder in the United States for at least 33 of the preceding 36 months.[91] The Department's current approach to PERM labor certification for sheepherder positions developed from Congressional legislation authorizing special handling of a certain number of skilled sheepherders for permanent employment during the early 1950s.[92] However, this legislation expired and Congress has not enacted further legislation providing an alternative path for employers seeking to permanently employ aliens as sheepherders.[93] As there is no statutory requirement that the Department continue to except certain sheepherders from the normal test of the U.S. labor market, consistent with the Department's proposal to eliminate exceptions to pre-filing recruitment requirements (*e.g.,* for job opportunities currently defined as Schedule A), the Department proposes to eliminate the alternative procedure section of the current rule for sheepherders at section 656.16. The Department proposes to review and process sheepherder applications under normal procedures (*e.g.,* proposed sections 656.10 and 656.17).

The Department proposes to delete this section in its entirety and to reserve this section for future use.

8. Proposed 20 CFR 656.17, Pre-Filing Recruitment Requirements

The Department is proposing to revise current section 656.17 and its section title (from ''Basic Labor Certification Process'' to ''Pre-filing Recruitment Procedures''), in part, due to the proposed reorganization of part 656. The Department proposes to relocate the content of current paragraphs (a) and (c) of section 656.17 (''Filing applications'' and ''Filing date'') to proposed section 656.10; the content of current paragraph (k) of section 656.17 (''Layoffs'') to proposed section 656.13; and the content of current paragraphs (b), (h), (i), (j), and (l) of section 656.17 (''Processing,'' ''Job duties and requirements,'' ''Actual minimum requirements,'' ''Conditions of employment,'' and ''Alien influence and control over the job opportunity'') to proposed section 656.19. The Department also proposes to revise section 656.17 to remove obsolete language (*e.g.,* current paragraph (d) ''Refiling procedures'') and to conform with other proposals contained in this proposed rule, such as the elimination of alternative procedures for sheepherders and occupations currently covered by Schedule A. The resulting proposed section 656.17 is designed to focus on pre-filing recruitment requirements. Moreover, under the proposed rule and as previously discussed, the pre-filing recruitment requirements proposed in section 656.17 would apply to all *Applications for Permanent Employment Certification,* unless the job opportunity was eligible for—and the employer opted to comply with—the optional pre-

[91] *See* ''Employment and Training Administration, Proposed Rule, *Implementation of New System, Labor Certification Process for the Permanent Employment of Aliens in the United States,* 67 FR 30465, 30470 (May 6, 2002), explaining that DOL will continue to handle all Sheepherder applications submitted to the Department in the same way and that Sheepherder applications will continue to be submitted to the Immigration and Naturalization Service. The Department adopted the proposed provision for Sheepherders in the resulting final rule. *See Labor Certification for the Permanent Employment of Aliens in the United States;* Implementation of New System, 69 FR 77326, 77340 (Dec. 27, 2004).

[92] Training and Employment Guidance Letter No. 32–10, *Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H–2A Program* (June 14, 2011), *available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2011/TEGL32-10.pdf* (summarizing Congress' engagement with temporary and permanent employment of aliens as sheepherders).

[93] Training and Employment Guidance Letter No. 32–10, *Special Procedures: Labor Certification Process for Employers Engaged in Sheepherding and Goatherding Occupations under the H–2A Program* (June 14, 2011), *available at https://www.dol.gov/sites/dolgov/files/ETA/advisories/TEGL/2011/TEGL32-10.pdf* (summarizing Congress' engagement with temporary and permanent employment of aliens as sheepherders).

filing recruitment requirements of proposed section 656.18.

Consistent with the current regulation, proposed section 656.17 would continue to require employers seeking a PERM labor certification to engage in pre-filing recruitment activities, conduct a good faith test of the labor market for qualified U.S. workers, and retain documentation to demonstrate compliance with program requirements. However, the Department proposes to eliminate the current distinction between pre-filing recruitment requirements for professional and non-professional occupations in section 656.17; the requirements of proposed section 656.17 would apply equally to professional and non-professional occupations. As discussed below, the Department proposes significant revisions to modernize the pre-filing recruitment steps required under section 656.17 that better reflect the widespread use of online or digital recruitment practices, ensure that recruitment efforts reach the broadest pool of qualified and available U.S. workers, and ensure the employers' labor market tests are conducted in good faith and consistent with their current hiring practices to reach prospective applicants for similar job opportunities outside the PERM labor certification process. The proposed approach will support recruitment of both professional and non-professional occupations, enabling the Department to further its goal of simplifying part 656.

Employer Obligations

Consistent with current section 656.17(e), proposed section 656.17(a) requires employers to attest, under penalty of perjury, that they conducted the pre-filing recruitment outlined in section 656.17, including compliance with all advertising requirements contained in proposed sections 656.17(b) through (e). Under the proposed rule, only employers filing *Applications for Permanent Employment Certification* for college or university teachers, professional athletes, or professional sports team coaches may opt not to conduct pre-filing recruitment under section 656.17; however, if they do not comply with pre-filing recruitment requirements of proposed section 656.17, they must comply with the pre-filing recruitment requirements of proposed section 656.18.

Both currently and under the proposed rule, the employer must maintain documentation, including copies of all advertisements and resumes or applications from prospective U.S. applicants considered for the job opportunity, to support the attestations made in the *Application for Permanent Employment Certification* and recruitment report. Under this proposed rule, the employer would be required to submit the recruitment report (including resumes and applications of all U.S. workers who applied for the job opportunity) and documentation to prove compliance with recruitment requirements at the time of filing the *Application for Permanent Employment Certification. See* proposed sections 656.10(a)(3) and (4).

Required Recruitment

Under the current rule, employers are generally required to recruit during the 30-day to 180-day period before filing the *Application for Permanent Employment Certification.* Recruitment for nonprofessional occupations consists of placing a job order with the SWA for a period of 30 days and print advertisements on two different Sundays in a newspaper of general circulation in the AIE most appropriate to the occupation and the workers likely to apply for the job opportunity. Recruitment for professional occupations similarly consists of placing a SWA job order and two print advertisements—one of which may be a professional journal that is normally used for job opportunities requiring an advanced degree and experience—but also requires three additional steps. Employers self-select the three additional steps to take from a menu of ten (10) recruitment options. The list of recruitment options for professional occupations are intended to provide employers flexibility to select methods appropriate to the job opportunity that is the subject of the *Application for Permanent Employment Certification.* The menu of options includes: job fairs; the employer's website; job search websites other than the employer's; on-campus recruiting; trade or professional organization newsletters or journals; private employment firms; employee referral programs with incentives; campus placement offices; local and ethnic newspapers; and radio and television advertisements.

The Department recognizes that print advertisements are no longer a meaningful method for recruitment, which impacts the informational value of the two print advertisements currently required for the PERM labor market test for both nonprofessional and professional job opportunities.[94] As some newspapers are shutting down and others are replaced by digital sources, the avenues for recruiting through news sources also migrate from print to online.[95] Online newspapers and social media sites are surpassing print newspapers for news and information,[96] including for job seekers, with job seekers using online or digital platforms over traditional print media.[97] In addition, many newspapers have reduced or eliminated print circulation.[98] This trend has continued, for example, with the Atlanta Journal-Constitution issuing its final print edition on December 30, 2025.[99] According to news reports, in recent years, print newspapers declined at rapid rates,[100] including local and ethnic print news sources,[101] resulting in news deserts throughout the country and the increased prevalence of areas

[94] The Department has previously recognized in the H–2 programs that print newspaper advertisements are not an effective method of recruiting prospective U.S. workers. See Modernizing Recruitment Requirements for the Temporary Employment of H–2A Foreign Workers in the United States, 83 FR 55985, 55987 (Nov. 9, 2018); *Modernizing Recruitment Requirements for the Temporary Employment of H–2B Foreign Workers in the United States,* 83 FR 55977, 55979 (Nov. 9, 2018).

[95] *See* David Buader, ''Local news sources are still drying up, but there's growth in digital sites in metro areas'', Associated Press, (Oct. 23, 2024), *https://apnews.com/article/newspapers-closing-jobs-lost-digital-fa82ebfdefdde058a1cbfaea1a59fb69* (discussing migration away from print newspapers toward digital sites).

[96] *See* Shearer, Elisa, ''Social media outpaces print newspapers in the U.S. as a news source,'' Pew Research Center, (Dec. 10, 2018), *https://www.pewresearch.org/short-reads/2018/12/10/social-media-outpaces-print-newspapers-in-the-u-s-as-a-news-source/* (discussing print newspapers being surpassed by social media sites).

[97] *See* Smith, Aaron, ''Job seeking in the era of smartphones and social media,'' Pew Research Center, (Nov. 19, 2015), *https://www.pewresearch.org/internet/2015/11/19/2-job-seeking-in-the-era-of-smartphones-and-social-media/* (discussing the increased use of the internet for job searches since 2015).

[98] *See* Lipka, Michael and Shearer, Elisa, ''Audiences are declining for traditional news media in the U.S.—with some exceptions,'' Pew Research Center, (Nov. 28, 2023), *https://www.pewresearch.org/internet/2015/11/19/2-job-seeking-in-the-era-of-smartphones-and-social-media/* (discussing decline in daily newspaper circulation).

[99] *See* Chapman, Jr., Leroy, ''After 157 years, AJC says goodbye to print and embraces its digital future (Dec. 31, 2025), *https://www.ajc.com/business/2025/12/as-the-final-ajc-editions-are-printed-an-era-of-local-news-ends/.*

[100] *See* Streitfeld, David, ''How the media industry keeps losing the future,'' New York Times, (Feb. 28, 2024), *https://www.nytimes.com/2024/02/28/technology/news-media-industry-dying.html* (discussing the decline of newspapers and traditional media).

[101] *See* Hagey Keach, Alpert, Lukas I., and Serkez, Yaryna, ''In News Industry, a Stark Divide Between Haves and Have-Nots,'' The Wall Street Journal, (May 4, 2019), *https://www.wsj.com/graphics/local-newspapers-stark-divide/* (discussing sharper declines in circulation for local print newspapers even beyond declines national print newspapers have experienced).

without local newspapers.[102]

The loss of print editions directly affects employers' abilities to place advertisements for job opportunities in print newspapers to comply with current part 656 requirements for both professional and nonprofessional occupations, and ultimately impacts the numbers of U.S. workers exposed to job opportunities advertised in print news sources.

Based on information, stakeholder feedback, and anecdotal data from previous rulemakings for the H–2A and H–2B programs, print ads in newspapers have yielded very few, if any, applications from able, willing, and qualified U.S. workers. Further, the Department's experience in conducting audit examinations, has shown that very few U.S. workers have applied to job opportunities in response to print advertisements that employers have placed.[103]

To modernize compliance requirements and to attract more U.S. workers to available job opportunities, this proposed rule seeks to replace mandatory print newspaper advertising with updated electronic methods for both nonprofessional and professional job opportunities. The modern methods of recruitment proposed in this rule ensure that recruitment for job opportunities that are the subject of *Applications for Permanent Employment Certification* is conducted in the manner that is at least the same as the employer's recruitment practices for job opportunities in the same or substantially comparable occupations that it does not seek PERM labor certification and most likely to reach the broadest pool of qualified U.S. workers in the current labor market.

In addition, the Department proposes to replace the current menu of options for additional recruitment for professional occupations with a standardized list of modern methods of recruitment, which would be applicable to both professional and nonprofessional occupations. As discussed below, the flexibility of the menu approach has not had the intended effect of ensuring appropriate recruitment for professional occupations. In addition, nonprofessional recruitment currently uses similar approaches to professional recruitment, including online advertising on job search websites and social media and recruitment through trade schools.[104]

The Department has reviewed the additional recruitment options employers have disclosed on *Applications for Permanent Employment Certification* for professional occupations and how employers have actually recruited using those options. In promulgating the current menu of additional recruitment options under the 2004 PERM Final Rule, the Department reasoned, at that time, that the methods selected were based on what program experience had shown to be real-world methods normally used by businesses to recruit workers, and that employers should be afforded flexibility to select the recruitment steps that were consistent with the employer's standard recruiting procedures.[105]

Based on a review of employer applications granted PERM labor certification for professional occupations (*i.e.,* requiring a degree) during FY 2021–FY 2025, the Department is proposing that the current approach—a menu of additional recruitment options for professional occupations—be eliminated because it is not serving its intended purpose.[106] Out of 409,368 PERM labor certifications granted during the most recent 5-year period, 94.2 percent of PERM applications for professional occupations were certified for positions within just the following 5 SOC major groups: SOC 15 (Computer and Mathematical) accounted for 65.4 percent of labor demand; SOC 17 (Architectural and Engineering) accounted for 10.1 percent of labor demand; SOC 13 (Business and Finance Operations) accounted for 8.9 percent of labor demand; SOC 11 (Management) accounted for 6.7 percent of labor demand; and SOC 29 (Healthcare Practitioners and Technicians) accounted for 3.2 percent of labor demand.[107]

First, the data reviewed shows that across all these professional occupations, the majority of employers selected online advertising through a job search website (95.4 percent) and half selected a website maintained by the employer (49.5 percent) as two of their three additional recruitment options. These recruitment options, along with the rapidly increasing use of social media platforms (*e.g.,* Instagram, LinkedIn, and others),[108] are considered among the top trends in recruiting young professionals seeking initial employment and career advancement.

Second, the data indicate that, in most instances, the ability for employers to self-select which additional recruitment options they want to conduct may lead to choices that do not necessarily serve to reach the broadest possible pool of potentially qualified U.S. workers. For example, despite requiring at least a post-secondary degree, more than 18.5 percent of employers across these occupational groups chose radio and television advertisements at a far higher rate as compared to using job fairs (0.2 percent), on-campus recruiting (0.5 percent), or a campus placement office (9.6 percent), which are more common methods of building talent pipelines and recruiting qualified professionals by allowing direct interaction with recruiters, industry peers, and hiring managers. In addition, with approximately 40 percent of college and university students participating in formal internships before graduation, the value of on-campus recruitment is not limited to entry-level job opportunities.[109] Additionally, approximately 76 percent of employers chose local and ethnic newspapers to

[102] *See* Adgate, Brad, ''This year the Loss in the Number of Newspapers Published Accelerated,'' Forbes, (Nov. 21, 2023), *https://www.forbes.com/sites/bradadgate/2023/11/21/this-year-the-loss-in-the-number-of-newspapers-published-accelerated/* (discussing the rapid disappearance of newspapers and the resulting news deserts in localities throughout the nation).

[103] *See* Modernizing Recruitment Requirements for the Temporary Employment of H–2A Foreign Workers in the United States, 83 FR 55985, 55987 (Nov. 9, 2018); *Modernizing Recruitment Requirements for the Temporary Employment of H–2B Foreign Workers in the United States,* 83 FR 55977, 55979 (Nov. 9, 2018).

[104] *See* Lobell, Kylie Ora, ''How to Recruit for Hard-to-Fill Blue-Collar Positions'' (Apr. 17, 2023); *https://www.shrm.org/topics-tools/news/talent-acquisition/how-to-recruit-hard-to-fill-blue-collar-positions.*

[105] DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (last accessed May 6, 2026).

[106] DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (last accessed May 6, 2026).

[107] DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (last accessed May 6, 2026).

[108] *See* Nick Ferrara, *How Social Media is Redefining Job Hunting for Gen Z Professionals,* Society for Human Resource Professionals (Feb. 26, 2025), available at *https://www.shrm.org/topics-tools/news/how-social-media-is-redefining-job-hunting-gen-z* (citing Zety's 2025 Gen Z Career Trends Report, which conducted a survey of 896 Generation (Gen) Z employees and is available at *https://zety.com/blog/genz-career-trends-report,* more than 95% of Gen Z employees said that a company's social media presence impacts their decision to apply with 76% using Instagram, 52% using TikTok, and 34% using LinkedIn for career advice and content. In addition, Gen Z employees were reportedly more likely to connect with peers, mentors, or industry professionals on Instagram (66%), compared to LinkedIn (35%), and more than 64% have secured a job or internship via Instagram and 56% have done so on Twitter or X).

[109] *See* ''Building A New Path: The 2026 Graduate Report,'' ZipRecruiter *https://www.ziprecruiter-research.org/annual-grad-report* (last accessed May 7, 2026).

advertise their professional job opportunities, which the Department noted in the 2004 Final Rule should be used ''to the extent they are appropriate for the job opportunity.'' [110] As noted above, job fairs, on-campus recruiting or a campus placement office would appear to be more appropriate for these professional job opportunities, yet employers overwhelmingly used local and ethnic newspapers instead. Program data suggest that employers are not using the flexibility afforded through the menu approach to engage in recruitment activities most appropriate to the job opportunities offered, contrary to the Department's intent.

In the proposed rule, the Department would eliminate mandatory print advertisements for both professional and nonprofessional job opportunities and the current menu of additional recruitment options for professional occupations. Instead, for both professional and nonprofessional job opportunities, the proposed rule would require employers to comply with a standardized, mandatory list of modernized recruitment activities, which leverage online recruitment and the employer's own approach to recruit for similar job opportunities that are not the subject of an *Application for Permanent Employment Certification.*

The proposed rule seeks to improve and modernize the PERM labor certification labor market test by replacing outdated and ineffective means of recruitment with modern and more effective forms of recruitment, while also retaining some forms of recruitment that remain standard and productive, to advertise job opportunities as broadly as possible in order to attract as many U.S. workers as possible. In addition, the proposed rule aims at leveraging employers' current approaches to recruitment outside the PERM labor certification program. The proposed rule would require employers to recruit U.S. workers for PERM labor certification job opportunities using the same methods they use when seeking to fill a vacancy in a non-PERM labor certification recruitment setting. The recruitment steps proposed in this paragraph would ensure that U.S. workers are informed of the job opportunity and are provided the opportunity to apply and be considered for the job opportunity prior to an alien being offered permanent employment through a PERM labor certification, which would allow the Department to make the certification required by the INA. The mandatory pre-filing recruitment activities required of all employers under proposed section 656.17 are outlined below.

Placement of the Job Order—Proposed section 656.17(b)(1) would require the employer to place a job order with the SWA serving the place(s) of employment, consistent with the current rule. The Department proposes a revision to clarify that if the job opportunity covers more than one place of employment and the SWAs serving the places of employment are distinct, the employer would be required to place a job order with more than one SWA. Further, the proposed rule uses the term ''place of employment'' rather than ''area of intended employment'' to add specificity for the location(s) that determine placement of the job order with the particular SWA(s).

Placement of Advertisement on Employer's Website(s)—As proposed in section 656.17(b)(2), if an employer maintains one or more websites for its business operations, it must place an advertisement for the job opportunity that is the subject of the *Application for Permanent Employment Certification* on those websites. If the employer customarily uses its website(s) for its business operations to recruit for job opportunities that are not the subject of an *Application for Permanent Employment Certification,* the advertisement for the job opportunity that is the subject of the *Application for Permanent Employment Certification* must be placed in the same manner (*e.g.,* same web page) the employer customarily uses to recruit for job opportunities. If the employer does not customarily use its website(s) for its business operations to recruit for job opportunities, the employer must post the job opportunity that is the subject of the *Application for Permanent Employment Certification* on all such website(s) in a conspicuous location (*e.g.,* the employer's contact page). The objective of the advertisement is to apprise as many U.S. workers of the job opportunity as possible and, therefore, the advertisement must be placed in a conspicuous location on each website the employer maintains for its business operations. Under the proposed rule, the employer is required to use all websites it maintains for business purposes to ensure the broadest dissemination of the job opportunity.

This proposal is intended to better apprise U.S. workers of the job opportunity and also make it more difficult for employers who are not recruiting in good faith to conceal job opportunities from U.S. workers, including those who are employed by the employer but might be interested in applying for the offered position, or U.S. workers who have been laid off, for example.

Placement of Advertisement on Job Search Website(s)—Proposed section 656.17(b)(3) would require the employer to place an advertisement for the job opportunity on at least one job search website. This proposal specifies that compliance with paragraph (b)(3) requires placement of the advertisement on a job search website that is not the employer's own website (*i.e.,* the employer's business website in proposed paragraph (b)(2)) or the SWA's website (*i.e.,* job order posting in proposed paragraph (b)(1)).

The proposed rule requires employers to post advertisements on one or more job search website(s) using the same methods and website locations as the employer customarily uses for recruitment of its other job opportunities that are unrelated to requests for PERM labor certification. The intent is to ensure that while recruiting for a PERM labor certification job opportunity, the employer, at a minimum, uses all of the job search website methods it typically uses, and in the same manner that it typically uses, when recruiting outside of the PERM labor certification context to make jobs known to U.S. workers. In the event an employer does not customarily post advertisements on job search websites for job opportunities that are the same as the job offered in the *Application for Permanent Employment Certification,* compliance with proposed 656.17(b)(3) would require the employer to post an advertisement on one job search website that is appropriate for recruitment of the job opportunity.

For an employer whose business is job postings, providing job searches, or job matching (*e.g.,* an employer whose business includes a job search engine, job website, job board, job portal, or job aggregator, etc.; and/or an employer whose businesses performs tasks such as headhunting, staffing, or connecting employers and job seekers through job platforms, etc.) or, otherwise, the employer specializes in advertisement of job opportunities, compliance with proposed section 656.17 would require the employer to advertise on its own job search website(s) for proposed paragraph (b)(2) and, in addition, to advertise using a third-party commercial job search website for the proposed paragraph (b)(3).

Social Media Platform(s)—Proposed section 656.17(b)(4) would require an employer who customarily uses one or more social media platforms to advertise

[110] *See* Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System, 69 FR 77345 (Dec. 27, 2004).

job opportunities in the same occupational classification to similarly do so during pre-filing recruitment for PERM labor certification. Under the proposed rule, the employer must use the same method(s) and location(s) and post this advertisement in a similar manner as it would for job opportunities unrelated to requests for PERM labor certification. The intent of this requirement is to ensure that while recruiting for a PERM labor certification, the employer, at a minimum, uses all of the methods it commonly uses when recruiting outside of the PERM labor certification context to make jobs known to U.S. workers.

If an employer does not customarily use a social media platform to advertise job opportunities in the same occupational classification, proposed paragraph (b)(4) does not require an advertisement on a social media platform. In this way, proposed paragraph (b)(4) contrasts with proposed paragraphs (b)(3) and (b)(5), which would require an employer who does not normally advertise job opportunities in the same occupational classification using the method described to do so during PERM labor certification pre-filing recruitment.

Job Fairs or On-Campus Recruitment—Proposed section 656.17(b)(5) would require employers to advertise the job opportunity through at least one job fair, on-campus recruitment event, or college, university, or trade school placement office while the job order placed with the SWA, under proposed paragraph (b)(1), is actively circulating. Even if the employer does not normally recruit for the same or similar job opportunities through any one of these methods, compliance with proposed paragraph (b)(5) would require the employer to do so at least once, through one of the listed methods.

For employers whose recruitment methods for the same or similar job opportunity outside the PERM labor certification context includes recruitment through job fairs, on-campus recruitment events, and/or college, university, or trade school placement office, the employer would be required to recruit for the PERM-related job opportunity in the same way it recruits for non-PERM job opportunities. The Department recognizes that employers may customarily recruit through job fairs, on-campus recruiting events, and/or college, university, or trade school placement offices that may not be geographically close to the place(s) of employment because those job fairs are expected to attract qualified candidates or those colleges, universities, or trade schools offer programs of study that align with the job opportunity offered and whose students or alumni are likely to be good candidates for the employer's job opportunities. The Department does not intend for employers to artificially limit their recruitment under proposed paragraph (b)(5) based on geography. Rather, employers who customarily recruit through job fairs, on-campus recruitment events, and/or campus placement offices would use the same location(s) and manner for job opportunities that are the subject of *Applications for Permanent Employment Certification.*

The Department welcomes comments on the proposed pre-filing recruitment methods listed above, as well as additional ideas or methods of recruitment that could be used in the PERM program. Specifically, the Department requests comments on whether to include a requirement to contact all U.S. workers currently employed at the place(s) of employment, similar to the requirement in the H–2B program under temporary final rules (TFRs) for fiscal years 2023, 2024, and 2025.[111] For this requirement, employers would be required to contact U.S. workers currently employed at the place(s) of employment to inform them of the job opportunity and request their assistance in recruiting qualified U.S. workers who may be seeking employment. As explained in the H–2B TFR and relevant for recruiting U.S. workers for permanent employment under this NPRM, the Department believes this method of positive recruitment is a reasonable and cost-effective way of broadening dissemination of available job opportunities and increasing the likelihood that qualified U.S. workers will apply.[112] Moreover, encouraging existing employees to provide referrals is generally recognized as an effective means for an employer to identify prospective applicants who would be well matched to the available job opportunity.[113] The Department also invites comments on how innovations in technology will impact the relevant forms of recruitment and whether there are alternative or additional methods of broadly disseminating job opportunities that could more effectively test the U.S. labor market while reducing unnecessary employer burden, including approaches that would facilitate and consolidate the publication of job opportunities. Commenters are encouraged to identify mechanisms that could increase the visibility and accessibility of PERM job opportunities to U.S. workers, improve the Department's ability to ensure compliance and/or assess the effectiveness of recruitment, or reduce reliance on multiple employer-directed recruitment activities.

Length of Active Recruitment

Section 656.17(c) of the proposed rule requires active recruitment for each method in proposed paragraphs (b)(1) through (b)(4) of this section to be performed for at least 90 calendar days. However, if during the prior 12 months, the employer has routinely advertised for the same or similar job opportunities unrelated to requests for PERM labor certification for more than 90 calendar days, then the employer must advertise for the PERM labor certification job opportunity for the longer period of time it routinely used in the prior 12 months. To comply with this paragraph, the employer must use whichever period of time is longer—90 calendar days or the employer's customary length of recruitment for the same or similar job opportunities in the prior 12-month period.

For example, where the employer normally posts a job opportunity for 120 calendar days, the employer must similarly post the job opportunity that is the subject of the *Application for Permanent Employment Certification* for 120 calendar days. The intent is for the employer to allow as much active recruitment time in connection with PERM labor certification recruitment as the employer allows on active

[111] *See* ''Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2025 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,'' 89 FR 95626, 95656 (Dec. 2, 2024); ''Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,'' 88 FR 80394, 80428 (Nov. 17, 2023); and ''Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2023 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,'' 87 FR 76816, 76845 (Dec. 15, 2022).

[112] *See* ''Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2025 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,'' 89 FR 95626, 95656, (Dec. 2, 2024).

[113] *See* Ceniza-Levine, Caroline, ''Does An Employee Referral Make A Difference?,'' Forbes, (Oct. 6, 2023), *https://www.forbes.com/sites/carolinecenizalevine/2023/10/06/does-an-employee-referral-make-a-difference/* (discussing the value of employee referrals for both the employer and job seeker); *see also* Lobell, Kylie Ora, ''How to Recruit for Hard-to-Fill Blue-Collar Positions'' (Apr. 17, 2023); *https://www.shrm.org/topics-tools/news/talent-acquisition/how-to-recruit-hard-to-fill-blue-collar-positions.*

recruitment for non-PERM labor certification recruitment. The proposed text requires that the job opportunity for which the employer seeks a PERM labor certification is as broadly and widely advertised as possible and in accordance with the employer's own customary business recruitment standards, in order to reach as many potentially qualified U.S. applicants as possible. The Department thinks that the proposed 90-day period for active recruitment of U.S. workers is both reasonable and appropriate because this proposed minimum timeframe is consistent with the amount of time unemployed American workers are actively searching for work and therefore a sufficient period of time to test the U.S. labor market. According to the October 2026 Employment Situation Summary Report, the BLS estimated that the average number of weeks unemployed persons were actively looking for work in September 2026 was 25.4 weeks (*i.e.,* approximately 6 months), while the median duration was 12.1 weeks (*i.e.,* approximately 3 months) and, when excluding the long-term unemployed (*i.e.,* persons actively seeking work 27 weeks or longer), nearly 1.1 million unemployed persons were actively looking for work for 15 to 26 weeks.[114] When examining the most recent estimates of unemployed American workers actively searching for work within the prime working-ages of 25 to 54 years, this proposed timeframe is likewise reasonable and appropriate. For October 2026, BLS also estimated that the median number of weeks unemployed persons were actively looking for work was 13.2 weeks for those 25 to 34 years old; 15.4 weeks for those 35 to 44 years old; and 14.6 weeks for those 45 to 54 years old.[115]

Additionally, the proposed 90-day advertising standard would provide a minimum level of consistency in recruitment efforts and ensure qualified U.S. workers have ample opportunity to apply and be considered for employment in the job opportunity. Because current regulations do not require any minimum timeframe, the amount of time employers make online advertisements available through their own website and other job search websites varies significantly, and often times these announcements are available for less time than the current 30-day job order placed with the SWA. For example, among the 200,124 applications granted PERM labor certification for professional occupations during FY 2021–FY 2025 that chose to advertise job opportunities through a website maintained by the employer, approximately 25 percent (50,361 applications) advertised for less than 15 calendar days, 34 percent (67,825 applications) advertised for 15 to 30 calendar days, and 41 percent (81,938 applications) advertised for 30 calendar days or more. Among the 387,518 applications where the employer chose to use an online job search website, approximately 62 percent (241,880 applications) advertised for less than 15 calendar days, 29 percent (113,165 applications) advertised for 15 to 30 calendar days, and 8 percent (32,464 applications) advertised for 30 calendar days or more.[116] Thus, the Department's most recent program experience demonstrates a clear need to propose a minimum regulatory standard that can achieve greater consistency in the length of time prospective qualified U.S. workers have to apply and be considered for employment in these job opportunities.

As discussed in detail below under section 656.17(f), the employer must document the length of its recruitment efforts for the *Application for Permanent Employment Certification* and, as directed by the CO, provide documentation of the length of the employer's recruitment efforts for *Application for Permanent Employment Certification* with proof of the length of the employer's normal or typical recruitment standard for the same or similar job opportunities.

Completion of Active Recruitment

Section 656.17(d) of the proposed rule would require the employer to complete the recruitment activities of proposed paragraphs (b)(1) through (b)(4), between 30 to 60 calendar days before the employer files the *Application for Permanent Employment Certification.* This provision protects U.S. workers by ensuring the recruitment for the job opportunity does not become stale prior to the *Application for Permanent Employment Certification* filing, and ensures that U.S. workers who may have availability for the job opportunity are made aware of the job in proximity to the filing of the *Application for Permanent Employment Certification,* rather than many months ahead of time, potentially prior to when currently available U.S. workers have begun their job search. In contrast, the current rule permits employers to complete recruitment as much as 5 months in advance of filing.

Advertising Content Requirements

Proposed section 656.17(e) largely continues current advertising content requirements, with revisions to ensure that U.S. workers are better apprised of the job opportunities offered. In addition, under this proposed rule, the Department would expand the scope of the advertising content requirements. The current rule has been interpreted as limiting advertising content requirements to the mandatory print advertisements.[117] In contrast, proposed 656.17(e) would apply the advertising content requirements to all recruitment conducted for compliance with 656.17.

Through the years after the implementation of the current rule, employers began to include technical jargon and shortened terms in PERM-related newspaper advertisements. More often than not, advertisements used in recruitment for PERM labor certification have confused potential job applicants, rather than sufficiently apprising U.S. workers about the actual job duties, qualifications, and skills required. In addition, over time, the advertisements placed for compliance with the current rule have been recognized by applicants as PERM-specific advertisements and in many cases, U.S. workers no longer apply because they believe such ads signify the lack of a bona fide job opportunity.[118] This perspective from U.S. workers suggests that some employers are not making PERM-related job opportunities truly open to qualified U.S. workers, a problem this proposed rule addresses. Further, the proposed rule would require consistency throughout the recruitment process by requiring employers to solicit and recruit for U.S. workers using specific content intended to apprise U.S. workers of the job requirements, wages, locations and other pertinent details of the available job opportunities.

While proposed section 656.17(e)(1) would continue to prohibit advertising from containing terms and conditions

[114] *See* BLS, *The Employment Situation,* Oct. 2026, Table A–12 Unemployed people by duration of unemployment, *https://www.bls.gov/news.release/empsit.t12.htm.*

[115] *See* BLS, *The Employment Situation,* Oct. 2026, Table A–36 Unemployed people by age, sex, race, Hispanic or Latino ethnicity, marital status, and duration of unemployment, *https://www.bls.gov/web/empsit/cpseea36.htm.*

[116] DOL OFLC Performance data for fiscal years 2021 through 2025 available at *https://www.dol.gov/agencies/eta/foreign-labor/performance* (accessed May 6, 2026).

[117] *See Symantec Corporation,* 2011–PER–01856 (July 30, 2014).

[118] *See* Gooding, Dan, ''The Job Listing Site Highlighting H–1B Positions So Americans Can Apply,'' Newsweek (Mar. 7, 2025), *https://www.newsweek.com/h1b-jobs-now-american-workers-green-cards-2041404* (accessed June 15, 2026) (discussing skepticism concerning whether employers try to seek U.S. workers, as they are required to do, when seeking approval through the PERM process).

that are less favorable to U.S. workers than those offered to the alien, it adds that the terms and conditions offered in the advertising also, at a minimum, must comply with assurances set forth in proposed section 656.13. The proposed rule would ensure that U.S. workers are not disfavored in the recruitment process or dissuaded from applying for job opportunities that are subject to *Applications for Permanent Employment Certification* due to misleading or inaccurate information or prohibited terms.

The list of required advertising content in proposed section 656.17(e)(2), again, largely continues current requirements. However, the proposed list includes intentional revisions to better ensure that U.S. workers are apprised of the pertinent details of the available job opportunities and available U.S. workers can apply for the position. For example, rather than continuing to require advertisements to ''[n]ame the employer'' and ''[d]irect applicants to report or send resumes, as appropriate for the occupation, to the employer,'' the proposed rule requires advertisements to contain ''[t]he employer's name and contact information.'' The revised advertising content requirements proposed in section 656.17(e) are intended to both provide the necessary information for U.S. workers to determine whether they are interested in and qualified for the job opportunity and better match non-PERM recruitment situations.

Finally, proposed section 656.17(e)(3) would permit employers to recruit for multiple positions simultaneously using the same advertisement as long as that single advertisement complies with all the pre-filing recruitment time, placement, and duration requirements for each job opportunity; and includes sufficient information to inform U.S. workers of each job opportunity.

As proposed, all of the employer's advertisements for recruitment under this proposed section must include the following: the employer's name and contact information; a description of the job opportunity sufficient to apprise U.S. workers of the services or labor to be performed and the actual minimum qualifications or requirements to perform the services or labor sought; the place(s) of employment or geographic area of employment, including a statement as to whether the position offers remote work, full-time telework, or a hybrid combination of telework and on-site work, with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor; the wage offer, or if there are multiple wage offers, the range of applicable wage offers (each of which must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage); a statement that overtime is available to the worker and the wage offer(s) for working any overtime hours (as applicable); and a statement that the job is a full-time position and, if the employer has more than one job opening, the total number of job openings the employer intends to fill.

The Department also proposes a new provision at section 656.17(e)(3) to provide some flexibility for employers who may be able to combine multiple positions in a single advertisement, while complying with the content requirements in proposed section 656.17(e). Permitting this flexibility would be financially efficient for employers, while ensuring the employer's advertisements contain content necessary to appropriately apprise U.S. workers of the job opportunities offered.

Recruitment Report

Section 656.17(f) of the proposed rule discusses the recruitment report the employer must prepare and maintain to document its recruitment efforts under part 656 and the results. A notable change from the current regulation is that under the proposed rule, the employer would submit the recruitment report (including the resumes and applications of all U.S. workers who applied for the job opportunity) concurrently with the *Application for Permanent Employment Certification.* The employer's submission of the recruitment report with the *Application for Permanent Employment Certification* will allow the Department's review of the recruitment report for each *Application for Permanent Employment Certification,* rather than solely reviewing recruitment reports during audit examinations or when submitted in connection with supervised recruitment, as is the case under the current regulation. In other words, under the proposed regulation, employers will be required to submit a recruitment report for each application and the Department will be able to review the report for every single application to assess employers' pre-filing recruitment activities and consideration of U.S. workers. As discussed for proposed sections 656.10(a)(3) and (4), the Department would also require the employer to submit the supporting evidence for the recruitment report—copies of all advertising and U.S. worker applicants' resumes or applications for the job opportunity. While the CO may review only the recruitment report in all cases, the employer's full documentation of compliance with recruitment and consideration of U.S. workers would be available for the CO to review, without additional correspondence. Also, as noted in connection with proposed sections 656.10(a)(3) and (4), employers would not incur additional new burdens as a result of this requirement because they are already required to prepare and maintain recruitment reports for each *Application for Permanent Employment Certification* and to provide the recruitment report and supporting documentation to the CO, upon request (*e.g.,* audit examination).

The Department proposes to require more specific content in the recruitment report under the proposed rule than the current rule mandates. Current section 656.17(g)(1) includes general language that requires the recruitment report to ''describe[e] the recruitment steps undertaken and the results achieved, the number of hires, and, if applicable, the number of U.S. workers rejected, categorized by the lawful job-related reasons for such rejections.'' This approach provides recruitment results to the CO in the form of data, which does not adequately reflect the success—or failure—of specific recruitment activities and does not adequately reflect the employer's consideration of U.S. workers who apply for the job opportunity that is the subject of the *Application for Permanent Employment Certification.* The Department has determined that the current recruitment report content does not provide sufficient information for the CO to form a clear picture of the labor market test (*e.g.,* which recruitment activities successfully reach U.S. workers, how the employer considered U.S. applicants, why the employer did not offer the job opportunity to each U.S. worker who applied, or that the employer did offer the job opportunity to U.S. workers who applied, but they declined) or to verify information in recruitment reports, as appropriate, for program integrity.

The recruitment report under proposed 656.17(f)(1) would include specific factual information to provide a fuller picture of the employer's recruitment activities and results. As proposed, the recruitment report submitted with the *Application for Permanent Employment Certification* would identify the name of each recruitment activity and the date(s) of advertisement; identify the uniform resource locator (URL) or other location of each advertisement, and, for each advertisement placed with a website,

platform, publisher, or the SWA, the platform or publisher generated confirmation number, receipt, or order identifier and the posting and expiration dates it generated; state the name and contact information and date of application of each U.S. worker (including any the employer laid off) who applied for or was referred for the job opportunity up to the date the employer finalizes its recruitment report for submission with the *Application for Permanent Employment Certification,* categorized by the advertising method through which the U.S. worker applied, indicating whether the U.S. worker met the actual minimum requirements, with the disposition of each U.S. worker specified, including whether the U.S. worker received a job offer and, if so, whether they accepted or declined; and, if applicable, for each U.S. worker who applied but was not hired, explain the lawful job-related reason(s) for not hiring that U.S. worker. The recruitment report would also identify the name and title of each employee of the employer who reviewed, screened, or interviewed each of the applicants listed.

As provided by the INA in section 212(a)(5)(A)(i) and (ii) and both the current and proposed rule in section 656.24(b)(2), the Department will not issue a PERM labor certification to an employer if able, willing, and qualified U.S. worker(s) are available for the job opportunity that is—or would be—the subject of the *Application for Permanent Employment Certification.* To demonstrate eligibility for a PERM labor certification, the employer must document its reasons for not hiring each U.S. applicant who applied for the job opportunity in a recruitment report. In the event U.S. workers apply for the job opportunity and satisfy the minimum qualifications, as described on the *Application for Permanent Employment Certification,* or for a college or university teacher position or positions offered to aliens who have exceptional ability in the sciences or the arts, who are at least as qualified as the alien, the employer must consider each of those U.S. worker applicants. Unless the employer identifies lawful, job-related reason(s) for not hiring each qualified U.S. worker, the Department considers the U.S. worker(s) available and will not issue a PERM certification. The employer may offer the job opportunity to such U.S. workers to determine whether the U.S. worker(s) are willing and available and if no qualified U.S. workers accept the job offer, the employer could continue to pursue issuance of a PERM labor certification. However, if a qualified U.S. worker accepts the job offer, the Department would not issue a PERM labor certification, as the job opportunity can be filled by a U.S. worker; permanent employment of an alien is not necessary. In addition, the proposed recruitment report content would provide the CO with information necessary to assess whether the employer has satisfied its burden of proof with respect to this statutory and regulatory requirement.

Adding the proposed specificity to recruitment report content requirements would improve clarity for employers and the consistency of recruitment information submitted to the NPC. It will also allow the Department to make a more informed determination about the availability of U.S. workers when carrying out its statutory obligation to determine that there are not sufficient able, willing, and qualified U.S. workers available for the job opportunity. In addition, the proposal to require recruitment reports to identify which U.S. workers applied for the job opportunity through which recruitment activities would better enable the Department to update recruitment requirements to balance burden against the effectiveness of advertising activities in the future.

Duty to Update Recruitment Report—Proposed section 656.17(f)(2), consistent with the proposed layoff attestation in section 656.13(e), would require the employer to update its recruitment report after initially submitting it with the *Application for Permanent Employment Certification* in the event of a layoff. A recruitment report update would be required whenever the employer experiences a layoff of any U.S. worker(s) in the same or similar occupation as the *Application for Permanent Employment Certification* in the place(s) of intended employment, until the employer withdraws the *Application for Permanent Employment Certification* or related Form I–140 petition, the CO denies PERM labor certification or USCIS denies the related Form I–140 petition, or USCIS approves the related Form I–140 petition. The employer would prepare an updated recruitment report each time it experiences a layoff. Each time, the employer would sign and date the updated recruitment report. The recruitment report updates would not be submitted to the CO, unless requested. This proposal supports program integrity and protects U.S. worker access to job opportunities before they are permanently filed with an alien by enabling the CO to confirm compliance with required consideration of laid off U.S. workers while the *Application for Permanent Employment Certification* and Form I–140 petition are pending.

Similar to proposed section 656.17(f)(1), proposed section 656.17(f)(2) specifies the content to be required for recruitment report updates. The employer would be required to update their recruitment report with (i) a detailed explanation of the method(s) used and date(s) on which the employer notified all potentially qualified laid off U.S. workers for the job opportunity, who had been employed in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification* in the place(s) of intended employment, and (ii) the name and contact information of each U.S. worker notified, identifying each one who applied to the job opportunity up to the date of the preparation of the recruitment report, categorized by the notification method through which they applied for the job opportunity, and specifying the disposition of each U.S. worker and whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined.

Duty to Maintain Recruitment Documentation—The Department is proposing to relocate the requirement to retain documentation to prove compliance with section 656.17 recruitment requirements from current section 656.17(e)(1) to proposed revised section 656.17(g). The proposed rule would continue to require employers to retain documentation associated with their pre-filing recruitment for the *Application for Permanent Employment Certifications* and add the required retention of documentation associated with their ongoing, post-filing consideration of any laid off workers, if applicable.

As is current practice, the CO may request the employer's documentation to verify compliance with timing, content, and activity requirements, as well as recruitment results. To demonstrate compliance, the employer must document each advertisement's date(s), content (*e.g.,* proof of publication or screen shot of the ad placed on a website), and location(s) (*e.g.,* physical location and/or website address) and each notification to laid off U.S. workers.

Finally, the Department proposes a new section 656.17(h) that would provide some flexibility for the OFLC Administrator to provide further clarifying guidance regarding recruitment requirements, methods, and practices that do not rise to the level of requiring rulemaking. The Department considers this to be an important option for the OFLC Administrator to address

questions or resolve confusion that may arise as recruitment methods continue to evolve.

9. 20 CFR 656.18, Optional Pre-Filing Recruitment Requirements for College and University Teachers and Professional Athletes and Professional Sports Team Coaches

The Department proposes to retain the optional competitive recruitment and selection procedures currently available to an employer seeking to permanently hire a college or university teacher at section 656.18, with revisions. Consistent with the current regulation, the employer would be permitted to conduct recruitment for a job opportunity involving a college or university teacher using the normal pre-filing recruitment procedures set forth in section 656.17. Alternatively, if the employer selected the alien using a competitive recruitment process, the employer would have the option of following the optional pre-filing recruitment procedures set forth in section 656.18.

The Department proposes expanding the optional pre-filing recruitment alternative available in proposed section 656.18 to include professional athlete or professional sports team coach job opportunities and rename proposed section 656.18 to reflect the changed content. The current regulations do not address pre-filing recruitment or documentation requirements for such job opportunities. As a result, while employers seeking to permanently employ professional athletes and professional sports team coaches must engage in pre-filing recruitment, they have not been required to comply with the standard pre-filing recruitment requirements of current section 656.17. Consistent with the Department's goals of clarifying program requirements and maintaining program integrity, the Department proposes to specify recruitment and documentation requirements for *Applications for Permanent Employment Certification* involving professional athletes and professional sports team coaches in this proposed rule, while maintaining the current flexibility for alternative recruitment practices appropriate to these job opportunities. The Department proposes to permit an employer seeking to permanently employ an alien as a professional athlete or professional sports team coach to either comply with the normal pre-filing recruitment procedures set forth in proposed section 656.17, or the alternative process in proposed section 656.18. The Department invites comments regarding the proposal to permit such employers to demonstrate a competitive recruitment and selection process under proposed section 656.18, rather than requiring compliance with proposed section 656.17. In addition, the Department invites comments that provide information about the means and methods of recruitment used for professional athletes and professional sports team coaches (*e.g.,* private executive recruiters, talent scouts, multi-session tryouts or interview panels), which may not be captured in the standard pre-filing recruitment requirements of 656.17. The Department invites the public to provide input that can better inform the pre-filing recruitment standards and documentation requirements to ensure potentially qualified and available U.S. workers are afforded a fair chance to apply for professional athlete and professional sports team coaching positions.

To use the optional recruitment and documentation procedures at section 656.18, both currently and under the proposed rule, the employer must be able to document that the alien was selected for the job opportunity using a competitive recruitment and selection process. Also consistent with the current regulation, this proposed rule would require the employer to prepare and retain documentation showing compliance with the requirements of the optional pre-filing recruitment procedures for submission to the CO, upon request. However, under the proposed rule, such employers also would submit the recruitment report and all evidence of compliance with the advertising requirements and consideration of U.S. workers (including resumes and applications of all U.S. workers who applied for the job opportunity) proposed in section 656.18 when filing their *Application for Permanent Employment Certification*—a change for all employers, as discussed in proposed section 656.10.

The documentation necessary to show compliance using a competitive recruitment and selection process for a college or university teacher job opportunity under proposed 656.18 would include the following list, which the Department retains from the current rule with minor conforming modifications: (1) a written statement, signed and dated by an official who has actual hiring authority from the employer, providing a detailed description of the recruitment procedures undertaken; (2) a final report or other documentation from the organizational or administrative body making the recommendation or selection of the alien at the completion of the competitive recruitment and selection process; (3) evidence of all other recruitment sources utilized; (4) a copy of at least one print or electronic advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements; and (5) a written statement attesting to the degree(s) of the alien's educational or professional qualifications and academic achievements. For a professional athlete or professional sports team coach job opportunity, the Department would require an employer using the optional recruitment procedures in proposed section 656.18 to document that the alien was selected for the job opportunity using a competitive recruitment and selection process and retain, at minimum, the first three documentation requirements listed above. The Department invites comments on additional documentation requirements that would be appropriate to require for professional athletes or professional sports team coaches akin to the additional requirements for college and university teachers, listed as (4) and (5) above.

In paragraph (b), the Department proposes to require employers who use the competitive recruitment and selection option under proposed section 656.18 to both retain the documentation listed in paragraph (a) and submit it to the CO when filing the *Application for Permanent Employment Certification.* The Department notes that attestations regarding the competitive recruitment and selection process are collected in Appendix D of the *Application for Permanent Employment Certification.*

While the recruitment and documentation requirements for employers who use these optional pre-filing recruitment procedures are consistent with current regulations, the proposed rule would change the timing and content of recruitment report submissions required of employers using the optional pre-filing recruitment requirements of proposed section 656.18. As addressed in proposed section 656.10, the Department proposes a consistent filing requirements and consistent recruitment report content requirements for all *Applications for Permanent Employment Certification.* The Department proposes to eliminate current section 656.18(c), which requires an employer to submit the *Application for Permanent Employment Certification* for a college or university teacher within 18 months of the alien's selection through a competitive recruitment and selection process. Instead, these applications would be

subject to the same filing requirements as all other *Applications for Permanent Employment Certification,* including proposed section 656.10(b), which requires application submission within 30 calendar days after completion of pre-filing recruitment requirements. This proposed change is discussed in section 656.10.

In addition, employers who engage in pre-filing recruitment under proposed section 656.18 would be required to prepare a recruitment report in compliance with proposed 656.17(f). As discussed in proposed section 656.17, the Department proposes to require additional specificity in employers' recruitment reports to better enable the CO to assess the employer's test of the U.S. labor market and, as appropriate, verify information. For employers preparing a recruitment report following optional pre-filing recruitment under proposed section 656.18, the Department proposes to expand recruitment report content requirements from only the ''total number'' of applicants for the job opportunity and the specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied to the additional specificity that would be required under proposed section 656.17(f)—the name of each recruitment activity and date(s) of advertisement and the name and contact information of each U.S. worker who applied, categorized by the advertising method through which they applied, and specifying each applicant's disposition and whether the job opportunity was offered to them and whether they accepted or declined.

The Department highlights that, consistent with the Department's efforts to modernize recruitment requirements, proposed section 656.18(a)(4) would permit either print or electronic advertisements. The Department invites comments about whether to retain the option for employers to place the one required advertisement in a national professional journal in print.

In addition, consistent with organizational changes proposed throughout this rule, the Department proposes to consolidate current sections 656.18(a)(1)(i) and 656.18(a)(1)(ii), which correspond to recruitment report content, with similar language in proposed section 656.17(f). Finally, the Department proposes deleting current section 656.18(d) to avoid redundancy with similar language in proposed section 656.18(a). These minor revisions are consistent with the Department's overall goal of simplifying and clarifying part 656.

10. Proposed 20 CFR 656.19, Processing of an Application

As previously discussed in connection with proposed section 656.10, the Department proposes to move the current content of section 656.19 (''Live-in household domestic service workers'') to proposed section 656.10(e), so that all filing requirements are located in section 656.10 of this proposed rule. Then, the Department proposes to repurpose current section 656.19 to address the processing of *Applications for Permanent Employment Certification* submitted to OFLC and retitle section 656.19 as ''Processing of an application.''

Consistent with the Department's proposed reorganization of part 656, the Department proposes to relocate provisions from other areas of the current regulation that address the review and processing of *Applications for Permanent Employment Certification* submitted to OFLC to proposed section 656.19. Specifically, the Department proposes to move content about the CO's assessment of the job opportunity described in the *Application for Permanent Employment Certification* from current sections 656.17(h) (''Job duties and requirements'') and 656.17(j)(2) (''Conditions of employment'') to proposed section 656.19(d). Similarly, text currently found at section 656.17(i) (''Actual minimum requirements'') would be relocated to proposed section 656.19(e). These proposals would streamline the regulations, while improving clarity for employers regarding how applications are assigned for review and promoting more effective and fair processing by OFLC.

Proposed section 656.19 would address the CO's assignment of *Applications for Permanent Employment Certification* for review, rules for correspondence between the NPC and employers during processing, including requirements for responding, and the CO's assessment of the job opportunity offered in the *Application for Permanent Employment Certification.* The provisions proposed in this section would apply to all employers who must obtain a PERM labor certification before filing a Form I–140 petition with USCIS, including sheepherders, professional athletes and professional sports team coaches, and job opportunities currently designated as Schedule A (including aliens with exceptional ability).

In proposed paragraph (a), the Department considered codifying its application assignment process but decided against including these details in the proposed regulatory text. The NPC currently processes applications by assigning *Applications for Permanent Employment Certification* for staff review in the order received, using application filing dates. Specifically, the CO or other designated staff assigns for review all of the *Applications for Permanent Employment Certification* received in a certain month and year, before moving to assign applications filed in the next month and year. After being assigned, each designated staff organizes their monthly workload and initiates review of each application for compliance with PERM labor certification program requirements. After initial review, the CO or designated staff may initiate other processing steps, such as an audit examination under section 656.20 or supervised recruitment under section 656.21, or issue a final determination, approving or denying the application, pursuant to section 656.24. Processing times for any particular *Application for Permanent Employment Certification* received and assigned for review within that processing month may vary, depending on the unique circumstances of each application, contents of each application, and the applicable processing steps. While the Department intends to continue this practice for the foreseeable future, new technology or program enhancements may create necessary modifications. Any future changes, including minor tweaks to processing or order, would require the Department to propose another rule to codify its revised practices. Accordingly, the Department does not find it efficient or necessary to codify its internal review process.

Proposed paragraph (b) contains the correspondence rules that would apply to both the CO and the employer while an *Application for Permanent Employment Certification* is in process. For any notice or request the CO sends to an employer that requires a response from the employer, the CO will use electronic delivery, unless the employer was permitted to file by mail, as set forth in proposed section 656.10(c). For employers permitted to file by mail, the CO will send any notice or request via traditional methods to assure next-day delivery. Similarly, employers would be required to submit their responses electronically by the due date, except that an employer permitted to file by mail under proposed section 656.10(c), may use traditional methods to assure next-day delivery. This proposed section would implement the current practice regarding due dates in the H–2A program, under which if a response

due date falls on a Sunday or Federal holiday, the employer's deadline would be the next business day, rather than the current practice regarding due dates in the H–2B and CW–1 programs, under which if a response due date falls on a Saturday, Sunday, or Federal holiday, the employer's deadline would be the next business day. *See* 20 CFR 655.140(b), 655.11(f), and 655.430(b), respectively. Mandatory electronic filing, with limited exceptions, and for those permitted to file by mail, access to delivery services on Saturday to postmark a response on the due date, the Department proposes to adopt the H–2A program's approach to due dates. This paragraph provides clarity for employers and supports the Department's efforts to process *Applications for Permanent Employment Certification* efficiently. These rules apply to all correspondence between the CO and the employer during processing, including any CO-issued RFIs outside audit procedures or supervised recruitment procedures. However, the proposed rule reiterates these correspondence rules in proposed section 656.20 (Audit) (*see* proposed § 656.20(e)) and proposed section 656.21 (Supervised Recruitment) to provide further clarity to employers subject to audit or supervised recruitment. *See* proposed sections 656.20(e) and 656.21(e). The Department invites comments about whether proposed section 656.19(b) provides sufficient notice of correspondence rules or if those rules should also be included in part 656 in sections 656.20 and 656.21. Providing sufficient notice of correspondence is important because failure to respond to an RFI, audit notice, supervised recruitment notice, or any other notice or request that requires a response, or responding after the due date may result in a denial.

Proposed paragraph (c) discusses response dates for correspondence between the CO and employer. For *Applications for Permanent Employment Certification* received electronically, the date that the response is submitted is considered the response date. For the time of submission, the Department will use the Eastern time zone of the United States. For *Applications for Permanent Employment Certification* received by mail in accordance with section 656.10(c)(2) or (3), the date that the response is submitted is the postmark date of the employer's response. This approach is consistent with the Department's filing date proposal, as discussed in proposed section 656.10(f)(2), and current practice in the Department's temporary labor certification program regulations for response submission to the NPC.[119] This applies to any notice or request sent to the employer during *Application for Permanent Employment Certification* processing.

Proposed paragraph (d) contains content relocated from current sections 656.17(h) (''Job duties and requirements'') and 656.17(j)(2) (''Conditions of employment''), while proposed paragraph (e) contains the content relocated from current section 656.17(i) (''Actual minimum requirements''). The Department intends to retain the CO's current standard of review and documentation requirements for assessing the job duties and requirements specified on the *Application for Permanent Employment Certification*. Modifications to the current regulatory text in proposed sections 656.19(d) and 656.19(e) are intended to improve clarity, not to change the existing standard of review. For example, the proposed section 656.19(d)(1) retains the requirement that the job requirements specified in the *Application for Permanent Employment Certification* must be those normally required for the occupation and must not exceed the SVP level assigned to the occupation as shown in the O*NET Job Zones, unless adequately documented as arising from business necessity. The Department proposes to revise the provision to identify the application as ''*Application for Permanent Employment Certification*'' and add ''(SVP)'' and ''Occupational Network'' for clarity. Similarly, in proposed sections 656.19(d)(2)(ii)(A) and (B), the Department proposes to add ''effectively'' to modify ''communicate in English'' to better convey the standard applied to foreign language requirements carried over from current section 656.17(h)(2)(ii). Further, the Department proposes to add ''executed contracts or agreements'' in proposed section 656.19(d)(2)(ii)(A) to clarify the type of documentation that may be required to show plans to market products or deliver services in a foreign country. The Department also proposes to add ''clients, contractors, or employees'' in proposed section 656.19(d)(2)(ii)(B) to replace ''customers'' and clarify with whom an alien may need to communicate. Lastly, the Department proposes to require an additional explanation as to why the responsibilities of the position for which permanent labor certification is sought necessitates regular contact and communication with these individuals.

Again, the Department proposes these modifications for clarity and better organizational flow, not to change the existing standard of review.

11. Proposed 20 CFR 656.20, Audit

The PERM labor certification audit process is a pre-decisional integrity measure that enables the CO to request and review documentation the employer is required to maintain, currently under section 656.10(f), to verify compliance with program requirements and form attestations before issuing a PERM labor certification. This proposed rule seeks to modify and clarify the audit examination process for employers under part 656.

Discretion

Consistent with the current regulation, the proposed rule allows the CO to select an *Application for Permanent Employment Certification* for audit review prior to the issuance of a final determination. The current rule lists two reasons in section 656.20(a) why the CO might select an application for audit—random selection or for quality control purposes. These examples could be misunderstood as limiting the CO's discretion, which was not the Department's intent. The proposed rule revises this language to clarify that the CO has the discretion to choose an *Application for Permanent Employment Certification* for audit for any reason(s) the CO might deem necessary to ensure compliance with the laws and regulations governing the PERM labor certification process. This discretion is necessary so that the CO can effectively use the audit tool to verify compliance and to bolster the integrity of the program. The CO may—or may not—select an application for audit based on any variety of internal and/or external factors, such as filing trends, specific industries or types of employers, complaints received from members of the public or referrals from other government agencies, program needs, etc., but ultimately the proposed rule clarifies that the CO has the necessary discretion to choose an *Application for Permanent Employment Certification* at any time prior to the issuance of a final determination. Under the proposed rule, the Department seeks to ensure the CO's ability to select applications for audit is clear, as the CO's discretion with this integrity tool strengthens the overall integrity of the program.

[119] *See* 20 CFR 655.140(b), 655.11(f), and 655.430(b).

Audit Notice

Proposed 656.20(b) continues current practice of requiring the CO to issue a written notice to the employer (*i.e.,* Notice of Audit Examination), after selecting an *Application for Permanent Employment Certification* for audit examination. In addition, proposed paragraph (b) codifies the CO's current practice of sending a copy of the audit notice to the employer's agent or attorney, if applicable, to ensure proper notice. The proposed audit notice will contain similar content to current audit notices, such as informing the employer of the selection of its application for audit review, identifying the documentation the employer is required to provide in response to the audit, specifying a due date by which the employer must respond to the CO for the audit, and advising the employer of the consequences of noncompliance with the audit notice.

The Department proposes revising the audit response due date in section 656.20(b)(2) to support processing efficiency. Currently, section 656.20(a)(2) requires the CO to specify the same due date in all audit notices—30 calendar days from the audit notice issuance date. Proposed section 656.20(b)(2) would permit the CO to specify a date ''no more than 30 calendar days'' from the audit notice issuance date as the due date for the employer's response. The Department notes that employers attest at the time of filing the *Application for Permanent Employment Certification* that they have prepared documentation demonstrating program compliance. Compliant employers will therefore be ready to submit a response to the audit notice quickly. This proposal permits the CO to require a faster audit response than 30 days without harm to the employer, particularly as the Department proposes to retain the option for an employer to request a one-time extension of up to 30 calendar days, if needed, in proposed section 656.20(c).

In addition, the Department proposes revising the audit notice's content to better advise employers of the potential consequences for failure to comply with the audit process. Current section 656.20(a)(3) has been relocated to proposed section 656.20(b)(3), and continues to require that the audit notice advise the employer that failure to respond by the due date will result in denial and ineligibility for review by BALCA under section 656.26. Separately—and not included in required audit notice content subparagraphs—current 656.20(b) addresses substantial failure to respond to the audit notice, stating that it may result in denial or supervised recruitment. The current provision fails to ensure that the employer is notified of all potential consequences of noncompliance with audit examination (*e.g.,* debarment) in the audit notice. The Department proposes to relocate the content of current section 656.20(b) to proposed section 656.20(b)(4), with revisions for readability and to include all potential consequences of failure to fully comply with the audit process. Proposed section 656.20(b)(4) improves notice to employers by ensuring the audit notice advises of all potential consequences of noncompliance with the CO's audit examination: denial of the *Application for Permanent Employment Certification* under section 656.24; imposition of supervised recruitment under section 656.21 for the current application or future application filings for up to two years; or debarment under section 656.31(f) from filing any labor certification applications or labor condition applications or receiving any approvals from OFLC for up to three years. These consequences are not new. The Department is proposing to both simplify the language in the audit notice and make it more complete.

One-Time Extension Request

In proposed section 656.20(c), the Department proposes to continue to permit an employer to request an extension of a response deadline once during audit examination. The Department proposes one change to the current one-time extension request provision. Currently, the one-time extension request provision in paragraph (c) refers only to the initial Notice of Audit Examination due date (current subparagraph 656.20(a)(2)). It does not reference requests for supplemental information and/or documentation the CO may make under current paragraph 656.20(d). The Department proposes to remove this limitation and permit an employer to request an extension of any one response deadline during audit examination. This proposed change is consistent with a similar provision in section 656.21 for supervised recruitment processing, which permits one extension request to any one response deadline during supervised recruitment. In addition, this proposed change acknowledges that a response to a supplemental audit information and/or documentation request may require more time to prepare and submit to the CO than the employer's initial response, which would largely encompass information and/or documents the employer attested to having prepared before filing the *Application for Permanent Employment Certification.*

Continuing current procedure, the employer must request an extension in writing, before the due date of the response, and the CO at their discretion, may grant one extension of up to 30 additional calendar days for the employer to respond. Where granted, the CO issues a written notice to the employer that specifies the new date by which the employer must respond with the requested information and/or documentation. This proposal clarifies in section 656.20(c) that this is a ''one-time extension,'' and the extension will not automatically be granted but rather will be granted at the CO's discretion. Only one extension request during audit examination will be approved by the CO.

Actions During Processing

The Department proposes to revise current section 656.20(d) by adding a heading (''Actions during processing''), updating content in paragraph (d)(1) for clarity and to reflect the proposed response deadline of up to 30 days, and retaining paragraph (d)(2) without change. Existing section 656.20 paragraphs (d) and (d)(1) state that before making a final determination the CO may ''request supplemental information and/or documentation,'' while current paragraph (d)(2) states that the CO ''may require the employer to conduct supervised recruitment under 656.21.'' In proposed paragraph (d), the Department continues its current practice, where, if the CO determines further information is needed to verify program compliance, the CO may request supplemental information from the employer and/or impose supervised recruitment requirements. The CO may request supplemental information more than once during audit examination, each time providing up to 30 calendar days for response. This provision is intended to ensure that employers are aware the CO may request supplemental information to have full information before rendering a final determination on the *Application for Permanent Employment Certification.* The Department also clarifies that the CO will not consider any information the employer submits that is beyond the approved deadline(s) for the audit response(s), that is not in response to a CO's request, or that is not provided in the manner specified by the CO's request for supplemental information.

These proposed regulatory changes will add more clarity to the process by clearly specifying when and how supplemental information must be

provided to the CO to ensure employers submit the necessary information when requested by the CO and that requesting and submitting supplemental information is done as efficiently as possible to avoid unnecessary delays in the audit examination.

Correspondence in Audit

Furthering technological efficiency measures and updates, and modernization efforts developed and implemented over time for OFLC's programs, the Department is now proposing to codify in section 656.20(e) that the CO will issue all notices or requests electronically to the employer—and the employer's agent or attorney, if applicable—during audit using the electronic mail (email) address the employer designates in the *Application for Permanent Employment Certification.* There is an exception for employers permitted to file by mail, as set forth in § 656.10(c). For these employers, the CO will send any notice or request via traditional methods to assure next day delivery. This proposal increases transparency and supports the Department's modernization goals.

The Department proposes in paragraph (e) to also require employers to communicate electronically, except where the employer has been granted permission to file by mail in section 656.10(c), in which case the employer must send responses to the CO using a method that assures next-day delivery. As discussed above, the Department is proposing to adopt the current practice regarding response due dates in the H–2A program—employer responses must be sent by the due date specified by the CO, or by the next business day if the due date falls on a Sunday or Federal holiday. This proposal furthers the Department's goals to modernize and streamline processes to support processing efficiency.

Failure To Comply With Audit

In proposed section 656.20(f), the Department proposes to clarify the actions the CO may take as the result of an audit examination, and address the potential for debarment based on noncompliance with audit examination requirements. Under the current and proposed rules, the CO may: order the employer to conduct supervised recruitment under 656.21 before the CO issues a final determination on the current *Application for Permanent Employment Certification;* deny the *Application for Permanent Employment Certification* under section 656.24; deny the *Application for Permanent Employment Certification* under section 656.24 and order supervised recruitment under 656.21 for the employer's future filings for up to 2 years; and/or deny the *Application for Permanent Employment Certification* under section 656.24 and pursue debarment against the employer, agent, and/or attorney for up to 3 years under 656.31(f). Although debarment is not a new possible consequence of noncompliance with audit examination, it is not mentioned in current section 656.20 of the current rule; rather, it appears in current section 656.31(f)(1)(iv). Moreover, proposed paragraph (f) better clarifies that failure to comply with audit requirements will lead to denial under section 656.24 and potential debarment under section 656.31, while an inadequate audit response will be denied under section 656.24. The CO may also determine it is appropriate to impose supervised recruitment for future applications for up to two years, in addition to denial. The Department proposes to change language referring to ''a substantial failure'' to provide required documents to ''failed to comply with audit requirements ordered by the CO'' in the audit examination. This proposed change simplifies the standard of review with a more objective test.

During audit examination, the employer must fully respond to the audit, including any supplemental RFI issued to the employer, and must return the response to the CO in the manner specified by the audit notice. Failure to provide the information requested will result in a denial because the CO will lack the information it requires to properly assess the application for compliance. The proposed changes ensure that employers are fully aware of the consequences of not complying with audit examinations.

Potential Referrals

The Department proposes a new section 656.20(g) to inform employers that the CO will refer information provided in response to an audit to other enforcement agencies where the findings indicate a possible violation of law within an agency's jurisdiction, and will provide such information upon an agency's request. Such referrals are in addition to internal referrals provided for elsewhere in part 656 and serve as an additional means of deterring fraud and suspicious activity. Under this proposed rule, the CO will refer audit findings and underlying documentation for an employer, or an attorney or agent, to any enforcement agency, including the DOL–OIG, DHS, DOS, EEOC, and DOJ. This includes referring any findings that an employer discouraged an eligible U.S. worker from applying, or failed to hire, discharged or otherwise discriminated against an eligible U.S. worker to DOJ, Civil Rights Division, Immigrant and Employee Rights Section and/or the U.S. Equal Employment Opportunity Commission. Proposed section 656.20(g) serves as an additional means of deterring fraud and suspicious activity and notifies the public fully of the Department's intention to cooperate with fellow agencies to the maximum extent possible to protect the integrity of the permanent labor certification program.

12. Proposed 20 CFR 656.21, Supervised Recruitment

The Department proposes clarifications to the supervised recruitment provisions in section 656.21. OFLC uses supervised recruitment as a means of enhancing program integrity by directing the employer through specific recruitment steps under part 656. Through this integrity measure, OFLC ensures the adequacy of the employer's test of the labor market for U.S. workers and ensures the employer's consideration of U.S. applicants for the available job opportunity.

When the CO places an employer into supervised recruitment, the CO guides the employer through an additional recruitment process. Consistent with the current rule, under the proposed rule, the CO may impose supervised recruitment on an employer for a single *Application for Permanent Employment Certification* or for all of the employer's future-filed *Application(s) for Permanent Employment Certification* for a period of up to 2 years if the CO determines the employer failed to fully comply with audit examination requirements. Once in supervised recruitment, the employer must demonstrate its compliance with the additional recruitment requirements specified by the CO, in addition to compliance with all other requirements of part 656, in order to receive a PERM labor certification.

Discretion

The proposed rule revises language in section 656.21(a) to more clearly state the CO's discretion to place an employer in supervised recruitment. Proposed section 656.21(a) replaces ''[w]here the Certifying Officer determines it appropriate'' with ''[t]he CO may, at their discretion, require supervised recruitment.'' Under both the current and proposed rule, the CO has discretion to place an employer in supervised recruitment; however, the proposed rule more clearly states this discretion. In addition, proposed section

656.21(a) replaces ''for the pending application or future applications pursuant to § 656.20(b),'' which could be interpreted as requiring the pending application to undergo audit before supervised recruitment, with ''on any *Application for Permanent Employment Certification* pending a final determination or for all of an employer's future *Applications for Permanent Employment Certification* for up to two years pursuant to § 656.20(f).'' By more clearly providing the CO maximum discretion to induct an employer into supervised recruitment at any phase of processing an *Application for Permanent Employment Certification,* the Department provides employers with clearer notice regarding the potential for supervised recruitment and supports the CO's efforts to quickly and efficiently address trends and concerns regarding program integrity. Furthermore, the proposed revision in paragraph (a) adds the specific period during which the CO may order supervised recruitment for an employer's future filings to add clarity to proposed section 656.21(a). The period stated in proposed 656.21(a) is not new. Current section 656.20(f) specifies the potential period for which the CO may order supervised recruitment for an employer's future *Applications for Permanent Employment Certification* as up to two years. This proposal would provide important information relating to supervised recruitment in one place.

By clarifying the CO's discretion regarding supervised recruitment, the Department seeks to both streamline processing and safeguard U.S. workers by ensuring a robust test of the labor market.

Supervised Recruitment Notice

The Department proposes to repurpose section 656.21(b) to formalize the ''Notice of Supervised Recruitment'' procedure, with revisions. To increase the consistency of the audit and supervised recruitment procedures and improve clarity for employers subject to supervised recruitment procedures, the Department proposes to repurpose section 656.21(b) so that it codifies current practice, through which the CO issues a written notice to the employer, currently called ''Notice of Supervised Recruitment,'' with a copy to the employer's attorney or agent, if the employer has such a representative.

In proposed section 656.21(b)(1), the Department proposes new content outlining the type of information and instructions to be provided to the employer in the Notice of Supervised Recruitment. As proposed, the notice will specify the procedures the employer must follow to conduct supervised recruitment, including ''the required method(s) and content for advertising the job opportunity to prospective U.S. applicants (*e.g.,* whether to have applicants respond directly to the NPC), timeframes for compliance with the supervised recruitment process, and state that supervised recruitment will be incorporated as bona fide conditions and terms of the *Application(s) for Permanent Employment Certification.*'' To simplify proposed section 656.21 and acknowledge that advertising methods and contents are assessed by the CO on case-by-case basis, the Department does not propose to retain the list of required advertisement content in current section 656.21(b)(2) that currently applies to newspaper advertisements. Further, this approach provides the CO with flexibility to customize instructions for each job opportunity to the employer in the Notice of Supervised Recruitment, including advertisement content, to ensure the supervised recruitment efforts are appropriately guided to solicit referrals from the broadest pool of potentially qualified and available U.S. workers. Among the greater flexibilities afforded the CO under the proposed rule to customize recruitment and advertising content, as appropriate, during supervised recruitment, proposed section 656.21(b) would permit—but not require—the CO to require the employer's advertisements to direct applicants to send resumes or applications for the job opportunity to the NPC, rather than the employer.[120] The current rule requires applicants to apply only to the CO and the CO to refer those applicants to the employer. With this proposed change, the Department intends to balance the competing goals of supervising labor market testing and using advertisements to test U.S. worker availability for PERM job opportunities that blend in with non-PERM advertisements.

In addition, the Department proposes to add new content in proposed section 656.21(b)(2) that would implement the same consequences for failure to provide required documents by the due date(s) as currently applies during audit examination. While in audit examination processing, if the employer fails to provide required documentation by the due date, the CO will deny the application, with the denial ineligible for review by BALCA under section 656.26. *See* current section 656.20(a)(3) and proposed section 656.20(b)(3). If adopted in the final rule, proposed section 656.21(b)(2) would implement this consequence in Supervised Recruitment processing and would require that the Notice of Supervised Recruitment include notification of the consequence.

Requirements

To accommodate the new content in paragraph (b), which discusses the Notice of Supervised Recruitment, current section 656.21(b) has been redesignated in the proposed rule as section 656.21(c), with additional substantive changes. Currently, supervised recruitment requires placement of print advertisements in all cases, as well as any other measures the CO may add. *See* current sections 656.21(b) and (d). In addition, the current rule specifies advertisement content, requires the employer to submit a draft advertisement for CO review within 30 calendar days of the supervised recruitment notice date, and requires communication between the CO and employer regarding the timing of advertisements in paragraphs (b) and (c).

Consistent with Department's proposed modernization of pre-filing recruitment requirements in this rule, proposed section 656.21(c) eliminates print advertisements as mandatory for all supervised recruitment, while retaining flexibility for the CO to order appropriate recruitment activity under the CO's guidance, which could include print advertisements, when appropriate. Because supervised recruitment may require the employer to repeat a pre-filing recruitment activity under supervision—for example, reposting an advertisement on the employer's website for a longer period of time or changing the location of the posting on the website, or the CO can require an additional advertisement on a website other than the employer's or the SWA's during supervised recruitment—the Department proposes language in paragraph (c) to clarify that the supervised recruitment process is in addition to the pre-filing recruitment requirements in section 656.17 or 656.18.

Proposed paragraph (c) further discusses the various potential additional requirements that could constitute supervised recruitment; however, the CO would not be limited to the list in proposed paragraph (c). The Department intends for the CO to use discretion to determine the appropriate supervised recruitment steps to ensure the proper recruitment of U.S. workers.

[120] *See* current section 656.21(b)(2)(i).

Paragraph (c) continues to allow the CO to control the supervised recruitment process, for example, by: requiring submission of a draft advertisement for review and approval prior to placement; identifying source(s) and specifying timeframe(s) for advertisements, including an extended period for advertisements or job orders; and requiring the employer to notify the CO when advertisement(s) are placed. In addition, the proposal continues to permit the CO to require the employer to retain proof of publication for submission to the CO, upon request, and to require the employer to submit a recruitment report to the CO after completing supervised recruitment.

As discussed above, the Department proposes to eliminate advertisement content requirements in regulatory text. Instead, under this proposed rule, the CO will specify required advertisement content in the Notice of Supervised Recruitment to maintain flexibility to require the content necessary to apprise U.S. workers of the job opportunity. Moreover, the CO may require the employer to submit a draft advertisement so that the CO can review and approve the content before placement.

Similarly, the Department proposes to eliminate the separate recruitment report content provision currently in section 656.21(e). Rather, proposed 656.21(c)(6), leverages the recruitment report provision at proposed section 656.17(f). Applying the proposed recruitment report content in section 656.17(f) to recruitment reports submitted in supervised recruitment would simplify part 656 and bring consistency to recruitment report content requirements.

The Department also proposes to add clarifying language in proposed section 656.21(c)(7), as discussed in connection with proposed section 656.10(a)(2), to put employers subject to supervised recruitment on notice that the CO may require them to update the NOF they provided or posted before filing the *Application for Permanent Employment Certification* with revised content, consistent with content ordered for supervised recruitment advertisements.

Supplemental Information Request

The Department proposes to relocate content from current section 656.21(f) to proposed section 656.21(d), with revisions, to address requests for documentation or information during supervised recruitment. Proposed section 656.21(d) has been revised for consistency with current practice in supervised recruitment and the similar provision for audit examination in proposed section 656.20(d). Proposed section 656.21(d) specifies that the CO may issue one or more requests to the employer for supplemental information and/or documentation during the supervised recruitment process. The CO will continue to issue requests for supplemental information to the employer in writing and will specify the date(s), of up to 30 calendar days, by which information is due to the CO. The employer must respond to the Notice of Supervised Recruitment and any request(s) from the CO during supervised recruitment, by the date(s) specified, in the manner specified, and with the documentation and information requested of the employer.

Correspondence During Supervised Recruitment

Consistent with proposals for correspondence during processing, the Department proposes in section 656.21(e) to require the CO to send notices and requests to the employer with a copy to the employer's attorney or agent, if the employer has such a representative, and the employer to respond electronically, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO would be required to send any notice or request and the employer to respond via traditional methods to assure next day delivery. Consistent with other proposals in this rule and current practice in the H–2A program, the proposed rule would require employer responses during supervised recruitment to be sent by the due date specified by the CO, or by the next business day if the due date falls on a Sunday or Federal holiday. This proposal improves transparency about the CO's correspondence during supervised recruitment, in addition to furthering the Department's goals to modernize and streamline processes to support processing efficiency.

Failure To Comply With Supervised Recruitment

The Department proposes revising section 656.21(f) to clarify the consequences of failure to comply with the supervised recruitment process or requirements. Current section 656.21(f) simply states that the CO will deny the application if the employer fails to ''supply the CO with the required documentation or information within 30 days of the date of the request.'' However, the CO also must deny certification if the employer submits the required documentation or information, but the substance of that documentation or information does not support certification. For example, the CO will deny the application if the employer submitted its recruitment report, but the recruitment report does not contain required content, such as lawful, job-related reasons for rejecting the U.S. workers who applied. The additional recruitment during supervised recruitment, when ordered, is part of the CO's assessment of U.S. worker availability and prevention of adverse impact to U.S. workers similarly employed. An employer's failure to perform the additional recruitment required, in compliance with the CO's instructions, precludes certification. Proposed section 656.21(f) clarifies that failure to comply with any requirements ordered by the CO during supervised recruitment—including, but not limited to, due dates—will result in denial.

In addition, the Department proposes revising section 656.21(f) to add that debarment of the employer and/or its attorney or agent is a possible consequence of noncompliance with supervised recruitment orders. This is not a new possible consequence. Both the current rule and proposed rule include a pattern or practice of failure to comply in the supervised recruitment process as a basis for debarment in section 656.31(f). Adding the proposed language in section 656.21(f) is consistent with changes proposed in section 656.20 (Audit) and improves notice of the consequences of noncompliance, which include taking appropriate measures to ensure the integrity of the PERM labor certification program under section 656.31(f).

Potential Referrals

The Department proposes to redesignate the provision for the one-time extension request option from current section 656.21(g) to proposed section 656.21(h) and repurpose section 656.21(g) to notify the public that the CO will provide supervised recruitment findings or underlying documentation to any enforcement agency, including the DOL–OIG, DHS, DOS, EEOC, and DOJ. Additionally, the CO will refer findings that an employer, attorney, or agent, ''discouraged an eligible U.S. worker from applying, or failed to hire, discharged or otherwise discriminated against an eligible U.S. worker'' to DOJ, Civil Rights Division, Immigrant and Employee Rights Section and/or the U.S. Equal Employment Opportunity Commission. The text in proposed section 656.21(g) aligns with a similar provision in proposed section 656.20 (Audit). These proposed provisions serve as an additional means of deterring fraud and suspicious activity and notify the public of the

Department's intention to cooperate with fellow agencies to the maximum extent possible to protect the integrity of the PERM labor certification program.

One-Time Extension Request

The Department proposes to relocate current section 656.21(g) to proposed section 656.21(h), with revisions for clarity and consistency with a similar provision in proposed section 656.20(c) for audit examination. The proposed rule continues to permit an employer to request one extension to any one response deadline during the supervised recruitment process. Consistent with current practice, where an employer requests an extension, it must do so in writing, before the due date of the supervised recruitment response, and the CO at his or her discretion, may grant one extension of up to 30 additional calendar days for the employer to respond. Where granted, the CO will issue a written notice to the employer that specifies the new date by which the employer must respond with the requested documentation. This proposal clarifies in paragraph (h) that this is a ''one-time extension'' and the extension is at the CO's discretion. Only one extension request during the supervised recruitment process will be approved by the CO.

13. Proposed 20 CFR 656.24, Labor Certification Determinations

Consistent with the Department's proposals throughout this rulemaking to reorganize part 656 and simplify language to clarify program requirements and procedures, the Department proposes revisions to the section addressing PERM labor certification determinations at section 656.24. The proposed changes in this section are largely organizational and for conformity with the overall proposed rule. For example, proposed section 656.24 contains paragraph headings to more clearly identify topics and simplifies procedural matters related to issuing final determinations to certify or deny an *Application for Permanent Employment Certification.* The Department also proposes relocating the content of current section 656.24(f), which discusses supervised recruitment, to proposed section 656.21(f) and the content of current section 656.24(g), which discusses reconsideration, to proposed section 656.24(d)(2). Below, the Department summarizes proposed section 656.24 and highlights proposed changes.

The Department retains its explanation of the OFLC Administrator's role and delegation of authority to COs to issue determinations for *Applications for Permanent Employment Certification* in proposed section 656.24(a) (Determinations), with conforming changes. The Department is proposing to revise the current language in section 656.24(a), to clarify that the OFLC Administrator's authority to review and issue determinations for *Applications for Permanent Employment Certification* is not limited to ''special or unique problems.'' The proposed language clarifies that authority resides with the OFLC Administrator, who may, in their discretion, delegate that authority to COs. The proposed provision states that, ''the OFLC Administrator has sole discretion to certify, deny, or suspend processing of *Applications for Permanent Employment Certification* under 656.31(b) or for other appropriate reasons or to delegate authority to the CO to do so.'' *See* proposed section 656.24(a). The Department emphasizes that the proposed language is not intended to change current practice. While the OFLC Administrator has the authority to review applications and issue final determinations, the COs at NPCs will continue to issue final determinations in most cases. The Department is revising this provision to add clarity, as well as align this language with several other provisions which discuss authority and delegation.

Proposed section 656.24(b) continues to address the three criteria for certification of an *Application for Permanent Employment Certification.* In addition to conforming modifications, the Department proposes revisions intended to increase clarity and consistency within part 656 and across the Department's regulations. With only minor clarifying changes, proposed subparagraph (b)(1) continues to require the employer to have met all the requirements of part 656 as a condition of certification. Proposed subparagraphs (b)(2) and (b)(3) continue to address the statutorily required determinations—that there are insufficient U.S. workers able, willing, qualified, and available to fill the employer's job opportunity and that the employment of the alien will not have an adverse effect upon the wages and working conditions of U.S. workers similarly employed—with revisions.

In proposed subparagraph (b)(2), the Department adds language regarding the CO's assessment of U.S. worker availability using information gathered from the U.S. labor market test, as provided in the employer's recruitment report. As modified, proposed subparagraph (b)(2) is consistent with similar provisions in the H–2A and H–2B programs at sections 20 CFR 655.51(b) and 20 CFR 655.161(b), respectively. It is the employer's responsibility to ensure that it submits a recruitment report that clearly articulates lawful, job-related reason(s) for not hiring any U.S. worker who applies for the job opportunity that is the subject of the *Application for Permanent Employment Certification.* Proposed section 656.24(b)(2) would better notify employers how the CO will assess U.S. worker availability in the event the employer's recruitment report fails to clearly state reason(s) that are lawful, job-related reasons for not hiring a U.S. worker. The CO will ''count as able and qualified'' any U.S. worker who was referred or applied for the job opportunity and for whom the employer does not identify a lawful, job-related reason for rejection in the recruitment report. This language supports efficient and faster processing, as the CO can reach a determination based on the information stated in the recruitment report, without additional requests and delays.

For most *Applications for Permanent Employment Certification,* current section 656.24(b)(2)(i) governs the CO's assessment of an employer's recruitment results. The Department proposes no substantive change to the standard of review for recruitment reports subject to assessment under section 656.24(b)(2)(i). Consistent with current practice, a U.S. worker is considered able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform the duties involved in the normally accepted manner, as customarily performed by other U.S. workers similarly employed, or can acquire the skills necessary to perform the duties involved during a reasonable period of on-the-job training. This assessment may be referred to as a ''minimally qualified'' assessment. The Department proposes to retain this subparagraph with one minor revision to identify the CO as the decisionmaker.

For *Applications for Permanent Employment Certification* involving a college or university teacher job opportunity, the CO currently applies the alternative assessment of U.S. worker availability found at current section 656.24(b)(2)(ii), which is a limited exception to the ''minimally qualified'' assessment. This alternative assessment reflects Congress' October 20, 1976 amendments to the INA at section 212(a)(5)(A)(ii), which implemented an ''equally qualified'' assessment for these job

opportunities.[121] Under this proposed rule, the CO would continue to apply this alternative assessment to count as available, any U.S. worker who applies or is referred to a college or university teacher job opportunity and who is ''at least as qualified'' (*i.e.,* ''equally qualified'') as the alien selected.

The Department proposes to expand current section 656.24(b)(2)(ii) to include job opportunities involving aliens who have exceptional ability in the sciences or the arts. This proposal further implements Congress' October 20, 1976 amendments to the INA at section 212(a)(5)(A)(ii), which also excepted aliens who have exceptional ability in the sciences and arts from the generally applicable ''minimally qualified'' assessment of U.S. worker availability and, instead, required application of the ''equally qualified'' assessment.[122] Although Congress extended the ''equally qualified'' assessment standard to PERM labor certifications for aliens who have exceptional ability in the sciences or the arts at the same time as college and university teachers, it was not necessary to address it in part 656 as long as job opportunities involving aliens who have exceptional ability in the sciences or the arts were included in Schedule A, Group II, and exempt from engaging in a labor market test.[123] With the proposed elimination of Schedule A, the Department expects to receive *Applications for Permanent Employment Certification* from employers seeking to permanently employ aliens who have exceptional ability in the sciences or the arts and will be required to assess U.S. worker availability using the statutory standard at INA section 212(a)(5)(A)(ii).[124] Such employers would be required to engage in the pre-filing recruitment activities proposed in section 656.17(a), and submit a recruitment report to OFLC when filing the *Application for Permanent Employment Certification,* as provided in proposed section 656.10(a)(1). Accordingly, proposed section 656.24(b)(2)(ii) clarifies that any U.S. worker who is ''at least as qualified'' (*i.e.,* ''equally qualified'') as the alien who has exceptional ability in the sciences or the arts would be considered available.

The Department proposes minor conforming changes in proposed subparagraph (b)(3). In addition, the Department proposes a modification to state that, in reaching the determination regarding adverse effect, the CO will consider information about working conditions that are ''normal to the occupation and industry,'' rather than ''prevailing . . . in the occupation.'' The Department notes that current subparagraph (b)(3) contains the only instance in part 656 where the current rule suggests a ''prevailing'' standard for assessing a job opportunity or occupation. The proposal to use a ''normal'' standard for the occupation and industry, here, is consistent with the CO's assessment of the information the employer provides about the job opportunity and related occupation on the *Application for Permanent Employment Certification* and during processing.[125] In addition, using a ''normal'' standard better aligns with publicly available resources and information, which facilitates efficient review of *Applications for Permanent Employment Certification.*

Finally, the Department proposes to reorganize the content of current sections 656.24(c), (d), and (e) to focus final determination issuance procedures in proposed sections 656.24(c) (Approved certification) and 656.24(d) (Denied Certification). Proposed sections 656.24(c) and 656.24(d) reflect changes to conform with electronic filing and communication proposals throughout this rule and OFLC's current practice of electronically sending the certified *Application for Permanent Employment Certification* directly to USCIS upon approval. For employers permitted to file by mail under proposed section 656.10(c), the CO would continue to send certifications by mail and denials by means normally assuring next-day delivery, to ensure full access to reconsideration and administrative review options. In addition, paragraph (d) identifies ''Notice of Denial'' as the name of the notice issued when the CO denies certification, a proposal to add clarity, as discussed in section 656.26 below.

To add clarity for employers, the Department further proposes to revise the content relocated from current 656.24(e) to proposed section 656.24(d) for Notice of Denial content. Currently, section 656.24(g) provides the option for an employer to request reconsideration by the CO after receiving a denial, but this option is not listed in the denial notice content requirements. To ensure employers who receive a Notice of Denial are apprised of their full set of options after denial, proposed subparagraphs (d)(2) and (d)(4) ensure that the employer is informed that it has three options—it may request reconsideration by the CO under proposed 656.26(a), review by BALCA under proposed 656.26(b), or may not appeal and, instead, file a new *Application for Permanent Employment Certification.* Proposed subparagraph (d)(3) continues to apprise employers that if they wish to request reconsideration or review of the denial, they must do so within 30 calendar days of the denial date; after 30 calendar days have passed, the window to appeal the denial closes and the denial becomes final. These are not new options, but in the proposed rule they are more clearly stated. Further, the proposed rule would require these options to be explained in the Notice of Denial.

14. Proposed 20 CFR 656.26, Review of Denied Permanent Labor Certifications

Consistent with the Department's general proposal to reorganize part 656 to follow the ordinate flow of processing an *Application for Permanent Employment Certification,* the Department proposes to rename section 656.26's heading to read ''Review of denied permanent labor certification'' (currently ''Board of Alien Labor Certification review of denials of labor certification'') and transfer the language currently contained in section 656.24(g), which addresses requests for reconsideration by the CO of an application's denial, under the proposed revised section 656.26(a). With this proposed change, section 656.26 would cover the options available to an employer who receives an application denial—requests for reconsideration by the CO and requests for review by BALCA. In addition, the Department proposes to redesignate current sections 656.26(a) through (c) as proposed sections 656.26(b) through (d) and to revise the existing regulatory language in section 656.26 to codify existing practices and provide clarity to employers, attorneys, agents, and BALCA regarding the reconsideration and appellate processes.

Requests for CO Reconsideration vs. Requests for BALCA Review

Currently, when the CO denies an *Application for Permanent Employment*

[121] *See* 69 FR 77326, 77357–7738 (Dec. 27, 2004) (discussing legislative history and intent related to its amendments to INA section 212(a)(5)(A)(ii)).

[122] *See* 69 FR 77326, 77357–7738 (Dec. 27, 2004) (discussing legislative history and intent).

[123] *See* 20 CFR 656.5(b) and 656.15(d).

[124] The Department's proposal extends to employers who intend to file an Immigrant Petition under INA section 203(b)(2) for an alien who has exceptional ability in the sciences or arts and are currently covered by the Department's regulations at 20 CFR 656.24(b)(2)(ii) (*i.e.,* Schedule A, Group II). It does not extend to Immigrant Petitions filed by individual aliens who submit a petition directly to DHS with a request for a waiver of the job offer requirement under INA section 203(b)(2)(B).

[125] *See, e.g.,* section 656.19(d) of this proposed rule, and sections 656.17(h)(1) and 656.17(j)(1) of the current rule.

Certification, the CO must include certain language in the notice to the employer. Current section 656.24(e) requires the CO to ''quote the request for review procedures at § 656.26(a) and (b).'' The request for review procedures articulates how an employer may request review of the denial by BALCA. In the 2002 NPRM, *Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System* (''2002 NPRM''),[126] the Department noted that the regulations at that time were silent on the possibility of motions for reconsideration by the CO after a final determination and that while, historically, COs ''sometimes honored such motions'' for reconsideration, they ''generally treated them as requests for review and transmitted the matter to the'' BALCA.[127] The 2002 NPRM proposed to preserve the ability for employers to submit motions for reconsideration, and the Department then amended the regulations to ''specifically provide that while motions for reconsideration before the [CO] may be filed, [the CO] may, in his/her complete discretion, choose to treat the motion as a request for review.'' [128] Thus, the Department adopted two avenues of review of a final determination in the current rule—either the employer requests review by BALCA, or it requests reconsideration by the CO.[129]

In practice, most employers, after an initial denial, choose to submit a request for reconsideration by the CO rather than submitting a request for review by BALCA. It became the general practice of OFLC to deem requests that did not specifically ask for BALCA review to be requests for reconsideration. After the denial of the request for reconsideration, the CO would automatically transmit the *Application for Permanent Employment Certification* to BALCA for review. This was done regardless of whether the employer requested review by BALCA after the request for reconsideration was denied. Those cases were then docketed at BALCA. This practice continued for many years. As a result, BALCA was inundated with cases—at one point reaching over 3,760 docketed cases in a fiscal year.[130]

There were a number of issues with this process as it evolved. First, many employers did not want their cases to be sent to BALCA for review after their requests for reconsideration were denied. OFLC automatically sending the applications for review by BALCA meant that not only was the case docketing an extra administrative burden to BALCA and to the CO, who created the administrative file for review, but it was also a burden to the employer who then had to wait for the case to be docketed only to then file a motion for it to be dismissed. Second, this waiting period could jeopardize an employer's attempts to file future PERM labor certification applications because, pursuant to current section 656.24(e)(6), an employer may not file a ''new application in the same occupation for the same [alien] . . . while a request for review is pending with the [BALCA].'' If an employer intended to file a new PERM labor certification application, it would again have to wait for the matter to be docketed, then file a dismissal and wait for the order to be issued.

For example, in *Lindsborg Community Hospital Association,* on April 10, 2012, the CO denied a request for reconsideration and forwarded the case to BALCA.[131] The employer attempted to withdraw the case on May 7, 2012, and the CO—because the case had already been sent to BALCA—sent the letter to BALCA as well.[132] Due to a docketing error of some kind, BALCA had not received the employer's withdrawal request as of September 17, 2012.[133] The employer explained that the pending appeal meant that it could not file a new *Application for Permanent Employment Certification* ''and that this may have implications for the timing of the new application and the supporting prevailing wage determination.'' [134] Had the employer been required to specifically request an appeal in the first instance, this lengthy delay between the denial on reconsideration (Apr. 10, 2012) and eventual dismissal from BALCA (Sept. 19, 2012) would have been eliminated. Also, BALCA noted in a footnote that the employer's motion for reconsideration had ''said nothing about requesting BALCA Review'' and that the regulation ''does not state that the CO must automatically forward an Appeal File to BALCA if the CO denies reconsideration. Thus, the fact that the matter was treated as an appeal may not have been procedurally correct.'' [135] The high number of appeals was extremely burdensome to BALCA and the CO—an unnecessary burden, especially in light of the fact that employers were not actively requesting such appeals. In addition, the Department's approach resulted in delays that could cause harm to employers seeking to file for permanent labor certifications.

The delays and administrative burdens on COs and BALCA led to an internal processing change that has been in effect since October 27, 2014.[136] As before, an employer may submit either a request for review by BALCA or a request for reconsideration by the CO, and the CO may still deem the request for BALCA review as a request for reconsideration.[137] Now, after the CO has determined to deny the request for reconsideration, the CO no longer automatically transmits that *Application for Permanent Employment Certification* to BALCA for review. Instead, the CO includes language in the reconsideration decision notice affirming the earlier denial that explains to the employer that the employer has the ability to request review by BALCA and has 30 calendar days from the date of the reconsideration decision notice to do so. This process significantly cut down the administrative burdens for the CO, BALCA, and employers because now only those decisions that employers wish to pursue are sent to BALCA. The table below shows the difference between the years when the CO was automatically sending cases to BALCA for review without employer's request as compared to when employers had to specifically request BALCA review after the CO denied request for reconsideration. The decrease in the number of cases docketed was significantly lower when employers had to request for BALCA review.

[126] *See* 67 FR 30466 (May 6, 2002).

[127] *See* 67 FR at 30476.

[128] *See* 67 FR at 30476.

[129] *See* 69 FR 77326 (Dec. 27, 2004).

[130] *See, e.g.,* 2012–PER–03768 (the last 5 digits show the sequential case docketing beginning with 00001 at the start of a fiscal year, then 00002, then 00003, etc.).

[131] *See* 2023–PER–03395, slip op. at 1 (Sept. 19, 2012).

[132] *See Id.* at slip op. at 1–2.

[133] *See Id.* at slip op at 1.

[134] *See Id.* at slip op. at 1.

[135] *See Id. at* 1, n.1.

[136] *See* OFLC Announcements, stating, ''As of October 27, 2014, the Atlanta National Processing Center has changed its process and will no longer automatically forward to BALCA all PERM case Requests for Reconsideration where the original case decision was upheld. Rather, a Notice of Decision will be issued when the case is upheld, and the employer must affirmatively request review before BALCA no later than 30 calendar days after the date the Notice of Decision is issued.'' (Oct. 23, 2014) *available at https://www.dol.gov/agencies/eta/foreign-labor/news/archive#14.*

[137] *See* 20 CFR 656.24(g)(4).

Fiscal years	Cases CO automatically referred to BALCA	Fiscal years	Cases employers requested BALCA review
2011	2,989	2014	1,729
2012	3,766	2015	757
2013	3,471	2016	852
		2017	326
Total Number of Cases Docketed	10,226		3,664

Source: Office of Administrative Law Judges.

It is likely that there are additional reasons for the declining docketed appeals; however, the data show a pattern of significant decrease of cases docketed when the CO no longer automatically sent cases to BALCA after denial on reconsideration. Currently, the CO only sends cases for BALCA review if an employer actively submits the request. The proposed section 656.26 would codify this current practice.

Although this processing change is not contradictory to the regulations in any way, it was not fully captured by the text of the current regulations. Notably, the older process by which the CO would transmit *Applications for Permanent Employment Certification* to BALCA immediately after denying the request for reconsideration was also not fully captured by the plain text of the current regulations. Regardless of which process would ultimately have been the chosen and lasting path by the Department, a change in regulatory text is needed to codify the current practice to provide clarity and transparency regarding this part of the permanent labor certification process.

Also, the fact that the processes are not actually encompassed in the regulations leads to procedural postures that are difficult to navigate. For example, if an employer requested reconsideration and the denial was affirmed, the employer was told that they could request review by BALCA within 30 calendar days; however as noted, there is no regulatory provision granting 30 calendar days to further appeal to BALCA—which itself is troublesome—but also, if the employer failed to appeal within that 30 calendar day timeframe, there was no regulatory provision to which either the CO or ALJs could cite that would allow for the dismissal or closure of an untimely filing.

With this NPRM, the Department proposes to amend sections 656.26 and 656.27 of the current regulations to codify the current practice that has been in place for over a decade and to articulate the full appellate process and provide transparency and clarity on program requirements and procedures of part 656.

Final Determinations

Currently, the term ''Final Determination'' is used for the initial denial of the PERM labor certification as well as for the notice sent after reconsideration is denied. This fact leads to, in many cases, having two ''Final Determinations,'' which is confusing to the regulated community. The Department proposes to call the notice after a PERM labor certification is denied the ''Notice of Denial,'' and call the notice issued after a request for reconsideration is denied a NORD. This proposed change in terminology clarifies the meaning of each of the CO's decisions and helps to distinguish which document the CO, an agent/attorney, employer, or even BALCA may be referring.

Section 656.26(a), Request for Reconsideration by the CO

In addition to proposing to relocate current section 656.24(g) to the proposed new section 656.26(a), the Department is seeking to change the reconsideration language in the provision at section 656.26(a). Most significantly, the Department proposes to include a subparagraph (5) in the proposed new section 656.26(a). Proposed subparagraph (a)(5) would explain that if reconsideration is requested, the CO will reconsider the application's denial, and then if the CO determines that the request for reconsideration should be denied, the CO will issue a NORD informing the employer of the determination. Proposed subparagraphs (a)(5)(i) through (vi) outline required NORD content. The proposed language states the notice will: state the reasons for the denial; quote the procedures for review by BALCA; advise that an employer has 30 calendar days from the date of the reconsideration determination to request review or the denial will become the final determination of the Secretary and the employer will have failed to exhaust administrative remedies; and advise that an employer may file a new application after the reconsideration is denied if a request for review is not filed with the Board, but otherwise a new application in the same occupation for the same alien cannot be pending while a request for review is pending with BALCA. The intent of this proposed subsection is to clarify, via both the regulatory text and the Notice of Reconsideration Denial, that an employer may, after the reconsideration is denied, make a formal appeal to BALCA within 30 calendar days, and to articulate the consequences for not doing so. As stated above, this proposed rule codifies this current practice and provides transparency and clarity in part 656.

The Department also proposes edits to the existing reconsideration regulatory language that would be relocated and contained in the new proposed section 656.26's paragraphs (a)(1) through (4). The new proposed paragraph (a)(1) states clearly that the employer may request reconsideration by the CO after the Notice of Denial is issued. The Department proposes to remove ''For applications submitted after July 16, 2007'' that would be included in proposed paragraph (a)(2), as the phrase is no longer necessary. Proposed paragraph (a)(4) asserts that an employer ''must clearly state'' with its request whether it is seeking review by BALCA or is making a request for reconsideration by the CO, and, if it does not do so, the CO will construe the request as a request for reconsideration by the CO.

In proposed paragraph (a)(4) the Department is proposing to remove the discretion for the CO to determine whether to treat the request as a reconsideration request or not and makes it very clear to employers that if they themselves are not clear as to their desired review process their request will be construed, by default, as requests for reconsideration. The Department believes its proposal to construe unclear requests as requests for reconsideration by the CO is largely more beneficial to the employer. Under this approach, the CO can review additional information submitted with the request for reconsideration (assuming it meets the documentary requirement of section

656.26's paragraphs (a)(2)(i) and (ii)). A case sent straight to BALCA—a procedure that does not allow for the introduction of new evidence on appeal—must be persuasive using a more limited pool of information. In fact, BALCA has objected to the CO's decision in previous cases to send to BALCA ''requests'' that were not entirely clear, or consistent internally, as to what was being requested—reconsideration and/or review—precisely because doing so precluded the introduction of new evidence.[138]

Finally, an employer may also receive a faster answer if the CO is given the opportunity to review a denial on reconsideration rather than sending the denial to BALCA and waiting for a decision and, potentially, an order remanding the case. Should an employer wish to move straight to BALCA review, it must clearly state as such.

Section 656.26(b), Request for Review by BALCA

In light of the proposed explicit incorporation of the ''request for reconsideration'' into the regulations, corresponding edits would also be needed to section 656.26, including redesignating existing paragraph (a) to (b), (b) to (c), and (c) to (d) following the addition of the reconsideration provision at paragraph (a). In redesignated paragraph (b)(1), the Department proposes new regulatory text to explain that a request for review by BALCA may be filed if a request for reconsideration is denied. The Department proposes including cross citations to other parts of the regulations for clarity and symmetry. As such, this section now proposes that BALCA may review a PERM labor certification denial pursuant to proposed section 656.24(d), a request for reconsideration denial under proposed new section 656.26(a), as well as a PERM labor certification revocation, or debarment under section 656.32 or section 656.31(f).

The Department proposes edits to the language that would be contained in redesignated paragraph (b)(2) to incorporate the provision for ''denial on reconsideration'' and again provide a 30-calendar-day timeline to employers for filing appeals to BALCA for denials on reconsideration and the way they should do so. Paragraph (b)(2)(iv) still refers to a ''final determination,'' but this reference is not a defined term and instead refers to the last or final determination of the reviewing official before the appeal.

The Department is also proposing non-substantive edits to subparagraph (b)(4) to clarify that with respect to the review of a PERM labor certification denial or a denial of a reconsideration motion, only items that were before the CO when the CO made the decision may be considered, even if other documents are in the physical appeal file sent to BALCA. Because the CO will include the appeal request in the administrative file transmitted to BALCA, the file will contain paperwork submitted on appeal. However, pursuant to the regulations, BALCA is not permitted to consider this additional submitted evidence.

The Department also proposes amending the regulations at (c)(2) and (3) to remove the physical address of BALCA from the regulatory text primarily because that physical address is no longer accurate—but also because as the Department streamlines and modernizes its processes, it is best to leave out specific physical addresses from regulatory texts as those might change from time to time and the Department is able to provide easier and faster updates to the public about the physical addresses or locations, as well as general information regarding its offices, services and procedures, electronically, via its website or when requested by the methods it specifies for requesting information. Corresponding edits were also made to (d)(2) and (3) removing the physical address from the text. Finally, it should be noted that electronic submission to BALCA, as well as to the Associate Solicitor for Employment and Training Legal Services is highly encouraged.

15. Proposed 20 CFR 656.27 Consideration by and Decisions of BALCA

The Department proposes to revise existing section 656.27 by adding new provisions, repurposing and redesignating paragraphs, and changing regulatory language for clarity and conformity with other proposed revisions introduced through this proposed rule. The Department proposes to repurpose section 656.27(c) to add a new standard of review provision. This proposal would result in the redesignation of current paragraphs (c), (d), and (e) as proposed paragraphs (d), (e), and (f). Similarly, the Department proposes adding a new provision to provide BALCA with the authority to remand cases to the CO when the merits of the *Application for Permanent Employment Certification* have not yet been fully assessed, resulting in the redesignation of current paragraph (c)(3) as proposed paragraph (d)(4). Also, in proposed section 656.27(d) (current section 656.27(c)), the Department proposes to add review of denials on reconsideration to the list of adverse decisions BALCA may review and to clarify that such review will be limited to an on-the-record review. In proposed paragraphs (e) and (f) (current paragraphs (d) and (e)), the Department proposes to codify its existing practice of including the employer's attorney or agent, if applicable, in communication during appeal. Throughout proposed section 656.27, the Department also proposes minor conforming changes for consistency throughout the proposed rule. In addition, the Department is proposing to remove language from current section 656.27(e)(1) that requires ''good cause'' to be shown for hearing rescheduling requests. This proposed change is intended to provide BALCA with more control and flexibility in hearing scheduling and requests for rescheduling.

Standard of Review

In proposed paragraph (c), the Department seeks to incorporate the arbitrary and capricious standard of review into requests for review of denials of PERM labor certifications under proposed section 656.24(d), denials of requests for reconsideration under proposed section 656.26(a), or affirmations of PWDs under section 656.41. As the regulation is currently silent on the standard of review, this proposed change clarifies and ensures BALCA is conducting review under part 656 in a consistent manner. Other employment-based visa programs administered by OFLC require use of the arbitrary and capricious standard of review on appeal to BALCA.[139] This change further aligns the PERM program

[138] *See, e.g., Denzil Gunnels,* 2010–PER–00627, slip op. at 10 (Nov. 16, 2020) (holding ''that the CO will be found to have abused his or her discretion when treating what is substantively a request for reconsideration as a request for BALCA review where doing so would have the unsolicited effect of precluding the employer from developing the necessary factual record upon which the denial of certification is properly based under the amended regulations''); see also *Mary Scott Russell,* 2010–PER–00550, slip op at 4 (Aug. 31, 2011) (''Because the Employer's first opportunity to submit evidence documenting its intent to sponsor the Alien occurred when it requested reconsideration, we find that pursuant to our holdings in *Denzil Gunnels* and *CVS Rx Services* [2010–PER–1108 and 1275 (Nov. 16, 2010)], the CO abused his discretion by forwarding this matter to BALCA.''

[139] *See* 20 CFR 655.171(d)(3) (H–2A program requires that ''[t]he ALJ must uphold the CO's decision unless shown by the employer to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.''); 20 CFR 655.462(d)(2) (CW–1 program requires that ''[t]he ALJ must uphold the CO's decision unless shown by the employer to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'').

with the other employment-based visa programs administered by OFLC.

Presently, BALCA explains that it uses a form of de novo review, ''limited in scope by 20 CFR 656.27(c)'' or in other words, as limited by the record.[140] However, BALCA has also said that ''[t]he Board will not decide an appeal on grounds for denial not raised while the case was before the CO.'' [141] It also stated that ''our review of the preliminary decisions entrusted by regulation to the discretion of the CO is typically more limited, and we examine those decisions with an eye toward whether they are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' [142]

The fact that BALCA seems to have combined different scopes of review—arbitrary and capricious for ''preliminary decisions,'' yet it conducts a modified ''de novo'' review that does not consider issues not already before the CO—demonstrates why clearly articulating one consistent standard of review in the regulations will help provide clarity to the regulated community, attorneys/agents and judges themselves. The Department proposes to adopt the standard of review ''arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law'' to make it consistent with the other employment-based visa programs. The Department does not believe that this will result in significant changes in adjudication because BALCA is limited in their review to the administrative record pursuant to current section 656.27(c) (proposed section 656.27(d)), and BALCA already does not decide an appeal based on new denial grounds or on new arguments not made before the CO.[143]

The Department proposes minor edits to section 656.27 paragraph (d) to account for the addition of review of denials on reconsideration by the CO as well as to note that on-the-record review is conducted on the basis of the record upon which the ''CO's final determination'' was made. Here ''final determination'' refers to the last determination by the reviewing official before it moves to BALCA—for example, the denial of the PERM labor certification, the denial of the reconsideration request, or the affirmation on the PWD.

Section 656.27(d)(2)–(3) Directing Certification and Remands

In the 2004 PERM Final Rule, the Department eliminated the possibility of remands from BALCA to the CO in the PERM program.[144] At that time, the Department believed that the cases that would have made it to BALCA would have been sufficiently developed such that remand would be unnecessary.[145] Furthermore, the Department, at the time, explained that the processing model for applications requesting PERM labor certification did ''not contemplate the type of interchange between the employer and the [CO]'' and ''it is not apparent what the [CO] would do if a case were 'remanded'.'' [146]

Through years of actual administrative practice, however, the Department has discovered that there have been cases—though not frequent—with a record sufficient enough to determine that the CO was arbitrary and capricious in the denial, but still not enough to determine that certification is warranted. The purpose of the PERM labor certification program is to allow the Secretary to determine and certify that ''there are not sufficient United States workers who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work; . . . and the employment of the alien will not adversely affect the wage and working conditions of United States workers similarly employed.'' [147] For certification to be issued in circumstances where the CO has not yet fully evaluated the merits of the case would violate the regulations and statute.[148]

A remand, rather than an order directing certification, in a situation where the CO has not fully reviewed an *Application for Permanent Employment Certification* and all supporting documentation would allow the CO to examine the merits of the application and to determine whether the application truly establishes that there are not sufficient U.S. workers able, willing, qualified and available for the position, and also that the alien's employment will not adversely affect the wages and working conditions of U.S. workers similarly employed.[149] BALCA has recognized this principle before and has actually remanded cases for further processing, even though remands are not currently provided for in the regulations. BALCA has stated, ''[w]hile the Board generally eschews remands to allow further processing of an application, such remands are appropriate where an application was denied on preliminary grounds, and the merits of the application have not been addressed.'' [150]

The Department agrees with BALCA and believes that remand may be the most appropriate way forward in certain cases; and therefore, is proposing to add a new provision, subparagraph (d)(3), to codify remands from BALCA for clarity and transparency purposes. The intent is for remands to be used sparingly and only in situations where, based on the facts and posture of the case, as well as the underlying reasons for denial, the CO had been unable to evaluate the underlying merits of the decision. If a case is sufficiently developed, then affirmance of the denial or reversal of the denial and an order directing certification would be appropriate. However, for example, if an employer failed to respond to an audit and did not submit appropriate documentation, a remand to allow for resubmission and further analysis for the CO would be inappropriate. In contrast, if the CO has listed all the legal reasons for denial after a thorough evaluation, but BALCA determines that the CO was arbitrary and capricious in their denial, certification rather than remand may be more appropriate as the CO already evaluated the merits of the application.

In addition, remand is an essential component of the Department's proposal in this NPRM regarding section 656.6 to better hold program violators accountable for their misconduct by preventing successors in interest to debarred persons or entities from participating in the program during the debarment period, without unnecessarily disrupting processing for proper filings. As discussed in proposed section 656.6, once the CO discovers an *Application for Permanent Employment Certification* has been filed by a successor in interest to a debarred person or entity, the CO would deny the application solely on that basis and without review. The Notice of Denial would offer the person or entity the option to appeal the CO's determination

[140] *See PA Employment Services, Inc.,* 2012–PER–00093, slip op. at 2 (Jan. 27, 2015) (citation omitted). It has done so for many years. *Albert Einstein Medical Center,* 2009–PER–00379, slip op at 14 (Nov. 21, 2011) (en banc) (''BALCA engages in de novo review of the record upon which the CO denied permanent alien labor certification.'').

[141] *See PA Employment Services, Inc.,* 2012–PER–00093 at 2 (citations omitted).

[142] *See Fresh Cleaners at Elk Grove, Inc.,* 2014–PER–00604, slip op at 3, n.5 (Jan. 23, 2019) (citation omitted).

[143] *See Albert Einstein Medical Center,* 2009–PER–00379, slip op. at 14; *PA Employment Services, Inc.,* 2012–PER–00093 at 2 (the Board ''will not consider wholly new arguments not made before the CO'') (citations omitted)).

[144] *See* 69 FR at 77363.

[145] *See* 67 FR at 30477.

[146] *See* 69 FR at 77363.

[147] *See* 20 CFR 656.1.

[148] See 8 U.S.C. 1182(a)(5); 20 CFR 656.1.

[149] *See* 8 U.S.C. 1182(5); 20 CFR 656.1.

[150] *See Lenora Systems, Inc.,* 2018–PER–00059, slip op. at 2 (Jan. 31, 2022) (citations omitted).

of their successor in interest status under section 656.26. However, as the CO would not have reviewed the merits of the *Application for Permanent Employment Certification* or reached any determination apart from successor in interest status, if BALCA overturns the CO's determination regarding the successor in interest status, remand would be the appropriate procedural order to allow the application to move forward.

To that end, the Department is proposing to allow for remands in subparagraph (d)(3), and to correspondingly revise proposed subparagraph (d)(2) to make clear that a grant of certification may only be directed when the CO had the opportunity to review the merits of the application.

16. Proposed 20 CFR 656.30, Validity of Labor Certifications

The Department proposes revisions to current section 656.30 to further its reorganizational efforts of part 656, to remove language outside the Department's jurisdiction, and to clarify requirements concerning the granting of PERM labor certifications. Specifically, the Department proposes to eliminate the content of current paragraph (a)—''priority date'' is a DHS, not DOL, topic—and, then, redesignate current paragraphs (b) and (c) as proposed paragraphs (a) and (b), with revisions discussed below. In addition, the Department proposes relocating current paragraph (d), regarding the standards for invalidating PERM labor certifications by DHS or DOS, to 656.32(c), with revisions discussed in the preamble for that section. Relocating current paragraph (d) and redesignating existing paragraph (c) as (b) in Section 656.30 would subsequently result in the removal of paragraphs (c) and (d) from Section 656.30.

In addition, the Department proposes to eliminate outdated language—including current section 656.30(e) in its entirety—to simplify the regulatory provision. This proposed change would result in the deletion of paragraph (e), which provides a no-longer-necessary process for requesting a duplicate paper permanent labor certification, as discussed below.

Finally, the Department proposes to change the title of proposed section 656.30 from ''Validity of and invalidation of labor certifications'' to ''Validity of labor certifications,'' consistent with the proposed content changes.

The current regulation at section 656.30(a) addresses filing dates in the context of how priority dates are established for Immigrant Petition purposes. However, the authority to designate priority dates for Immigrant Petitions resides with DHS, as USCIS is the agency that processes Immigrant Petitions, not DOL.[151] Although priority dates may be based on *Application for Permanent Employment Certification* filing dates, they are a concept outside the Department's statutory authority and bear no impact on the administration of the PERM program. DHS has long codified how priority dates are assigned in its regulations.[152] As part of its deregulatory initiatives, the Department is proposing to eliminate from its regulations language that is duplicative or outside its statutory or regulatory authorities. Removing language about priority dates from the Department's regulations will streamline PERM labor certification program regulations and ensure the scope of each department's authority remains focused on each agency's role, as determined by statute.[153] The Department proposes to retain content from current paragraph (a) about the *Application for Permanent Employment Certification* filing date, and seeks to relocate that content to proposed section 656.10(f), with clarifying revisions.

After relocating current paragraph (a) of section 656.30, the Department proposes to redesignate current paragraph (b) as proposed paragraph (a), with revisions. In turn, the proposed new paragraph (a) would continue to include the current 180-calendar day validity period for a PERM labor certification. Consistent with the current rule, this NPRM would require the employer to submit a PERM labor certification to USCIS with its Immigrant Petition (*i.e.,* Form I–140 petition) for the alien within 180 calendar days of the date the CO approves the *Application for Permanent Employment Certification.* If the employer does not submit an Immigrant Petition to USCIS using the approved *Application for Permanent Employment Certification* for the alien within 180 calendar days of approval, the PERM labor certification, as it is the case under the current rule, expires and cannot be used. However, the Department has become aware of the practice of PERM labor certifications being reused to subsequent Form I–140 petitions filed with USCIS for the same alien in violation of this prescribed validity period of 180 days, based on a mistaken interpretation of the provision. Therefore, the Department proposes a revision to the current regulatory language to explicitly prevent reuse of a PERM labor certification once it is used in support of the first or initial Form I–140 petition filing for the alien.

Specifically, some employers have been using their PERM labor certifications more than once, including filing after the 180-calendar day validity period has expired. For example, after receiving an Immigrant Petition denial from USCIS and unsuccessfully pursuing an appeal, some employers have filed, and USCIS has accepted, a subsequent Immigrant Petition using the same approved PERM labor certification. These employers assert to USCIS that current section 656.30(b) allows the approved PERM labor certification to remain valid indefinitely, so long as the employer first used it during the 180-calendar day validity period to file an Immigrant Petition with USCIS. Under this interpretation, a PERM labor certification could be several years out-of-date by the time an employer attempts to use it in support of a subsequent Immigrant Petition, which undermines the original PWD and labor market test.

The Department strongly disagrees with this interpretation of its PERM labor certification validity rule. The Department did not intend to permit use of the same PERM labor certification more than 180 calendar days after approval or in connection with subsequent Form I–140 petition filings for the alien. The Department asserts that the statutorily required determinations underlying a PERM labor certification are based on an assessment of the labor market for a certain job opportunity at a certain point in time and a new, updated assessment is necessary for each subsequent Immigrant Petition. The ability to use a PERM labor certification in perpetuity, so long as it was timely filed with a first Immigrant Petition is a fundamentally inconsistent interpretation of the Secretary's determinations, and contradicts statutory intent, and must be clarified to ensure the integrity of the PERM labor certification process. In addition, issuing this clarification and closing this perceived loophole will significantly reduce the continued costs of adjudicating and litigating subsequent filings with USCIS. Although the Department anticipates that this clarifying change would likely result in a marginal increase in filings in its PERM labor certification program, the Department has determined that this cost is necessary to serve its statutory

[151] *See* INA section 203(b); 8 U.S.C. 1153(b) (Nov. 29, 1990).

[152] *See* 8 CFR 204.5(d).

[153] *See* INA section 212(a)(5)(A); 8 U.S.C. 1182(a)(5)(A).

duty and preserve, above all, the integrity of the program.

Accordingly, the Department proposes to resolve this misinterpretation by revising the language that under the proposed reorganization of section 656.30 would be included in proposed new paragraph (a) to explicitly limit the validity of a PERM labor certification to the ''initial Immigrant Petition.'' With this proposed revision, the Department clarifies that a PERM labor certification may be used in connection with one Immigrant Petition, which must be submitted to USCIS within 180 days of the *Application for Permanent Employment Certification'*s approval. If USCIS adjudicates the initial Immigrant Petition and denies it—and after any appeals with USCIS have been exhausted and other due process rights afforded—the PERM labor certification is no longer valid for use when filing a new Immigrant Petition.

As explained in the beginning of this section, the Department also proposes redesignating this section 656.30's current paragraph (c) as paragraph (b). In addition to redesignating paragraph (c) as new paragraph (b), the Department proposes revising the regulatory language to clarify the scope of a PERM labor certification's validity that already exists, in large part, on the Office of Management and Budget (OMB)-approved form—*Final Determination: Permanent Employment Certification Approval,* and to conform with other proposals in this proposed rule. First, the Department proposes to remove language that has become outdated and language discussing Schedule A and sheepherder *Applications for Permanent Employment Certification,* which this NPRM proposes to eliminate. Second, the Department is proposing revised language to clarify that a PERM labor certification is valid only for the employer to whom the CO issued the approval, or its successors in interest. Proposed section 656.30(b) further clarifies that a PERM labor certification is only valid for the job opportunity, the alien, the place(s) of intended employment, and the employer named on the approved *Application for Permanent Employment Certification,* while recognizing that the employer may change its corporate form and should not lose access to the PERM labor certification due to a legitimate business transaction related to a change to its corporate structure.

Finally, the Department is proposing to eliminate current section 656.30(e), which outlines an outdated process for requesting duplicate PERM labor certifications from the OFLC CO. Through past information technology initiatives, the Department has eliminated the issuance of PERM labor certifications in paper form; now that PERM labor certifications are issued electronically through the OFLC FLAG system, employers, aliens, and their authorized attorneys or agents, as applicable, no longer need to request duplicate PERM labor certifications to submit to USCIS or DOS. Through a combination of existing data sharing agreements with USCIS and DOS and direct customer access to their authorized FLAG system accounts, OFLC makes all approved PERM labor certifications, as well as information related to any application, available real-time to USCIS and DOS. Once this change is implemented, the government agencies that collaborate with OFLC to administer the temporary and permanent labor certification programs will continue to have access to OFLC's FLAG system to obtain PERM labor certification records and verify data and information related to *Applications for Permanent Employment Certification.* Therefore, there is no longer a need to issue duplicate approved PERM labor certifications, when this process occurs electronically. Eliminating these paper government records serves to safeguard government resources, reduce burden on employers, and reduce costs to the public, the filing community, and the federal agencies processing these cases. This proposal also seeks to strengthen integrity measures by minimizing the number of original PERM labor certifications that are issued in paper-format. By eliminating this provision, the Department is not prohibiting the issuance of paper-based PERM labor certification records or duplicates to USCIS or other federal agencies, if and when necessary, but no longer needs to issue them directly to employers, aliens, or their authorized attorneys or agents, as applicable.

17. Proposed 20 CFR 656.31, Applications Involving Fraud, Willful Misrepresentation, or Violations of This Part

The Department is proposing to revise current section 656.31 to make non-substantive, clarifying changes that conform to other changes the Department is proposing in this NPRM to bring consistency regarding the terms widely used across part 656 regulations. In addition, the Department proposes to strengthen program integrity by expanding the scope under which debarment of the employer, attorney, or agent, or any combination thereof, will be applied.

First, the Department is proposing to shorten the section heading by deleting the term ''Labor Certifications'' and just simply having the heading read ''Applications involving fraud, willful misrepresentation, or violations of this part.'' This is a conforming, non-substantive change that would align with other changes the Department is making to ensure uniform use of terms throughout part 656 regulations.

The Department is further proposing clarifying changes throughout section 656.31 to uniformly indicate that the provisions of this section apply to ''any,'' meaning any single, *Application for Permanent Employment Certification.* This change would clarify previous instances where singular and plural references were used interchangeably. The Department is also proposing some clarifying changes such as the elimination of the term ''National Processing Center'' and shortening agency titles by including acronyms instead (*e.g.,* DHS, DOL, EEOC). The Department asserts that these changes will provide consistency and clarity across part 656 regulations, as more up-to-date and easier to identify terms will be used. In addition, references to other provisions that are relevant to the scope of this section would now be included, which could be beneficial in navigating part 656 regulations.

The Department is also seeking to codify OFLC's current practice regarding notification by proposing to update current sections 656.31(b)(1) and 656.31(c) to add language that would specify that a copy of any notice to suspend processing of applications for possible fraud or willful misrepresentation reasons, involving the employer who filed the *Application for Permanent Employment Certification,* would also be provided to the employer's agent or attorney, if appropriate. This proposed change would codify a practice that has allowed OFLC through the years to provide simultaneous notifications of this nature to not only employers, but also their agents and attorneys, when appropriate, for expediency, transparency and accountability purposes.

The Department is further codifying another existing OFLC practice as it proposes to revise section 656.31(d) to specify that it will resume processing of *Application(s) for Permanent Employment Certification* if the employer or their representative is acquitted of fraud or willful misrepresentation charges, or if criminal charges are withdrawn or otherwise did not result in a finding of fraud or willful misrepresentation. The existing regulatory language states that ''the Certifying Officer shall decide each pending PERM labor certification

application related to that employer, attorney, or agent on the merits of the application.'' Specifically, the proposed change would make it clear that the CO will resume processing the application at the stage where the suspension began, before reaching a determination on the merits of the application. The proposed change to section 656.31(d) reflects the Department's current processing procedures for handling cases involving potential fraud or willful misrepresentation in the PERM labor certification process.

In addition, the Department is proposing changes to section 656.31(f) to strengthen debarment. The Department proposes to expand the list of bases for debarment in current section 656.31(f)(1) to include two new proposed grounds for debarment. Proposed section 656.31(f)(1)(vii) would add a pattern or practice, by an attorney or agent, of preparing or submitting *Applications for Permanent Employment Certification* on behalf of unrelated employers that ''contain materially the same job duties, requirements, or recruitment procedures where the CO has determined that those requirements were not the employers' actual minimum requirements or that the recruitment was not conducted in good faith'' as a basis for debarment, while proposed section 656.31(f)(1)(viii) would establish ''failure to pay the alien or a U.S. worker hired for the job opportunity the offered wage stated in the certified *Application for Permanent Employment Certification*'' as a basis for debarment. The Department also proposes to add a new section 656.31(f)(3) that would more clearly establish the OFLC Administrator's independent authority to a finding of fraud or material misrepresentation and that such a finding does not preclude a related referral under proposed section 656.31(b).

Finally, the Department is proposing under section 656.31(f) that an employer, agent, or attorney, or any combination thereof, who is debarred by OFLC from the permanent labor certification program will also be debarred from all other foreign labor certification and labor condition application programs administered by the Department for the time period in the Notice of Debarment issued under section 656.31(f)(2), consistent with H–2B program regulations.[154] As the Department has noted in prior rulemaking in temporary labor certification programs, many employers, agents and attorneys participate in more than one foreign labor certification or labor condition application program administered by the Department.[155] However, under the current regulation, an employer, attorney, or agent that is debarred under the permanent labor certification program may continue to file applications and receive certifications or approvals under the Department's other foreign labor programs. By empowering OFLC to reject applications filed by, or on behalf of, a debarred employer, attorney, or agent, to refuse to issue certifications under the permanent labor certification program during the term of debarment, and to prevent filings or approvals during the debarment period in any of the Department's foreign labor certification or labor condition application programs, the Department would not only foster regulatory uniformity but would also enhance employer accountability and strengthen program integrity.

The Department invites comments about whether parties other than ''employer, attorney, or agent'' should be named in proposed sections 656.31(b) and (c). For example, an employer representative or point of contact may engage in fraud, willful misrepresentation, or violations while acting on the employer's behalf, but without the employer's knowledge. Thus, the Department seeks public input on whether ''employer representative,'' ''employer point of contact,'' or other parties be identified in sections 656.13(b) and (c) to ensure maximum integrity of the program from visa fraud or abuse.

The Department also is interested in receiving comments on additional reforms to the PERM debarment process including making the PERM debarment operative during the pendency of the administrative review process. The Department is also requesting comments on whether the maximum debarment period under 20 CFR 656.31(f) should be increased from 3 years to, for example, 5 years consistent with the debarment parameter at 20 CFR 655.73 for the H–2B program, or longer, such as to 10 years.

18. Proposed 20 CFR 656.32, Revocation and Invalidation of Permanent Labor Certifications

The Department is proposing various changes to section 656.32. One of the changes to proposed to section 656.32 involves adding a new paragraph (c) to contain content about ''invalidation'' that the Department proposes to relocate from current 656.30(d). This proposed change would also result in revision of the title of proposed section 656.32.

In proposed section 656.32(a), the Department is proposing to replace the phrase ''Certifying Officer, in consultation with the Chief, Division of Foreign Labor Certification'' with ''OFLC Administrator'' to establish the OFLC Administrator's role as adjudicator in revocation matters, while also updating terminology. In addition, the Department proposes to remove a sentence acknowledging DHS and DOS's authority to invalidate an approved PERM labor certification, as invalidation would now be addressed under the new paragraph (c) of this section and ''revocation'' and ''invalidation'' are different program integrity measures, performed by different agencies (*i.e.,* DOL vs DHS or DOS), based on each agency's own authority, as further discussed below.

Similarly, the Department proposes changes to section 656.32(b) to identify the OFLC Administrator as the adjudicator in revocation matters. In addition, the Department proposes to codify its current practice in section 656.32(b)(1) by stating that when the OFLC Administrator issues a *Notice of Intent to Revoke* (NOIR) in connection with an approved *Application for Permanent Employment Certification,* it will be sent to the employer and a copy, if appropriate, to the employer's agent or attorney. As a matter of longstanding practice, OFLC provides a copy of any notice during revocation proceedings to the employers' agents or attorneys, if applicable; codifying this practice merely captures a process that has been well established.

Although the Department is not modifying section 656.32(b)(2), the Department is reiterating that if the

[154] *See* 20 CFR 655.73(i).

[155] The Department has repeatedly recognized its inherent suspension and debarment authority in the foreign labor certification context. As the Second Circuit found in *Janik Paving & Construction, Inc.* v. *Brock,* 828 F.2d 84 (2d Cir. 1987), the Department possesses an inherent authority to refuse to provide a benefit or lift a restriction for an employer that has acted contrary to the welfare of U.S. workers. In assessing the Department's authority to debar violators, the court found that ''[t]he Secretary may . . . make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions . . . as he may find necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business.'' *Id.* at 89 n.6. In that case, the implied authority to debar existed even though the statute in question ''specifically provided civil and criminal sanctions for violations of overtime work requirements but failed to mention debarment.'' *Id.* at 89. The court held that debarment may be necessary to ''effective enforcement of a statute.'' *Id.* at 91; *see also Temporary Non-Agricultural Employment of H–2B Aliens in the United States,* 80 FR 24083 (Apr. 29, 2015) (discussing debarment under 20 CFR 655.73(i)), and *Labor Certification Process for Temporary Employment in the Commonwealth of the Northen Mariana Islands (CW–1 Workers),* 84 FR 12412–12414 (Apr. 1, 2019) (discussing debarment under 20 CFR 655.473(b)).

employer or its representative does not submit rebuttal evidence within the 30-calendar-day period provided in the NOIR, the NOIR becomes the final decision of the Secretary. As a result, the Department would not issue a subsequent declaration or letter notifying the employer, if applicable, its attorney or agent, that the PERM labor certification has been, in fact, revoked; rather, the NOIR serves that purpose.

After relocating the content of current section 656.30(d) to proposed section 656.32(c), the Department proposes revisions for clarity and to simplify the regulation. The Department proposes revisions to remove a sentence about ''revocation'' from proposed paragraph (c). As noted above, ''revocation'' and ''invalidation'' are different program integrity measures performed by different agencies (*i.e.,* DOL vs DHS or DOS). DOL continues to have authority to revoke a PERM labor certification issued under part 656, if the certification was not justified, following the procedures outlined in proposed 656.32(b). DHS and DOS continue to have authority to invalidate a PERM labor certification, exercising their own authority to make ''a determination[ ] in accordance with those agencies' procedures or by a court'' of fraud or willful misrepresentation of a material fact involving the PERM labor certification application, as acknowledged in proposed section 656.32(c). As continued in proposed section 656.32(c), the Department's only role related to ''invalidation'' is to send written notice to DHS or DOS—and, as appropriate, a copy to the regional or national office of the DOL–OIG—if evidence of fraud or willful misrepresentation becomes known to the OFLC Administrator.

In proposed section 656.32, the Department is also proposing conforming changes to ensure uniform use of terms and language throughout part 656 regulations and to identify the OFLC Administrator as responsible for revocation and for sending notice to DHS or DOS, in the event of fraud or willful misrepresentation becoming known to the OFLC Administrator.

E. Discussion of Proposed Revisions to 20 CFR Part 656, Subpart D

The Department is proposing to amend subpart D by revising section 656.40; however, section 656.41 would remain unchanged.

1. Proposed 20 CFR 656.40, Determination of Prevailing Wage for Labor Certification Purposes

Employers who intend to file an *Application for Permanent Employment Certification* must obtain a PWD, as defined in proposed section 656.3, before filing that application, and before beginning to engage in pre-filing recruitment, unless the employer's application is subject to supervised recruitment under section 656.21. Current section 656.40 provides the standards and procedures for the PWD an employer must obtain from the Department before filing an *Application for Permanent Employment Certification.* However, at the time the current rule went into effect, PWDs were processed at State Workforce Agencies.[156] On January 1, 2010, PWD processing shifted to OFLC.[157] OFLC established internal procedures for processing *Applications for Prevailing Wage Determination* under section 656.40 and has updated its internal procedures in the years since, as appropriate, to support processing efficiency, allow for submission and consideration of additional information during processing, and adapt to an electronic processing environment. The Department has kept stakeholders apprised of these internal procedures through public guidance, including in Frequently Asked Questions posted on the Department's website.[158] The Department is taking this opportunity to codify its existing procedures to increase transparency and to ensure stakeholders are fully aware of these procedures and the requirements with which employers must comply to obtain the required PWD.[159] The Department also proposes to revise current section 656.40, consistent with its modernization and streamlining goals and to further improve efficiency in PWD processing.

Filing an Application for Prevailing Wage Determination

The Department proposes to eliminate the content of current section 656.40(a) and add new content in proposed section 656.40(a), using a framework similar to proposed section 656.10 (''Application filing requirements''). In proposed section 656.40(a)(1), the Department proposes to add specific details on what to file to request a PWD. Similarly, the Department proposes adding the location and method of filing in proposed section 656.40(a)(2).

Consistent with current practice, proposed paragraph (a)(1)(i) would require that an employer submit a completed *Application for Prevailing Wage Determination,* including its appendix and supporting documentation, if applicable, to the NPC. Proposed section 656.40(a)(1)(ii) codifies the current practice in which employers provide their legal name, trade name(s), valid FEIN, and valid business address with a physical location in the United States as part of their *Application for Prevailing Wage Determination.* Codifying these practices would provide additional clarification to employers about what information they must provide when submitting an *Application for Prevailing Wage Determination* to the NPC.

Proposed paragraphs (a)(1)(iii) to (v) address additional documentation requirements in the event an employer seeks a PWD based on a wage source other than the Occupational Employment and Wage Statistics (OEWS) program.[160] The proposed rule continues to require employers to request a PWD based on a collective bargaining agreement (CBA) or professional sports league rules or regulations, when the job opportunity is subject to those wage sources. In the event the job opportunity is not subject to a CBA or professional sports league rules or regulations, the proposed rule continues to permit the employer to use Service Contract Act or Davis Bacon Act as the wage source, when applicable, or to request consideration of an employer-provided survey as an alternative to a PWD determined using the BLS OEWS program. Although the current rule does not state that documentation of the requested wage source must be submitted with the *Application for Prevailing Wage Determination,* the electronic filing system currently will not permit submission of an *Application for Prevailing Wage Determination* without additional documentation uploaded, if a source other than OEWS is requested. The Department proposes to codify its existing practice of requiring employers to provide documentation of their selected wage source, if applicable, for the CO's review concurrent with their filing of the *Application for Prevailing Wage Determination.* This practice supports efficient processing by reducing unnecessary requests for documentation necessary to issue a PWD.

The current rule also does not specify what documentation is necessary to enable the CO to assess whether the

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[156] *See* 74 FR 63795, 63796 (Dec. 4, 2010).

[157] *See* 74 FR 63795, 63796 (Dec. 4, 2010).

[158] *See* Frequently Asked Questions (FAQs), National Prevailing Wage and Helpdesk Center (Mar. 2010), *available at https://www.dol.gov/agencies/eta/foreign-labor/faqs/print* (last visited Mar. 6, 2026).

[159] *See* FAQs, DOL, *https://www.dol.gov/agencies/eta/foreign-labor/faqs/print* (last visited Mar. 6, 2026).

[160] See generally BLS, Occupational Employment and Wage Statistics, *https://www.bls.gov/oes/.*

employer's suggested wage source may be used to establish the prevailing wage, which the Department proposes to add in proposed subparagraphs (a)(1)(iii) to (v), based on current practice. This proposal to codify what documents to submit for the CO's review will increase transparency and better inform employers how to request an alternative wage source, if appropriate. In addition, it will avoid unnecessary requests for documentation, which slow processing.

For example, proposed subparagraphs (a)(1)(iii)(A) through (C), clarify that to request CO consideration of a CBA, employers must provide a: (1) copy of the relevant sections of the CBA, which must include the validity dates of the agreement; the position(s) and description of the job(s) covered; the wage section, including tables and explanations; and the signature page with effective dates of the agreement; (2) letter on letterhead from the employer or employer's representative that states the relevant portions of the agreement with effective dates; the title of the position in the agreement appropriate to the job duties, requirements, and location; and wage value appropriate to the job duties, requirements, and location; and (3) letter on letterhead from the CBA authorized representative that states the relevant portions of the agreement with effective dates; the title of the position in the agreement appropriate to the job duties, requirements, and location; and wage value appropriate to the job duties, requirements, and location. As is current practice, if the NPC determines the CBA is valid and covers the job opportunity for which the employer seeks a PWD, the NPC will use the CBA wage as the prevailing wage, even where the OEWS wage for the occupation in the AIE is higher. When the NPC determines, based on the documentation provided, that the CBA does not meet all the requirements, the NPC will continue its current practice of issuing an OEWS wage for the employer's job opportunity. As discussed in proposed section 656.18, in connection with documentation requirements for *Applications for Permanent Employment Certification* for professional athlete or professional sports team coach job opportunities, the Department recognizes that unions may vary in their responsiveness to an employer's request for the letter to be submitted to the NPC. The Department invites comments about whether and how an employer could provide alternative documentation that would not compromise program integrity, in the absence of a response from union.

The Department also proposes to add language in proposed subparagraph (a)(1)(iv) to address the documentation necessary to issue PWDs for professional athletes and professional sports team coaches whose wages are set by professional sports league rules or regulations, which is necessary due to the proposed elimination of current section 656.40(f). Proposed section 656.40(a)(1)(iv) clarifies that if an employer is requesting a PWD for a job opportunity for a professional athlete or professional sports team coach covered by professional sports league rules or regulations with wage provisions, the employer must concurrently submit with its *Application for Prevailing Wage Determination* a copy of the applicable league rules or regulations. Similar to the current regulation, this proposed language comports with section 212(p)(2) of the INA.[161] Further, as noted above, requiring a copy of the applicable league rules or regulations at the time of filing allows the Department to review the league rules or regulations when determining the prevailing wage, likely reducing the number of RFIs and further streamlining the PWD process.

Similarly, the Department proposes to relocate the content of current section 656.40(g)(2) to proposed section 656.40(a)(1)(v), with minor revisions to the existing language to codify its current practice for the CO's consideration of a survey other than OEWS. This proposed provision continues to require the employer to concurrently submit the actual wage survey with its *Application for Prevailing Wage Determination.* The current regulation lists requirements for a survey but does not explicitly state that copies of the actual survey pages are required. Currently, the NPC frequently contacts the employer to request the actual survey instrument through an RFI so that the NPC can determine if the survey meets the methodological requirements before issuing a PWD. To better streamline the process, improve efficiency, and align the regulation with the NPC's practice of reviewing the actual survey instrument alongside the submitted *Application for Prevailing Wage Determination,* the Department proposes to specify in its regulations that employers must concurrently submit a copy of the survey at the time of filing the application. Consistent with current policy and practice, the survey must contain specific information about the survey methodology, including sample size and source, sample selection procedures, survey job descriptions, job and wage leveling chart, and list of participants surveyed to allow a determination of whether the survey meets all the requirements of this section.[162] In situations where the survey instrument is incomplete, the Department will continue to send an RFI before issuing a PWD. Although the proposal does not change current practice nor create new burdens on the regulated community, by codifying this information in the regulation, the Department anticipates a reduction in the number of RFIs needed before issuing a PWD, thereby maintaining processing efficiency.

Proposed section 656.40(a)(2)(i) would mandate electronic filing for *Applications for Prevailing Wage Determination,* which is consistent with the Department's proposal to mandate electronic filing for *Applications for Permanent Employment Certification* in section 656.10(c). The Department also would provide the same limited exceptions, as are available under 656.10(c), to mandatory electronic filing for employers who are unable or limited in their ability to use or access electronic forms to submit an *Application for Prevailing Wage Determination.* This proposed provision is intended to maximize end-to-end electronic processing of *Applications for Prevailing Wage Determination,* which is an important technological objective of the Department.

Although electronic filing of applications using the FLAG System is not currently mandated, in the Department's experience, employers prefer to use electronic filing to request a PWD. Based on data for *Applications for Prevailing Wage Determination* processed during fiscal years 2023, 2024, and 2025, more than 99 percent of employer's *Applications for Prevailing Wage Determination* were submitted electronically to the NPC for processing using the FLAG System. Therefore, requiring electronic filing of *Applications for Prevailing Wage Determination* continues the current practice for nearly all employers.

[161] INA section 212(p)(2) states, ''With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.''

[162] *See* 20 CFR 656.40(g)(2); Frequently Asked Questions, National Prevailing Wage Center (Mar. 2010), *available at https://www.dol.gov/agencies/eta/foreign-labor/faqs/print.*

NPC processing

The Department proposes to relocate current section 656.40(b) (''Determinations'') to proposed section 656.40(d) and add new language in proposed section 656.40(b) to discuss the NPC review process for *Applications for Prevailing Wage Determination.* The processes described in this proposed section are consistent with the NPC's current practices and the Department is merely proposing to codify them for transparency and clarification. Proposed section 656.40(b)(1) explains that when NPC receives an employer's *Application for Prevailing Wage Determination,* the CO reviews it to ensure it complies with all applicable program requirements, including that all the necessary information pertaining to the employer's job opportunity is included in the *Application for Prevailing Wage Determination.* After reviewing the employer's application, the CO will decide whether to issue a RFI under proposed section 656.40(c) or issue a PWD under proposed section 656.40(d).

Proposed section 656.40(b)(2) would require the CO to electronically send notice(s) or request(s) that require a response to employers, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO would send the notice or request via traditional methods to assure next day delivery. Similarly, the employer's response to such a notice or request must be filed electronically, except that an employer permitted to file by mail as set forth in § 656.10(c) may use traditional methods to assure next day delivery. The proposed rule would require the employer to send the response by the due date or the next business day, if the due date falls on a Sunday or Federal holiday. Consistent with current practice, if the CO does not timely receive the employer's response by the due date, the CO will return the employer's application unprocessed. While the Department encourages electronic communication, this proposed paragraph would retain the option to issue and respond to notices and requests using traditional methods that ensure next-day delivery, which may be necessary in some cases.

Proposed section 656.40(b)(3) provides that an employer may file only one *Application for Prevailing Wage Determination* for the same job opportunity and AIE. This proposal promotes efficiency and is consistent with similar provisions in the temporary labor certification programs the Department administers.[163] This provision would prevent the Department from receiving and processing duplicate applications that result in a general unnecessary delay in processing. Submitting multiple *Applications for Prevailing Wage Determination* for the same job opportunity for a PWD in the same wage year is unnecessary, as a single PWD can be used for multiple *Applications for Permanent Employment Certification* that offer the same job opportunity in the same AIE(s). This provision also would reduce duplicative processing by preventing an employer from filing a new *Application for Prevailing Wage Determination* for the same job opportunity in the same AIE when the employer's appeal of a PWD for that job opportunity in the same AIE is pending. Preventing an employer from filing a subsequent *Application for Prevailing Wage Determination* also serves to enhance program integrity by deterring an employer that is seeking to manipulate the prevailing wage process from submitting numerous filings in the hope that one of the PWDs might be adjudicated in a manner more favorable to the employer. As proposed, the CO will return duplicative applications unprocessed. The Department does not intend for this proposal to prevent employers from submitting a new *Application for Prevailing Wage Determination* for the same job opportunity near the expiration of their current PWD in order to obtain an updated PWD for the new wage year with a new validity period.

Requests for Information

The Department proposes to relocate the content of current section 656.40(c) (''Validity period'') to proposed section 656.40(h), with revisions, as discussed below. The Department is proposing to add new language in proposed section 656.40(c) to codify the NPC's current RFI practice. Currently, the CO may issue one or more RFIs when the employer's *Application for Prevailing Wage Determination* is incomplete, contains errors or inaccuracies, or otherwise contains information that is not sufficient to issue a PWD. Consistent with current practice, under proposed section 656.40(c), the CO would send RFIs to the employer with a copy to the employer's attorney or agent, if applicable. As proposed, the CO could issue multiple RFIs to allow employers every opportunity to provide necessary information to ensure the employer's application is complete. This approach enables the CO to process the application based on the most accurate information possible to issue a prevailing wage that does not adversely affect the wages of U.S. workers.

In proposed section 656.40(c)(2), the Department outlines the content of an RFI, which largely continues current practice but introduces a change involving amendment of an employer's *Application for Permanent Employment Certification* to enable the NPC to issue a PWD. As proposed, the RFI would continue to state the reason the CO could not issue a PWD and offer the employer the opportunity to submit a response within 7 calendar days. In addition, the RFI would explain that if the employer submits a response, the CO will review the response, determine whether to issue a PWD, and, as necessary, make amendments to the *Application for Prevailing Wage Determination* so that the CO can issue a PWD. Currently, the CO does not treat the employer's response as authorizing amendments to the employer's *Application for Prevailing Wage Determination* that would enable the CO to issue a PWD. This change in practice would save both the Department and the employer's time, eliminating additional back-and-forth communication between the CO and the employer for the purpose of acquiring explicit permission to amend the employer's application so that a PWD can be issued. The Department intends this provision to enable the CO to identify information that would need to be corrected for the CO to issue a PWD (*e.g.,* conflicting information regarding travel). This provision would not permit employers to request modification of an *Application for Prevailing Wage Determination.* To correct information, the employer may request withdrawal of the *Application for Prevailing Wage Determination* under proposed section 656.40(i) and then file a new, corrected application. Furthermore, once a PWD is submitted in connection with, and becomes a part of an *Application for Permanent Employment Certification,* it will be subject to the ''no modification'' provision in 20 CFR 656.11(b).

As proposed, the RFI also would explain what will happen if the employer does not respond by the due date. If the employer does not send their response by the due date (*i.e.,* within 7 calendar days from the date the RFI was issued by the CO), the application will be deemed abandoned, the CO will return the application unprocessed to the employer without issuing a PWD, and the employer may file a new *Application for Prevailing Wage Determination* with the NPC. This proposal improves transparency,

[163] See 20 CFR 655.120(e)(2).

supports processing efficiency, and is also consistent with other programs and regulations.[164] The Department seeks public comment regarding the number of days employers have to respond to RFI before the PWD is deemed abandoned.

Determinations

Consistent with the Department's proposed reorganization of section 656.40—to address what, when, and how to submit to the NPC to request a PWD in proposed paragraph (a) and processing information in proposed paragraphs (b) and (c), before addressing the CO's issuance of a PWD—the Department proposes to address determinations in proposed paragraph (d).

After relocating the content from current section 656.40(b), titled ''Determinations'' to proposed section 656.40(d), the Department proposes technical changes for consistency and conformity with other sections of this proposed rule, to improve clarity, and to update internal references. In addition, the Department proposes to update the term ''DOL Occupational Employment Statistics Survey'' to ''Occupational Employment and Wage Statistics survey,'' to reflect the current name.[165]

The Department proposes one substantive change in proposed section 656.40(d). In proposed paragraph (d)(3), the Department proposes to eliminate the exception in the current rule that allows a survey to provide the median wage if the arithmetic mean wage is not provided; as a result, all surveys must provide the arithmetic mean of wages of workers similarly employed in the AIE. Under this proposed rule, if an employer submits a survey that provides only the median wage, the survey would not meet the criteria to issue a PWD. Because the requested survey could not be used to issue a PWD, the CO would issue the PWD using an OEWS wage. The Department proposes this change to be consistent with the methodology of the OEWS survey. Also, based on the Department's experience, employers have generally submitted surveys with the arithmetic mean of the wages of all workers similarly employed in the AIE. As a result, the Department asserts that elimination of the option to provide a survey using a median wage will not have a significant practical effect because the NPC rarely receives surveys that only include a median wage. Moreover, the Department continues to think that setting the wage below the mean would have a depressive effect on wages, and therefore this proposed change is consistent with the Department's obligation to ensure that U.S. workers' wages are not adversely affected when setting a prevailing wage for workers employed in the PERM program.

PWD Validity Period

The Department proposes to relocate current section 656.40(c), entitled ''Validity period'' to proposed section 656.40(h), with revisions. Proposed section 656.40(h)(1) continues to require each PWD to have a specific validity period. The Department proposes a technical revision to clarify that the CO will specify the validity period of the PWD as 90 to 365 calendar days from the date of issuance, rather than 90 days to 1 year. In addition, added language clarifies that an employer cannot use a PWD for PERM labor certification purposes, while simultaneously requesting review of that PWD under section 656.41. As stated in proposed section 656.40(h)(1), ''[a] request for review under section 656.41 renders the PWD invalid until the CO issues an affirmed or modified PWD.'' After the review under section 656.41 is complete, the CO will issue an affirmed or modified PWD, which will specify the validity period for the PWD. Then, the PWD can be used to support an *Application for Permanent Employment Certification* during the validity period. A new proposed section 656.40(h)(3) would clarify the option available for an employer to use the same PWD for multiple, consistent *Applications for Permanent Employment Certification.* These proposed revisions clarify the Department's existing prevailing wage process and bring certainty to employers and stakeholders of the prevailing wage program.

In proposed section 656.40(h)(2), the Department proposes a substantive change to employers' use of a PWD for an *Application for Permanent Employment Certification.* Currently, if an employer either begins pre-filing recruitment or files the *Application for Permanent Employment Certification* within the PWD's validity period, they may use that PWD when filing the *Application for Permanent Employment Certification.* The Department proposes to eliminate the option for an employer to begin pre-filing recruitment before receiving a PWD for the job opportunity to be offered to U.S. workers during the labor market test. As proposed in subparagraph (h)(2), the employer must obtain a PWD before beginning pre-filing recruitment for the *Application for Permanent Employment Certification* and must begin pre-filing recruitment—whether in accordance with section 656.17, section 656.18, or section 656.21—within the validity period OFLC specified on the *Application for Prevailing Wage Determination.* This change would improve program integrity by ensuring pre-filing recruitment offers at least the prevailing wage rate the CO determines applies to the employer's job offer.

Similarly Employed

The Department proposes to relocate current section 656.40(d), titled ''Similarly employed'' to proposed section 656.40(g), without any revisions.

PWDs for Institutions of Higher Education, Affiliated or Related Nonprofit Entities, Nonprofit Research Organizations, or Governmental Research Organizations

Section 656.40(e) implements Congress' prevailing wage computation requirements for job opportunities at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)(2000)), or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization.[166] In computing the prevailing wage for such job opportunities, the CO takes into account the wage levels of employees only at such institutions and organizations in the AIE. The Department defines affiliated or related nonprofit entity in current section 656.40(e)(1)(ii) using DHS' definition at 8 CFR 214.1(h)(19)(iii)(C), which DHS has updated since the current rule was

[164] *See* 20 CFR 655.121(e)(2), which states that the employer has 12 calendar days to respond to a SWA concerning deficiencies in a job order and that if the employer does not respond within 12 calendar days the job order will be deemed abandoned.

[165] DOL's BLS changed the name of this program in 2021. *See* Bureau of Labor Statistics, History: Handbook of Methods: U.S. Bureau of Labor Statistics,'' *available at https://www.bls.gov/opub/hom/oews/history.htm* (last accessed Mar. 3, 2026). The Department will continue to issue PWDs based on ''occupational categories based on the Office of Management and Budget's 2018 Standard Occupational Classification (SOC) system.'' *Occupational Employment and Wage Statistics, Technical Notes for May 2025 OEWS Estimates* (last updated May 15, 2026), *https://www.bls.gov/oes/2025/may/oes_tec.htm.* The SOC system is the authoritative resource for occupational definitions within the United States. Of note, the O*NET OnLine, an oft used tool by stakeholders in prevailing wage determination applications, is an application for the ''general public'' based on the SOC system but is not the authoritative source for defining occupations. National Center for O*NET Development, *O*NET OnLine Help, OnLine Overview,* O*NET OnLine (last updated May 19, 2026), *https://www.onetonline.org/help/online/.*

[166] INA section 212(p)(1); 8 U.S.C. 1182(p)(1).

published.[167] The Department proposes to update section 656.40(e)(1)(ii) in the proposed rule to reflect DHS' current regulatory language. In addition, the Department proposes to include the DHS regulatory citation in proposed 656.40(e)(1) (*i.e.,* 8 CFR 214.2(h)(19)(iii)) for employers to use for reference. Also, the Department proposes one technical edit in this section by adding a hyphen in the word ''pre-accreditation'' in section 656.40(e)(1)(i)(E). Otherwise, the Department retains this section in the proposed rule without any other changes.

Professional Athletes and Professional Sports Team Coaches

The Department proposes to eliminate the content of current paragraph (f), titled ''Professional athletes,'' from section 656.40. As discussed in proposed section 656.3, the Department proposes to relocate the content of current section 656.40(f) that is definitional to proposed section 656.3. In addition, the Department's revisions throughout proposed section 656.40 appropriately address PWDs for professional athletes and professional sports team coaches, without retaining the content of paragraph (f) in section 656.40.

Surveys Other Than OEWS

The Department proposes to relocate current section 656.40(g), titled ''Employer-provided wage information'' to proposed section 656.40(f), with revisions. The revisions, which eliminate some content of subparagraph (1) and all of subparagraphs (4) and (5), are necessary to conform with the Department's proposals to require wage survey information to be submitted concurrently with the *Application for Prevailing Wage Determination* and to streamline the PWD process by eliminating unnecessary correspondence. In addition, the Department proposes to eliminate current subparagraph (2), as its content is now addressed in proposed section 656.40(a)(1)(v), and redesignate subparagraph (3) as subparagraph (2), without any substantive changes.

Withdrawal

The Department proposes to delete the content of current section 656.40(i) and repurpose section 656.40(i) to codify how an employer may request withdrawal of an *Application for Prevailing Wage Determination.* Proposed section 656.40(i) explains the NPC's current practice of allowing employers to withdraw a pending *Application for Prevailing Wage Determination.*[168] That is, if the CO has not issued a PWD for the job opportunity for which the employer submitted the *Application for Prevailing Wage Determination,* the employer may withdraw their application by submitting a request in writing, either electronically or via mail, to the NPC. The request must identify the unique application number and state the reason(s) for the withdrawal. This provision clarifies the existing prevailing wage process and practice with no substantive or procedural changes.

Other Eliminated Provisions

The Department proposes to eliminate the content of current section 656.40(h), titled ''Submittal of supplemental information by employer.'' Currently, employers must go through two stages of reviews when they disagree with a PWD. They must first submit a request for redetermination under current section 656.40(h) before they are permitted to submit a request for Center Director Review (CDR) under current section 656.41. The Department proposes to eliminate the first step of review so employers may directly submit a request for (CDR) under section 656.41. Deleting this section would reduce the regulatory burden on employers from having multiple review processes. In addition, it would streamline the process by which the Department receives and reviews employers' *Applications for Prevailing Wage Determination* by eliminating submission of additional information outside the RFI process proposed in section 656.40(c).

The Department also proposes to eliminate current content section 656.40(i), titled ''Frequent users,'' because the Department believes it is no longer relevant or necessary. The proposed removal of this paragraph is consistent with the Department's goal of simplifying its regulations. In addition, the proposed language added in section 656.40(h)(3) codifies current practice whereby an employer may use just one PWD for multiple job opportunities if the positions have the same job duties and requirements and are in the same AIE.

Similarly, the Department proposes to eliminate current section 656.40(j), titled ''Fee prohibited.'' This section is no longer relevant, as the responsibility to issue PWDs was transferred from the SWAs to OFLC on January 1, 2010.[169]

F. Discussion of Proposed New to 20 CFR Part 656, Subpart E

The Department is proposing to amend part 656 by adding a new subpart E, which would include one new provision in a new section 656.50, to add a severability clause to part 656.

1. Proposed 20 CFR 656.50, Severability

Proposed section 656.50 would add a severability provision to part 656. This new content would provide that if any provision of the Department's part 656 regulations is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law. As proposed, section 656.50 further provides that where such holding is one of total invalidity or unenforceability, the provision would be severable from the corresponding part and will not affect the remainder thereof.

Consistent with its reasoning when proposing to add such a provision within the H–2A regulations, the Department believes that adding a severability clause to part 656 is appropriate because each provision within part 656 is capable of operating independently from the others and to enhance the Department's capabilities to monitor compliance and conduct enforcement.[170] It is also important to the Department and the regulated community that the PERM and PWD regulations continue to operate consistent with the expectations of employers and workers, even if a portion of those regulations is held to be invalid or unenforceable.

The Department invites comments about the substance and scope of proposed section 656.39 and requests the public's views on other issues related to severability, such as whether the rule in general includes provisions that would not be amenable to severability; whether specific parts of the rule could operate independently; whether the benefits of the rule would continue to justify the costs should particular provisions be severed; or whether individual provisions are essential to the entire rule's workability.

[167] *See* final rule titled ''*Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.*'' 89 FR 103054, 103199 (December 18, 2024).

[168] This practice has been in place since January 1, 2010. *See* 73 FR 78068 (Dec. 19, 2008).

[169] *See* 73 FR 78068 (Dec. 19, 2008).

[170] *See* NPRM, *Improving Protections for Workers in Temporary Agricultural Employment in the United States,* 88 FR 63750 (Sept. 15, 2023).

IV. Administrative Information

A. Executive Order 12866: Regulatory Planning and Review, Executive Order 13563: Improving Regulation and Regulatory Review, and Executive Order 14192: Unleashing Prosperity Through Deregulation

Under E.O. 12866, the Office of Information and Regulatory Affairs (OIRA) in OMB determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and review by OMB. Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has reviewed this rule and designated it a significant action under E.O. 12866.

E.O. 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Improving Regulation and Regulatory Review, 76 FR 3821, 3821 (Jan. 21, 2011), E.O. 13563 recognizes that some costs and benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. *Id.*

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' was issued on January 31, 2025. This executive order 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.'' This proposed rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA § 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation''' (Mar. 26, 2025).

1. Need for Regulation

The Department has determined that this rulemaking is necessary to modernize the permanent labor certification (PERM) program so that it continues to fulfill the Secretary's statutory responsibilities under section 212(a)(5)(A) of the INA. The current regulatory framework has remained largely unchanged since 2005, despite significant changes in labor market conditions, recruitment practices, technology, and the manner in which employers recruit and hire workers.

Modernizing the PERM program is a regulatory action the Department must undertake to be able to adapt existing regulations governing the statutory permanent labor certification requirement to the current characteristics and demands of the labor market in the United States, address challenges encountered by the Department to more effectively administer the program while addressing employers' bona fide workforce needs who rely on the program to employ aliens in permanent positions that cannot be filled by qualified and available U.S. workers. For example, over the past two decades, employers have increasingly shifted away from print advertising toward electronic recruitment platforms, remote work has become commonplace across many industries, and workforce mobility and employer hiring practices have evolved considerably. At the same time, the Department has gained substantial operational experience administering the PERM program and identified areas where existing regulations no longer adequately reflect current labor market realities or provide sufficient clarity regarding employer obligations, as well as program administration, integrity and enforcement. These developments demonstrate the need to update the Department's regulations to ensure that the statutory PERM labor certification requirement remains an effective mechanism for determining whether qualified U.S. workers are available for permanent job opportunities and whether the employment of aliens would adversely affect the wages and working conditions of similarly employed U.S. workers.

The Department has also determined that rulemaking is necessary to strengthen protections for U.S. workers and improve integrity of the labor market test required by the INA. Decades of experience administering the PERM program has revealed opportunities to better ensure that employers recruit U.S. workers in good faith using recruitment methods that better reflect contemporary hiring practices and provide the broadest exposure possible of available job opportunities to prospective U.S. applicants. Moreover, the Department has identified the need to strengthen safeguards related to layoffs, clarify employer obligations during the recruitment and adjudication process, improve notice requirements, enhance oversight of third-party employment arrangements, and increase accountability for employers, attorneys, and agents participating in the program. In addition, following its review of public comments received in response to the Department's 2023 RFI concerning Schedule A, the Department concluded that it lacks a reliable, objective, and transparent methodology for maintaining or expanding Schedule A in a manner consistent with its statutory responsibilities. Accordingly, the Department has determined that regulatory changes are necessary to ensure that labor market testing more accurately reflects current labor market conditions and that all employers seeking permanent labor certification are subject to standards that are consistent, transparent, and aligned with the INA.

This rulemaking is also intended to modernize and streamline administration of the PERM program by codifying electronic filing and communication practices, clarifying regulatory standards, simplifying procedures, and eliminating outdated requirements that no longer provide meaningful regulatory value. The Department proposes to consolidate and reorganize regulatory provisions, modernize and streamline prevailing wage and application processing procedures, clarify integrity actions, as well as the appeals and review processes, and remove obsolete

requirements associated with paper processing and duplicative regulatory provisions. These changes are expected to improve administrative efficiency, reduce unnecessary burdens on employers and the Department, facilitate coordination with DHS, and improve the consistency and predictability of program administration.

Accordingly, the Department is proposing comprehensive revisions to 20 CFR part 656 that modernize recruitment requirements, strengthen protections for U.S. workers, enhance program integrity, improve processing efficiency, and update the regulatory framework governing permanent labor certifications to better reflect current labor market conditions and the Department's statutory responsibilities. Collectively, the proposed revisions are intended to preserve employers' ability to access employment-based immigration pathways when qualified U.S. workers are unavailable, while ensuring that the PERM labor certification process continues to provide meaningful protections for the U.S. workforce and supports the fair and effective administration of the Nation's employment-based immigration system.

2. Analysis Considerations

The Department estimated the costs and cost savings of this proposed rule relative to the existing baseline (*i.e.,* the current practices for complying, at a minimum, with the PERM program as currently codified at 20 CFR part 656, subparts A, B, C, and D).

In accordance with the regulatory analysis guidance articulated in OMB's Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the proposed rule (*i.e.,* costs, cost-savings, and benefits that accrue to entities affected). The analysis covers 10 years to ensure it captures measurable costs and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2025 dollars and uses discount rates of 3 and 7 percent, pursuant to Circular A–4 [171] published on October 9, 2003.

3. Subject-by-Subject Analysis

In this section, the Department describes all anticipated benefits, costs, and cost-savings of the proposed rule, including both quantified and unquantified impacts. Each impact is described, and quantifiable impacts are estimated while nonquantifiable impacts are discussed qualitatively.

i. Benefits Discussion

The Department expects the proposed rule to generate substantial benefits by modernizing the PERM labor certification process, strengthening protections for U.S. workers, improving the integrity and efficiency of the employment-based immigrant visa system, and reducing administrative inefficiencies for employers and the Federal Government. Collectively, the proposed changes would better align the PERM program with current labor market conditions, modern recruitment practices, and the Department's statutory obligations under INA section 212(a)(5)(A), and modernize the program so that it becomes more efficient and transparent.

A principal benefit of the proposed rule is the modernization of existing recruitment methods used to test the U.S. labor market for purposes of filing a PERM application. The current PERM framework relies heavily on print newspaper advertisements and recruitment methods established nearly two decades ago, which no longer reflect how employers recruit workers or how workers search for employment opportunities. The proposed rule replaces outdated print-focused recruitment requirements with modern electronic recruitment methods, including advertisements on employer websites, commercial job search websites, social media platforms, and SWA job orders, as well as job fairs or campus recruiting events. These proposed changes are expected to improve dissemination of job opportunities to U.S. workers and increase the likelihood of qualified and available U.S. workers becoming aware of and applying for PERM-related positions before employers seek to permanently employ aliens.

The proposal also would require employers to recruit U.S. workers using the same recruitment methods and timeframes they customarily use for comparable non-PERM positions. This approach is expected to improve the equality of employment opportunities by disincentivizing employers from departing from their ordinary PERM recruitment methods or efforts they normally employ, in ways that may discourage U.S. worker participation. By requiring recruitment practices that more closely resemble real-world hiring practices, the rule would strengthen the integrity of the labor market test and improve confidence that PERM recruitment is conducted in good faith.

The Department also expects significant benefits from the proposed extension of recruitment duration requirements. Under the proposed rule, most advertisements would remain active for at least 90 calendar days, or longer if the employer normally recruits for similar positions for a longer period. Longer recruitment periods are expected to improve labor market exposure for job opportunities and provide workers additional time to find out about the job offer, become familiar with the job requirements and apply for available positions. The Department believes this longer recruitment timeframe would better reflect actual labor market conditions and would align more closely with the amount of time unemployed workers spend searching for employment.

Another major benefit the Department believes would derive from the proposed rule is enhanced protection for U.S. workers impacted by layoffs not only throughout the PERM process but also while the employer pursues the visa petition before DHS. Specifically, the proposal would expand current layoff-related protections by prohibiting the filing of a PERM application within the 2 years after a relevant layoff and, in the event a relevant layoff occurs after filing a PERM application, requiring employers to consider laid-off U.S. workers during a significantly broader timeframe extending through adjudication of the associated Form I–140 petition or final case resolution. The Department expects these changes to reduce the risk of employers seeking permanent foreign labor while simultaneously displacing U.S. workers in the same or similar occupations. These provisions are also expected to improve employment opportunities for laid-off workers and better align labor certification determinations with actual labor market conditions at the time of adjudication of PERM applications and visa petitions.

The proposed rule also seeks to prohibit the placement of aliens at third-party worksites experiencing layoffs where indicia of an employment relationship exist between the alien and the third-party employer. This provision is expected to reduce the risk of indirect displacement of U.S. workers through staffing arrangements or contractor relationships and improve accountability and transparency in third-party employment arrangements.

The Department further expects benefits from increased transparency requirements related to layoffs and notice obligations. Employers would be required to notify DOL and, where applicable, USCIS, of layoffs occurring

[171] OMB, Circular A–4, *https://www.whitehouse.gov/wp-content/uploads/2025/08/CircularA-4.pdf,* Sept. 17, 2003.

during the relevant period and update recruitment reports accordingly. Expanded NOF requirements, including electronic notice procedures and notice obligations for third-party worksites, are expected to improve U.S. workers' awareness of pending labor certification applications and facilitate the reporting of fraud, misrepresentation, or the existence of qualified U.S. workers to the Department and USCIS.

The proposed elimination of Schedule A is also expected to produce important benefits. The Department determined that it currently lacks a reliable, objective, and transparent methodology to justify continuing categorical labor market test exemptions for occupations listed on Schedule A. Eliminating Schedule A would ensure that all occupations subject to PERM labor certification requirements undergo a labor market test unless exempted by statute. The Department expects this change to improve consistency with the INA's labor certification requirements and provide U.S. workers an opportunity to apply for all PERM-covered positions.

The proposed rule also contains substantial program integrity improvements. These changes include enhanced employer attestations, expanded audit and supervised recruitment authority, stronger debarment provisions, successor-in-interest liability standards, and independent accountability for attorneys and agents. The Department expects these changes to deter fraud and abuse, improve compliance with program requirements, and strengthen public confidence in the PERM labor certification process. Expanded authority to hold attorneys, agents, and successor entities accountable for misconduct is expected to reduce opportunities for program circumvention and abusive filing practices.

The proposal would also modernize and streamline the administration of the PERM program through mandatory electronic filing and expanded electronic communications. These changes are expected to reduce paperwork burdens, lower mailing and administrative costs, improve application completeness and data quality, reduce processing delays associated with deficient applications, and facilitate faster communication between OFLC and stakeholders. The vast majority of employers already use electronic filing systems, based on FY 2021–FY 2025 data, approximately 99.61 percent of PERM labor certification applications were filed electronically. Department expects the transition costs associated with mandatory electronic filing to be minimal for most employers.

In addition, the Department estimates that the proposed centralized electronic processing and electronic transmission of determinations to USCIS will improve interagency coordination, facilitate data sharing, reduce duplicative submissions, and improve fraud detection capabilities. The Department also expects operational efficiencies and better public experience with the program from codifying existing adjudicative practices, clarifying audit and appeal procedures, and reducing unnecessary BALCA docketing.

The proposed rule would further improve regulatory clarity and predictability by modernizing existing terminology, consolidating procedures, and clarifying definitions and standards throughout part 656. These changes are expected to improve the regulated community understanding of program requirements, reduce ambiguity and inadvertent noncompliance, improve adjudicative consistency, and reduce litigation risk.

Overall, the Department expects the proposed rule to generate substantial benefits by improving labor market testing, strengthening protections for U.S. workers, increasing transparency and accountability by all program participants, modernizing program administration, reducing inefficiencies, and enhancing the integrity of the PERM labor certification process. The proposals are expected to create a more effective, transparent, and administratively efficient system that better reflects contemporary labor market conditions while preserving access to employment-based immigration pathways for employers with legitimate workforce needs.

ii. Costs

In the following sections, the Department presents the costs estimated to be incurred by relevant stakeholders.

a. Quantifiable Costs

Rule Familiarization

To quantify rule familiarization costs, the Department employs a methodology that reflects the structure of the PERM filing market. PERM applications are primarily filed either by outside immigration law firms on behalf of employers or directly by employers themselves, although agents also may file PERM applications on behalf of employers. Accordingly, the Department estimates familiarization costs separately for two groups: (1) unique law firms that submitted PERM applications on behalf of employers, and (2) unique employers that filed PERM applications directly without outside legal counsel.

For law firms, the Department assumes that one attorney per firm is responsible for reviewing and understanding the regulatory changes associated with the rule. The Department values this time using the fully-loaded hourly compensation rate for Attorneys. For employers filing without outside counsel, the Department assumes that one Human Resources (HR) specialist per employer is responsible for rule familiarization and values this time using the fully loaded hourly compensation rate for HR Specialists.

The Department used the hourly compensation rates presented in Exhibit 1 to estimate rule familiarization costs. BLS's OEWS data show that the mean hourly wage of HR Specialists (SOC 13–1071) is $39.42 and the hourly rate of an Attorney is $89.35 (SOC 23–1011).[172] The Department applied a 42-percent benefits rate [173] and a 17-percent overhead rate,[174] resulting in a fully loaded hourly wage of $62.68 for HR Specialists and $142.07 for Attorneys.

Based on FY 2023–FY 2025 PERM certification data, the Department identified 5,433 unique law firms and 41,747 unique employers. Assuming one hour of familiarization time per attorney and per HR specialist, the law firm familiarization cost is estimated at $0.77 million, and the employer familiarization cost is estimated at $2.62 million for a combined first-year total of $3.38 million, once the rule is implemented. The annualized cost over a ten-year period is projected at $0.39 million at (3% discount rate) and $0.48 million (7% discount rate).

[172] See BLS, Occupational Employment and Wage Statistics, Period: May 2025, *https://data.bls.gov/oes/#/area/0000000/2025.*

[173] BLS, ''National Compensation Survey, Employer Costs for Employee Compensation,'' *https://www.bls.gov/ecec/data.htm* (last visited June 3, 2026). For private sector workers, wages averaged $32.36 per hour worked in 2025, while benefit costs averaged $13.79, which is a benefits rate of 42 percent.

[174] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document/EPA-HQ-OPPT-2014-0650-0005* (last visited May 8, 2025).

Exhibit 1: Compensation Rate

Occupation	Base hourly wage rate	Loaded wage factor	Overhead costs	Hourly compensation rate
	(a)	(b)	(c)	(d)
HR Specialist	39.42	$16.56 = ($39.42 × 0.42)	$6.7 = (39.42 x 0.17)	62.68
Attorney	89.35	$37.53 = ($89.35 × 0.42)	$15.19 = (89.35 x 0.17)	142.07

Employer Signature on All Supporting Documents (§ 656.4)

The primary cost associated with the employer signature requirement is the incremental time and coordination burden imposed on employers who are represented by attorneys or agents and who are not currently in the practice of signing all documentation submitted to OFLC beyond the Application for Permanent Employment Certification and recruitment report. For these employers, the proposed rule adds a workflow step to the filing and processing cycle. Specifically, the need to obtain the employer's signature on audit responses, supplemental information submissions, and other materials before transmitting them to OFLC.

The Department notes that the additional signature burden is not uniform across the population of employers filing Applications for Permanent Employment Certification, it is concentrated among those whose applications are selected for audit examination or placed into supervised recruitment, as those are the principal processing stages at which employers would be required to sign and submit additional documentation beyond the application and recruitment report. For applications that proceed through standard adjudication without audit or supervised recruitment, the proposed signature requirement would apply only to the *Application for Permanent Employment Certification* and the recruitment report, both of which are already subject to employer signature requirements under current regulations and thus would impose no incremental burden on those employers.

The Department calculates this cost by multiplying the total number of employers (including Schedule A and Sheepherders) by 1 hour (on average) and the wage rate for an HR Specialist. Based on FY 2023–FY 2025 PERM certification data, there were approximately 26,277 unique employers that filed PERM applications per year, an average of 1,417 unique Schedule A employers per year,[175] and an average of 4 Sheepherder applications per year.[176] The annual cost is calculated as follows: (26,277 + 1,417 + 4) × $62.68 × 1 hour = $1,736,046. Over the ten-year period of analysis, the total undiscounted cost would be approximately $17.36 million.

The annualized cost over the ten-year span is projected at approximately $1.79 million (3% discount rate) and $1.86 million (7% discount rate).

Extended NOF Duration and Locations (§ 656.14)

The primary cost associated with the expanded NOF requirements is the additional administrative burden of maintaining the posting, whether physical or electronic, for a significantly longer duration than currently required. Under the proposed rule, the NOF must remain available throughout the entirety of OFLC's adjudication of the *Application for Permanent Employment Certification* and USCIS's adjudication of the associated Form I–140 petition, which can span months or, in some cases, years. For employers who post the NOF physically, this may require periodic monitoring to ensure the posting remains visible and unobstructed throughout the extended period, consistent with the proposed requirement that the notice be of sufficient size, clearly visible, and unobstructed while posted. For employers who post electronically through their existing internal or external websites, the incremental burden of maintaining the NOF through the conclusion of adjudication is expected to be minimal, as sustaining a web page posting requires little ongoing effort once the notice is initially published.

The Department assumes an average of 15 minutes of additional time per application to manage the extended posting requirements. The average number of certification applications for FY 2023–FY 2025 was approximately 108,786, and the average number of Schedule A applications filed with USCIS for FY 2023–FY 2025 was 23,835, for a total of 132,621. This yields an estimated annual incremental cost of approximately $2.08 million (132,621 × $62.68 × 0.25). Over the ten-year period of analysis, the total undiscounted cost would be approximately $20.78 million. The annualized cost over the ten-year span is projected at $2.14 million at a 3-percent discount rate and $2.23 million at a 7-percent discount rate.

New Attestations (§ 656.13)

The primary cost associated with the new and expanded attestations is the incremental time required for employers and their authorized attorneys or agents to review, understand, and execute the expanded set of attestations at the time of filing. To estimate the cost of the new and expanded attestation requirements, the Department multiplies the number of certification applications and Schedule A applications (132,621) [177] by

[175] This is calculated from the PERM petition data for FY 2023–FY 2025 provided by USCIS.

[176] The average of 4 Sheepherder applications per year is derived from the PERM petition data for FY 2023–FY 2025 provided by USCIS, which recorded 1, 2, and 9 Sheepherder applications respectively, for a three-year total of 12 applications (12 ÷ 3 = 4). FY 2023–FY 2025 figures are used for Sheepherder applications as they represent the most recent complete fiscal years available at the time of this analysis.

[177] The total of 132,621 reflects the average number of certified PERM applications for FY 2023–FY 2025 (108,786) and the average number of

an average of 30 minutes of additional time per application for employers to review and execute the expanded attestations at the wage rate of $62.68 for a HR specialist. This yields an estimated annual incremental cost of approximately $4.16 million (132,621× 62.68 × 0.5). Over the ten-year period of analysis, the undiscounted total cost would be approximately $41.56 million. The annualized cost over the ten-year span is projected at $4.28 million at a 3-percent discount rate and $4.44 million at a 7-percent discount rate.

Schedule A Occupations Now Subject to Full PERM Recruitment (§ 656.5 & § 656.15)

The proposed elimination of Schedule A requires employers seeking to permanently employ aliens in occupations previously listed under Schedule A, including physical therapists, professional nurses, and workers who possess exceptional ability in the sciences or the arts, to conduct full pre-filing recruitment under proposed section 656.17 and submit an Application for Permanent Employment Certification to OFLC before filing a Form I–140 petition with USCIS. Under the current rule, employers sponsoring aliens in Schedule A occupations obtain a PWD from OFLC but bypass the PERM labor certification process entirely, submitting an uncertified *Application for Permanent Employment Certification* directly to USCIS without conducting any pre-filing recruitment. The proposed rule imposes entirely new recruitment costs on these employers that they have not previously incurred.

To estimate the population of certification applications affected by this provision, the Department relied on USCIS administrative data on Form I–140 petitions filed under Schedule A occupations for fiscal years 2023 through 2025. The number of Schedule A petitions filed annually is 20,557 in FY 2023, 27,428 in FY 2024, and 23,521 in FY 2025, with an average of approximately 23,835 petitions per year over the three-year sample.[178]

To estimate the incremental labor cost imposed on Schedule A employers by the full PERM pre-filing recruitment requirement, the Department estimates 60 minutes per application for pre-filing recruitment activities to the average annual volume of Schedule A petitions (23,835) and the loaded hourly compensation rate for HR specialists of $62.68, as presented in Exhibit 2. This yields an estimated annual incremental labor cost of approximately $1,493,978, calculated as 23,835 applications multiplied by 1 hour multiplied by $62.68 per hour. Over the ten-year period of analysis, the total undiscounted cost would be approximately $14.94 million. The annualized cost over the ten-year span is projected at $1.54 million at a 3-percent discount rate and $1.32 million at a 7-percent discount rate.

Notify OFLC of Pending Form I–140 Petition (§ 656.13(f))

The primary cost associated with the proposed notification requirement is the time employers would spend preparing and submitting the required notification. Under the proposed rule, employers would be required to notify the NPC, and USCIS in the case of a pending Form I–140 petition, no later than 5 business days after engaging in a qualifying layoff, including the placement of an alien with another employer that is engaging in layoffs.

To estimate the cost of this requirement, the Department estimates that employers would spend approximately 10 minutes (0.167 hours) preparing and submitting each notification. Consistent with the methodology used elsewhere in this analysis, the Department uses the average annual number of Form I–140 petitions for FY 2023 through FY 2025, 23,835 petitions, to estimate the number of notifications. Applying a loaded hourly compensation rate of $62.68 for human resources specialists, the Department estimates an annual cost to employers of approximately $248,991 (23,835 petitions × 0.167 hours × $62.68 per hour).

The Department estimates that this requirement would result in a recurring annual cost of approximately $248,991. Over the ten-year period of analysis, the total undiscounted cost would be approximately $2.49 million. The annualized cost over the ten-year span is projected at $0.26 million (at the 3-percent discount rate) and $0.27 million (at the 7-percent discount rate).

b. Nonquantifiable Costs

In this section, the Department describes various non-quantifiable costs of the proposed rule.

Record Retention Period Restarted 5 Years From Date of Certification Expiration or Denial/Withdrawal of the Application for Permanent Employment Certification, or 5 Years From the Date on Which the Immigrant Petition Is Approved or Denied (§ 656.10)

The principal cost associated with the extended record retention period is the incremental cost of storing documentation for a longer period than currently required for applications with extended processing timelines.

The Department was unable to quantify the incremental storage costs associated with the extended retention period with sufficient precision to report a point estimate, for several reasons, and accordingly treats the costs of this provision as a nonquantifiable cost.

First, the additional retention burden is not uniform across the population of employers filing Applications for Permanent Employment Certification, it varies significantly depending on the processing trajectory of each individual application. Employers whose applications proceed through standard adjudication and result in a timely filed and approved Form I–140 petition would experience little or no meaningful extension of their retention obligations relative to the current rule, as the practical difference between a retention period measured from the date of filing and one measured from the date of certification expiration would be modest in the absence of prolonged processing. By contrast, employers whose applications are subject to audit examination, supervised recruitment, BALCA review, or extended USCIS adjudication of the associated Form I–140 petition could face a substantially longer retention period under the proposed rule than under current regulations. Because the Department cannot predict with confidence which applications will follow each processing path at the time of filing, it cannot reliably estimate the average incremental retention duration across the full population of filers.

Additionally, the incremental cost per unit of additional retention time varies significantly across employers depending on whether they maintain physical or electronic records, the volume of documentation associated with each application, and the nature of each employer's existing document management infrastructure. For the substantial majority of employers who already use electronic filing and document management systems, as evidenced by the near-universal rate of electronic filing in the PERM program,

Schedule A applications for FY 2023–FY 2025 (23,835).

[178] Because Schedule A employers currently file directly with USCIS, the Department does not have independent program data on the volume of Schedule A filings and relies on USCIS administrative records as the best available source for this estimate.

with approximately 99.61 percent of Applications for Permanent Employment Certification filed electronically during FY 2021–FY 2025, the marginal cost of retaining records for an extended period is expected to be negligible, consisting primarily of incremental electronic storage costs that are difficult to isolate and are likely to be minimal relative to overall compliance costs. For the small subset of employers who maintain physical records, the incremental cost would depend on local storage rates and individual document volumes that the Department does not have sufficient data to estimate reliably across the regulated community.

The Department notes that the proposed change does not require employers to collect or create any new documentation; it requires only that documentation already required to be prepared and retained under existing program regulations be preserved for a period that more reliably ensures its availability for program oversight purposes throughout the full adjudication lifecycle of the application and associated petition. For these reasons, the Department concludes qualitatively that the incremental retention costs associated with this provision are minimal relative to the significant program integrity benefits of ensuring that complete documentation remains accessible for the full period during which OFLC and partner agencies may have occasion to request and review it.

The Department requests comment and data that could inform its assessment of the incremental costs associated with the proposed record retention requirements. Specifically, the Department requests comment and data on, the proportion of applications that proceed to audit or BALCA review, the time elapsed between PERM approval or denial and I–140 adjudication, the number of employees potentially affected, the extent of any additional recruitment, hiring, delay, or administrative burdens, and costs associated with those impacts. The Department also requests data on how these costs might vary depending on employer size, industry, and other circumstances.

Permanent Labor Certification Validity Limited to One Use and One Employer (§ 656.30)

The primary costs associated with this clarification fall on employers who have previously relied on the interpretation that an approved permanent labor certification remains available for use in connection with subsequent Form I–140 petitions for the same alien, provided it was timely filed with an initial petition. For employers in this situation whose initial petitions are denied, and whose appeals before USCIS or the federal courts are ultimately unsuccessful, the proposed clarification would require them to obtain a new permanent labor certification, including full compliance with the pre-filing recruitment requirements of proposed section 656.17, before filing a subsequent petition with USCIS. This would involve conducting a new labor market test, obtaining a new PWD from OFLC, and preparing and submitting a new *Application for Permanent Employment Certification,* all of which impose meaningful time and cost on affected employers and their authorized representatives.

The magnitude of this cost is difficult to estimate reliably for several reasons. First, the Department does not have comprehensive data on the number of employers who have reused approved permanent labor certifications in connection with subsequent Form I–140 petitions, as this practice occurs in the context of USCIS adjudication rather than OFLC processing and is therefore not fully captured in the Department's program data. Second, the costs imposed on any individual employer will depend on the circumstances of the underlying denial, the duration of any appellate proceedings before USCIS or the federal courts, and the extent to which labor market conditions and prevailing wage rates have changed in the intervening period, all of which will vary considerably across affected employers.

Because the proposed clarification forecloses a practice that the Department has determined is inconsistent with the intent of the current rule and with the Secretary's statutory obligations under INA section 212(a)(5)(A), the population of employers who would incur these costs going forward is expected to consist primarily of those who have been relying on an interpretation of the regulation that the Department considers erroneous, rather than those engaging in conduct the Department intended to permit.

The Department concludes qualitatively that the costs of this clarification are real, and in some cases may be significant for individual employers affected by it.

Those costs are a necessary consequence of the Department's obligation to administer the permanent labor certification program in a manner consistent with the Secretary's statutory mandate and are proportionate to the program integrity benefits the clarification is designed to achieve.

Recruitment Report Required at Time of Filing (§ 656.10, § 656.17)

The Department acknowledges that requiring submission of the recruitment report at the time of filing will impose an incremental upfront documentation burden on employers and their authorized attorneys or agents. Under the current rule, employers whose applications are not selected for audit are not required to submit the recruitment report at any point during processing. Under the proposed rule, all employers would be required to upload or otherwise submit the recruitment report at the time of filing. Because this change applies to the full universe of applications, rather than only to those selected for audit, it represents a broader expansion of the submission requirement than any prior change in program administration.

Nonetheless, the Department expects the incremental burden of this requirement to be modest for most employers and their representatives and accordingly treats the costs of this provision as a non-quantifiable cost.

Because employers are required to prepare and maintain the recruitment report before filing the *Application for Permanent Employment Certification,* the substantive work of compiling the report is already required under current regulations. The proposed change imposes only the additional step of transmitting the completed report to OFLC at the time of filing rather than retaining it solely in the employer's records. For approximately 99.61 percent of employers who already file electronically using the FLAG System, this additional step consists primarily of uploading the recruitment report into the electronic filing system as part of the standard submission process, a task the Department considers de minimis in isolation. The incremental time associated with this step will vary depending on the format and organization of the employer's existing recruitment documentation, the complexity of the employer's pre-filing recruitment activities, and the capabilities of the employer's document management systems, making it difficult to estimate reliably across the full population of filers.

Furthermore, the incremental burden of this requirement will also vary depending on the degree to which employers and their authorized attorneys or agents have already integrated recruitment report preparation into their standard pre-filing workflows. For immigration law

firms that handle large volumes of PERM filings and have established document management practices, the additional step of uploading the recruitment report concurrently with the application is expected to impose little marginal burden beyond what is already incurred in preparing and organizing the report for retention. For employers who file without outside legal counsel and who may have less standardized pre-filing documentation practices, the incremental burden of ensuring the recruitment report is in a form suitable for submission at the time of filing may be somewhat greater, though the Department expects this cost to decrease over time as employers adapt their pre-filing workflows to the new requirement.

The Department notes that this provision is expected to generate offsetting administrative efficiencies for both employers and OFLC. By enabling OFLC to review the recruitment report for every application as a standard part of adjudication, rather than only upon audit selection, the proposed rule is expected to reduce the frequency of post-filing requests for documentation, support faster adjudication of compliant applications, and reduce the uncertainty and administrative burden associated with responding to audit notices for employers whose applications might otherwise have been selected for that purpose. For these reasons, the Department concludes qualitatively that the incremental costs associated with the universal recruitment report submission requirement are modest and proportionate to the significant program integrity and adjudicative efficiency benefits expected from this change.

Mandatory Electronic Filing

The Department assumes there is a modest cost associated with mandatory electronic filing falls on the small subset of employers who currently file by mail and who may need to establish access to the FLAG System or otherwise adapt their filing practices to comply with the electronic filing requirement. These costs may include the time necessary to establish or access a FLAG System account, convert or upload supporting documentation in an appropriate electronic format, and modify existing administrative procedures used to prepare and submit applications.

The Department expects this transition cost to be minimal for most affected employers, given that the FLAG System is publicly accessible and that the Department proposes to retain a limited exception to mandatory electronic filing for employers who can demonstrate to the OFLC Administrator that they are unable or limited in their ability to use or access electronic filing. This exception ensures that mandatory electronic filing does not impose an unreasonable burden on employers with genuine technological constraints. The Department concludes qualitatively that the transition costs associated with mandatory electronic filing are minimal relative to the cost savings the requirement is expected to generate for the employer community and OFLC.

Antidiscrimination Provision of the INA

This provision *will* prohibit an employer from rejecting any qualified U.S. worker over a prospective *alien* based on any cost justifications or basis, including differences in any term, condition, or privilege of employment, and compensation and fringe benefits between any qualified U.S. worker and a prospective *alien.*

The Department does not expect this provision to impose additional costs on employers because it requires conduct that is already required under existing Federal anti-discrimination laws. Because employers are already required to comply with these legal obligations, the proposed provision does not impose an incremental compliance burden relative to the regulatory baseline; rather, it reinforces and clarifies the application of existing requirements in the PERM context.

2-Year Pre-Filing Anti-Layoff Provision

The Department expects that the proposed expansion of the layoff period from 180 days to 2 years could generate costs that cannot be reliably quantified. The proposed provision could also impose costs on employers by reducing their flexibility to use the permanent labor certification program following a relevant layoff. Employers whose legitimate workforce needs change during the 2-year period may be unable to pursue permanent labor certification for workers in the same or occupations even when subsequent business conditions create a need for additional workers. These employers could incur costs associated with delaying hiring, conducting additional recruitment, retraining or redeploying existing workers, modifying business operations, or using alternative sources of labor. To the extent that relevant visas are thus freed for use by other employers—those with PERM certifications but facing a visa backlog due to statutory caps—there would be partially-offsetting cost savings associated with their accelerated hiring.

Because the Department lacks sufficient information regarding the extent of relevant layoffs, and subsequent employer hiring needs, the effects of this provision are discussed qualitatively. The Department requests public comments and data linking employers' layoff histories to their standing within relevant visa backlogs and invites interested individuals, organizations, and stakeholders to share their feedback and suggestions.

iii. Cost-Savings

In the following sections, the Department presents the cost-savings of this proposed rule.

a. Quantifiable Cost-Savings

Elimination of Mandatory Print Newspaper Advertisements and Expanded Recruitment Method Requirements (§ 656.17, § 656.21)

One of the largest quantifiable cost savings is the Elimination of Mandatory Print Newspaper Advertisements (§ 656.17/§ 656.21). The cost savings of not requiring employers to post their job ads in print newspapers are twofold. Firstly, they save money by not having to pay newspapers money to post their job ad. Secondly, the cost savings also extend to the labor and time spent that companies used to get the ad online.

The average cost of a job posting in a printed newspaper varies. The average print newspaper advertisement cost for a one-inch column, black-and-white ad in a major publication is $681.[179] Assuming this cost is per insertion, the average cost of a job posting in a printed newspaper will be $1,362 to cover two Sundays. The Department will use this figure but is open to public comments on whether it overstates or understates the true average cost of a newspaper job posting.

To estimate the annual cost savings by eliminating mandatory print newspaper advertisements, the Department multiplies the number of certification applications (108,786) by the average cost of a Newspaper job posting ($1,362). This yields an estimated annual cost-savings of approximately $174,465,390 (108,786 × $1,362). Over the ten-year period of analysis, the total undiscounted cost would be approximately $1.74 billion. The annualized cost over the ten-year span is projected at $179.69 million (at a 3 percent discount rate) and $153.71 (at a 7-percent discount rate).

The proposed rule also expands the recruitment method requirements for nonprofessional jobs by requiring advertising on the employer's own

[179] Fit Small Business, ''How Much Does a Newspaper Ad Cost? (+ Factors & Alternatives),'' *https://fitsmallbusiness.com/newspaper-advertising-costs/,* published June 23, 2025.

website(s), at least one job search engine, social media (if applicable), and at a job fair (or campus recruitment) and for professional occupations from three additional methods selected from a menu of options similar to the options proposed in this rule to four or more, consistent with their customary recruitment methods for job opportunities that are not the subject of a PERM application. The Department assumes that there are no additional costs to employers to place a job advertisement on job search engines and at a job fair (or -campus recruitment). There are several ways to post job advertisements online for free, making it easier for employers and small businesses to find qualified candidates without spending money on advertising. Many job boards, social media platforms, and community websites allow users to publish job vacancies at no cost. Employers can also share job openings in professional networking groups, local community forums, and university career portals to reach a wider audience. Using these free online platforms helps organizations attract potential applicants efficiently while reducing recruitment costs. By choosing the right combination of free resources, employers can successfully promote their job opportunities to a large and diverse audience. We are seeking public comments on this matter and invite interested individuals, organizations, and stakeholders to share their feedback and suggestions

b. Nonquantifiable Cost-Savings

Permanent Labor Certification Validity Limited to One Use and One Employer (§ 656.30)

The Department expects the clarification of permanent labor certification validity to generate meaningful cost savings for USCIS and, indirectly, for the broader employer community, by reducing the volume of Form I–140 petitions filed in reliance on stale or improperly reused permanent labor certifications.

Under the current rule, as interpreted by some employers, and current USCIS procedures, an approved permanent labor certification may be reused in connection with successive Form I–140 petitions for the same alien, potentially years after the underlying labor market test was conducted, so long as it was timely filed with an initial petition. Each such petition requires USCIS to expend adjudicative resources to review and process a filing that the Department has determined is inconsistent with the intent of the permanent labor certification program and with the Secretary's statutory obligations under INA section 212(a)(5)(A). Where USCIS denies such petitions, additional costs are incurred through the appellate process, including administrative appeals before the USCIS Administrative Appeals Office and, in some cases, litigation in the federal courts. By clarifying that a permanent labor certification is valid for use in connection with one initial Form I–140 petition only, the proposed rule is expected to reduce the frequency of such filings going forward, generating cost savings for USCIS in the form of reduced adjudicative and administrative costs associated with processing petitions based on stale certifications.

To the extent that the clarification also reduces the frequency of federal court litigation arising from USCIS denials of petitions based on reused certifications, the proposed rule is expected to generate additional cost savings for both USCIS and DOJ in the form of reduced litigation costs. The Department is unable to quantify these savings with precision, as it does not have comprehensive data on the volume of petitions currently filed in reliance on reused certifications or the rate at which such petitions are denied and subsequently litigated. However, the Department concludes qualitatively that these cost savings are real and contribute meaningfully to the overall net benefits of the proposed clarification.

Mandatory Electronic Filing (§ 656.10 & § 656.40)

The Department expects the requirement to file *Applications for Permanent Employment Certification* and *Applications for Prevailing Wage Determination* electronically through the FLAG System to generate meaningful cost savings for both employers and OFLC. Because approximately 99.61 percent of *Applications for Permanent Employment Certification* and more than 99 percent of *Applications for Prevailing Wage Determination* were already submitted electronically during FY 2021–FY 2025, mandatory electronic filing does not represent a change in practice for the substantial majority of employers and their authorized representatives. Rather, it codifies and extends to the full population of filers the efficiencies that the Department and most employers have already realized through voluntary adoption of electronic filing.

For employers who currently file electronically, the cost savings associated with mandatory electronic filing are already being realized and are not incremental to the proposed rule. For the small subset of employers who currently file by mail (approximately 0.39 percent of PERM filers based on recent program data) mandatory electronic filing is expected to eliminate the costs associated with paper-based submission, including printing, postage, and private courier or expedited mailing fees. The Department notes that nearly all employers who currently file by mail disclosed valid email addresses on their applications, suggesting that these filers have access to the internet and are likely capable of transitioning to electronic filing without significant investment in new technology or infrastructure.

For OFLC, mandatory electronic filing is expected to generate operational cost savings by reducing the administrative burden associated with receiving, sorting, scanning, and manually processing paper applications. Electronic filing also reduces the frequency of processing delays attributable to illegible, incomplete, or misdirected paper submissions, and supports more efficient interagency data sharing with USCIS and DOS by enabling direct electronic transmission of certified applications and PWDs. The Department considers these savings to be genuine reductions in Federal administrative costs that contribute to the overall net benefits of the proposed rule.

Elimination of Duplicate Labor Certifications (§ 656.30)

The Department expects the elimination of the process for requesting duplicate paper permanent labor certifications under current section 656.30(e) to generate cost savings for employers (potentially), their authorized representatives (potentially), and OFLC (more certainly) by removing an administrative procedure that is no longer necessary given the Department's transition to fully electronic processing and direct electronic transmission of approved certifications to USCIS and DOS.

Under the current rule, employers, aliens, and their authorized attorneys or agents may request duplicate paper copies of approved permanent labor certifications from the CO for submission to USCIS or DOS. This process requires employers or their representatives to identify the need for a duplicate, submit a request to OFLC, and await issuance of the duplicate certification before proceeding with downstream immigration filings. For OFLC, processing duplicate certification requests requires staff time to locate, verify, and issue the requested documentation. These costs, derived by

both employers and the Federal Government, are entirely avoidable given that OFLC now transmits approved permanent labor certifications directly to USCIS electronically through existing data sharing agreements, and that employers, aliens, and their authorized representatives have real-time access to approved certification records through their FLAG System accounts.

By eliminating the duplicate certification process, the proposed rule removes a procedural step that generates administrative costs without producing program benefits that are meaningful under current operating conditions as they might have been under other conditions. The Department expects that, for employers and authorized representatives who did not use the duplicate certification process, this elimination will have no effect on their burden. For those who voluntarily used the process, its elimination represents a loss of flexibility and a potential cost, as these entities will need to rely on FLAG System access or other means to provide certification documentation to USCIS or DOS, rather than a straightforward savings. For OFLC, cost savings would be in the form of reduced staff time spent processing requests that are no longer necessary for the downstream submission process. The Department also expects this change to strengthen program integrity by reducing the number of original paper permanent labor certifications in circulation, thereby reducing the risk of fraud associated with the possession and potential misuse of paper certification documents. The Department concludes qualitatively that eliminating the duplicate certification process would generate administrative cost savings for the Federal Government and potentially for employers and their representatives who did not rely on the duplicate process, there would be no change in burden. For those who did rely on it, they may incur costs from the loss of flexibility to request duplicate certifications. Such costs could include additional time and resources needed to obtain or verify certification records through alternative procedures. The Department is unable to reliably quantify these costs and seeks public comment on their potential magnitude, including the time and resources needed to obtain or verify certification records through alternative means. The Department requests comment and data that could inform its assessment of this provision.

Elimination of Post-PWD Supplemental Information Submission (§ 656.40)

The Department expects the elimination of the supplemental information submission step currently available under section 656.40(h), which requires employers to submit a request for redetermination before they may seek Center Director Review (CDR) of a PWD under section 656.41, to generate cost savings for employers and their authorized representatives by streamlining the prevailing wage review process and eliminating a procedural step that imposes compliance costs without commensurate program integrity benefits.

Under the current rule, employers who disagree with a PWD issued by OFLC must first submit supplemental information to the NPC under section 656.40(h) before they are eligible to request review by the Center Director under section 656.41. This two-stage review process requires employers and their authorized representatives to prepare and submit supplemental information at the redetermination stage, await a response from the NPC, and then, if the redetermination is unfavorable, prepare and submit a separate request for Center Director Review (CDR). Each stage of this process imposes incremental costs on employers in the form of attorney or agent time spent preparing submissions, coordinating with the NPC, and managing the administrative timeline associated with a multi-stage review process.

By eliminating the redetermination step and permitting employers to proceed directly to Center Director Review (CDR) under section 656.41 when they disagree with a PWD, the proposed rule reduces the number of procedural steps employers must navigate to obtain review of an unfavorable determination. The Department expects this change to generate cost savings for employers by reducing the total time and professional fees associated with challenging a PWD, and to generate operational efficiencies for OFLC by reducing the volume of supplemental submissions the NPC must review and adjudicate outside of the standard RFI process established in proposed section 656.40(c). The Department concludes qualitatively that the elimination of the post-PWD supplemental information submission step generates meaningful cost savings for the regulated community and contributes to the Department's broader goal of streamlining and modernizing the administration of the PWD process.

4. Summary of the Analysis

Exhibit 2 summarizes the estimated total costs, cost savings, and net cost-savings of the proposed rule over the 10-year analysis period. The Department estimates the total net cost-savings of the proposed rule at $164.30 million at a discount rate of 7 percent and $164.37 million at a discount rate of 3 percent.

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Exhibit 2: Estimated Monetized Costs, Cost Savings, and Net Costs,			
	Costs	**Cost Savings**	**Net Costs**
Rule Familiarization (1st Year only)	$3,388,457	$0.00	$3,388,457.00
Employer Signature on All Supporting Documents	$17,360,455	$0.00	$17,360,455
Extended NOF Duration and Locations	$20,781,034	$0.00	$20,781,034
New Attestations	$41,562,067	$0.00	$41,562,067
Schedule A Occupations Subject to Full PERM Recruitment	$14,939,254	$0.00	$14,939,254
Notify OFLC of Pending Layoffs	$2,489,910	$0.00	$2,489,910
Elimination of Mandatory Print Newspaper Advertisements and Expanded Recruitment Method Requirements	$0.00	$1,744,653,900	($1,744,653,900)
Total (Year 1)	$13,101,729	$174,465,390	($161,576,420)
Total (Years 2 through 10)	$87,419,448	$1,570,188,510	($1,482,769,062)
Annualized with a Discount Rate of 3%			($164,366,457)
Annualized with a Discount Rate of 7%			($164,301,239)

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5. Regulatory Alternatives

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. The Department considered two primary alternatives:

Alternative 1: Mandating Additional Recruitment Methods and Longer Recruitment Periods

As an alternative to the proposed rule, the Department considered mandating additional recruitment methods and longer recruitment periods. Under this alternative, the Department could have required employers to conduct a more extensive labor market test by mandating additional recruitment methods and longer recruitment periods beyond those proposed in this NPRM. For example, the Department could have required all employers to conduct recruitment through multiple commercial job search websites, mandatory social media advertising regardless of customary practice, and mandatory employee referral programs. Similarly, the Department could have required all recruitment advertisements to remain active for periods exceeding 90 calendar days, such as 120 or 180 calendar days, to maximize labor market exposure and increase opportunities for U.S. workers to apply. Although the Department recognizes that these more stringent requirements could potentially provide additional protections for U.S. workers and further strengthen program integrity, the Department determined that such approaches would likely impose substantially greater administrative and compliance burdens on employers, increase processing complexity, and reduce operational flexibility for employers with legitimate workforce needs. The Department also determined that these approaches could significantly increase application preparation costs and prolong recruitment timelines without proportionate additional benefits in many cases. Accordingly, the Department determined that the proposed rule appropriately balances the need to strengthen labor market protections and program integrity while avoiding unnecessary burdens on employers and the administration of the PERM program.

Alternative 2: Elimination of Print Newspaper Advertisement Requirements

As an alternative to the proposed rule, the Department considered a narrower regulatory approach that would have focused solely on eliminating the mandatory print newspaper advertisement requirements currently applicable to the PERM labor certification process, while otherwise retaining the existing recruitment framework and procedural requirements under 20 CFR part 656. Under this alternative, employers would continue to comply with the existing PERM labor certification structure, including the distinction between professional and nonprofessional occupations, the current menu-based recruitment system for professional occupations, and existing recruitment timing and notice requirements. However, the Department would eliminate the requirement that employers place print advertisements in newspapers of general circulation on two different Sundays or in professional journals, as currently required under section 656.17.

In place of mandatory print advertisements, the Department considered allowing employers to satisfy the recruitment requirement through alternative electronic recruitment methods, such as commercial job search websites or employer websites, while preserving the remainder of the current regulatory framework. This alternative would have recognized significant changes in labor market recruitment practices and the declining utility of print newspapers as a meaningful recruitment tool for many occupations.

The Department considered this alternative because current labor market practices increasingly rely on electronic recruitment methods rather than traditional print media. Online job platforms, employer career websites, and social media platforms have become the primary means through which employers advertise vacancies and workers search for employment opportunities. In contrast, print newspaper circulation has significantly declined in recent years, including among local and ethnic newspapers traditionally relied upon for recruitment. As a result, the Department recognized that retaining mandatory print newspaper advertisements may impose costs on employers while producing diminishing recruitment value for U.S. workers.

However, after consideration, the Department determined that this limited alternative would not adequately address broader structural and integrity concerns within the PERM labor certification process. Although eliminating print newspaper advertisements would modernize one component of the labor market test, the Department concluded that retaining the remainder of the current recruitment framework would fail to sufficiently align PERM recruitment requirements with contemporary labor market conditions and employer hiring practices. In particular, the Department determined that simply removing print newspaper advertisements without adopting broader modernization measures would not adequately address inconsistencies in recruitment quality, insufficient labor market exposure, or concerns regarding employer recruitment practices that may deter participation by qualified U.S. workers. The Department also determined that this alternative would not sufficiently strengthen protections for U.S. workers impacted by layoffs, improve transparency during adjudication, or address integrity concerns involving third-party placements, inadequate notice procedures, or inconsistent employer recruitment practices.

The Department invites public comments on these or other possible alternatives with the goal of ensuring a thorough consideration and discussion at the final rule stage.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), hereafter jointly referred to as the RFA, requires agencies to prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. The Department conducted the IRFA below of the effect on small entities from the proposed rule.

1. Why the Department Is Considering Action

The Department is considering this rulemaking to modernize and streamline the permanent labor certification (PERM) program and ensure that its regulations continue to fulfill the Department's statutory responsibilities under section 212(a)(5)(A) of the INA. Under the INA, before certain employment-based immigrants may be admitted to the United States for permanent employment, the Secretary must determine and certify that there are not sufficient U.S. workers who are able, willing, qualified, and available to perform the work and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The Department's current PERM regulations were largely established in 2004 and have not undergone comprehensive modernization in approximately two decades. During that time, substantial changes have occurred in labor market conditions, recruitment practices, workforce mobility, and the use of technology in hiring. Employers increasingly rely on electronic recruitment methods, including online job boards, employer websites, social media platforms, and virtual recruitment events, while the use and effectiveness of traditional print newspaper advertising have declined significantly. The Department has determined that the current regulatory framework does not fully reflect these developments and may not consistently ensure that available job opportunities are advertised to the broadest possible pool of qualified U.S. workers.

The Department is also considering this action to strengthen protections for U.S. workers and improve program integrity. Through its administration of the PERM program, the Department has identified areas where existing regulations could be clarified or updated to better address issues involving layoffs, third-party worksite arrangements, notice requirements, recruitment practices, employer accountability, and compliance oversight. The Department believes that updating these requirements would improve transparency, enhance the effectiveness of labor market testing, and provide greater assurance that employers seeking permanent labor certification are conducting recruitment in good faith and providing qualified U.S. workers a meaningful opportunity to compete for available positions.

In addition, the Department seeks to modernize and streamline program administration by codifying electronic filing and communication practices, clarifying regulatory standards, reducing reliance on outdated procedures, and improving operational efficiency. These changes are intended to support timely processing, reduce administrative burdens associated with obsolete requirements, and improve consistency and integrity across the Department's foreign labor certification programs

while continuing to provide employers with access to lawful employment-based immigration pathways when qualified U.S. workers are unavailable.

2. Objectives of and Legal Basis for the NPRM

The objective of this NPRM is to modernize the permanent labor certification (PERM) program, improve protections for U.S. workers, strengthen program integrity, and increase the efficiency and transparency of the Department's administration of employment-based permanent labor certifications. Through this rulemaking, the Department seeks to update regulatory standards and procedures that have remained largely unchanged since implementation of the current PERM framework in 2005, while continuing to provide employers with access to permanent employment-based immigration pathways when qualified and available U.S. workers cannot be found.

The proposed rule would update labor market test requirements to better reflect contemporary recruitment practices and labor market conditions. Among other changes, the Department proposes to replace outdated print-focused recruitment requirements with modern electronic recruitment methods, establish a more uniform recruitment framework applicable to most occupations, clarify recruitment content and timing requirements, and require employers to recruit U.S. workers in a manner that is comparable to recruitment conducted for similar positions outside the PERM process. The Department also proposes to strengthen worker protections by expanding requirements related to layoffs, NOF obligations, and consideration of qualified U.S. workers throughout the labor certification process.

In addition, the NPRM proposes measures intended to enhance program integrity and improve compliance with statutory and regulatory requirements. These measures include revised employer attestations, expanded audit and supervised recruitment authorities, strengthened debarment provisions, successor-in-interest accountability standards, and additional requirements governing attorneys and agents participating in the PERM process. The Department also proposes to modernize program administration through mandatory electronic filing and communications, clarification of PWD procedures, and codification of existing electronic processing practices.

The legal basis for this NPRM is found principally in section 212(a)(5)(A) of the INA, 8 U.S.C. 1182(a)(5)(A), which requires the Secretary to determine and certify, before certain employment-based immigrants may be admitted to the United States, that there are not sufficient U.S. workers who are able, willing, qualified, and available to perform the labor or services involved in the employment opportunity and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. Additional authority is provided by section 212(p) of the INA, 8 U.S.C. 1182(p), governing PWDs, and other statutory authorities delegated to the Secretary for administration of the permanent labor certification program. The Department is issuing this NPRM pursuant to these statutory authorities and its responsibility to establish procedures necessary to carry out the labor certification requirements of the INA.

3. Estimating the Number of Small Entities Affected by the Rulemaking

Based on FY 2021–FY 2025 DOL Certification data, there were 95,656 unique PERM employers. To clarify which industries are impacted by this regulation, Exhibit 3 shows the number of unique PERM employers in the 10 most prevalent industries at the 6- and 4-digit North American Industry Classification System (NAICS) levels. The Department, however, lacks the data needed to identify small employers among the 95,656 unique PERM employers.

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Exhibit 3 – Number of PERM Unique Employers by NAICS Code

6-Digit NAICS	Description	Number of PERM Unique Employers	Percentage of Employers
541511	Custom Computer Programming Services	7,488	8%
722511	Full-Service Restaurants	3,995	4%
541330	Engineering Services	2,457	3%
541512	Computer Systems Design Services	1,609	2%
511210	Software Publishers	1,466	2%
814110	Private Households	1,411	1%
611310	Colleges, Universities, and Professional Schools	1,143	1%
541519	Other Computer Related Services	1,065	1%
722513	Limited-Service Restaurants	1,006	1%
541110	Office of Lawyers	972	1%
All Others		73,044	76%
Total		95,656	100%

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4. Compliance Requirements of the NPRM, Including Reporting and Recordkeeping

The Department has considered the incremental costs (and cost-savings) for small entities from the baseline (*i.e.,* the current practices for complying, at the minimum, with the regulations governing permanent labor certifications at 20 CFR part 656 and labor condition applications at 20 CFR part 655, subpart H) to this NPRM. We estimated the cost (cost-savings) of (1) the time to read and review the NPRM; (2) elimination of mandatory print newspaper advertisements and expanded recruitment method requirements; (3) employer's signature required on all supporting documents; (4) expanded NOF duration and locations; and (5) new attestations. These estimates are consistent with those presented in the E.O. 12866 section.

5. Calculating the Impact of the NPRM on Small Entities

The Department estimates that small entities using the PERM program would incur a one-time cost of $62.68 to familiarize themselves with the rule. In addition to the rule familiarization, each small entity using the PERM program would incur $62.68 for providing employer's signature on all supporting documents. $15.67 for expanded NOF locations. Cost-savings of eliminating mandatory print newspaper advertisements for a job posting is $1,362 per year. The cost of the new and expanded attestation requirements is $31.34 annually per small entities. In total, typical small entities affected will have an annualized cost-savings of $1,190. with 7% discounting.

Exhibit 4 through 13 provide breakdowns of small employers by the proportion of revenue affected by the costs of the NPRM for the top ten most prevalent industries at the six-digit NAICS code level.[180] Based on FY 2023–FY 2025 DOL certification data, approximately 90 percent of unique PERM employers had no more than five certifications over the five-year period. Therefore, the Department assumes that, on average, small employers have one certification per year.

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[180]The Department uses the United States Census Bureau's 2022 Statistics of U.S. Businesses that includes annual receipts for most U.S. business firms (*https://www.census.gov/data/tables/2022/econ/susb/2022-susb-annual.html*).

Exhibit 4 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 5415111

Custom Computer Programming Services (NAICS 541511)					
Small Business Size Standard: $34.0 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	12,194	19.9%	$48,437	$1,190	2.5%
$100,000 to $499,999	25,636	41.9%	$243,535	$1,190	0.5%
$500,000 to $999,999	7,355	12.0%	$712,014	$1,190	0.2%
$1,000,000 to $2,499,999	7,291	11.9%	$1,591,418	$1,190	0.1%
$2,500,000 to $4,999,999	3,772	6.2%	$3,535,956	$1,190	0.0%
$5,000,000 to $7,499,999	1,590	2.6%	$6,043,962	$1,190	0.0%
$7,500,000 to $9,999,999	902	1.5%	$8,487,348	$1,190	0.0%
$10,000,000 to $14,999,999	1,015	1.7%	$11,844,915	$1,190	0.0%
$15,000,000 to $19,999,999	616	1.0%	$16,569,023	$1,190	0.0%
$20,000,000 to $24,999,999	343	0.6%	$21,202,379	$1,190	0.0%
$25,000,000 to $29,999,999	228	0.4%	$25,815,320	$1,190	0.0%
$30,000,000 to $34,999,999	197	0.3%	$30,409,198	$1,190	0.0%

Exhibit 5 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541512

Computer Systems Design Services (NAICS 541512)					
Small Business Size Standard: $34.0 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	9,400	19.5%	$48,269	$1,190	2.5%
$100,000 to $499,999	21,775	45.1%	$244,193	$1,190	0.5%
$500,000 to $999,999	5,913	12.2%	$702,622	$1,190	0.2%
$1,000,000 to $2,499,999	5,310	11.0%	$1,577,051	$1,190	0.1%
$2,500,000 to $4,999,999	2,596	5.4%	$3,492,912	$1,190	0.0%
$5,000,000 to $7,499,999	1,100	2.3%	$5,957,183	$1,190	0.0%
$7,500,000 to $9,999,999	620	1.3%	$8,519,268	$1,190	0.0%
$10,000,000 to $14,999,999	654	1.4%	$11,921,459	$1,190	0.0%
$15,000,000 to $19,999,999	352	0.7%	$16,099,790	$1,190	0.0%
$20,000,000 to $24,999,999	219	0.5%	$20,170,521	$1,190	0.0%
$25,000,000 to $29,999,999	157	0.3%	$25,471,121	$1,190	0.0%
$30,000,000 to $34,999,999	92	0.2%	$29,790,902	$1,190	0.0%
$35,000,000 to $39,999,999	85	0.2%	$34,315,153	$1,190	0.0%

Exhibit 6 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 454111

Electronic Shopping and Mail-Order Houses (NAICS 454111)					
Small Business Size Standard for Retail Trade Industry: $9.0 million – $47.0 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	9,615	18.3%	$46,644	$1,190	2.6%
$100,000 to $499,999	16,997	32.4%	$259,774	$1,190	0.5%
$500,000 to $999,999	7,847	15.0%	$714,538	$1,190	0.2%
$1,000,000 to $2,499,999	8,483	16.2%	$1,581,124	$1,190	0.1%
$2,500,000 to $4,999,999	4,173	8.0%	$3,490,440	$1,190	0.0%
$5,000,000 to $7,499,999	1,791	3.4%	$5,968,086	$1,190	0.0%
$7,500,000 to $9,999,999	937	1.8%	$8,347,625	$1,190	0.0%
$10,000,000 to $14,999,999	996	1.9%	$11,658,443	$1,190	0.0%
$15,000,000 to $19,999,999	544	1.0%	$16,101,985	$1,190	0.0%
$20,000,000 to $24,999,999	340	0.6%	$20,511,574	$1,190	0.0%
$25,000,000 to $29,999,999	218	0.4%	$25,222,537	$1,190	0.0%
$30,000,000 to $34,999,999	166	0.3%	$28,776,867	$1,190	0.0%
$35,000,000 to $39,999,999	143	0.3%	$33,579,308	$1,190	0.0%
$40,000,000 to $49,999,999	170	0.3%	$38,348,212	$1,190	0.0%

Exhibit 7 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 511210

Software Publishers (NAICS 511210)					
Small Business Size Standard for Information Industry: $11.0 million – $47.0 million					
	Number of Firms	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	1,826	14.2%	$46,457	$1,190	2.6%
$100,000 to $499,999	3,738	29.1%	$259,281	$1,190	0.5%
$500,000 to $999,999	1,821	14.2%	$709,754	$1,190	0.2%
$1,000,000 to $2,499,999	2,179	17.0%	$1,574,610	$1,190	0.1%
$2,500,000 to $4,999,999	1,256	9.8%	$3,506,799	$1,190	0.0%
$5,000,000 to $7,499,999	567	4.4%	$6,000,767	$1,190	0.0%
$7,500,000 to $9,999,999	318	2.5%	$8,311,094	$1,190	0.0%
$10,000,000 to $14,999,999	360	2.8%	$11,887,753	$1,190	0.0%
$15,000,000 to $19,999,999	220	1.7%	$15,858,295	$1,190	0.0%
$20,000,000 to $24,999,999	147	1.1%	$21,420,422	$1,190	0.0%
$25,000,000 to $29,999,999	130	1.0%	$26,131,908	$1,190	0.0%
$30,000,000 to $34,999,999	70	0.5%	$29,558,443	$1,190	0.0%
$35,000,000 to $39,999,999	72	0.6%	$34,198,708	$1,190	0.0%
$40,000,000 to $49,999,999	126	1.0%	$41,008,397	$1,190	0.0%

Exhibit 8 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 311615

Poultry Processing (NAICS 311615)					
Small Business Size Standard: 1,250 employees					
Employer with	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
0-4 employees	71	27.3%	$1,099,507	$1,190	0.1%
5-9 employees	37	14.2%	$2,508,270	$1,190	0.0%
10-19 employees	27	10.4%	$8,034,556	$1,190	0.0%
20-99 employees	60	23.1%	$22,382,233	$1,190	0.0%
100-499 employees	35	13.5%	$100,976,800	$1,190	0.0%
500-749 employees	10	3.8%	$235,111,200	$1,190	0.0%
50-999 employees	10	3.8%	$243,939,000	$1,190	0.0%
1,000-1,499 employees	10	3.8%	$436,221,500	$1,190	0.0%

Exhibit 9 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 334111

Electronic Computer Manufacturing (NAICS 334111)					
Small Business Size Standard: 1,250 employees					
Employer with	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
0-4 employees	79	40.5%	$791,873	$1,190	0.2%
5-9 employees	37	19.0%	$3,374,568	$1,190	0.0%
10-19 employees	25	12.8%	$5,710,360	$1,190	0.0%
20-99 employees	36	18.5%	$19,231,194	$1,190	0.0%
100-499 employees	18	9.2%	$154,260,444	$1,190	0.0%
500-749 employees	0	0.0%	NA	NA	NA
750-999 employees	0	0.0%	NA	NA	NA
1,000-1,499 employees	0	0.0%	NA	NA	NA

Exhibit 10 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 611310

Colleges, Universities, and Professional Schools (NAICS 611310)					
Small Business Size Standard: $34.5 million					
Enterprises with receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	157	10.3%	$49,675	$1,190	2.4%
$100,000 to $499,999	341	22.4%	$264,692	$1,190	0.4%
$500,000 to $999,999	154	10.1%	$738,506	$1,190	0.2%
$1,000,000 to $2,499,999	228	15.0%	$1,631,763	$1,190	0.1%
$2,500,000 to $4,999,999	165	10.9%	$3,538,188	$1,190	0.0%
$5,000,000 to $7,499,999	104	6.8%	$6,064,519	$1,190	0.0%
$7,500,000 to $9,999,999	75	4.9%	$8,644,800	$1,190	0.0%
$10,000,000 to $14,999,999	81	5.3%	$11,615,383	$1,190	0.0%
$15,000,000 to $19,999,999	69	4.5%	$17,032,768	$1,190	0.0%
$20,000,000 to $24,999,999	56	3.7%	$22,171,768	$1,190	0.0%
$25,000,000 to $29,999,999	44	2.9%	$26,563,500	$1,190	0.0%
$30,000,000 to $34,999,999	46	3.0%	$31,368,761	$1,190	0.0%

Exhibit 11 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 541519

Other Computer Related Services (NAICS 541519)					
Small Business Size Standard: $34.0 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	2,433	23.4%	$48,118	$1,190	2.5%
$100,000 to $499,999	4,704	45.2%	$239,342	$1,190	0.5%
$500,000 to $999,999	1,185	11.4%	$708,056	$1,190	0.2%
$1,000,000 to $2,499,999	1,002	9.6%	$1,562,830	$1,190	0.1%
$2,500,000 to $4,999,999	472	4.5%	$3,478,585	$1,190	0.0%
$5,000,000 to $7,499,999	178	1.7%	$5,945,230	$1,190	0.0%
$7,500,000 to $9,999,999	111	1.1%	$8,449,153	$1,190	0.0%
$10,000,000 to $14,999,999	133	1.3%	$11,714,707	$1,190	0.0%
$15,000,000 to $19,999,999	68	0.7%	$16,270,147	$1,190	0.0%
$20,000,000 to $24,999,999	55	0.5%	$20,341,618	$1,190	0.0%
$25,000,000 to $29,999,999	31	0.3%	$25,029,194	$1,190	0.0%
$30,000,000 to $34,999,999	23	0.2%	$27,239,087	$1,190	0.0%
$35,000,000 to $39,999,999	18	0.2%	$33,093,556	$1,190	0.0%

Exhibit 12 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 722513

Limited-Service Restaurants (NAICS 722513)					
Small Business Size Standard: $13.5 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100000	13,597	8.5%	$50,945	$1,190	2.3%
$100,000 to $499,999	56,720	35.5%	$288,968	$1,190	0.4%
$500,000 to $999,999	40,506	25.4%	$711,219	$1,190	0.2%
$1,000,000 to $2,499,999	34,412	21.5%	$1,489,168	$1,190	0.1%
$2,500,000 to $4,999,999	8,825	5.5%	$3,318,664	$1,190	0.0%
$5,000,000 to $7,499,999	2,515	1.6%	$5,891,812	$1,190	0.0%
$7,500,000 to $9,999,999	1,536	1.0%	$8,174,289	$1,190	0.0%
$10,000,000 to $14,999,999	1,604	1.0%	$11,316,902	$1,190	0.0%

Exhibit 13 – Cost Impacts as a Proportion of Total Revenue for Small Entities under NAICS 518210

Data Processing, Hosting, and Related Services (NAICS 518210)					
Small Business Size Standard: $40.0 million					
Enterprises with Receipts	**Number of Firms**	**Number of Firms as Percent of Small Firms in Industry**	**Average Receipts per Firm**	**Annualized Cost-Savings per Firm with 7% Discounting**	**Annualized Cost-Savings per Firm as Percent of Receipts**
below $100,000	1,740	16.7%	$46,422	$1,190	2.6%
$100,000 to $499,999	3,183	30.5%	$251,294	$1,190	0.5%
$500,000 to $999,999	1,393	13.4%	$710,749	$1,190	0.2%
$1,000,000 to $2,499,999	1,643	15.8%	$1,589,093	$1,190	0.1%
$2,500,000 to $4,999,999	922	8.8%	$3,498,157	$1,190	0.0%
$5,000,000 to $7,499,999	440	4.2%	$5,918,555	$1,190	0.0%
$7,500,000 to $9,999,999	256	2.5%	$8,153,965	$1,190	0.0%
$10,000,000 to $14,999,999	303	2.9%	$11,453,026	$1,190	0.0%
$15,000,000 to $19,999,999	200	1.9%	$15,758,765	$1,190	0.0%
$20,000,000 to $24,999,999	129	1.2%	$19,035,791	$1,190	0.0%
$25,000,000 to $29,999,999	77	0.7%	$22,959,442	$1,190	0.0%
$30,000,000 to $34,999,999	69	0.7%	$26,595,087	$1,190	0.0%
f $35,000,000 to $39,999,999	64	0.6%	$28,350,719	$1,190	0.0%

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6. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the NPRM

The proposed rule concerns the administration of the permanent labor certification process under section 212(a)(5)(A) of the INA, an area of authority specifically delegated to DOL. The regulations in 20 CFR part 656 govern the standards and procedures by which the Department determines whether there are sufficient qualified and available U.S. workers for a job opportunity and whether the employment of an alien would adversely affect the wages and working conditions of similarly employed U.S. workers.

Although other Federal agencies, including DHS and DOS, administer related aspects of the employment-based immigration system, their regulations address separate statutory responsibilities, such as immigrant visa petition adjudication, visa issuance, and admission of aliens. The proposed revisions in this NPRM are intended to complement, rather than duplicate or conflict with those requirements. However, as USCIS administers the immigrant petition process after DOL grants permanent labor certification, the proposed revisions may require DHS to make technical revisions to 8 CFR 204.5 in the event the Department eliminates Schedule A and other minor changes regarding USCIS requests to OFLC for duplicate Applications for Permanent Employment Certification and outdate references to discontinued DOL Form ETA–750.

7. Alternatives to the Proposed Rule

The RFA requires agencies to consider significant alternatives that accomplish the objectives of the proposed rule while minimizing impacts on small entities. The Department considered the following alternatives.

Alternative 1: Reduced Recruitment Duration for Small Employers

As an alternative to the proposed requirement that most recruitment activities remain active for at least 90 calendar days, the Department considered allowing small employers to satisfy the recruitment requirement through a shorter advertising period, such as 30 or 60 calendar days. This approach would reduce recruitment costs and administrative burdens for small businesses by shortening the duration of required job advertisements and reducing the time needed to complete the labor market test. However, the Department determined that a uniform recruitment period better promotes consistency across employers and provides U.S. workers with a meaningful opportunity to learn about and apply for available job opportunities. Accordingly, the Department is proposing a single recruitment standard applicable to all employers.

Alternative 2: Retention of Current Recruitment Framework With Limited Modernization

The Department considered retaining the existing PERM recruitment framework while eliminating only the

mandatory newspaper advertisement requirements and permitting electronic recruitment methods as substitutes. Under this alternative, employers would continue to follow the current distinction between professional and nonprofessional occupations and the existing recruitment timelines. This approach would reduce compliance costs for small businesses by avoiding many of the new recruitment, notice, and reporting requirements proposed in this NPRM. However, the Department concluded that this narrower approach would not sufficiently address concerns regarding the effectiveness of the labor market test, evolving recruitment practices, program integrity, and protections for U.S. workers. Therefore, the Department determined that the proposed rule more effectively advances its statutory objectives.

The Department welcomes commenter feedback on these regulatory alternatives and invites suggestions for any other regulatory alternatives that commenters believe would be feasible and appropriate.

C. Review Under the Paperwork Reduction Act

In order to meet its statutory responsibilities under the INA, the Department collects information necessary to render determinations on requests for permanent labor certification, which allow employers to bring foreign labor into the United States on a permanent basis under the PERM program. This information collection is authorized by INA sections 203(b)(2) and (b)(3) and 212(a)(5)(A) and 8 U.S.C. 1153(b)(2) and (b)(3) and 1182(a)(5)(A), DOL and DHS have promulgated regulations to implement provisions of the INA at 20 CFR part 656 and 8 CFR 204.5. This information is subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. See 5 CFR 1320.5(a) and 1320.6. The Department obtained OMB approval for this information collection under Control Number 1205–0451. The PRA helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The NPRM, *Modernizing the Labor Market Test and Improving Protections for U.S. Workers in the PERM Immigrant Visa Program,* proposes to update the PERM program by modernizing recruitment to attract high-quality American talent, improving the safeguards for U. S. workers impacted by layoffs, strengthening employer compliance and program integrity, and modernizing the prevailing wage and PERM application process. The Department now proposes revisions to the information collection tools covered under OMB Control Number 1205–0451, to reflect the regulatory changes proposed in this proposed rule. The revisions to Form ETA–9089 and General Instructions the Department is proposing through this proposed rule will align information collection requirements with the proposed regulatory framework and the Department's continued ongoing efforts to provide greater clarity to employers on regulatory requirements, standardize and streamline information collection to reduce employer time and burden preparing applications, minimize processing delays associated with deficient applications, and promote greater efficiency and transparency in the review and issuance of decisions under the PERM program.

Specifically, the Department is proposing conforming changes to the Form ETA–9089, and the General Instructions which include, for example, updating language based on proposed revised regulatory language, eliminating fields that have and will become obsolete due to the Department's proposed changes to eliminate certain steps of the process, and adding new fields to reflect the proposed regulatory changes that will result in new or revised requirements to be implemented. In addition, DOL seeks to extend, without changes, the validity of Form ETA–9089, *Application for Permanent Employment Certification;* Form ETA–9089, *Final Determination: Permanent Employment Certification Approval;* Form ETA–9089, *Appendix A, Foreign Worker Information;* Form ETA–9089, *Appendix B, Additional Worksite Information;* Form ETA–9089, *Appendix C, Supplemental Information;* Form ETA–9089, *Appendix D, Optional Pre-filing Recruitment for College and University Teachers and Professional Athletes and Professional Sports Team Coaches,* and Form ETA–9089, *General Instructions.* The Department is, however, proposing the creation and implementation of a new Form ETA–9089, *Appendix E, Assurances and Obligations* to comply with the proposed revised provisions at 656.13 and to enumerate by topic the assurances and obligations under the PERM labor certification program to which an employer must attest compliance. This form will include existing obligations contained in current sections 656.10, 656.12, 656.17, and 656.20 that are being relocated to proposed section 656.13, which also further revises them to create clear employer attestations in efforts to clarify and/or update compliance requirements. The proposals in this rule strengthen U.S. worker protections and bolster program integrity by holding employers who choose to participate in the PERM program accountable to the Department, and to their responsibilities to both U.S. workers and aliens, with regard to the employer's filing of the of the *Application for Permanent Employment Certification* and participation in the PERM labor certification program.

The rule also proposes that employers seeking to sponsor workers under DHS' National Interest Waiver program must continue to file Form ETA–9089 directly with DHS. This will continue to eliminate the intake of this information by the Department and will transfer the burden imposed by the requirement to another agency so it is not accounted for in the reporting burden disclosure the Department submits to OMB.

In addition, the Department is proposing to revise its regulations covering Schedule A occupations to eliminate the exception to pre-filing recruitment requirements. This change, if approved, would result in employers who utilize Schedule A having to conduct pre-filing requirements and submitting the Form ETA–9089 to the Department, instead of being submitted with DHS, which is the current process.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

The Department is also considering which questions or instructions could be removed to reduce public burden without impacting the general collection of information to assess and process Applications for Permanent Employment Certification or revised to better collect the information needed to fulfill the Department's statutory obligations regarding the requests for permanent employment certification. For example, questions confirming whether a required appendix has been attached could potentially be removed if the electronic platform would not permit submission without the required appendix. Similarly, redundant questions about the employer's acceptance of foreign diploma/degree equivalency could be removed from Form ETA–9089 because the information is already collected through the current Form ETA–9141. The Department is also interested in feedback regarding ways to improve the information collected to ensure consistency across the forms and appendices the Department relies on to collect information in order to process *Applications for Permanent Employment Certification* or requesting more information that would assist employers establish or clarify any successor in interest scenario or travel requirements (*e.g.,* frequency of travel). As discussed above, the Department seeks to improve the collection of worksite information to better reflect modern concepts of remote work and telework, without adding burden to employers. The Department is therefore seeking comments on how to best approach these changes and may consider adding, eliminating or revising questions, as necessary to accomplish the goals of this proposed rule. Lastly, the Department is seeking comments on how an employer's future filings of the ETA Form 9089 under Supervised Recruitment are clearly identifiable.

Agency: DOL–ETA.

Type of Review: Notice of Proposed Rulemaking.

Title of Collection: Application for Permanent Employment Certification.

Forms: Form ETA–9089, *Application for Permanent Employment Certification;* Form ETA–9089, *Final Determination: Permanent Employment Certification Approval;* Form ETA–9089, *Appendix A, Foreign Worker Information;* Form ETA–9089, *Appendix B, Additional Worksite Information;* Form ETA–9089, *Appendix C, Supplemental Information;* Form ETA–9089, *Appendix D, Optional Pre-filing Recruitment for College and University Teachers, and Professional Athletes and Professional Sports Team Coaches;* New Form ETA–9089, *Appendix E, Assurances and Obligations;* and Form ETA–9089, *General Instructions.*

OMB Control Number: 1205–0451.

Affected Public: Individuals or Households; Private Sector (businesses or other for profits); Not-for-profit Institutions; Government, State, Local and Tribal Governments.

Total Estimated Number of Annual Respondents: 42,073.

Annual Frequency: Varies by form.

Total Estimated Number of Annual Responses: 1,032,321.

Estimated Time per Response: Varies by form.

Total Estimated Annual Burden Hours: 29,691 hours.

Total Estimated Annual Other Costs: $104,905,296.20.

D. Review Under Executive Order 13132

E.O. 13132, *Federalism,* 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

The Department has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this proposed rule in accordance with E.O. 13175 and has determined that it does not have tribal implications. This proposed rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and tribal governments.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on state, local, and tribal governments. UMRA requires Federal agencies to assess a regulation's effects on state, local, and tribal governments, as well as on the private sector, except to the extent the regulation incorporates requirements specifically set forth in law. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any regulation that includes any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. A

Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or upon the private sector, except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

The Department examined this proposed rule according to UMRA and its statement of policy and determined that this rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* 53 FR 8859 (Mar. 18, 1988), the Department has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this proposed rule under the OMB guidelines and has concluded that it is consistent with applicable policies in those guidelines.

List of Subjects and Regulatory Amendments in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Passports and visas, Reporting and recordkeeping requirements, Wages.

Department of Labor

For the reasons stated in the preamble, the Department of Labor proposes to amend part 656 of Chapter V, Title 20, Code of Federal Regulations, as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

■ 1. The authority citation for part 656 continues to read as follows:

Authority: 8 U.S.C. 1182(a)(5)(A), 1182(p)(1); sec. 122, Public Law 101–649, 109 Stat. 4978; and Title IV, Public Law 105–277, 112 Stat. 2681.

■ 2. Revise subpart A to read as follows:

Subpart A—General Provisions

Sec.

656.1 Purpose and scope.
656.2 Statutory authority and burden of proof.
656.3 Definition of terms.
656.4 Persons and entities authorized to file and sign.
656.5 Requirements for agents and attorneys.
656.6 Successors in interest.
656.7 Transition procedures.

§ 656.1 Purpose and scope.

(a) *Purpose.* This part establishes the requirements and the procedures by which the Department of Labor (Department or DOL) makes a determination in connection with *Applications for Permanent Employment Certification* and certifies its determination to the Department of Homeland Security (DHS) and Department of State (DOS). A permanent labor certification issued under this part reflects a determination by the Secretary of Labor (Secretary), pursuant to 8 U.S.C. 1182(a)(5)(A), that:

(1) There are not sufficient workers who are able, willing, and qualified United States (U.S.) workers available at the time of application for a visa and admission to the United States and at the place where the alien is to perform the skilled or unskilled services; and

(2) The employment of the alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(b) *Scope.* This part sets forth the procedures governing the labor certification process for the permanent employment of aliens in the United States. It also establishes standards and obligations with respect to the terms and conditions of the permanent labor certification with which employers must comply and sets forth integrity measures for ensuring employers' good faith recruitment of U.S. workers and continued compliance with the terms and conditions of the permanent labor certification.

§ 656.2 Statutory authority and burden of proof.

(a) The Secretary has delegated the authority to issue permanent labor certifications and execute other statutory responsibilities required by 8 U.S.C. 1182(a)(5)(A) to the Office of Foreign Labor Certification (OFLC). Determinations on an *Application for Permanent Employment Certification* are made by the OFLC Administrator who, in turn, may delegate this responsibility to designated staff (*e.g.,* a Certifying Officer (CO)).

(b) The employer has the burden of proof to establish eligibility to receive certification of an *Application for Permanent Employment Certification.*

§ 656.3 Definition of terms.

For purposes of this part, the following definitions apply:

Act. The Immigration and Nationality Act, as amended (INA), 8 U.S.C. 1101 *et seq.*

Actual minimum requirements. The minimum requirements for education, experience, training, skills, licenses, or other requirements that are necessary for prospective applicants to perform the employer's job opportunity in a normally acceptable manner. The employer's actual minimum requirements must be normal for the occupation and must not exceed the Specific Vocational Preparation (SVP) required in the Standard Occupational Classification (SOC) code, as indicated by the Occupational Network (O*NET) Job Zones, or must not be materially different from the requirements stated in the employer's recruitment for job opportunities that were not subject to PERM labor certification in the same or substantially comparable occupational classifications during the 12 months preceding the date on which recruitment began for the job opportunity stated in the *Application for Permanent Employment Certification,* unless the employer is able to establish a business necessity for any requirements that are not normal to the occupation or exceed the SVP.

Administrative Law Judge (ALJ). A person within the Department's Office of Administrative Law Judges appointed pursuant to 5 U.S.C. 3105.

Agent. A legal entity or person that:

(i) Is authorized to act on behalf of the employer for permanent labor certification purposes;

(ii) Is not itself an employer as defined in this subpart with respect to a specific application; and

(iii) Is not under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, or the Executive Office for Immigration Review or DHS under 8 CFR 292.3 or 1003.101.

Applicant. A U.S. worker who is applying for a job opportunity for which an employer anticipates an *Application for Permanent Employment Certification.*

Application for Permanent Employment Certification. The Office of Management and Budget (OMB)-approved Form ETA–9089, including the PWD (Form ETA–9141) and appropriate appendices, or any successor forms submitted by an employer to secure a permanent labor certification determination from DOL.

Area of intended employment (AIE). The geographic area within normal commuting distance of the place(s) of employment for which permanent labor certification is sought. There is no rigid measure of distance that constitutes a normal commuting distance or normal commuting area, because there may be widely varying factual circumstances among different areas (*e.g.,* average commuting times, barriers to reaching the place of employment, or quality of the regional transportation network). If a place of employment is within an MSA, including a multistate MSA, any place within the MSA is deemed to be within normal commuting distance of the place of employment. The borders of MSAs are not controlling in the identification of the normal commuting area; a place of employment outside of an MSA may be within normal commuting distance of a place of employment that is inside (*e.g.,* near the border of) the MSA.

Attorney. Any person who is a member in good standing of the bar of the highest court of any State, possession, territory, or commonwealth of the United States, or the District of Columbia (DC). Such a person is also permitted to act as an agent under this subpart. No attorney who is under suspension, debarment, expulsion, or disbarment from practice before any court, the Department, or the Executive Office for Immigration Review or DHS under 8 CFR 292.3 or 1003.101 may represent an employer under this part.

Barter. The transfer of ownership of a permanent labor certification or application from one person to another by voluntary act or agreement in exchange for a commodity, service, property or other valuable consideration.

Board of Alien Labor Certification Appeals (BALCA or Board). The permanent Board established by this part, chaired by the Chief Administrative Law Judge (Chief ALJ), and consisting of Administrative Law Judges (ALJs) appointed pursuant to 5 U.S.C. 3105 and designated by the Chief ALJ to be members of the Board.

Business day. Any day other than a Saturday, Sunday, or Federal holiday. The terms ''business day'' and ''working day,'' wherever used in this part, have the same meaning.

Business Necessity. An employer's demonstration that the job duties and requirements of the job opportunity bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform the job in a reasonable manner.

Certifying Officer (CO). The person who makes a determination on an *Application for Permanent Employment Certification* filed under this part. The OFLC Administrator is the national CO. Other COs may be designated by the OFLC Administrator to also make the determinations required under this part.

Chief Administrative Law Judge (Chief ALJ). The chief official of the Department's Office of Administrative Law Judges or the Chief ALJ's designee.

Closely held corporation. A corporation that typically has relatively few shareholders and whose shares are not generally traded in the securities market.

Department of Homeland Security (DHS). The Department of Homeland Security, as established by 6 U.S.C. 111.

Employee. A person who is engaged to perform work for an employer, as defined under the general common law of agency. Some of the factors relevant to the determination of employee status include: the hiring party's right to control the manner and means by which the work is accomplished; the skill required to perform the work; the source of the instrumentalities and tools for accomplishing the work; the location of the work; the hiring party's discretion over when and how long to work; and whether the work is part of the regular business of the hiring party. Other applicable factors may be considered and no one factor is dispositive.

Employer. An individual or entity (*e.g.,* partnership, association, corporation, cooperative, firm, joint stock company, trust, public institution, or other organization with legal rights and duties) that seeks to permanently employ a full-time alien at a place within the United States and:

(1)(i) Has or will have an employment relationship (such as the ability to hire, pay, fire, supervise, or otherwise control the work performed by the employee) with respect to a worker;

(ii) Possesses a valid Federal Employer Identification Number (FEIN);

(iii) Has a place of business (physical location) in the U.S. and a means by which it may be contacted for employment The employer must employ at least one individual full-time at the place of business;

(iv) Files an *Application for Permanent Employment Certification* other than as an agent or attorney; and

(v) Is an individual or entity on whose behalf an *Application for Permanent Employment Certification* is filed.

(2) Persons who are temporarily in the United States, including but not limited to, individuals with temporary employment visas, adjustment applicants whose underlying work authorization was based on a temporary employment visa, foreign diplomats, intra-company transferees, students, and exchange visitors, visitors for business or pleasure, and representatives of foreign information media cannot be employers for the purpose of obtaining a labor certification for permanent employment in the United States.

(3) A foreign mission, determined applicable by the Secretary of State, *e.g.* 22 U.S.C. 4302(a)(3) inter alia, cannot be an employer for purposes of obtaining a permanent labor certification.

Equal Employment Opportunity Commission (EEOC). The Equal Employment Opportunity Commission, an independent Federal agency established by Title VII of the Civil Rights Act of 1964.

Familial relationship. A familial relationship includes any relationship established by blood, marriage, or adoption, even if distant. For example, cousins of all degrees, aunts, uncles, grandparents and grandchildren are included. It also includes any relationship established through marriage (including domestic partnerships, common-law marriages or civil unions), such as in-laws and step families.

Federal holiday. Legal public holiday as defined at 5 U.S.C. 6103.

Fraud. A false representation of a material fact, or the concealment of a material fact, made with knowledge of its falsity and with the intent to deceive the Department, DHS, the Department of State, or another Government entity, or to obtain a benefit under this part or the Act to which the person is not entitled. Reliance by the Department on the false representation or concealment is not required.

Immigrant Petition. The U.S. Citizenship and Immigration Services (USCIS) Form I–140, *Immigrant Petition*

for Alien Workers, or successor form, and accompanying documentation required by DHS for employers seeking to employ foreign persons under an employment-based immigrant visa.

Job opportunity. Full-time employment at a place in the United States to which U.S. workers can be referred. In the event of an audit, the employer must be prepared to document the permanent and full-time nature of the position by furnishing position descriptions and payroll records for the job opportunity involved in the *Application for Permanent Employment Certification.*

Job offer. The offer made by an employer or potential employer of an alien(s) to both U.S. and aliens describing all the material terms and conditions of employment, including those relating to wages, working conditions, and other benefits for the job opportunity.

Job order. The document containing the material terms and conditions of employment that is posted by the State Workforce Agency (SWA) on its interstate and intrastate job clearance systems to recruit prospective U.S. applicants for the employer's job offer.

Layoff. An involuntary separation of one or more workers by the employer without cause or prejudice, such as a personnel action characterized by the employer as a reduction in force, restructuring, or downsizing.

Material. A fact, statement, representation, or omission is material if it has a natural tendency to influence, or is capable of influencing, a decision of the Department under this part or a decision of DHS or the Department of State on an Immigrant Petition or visa application that relies on a permanent labor certification, regardless of whether it actually influenced the decision. A misrepresentation is not immaterial merely because the Department could have discovered the truth through its own inquiry.

Metropolitan Statistical Area (MSA). A geographic entity defined by OMB for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. An MSA contains a core urban area of 50,000 or more population, and a Micropolitan Statistical Area contains an urban core of at least 10,000 (but fewer than 50,000) population. Each metropolitan or micropolitan area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core.

National Processing Center (NPC). The offices within OFLC in which the COs operate and which are charged with the adjudication of *Applications for Permanent Employment Certification.*

Non-profit or tax-exempt organization. An organization that:

(1) Is defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)); and

(2) Has been approved as a tax-exempt organization for research or educational purposes by the Internal Revenue Service.

Offered wage. The salary or wage, or salary or wage range offered by the employer for the job opportunity. The offered wage must be included in the employer's *Application for Permanent Employment Certification* and advertisements and must equal or exceed the highest of the prevailing wage or Federal, State, or local minimum wage.

Office of Foreign Labor Certification (OFLC). The organizational component within DOL that provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary under the INA, as amended, concerning aliens seeking admission to the United States in order to work under section 212(a)(5)(A) of the INA, as amended.

OFLC Administrator. The primary official of OFLC, or the OFLC Administrator's designee.

*Occupational Network (O*NET).* The system developed by DOL, Employment and Training Administration, to provide to the general public information on skills, abilities, knowledge, work activities, interests and SVP levels associated with occupations. O*NET is based on the SOC system. Further information about O*NET can be found at *http://www.onetcenter.org.*

Pattern or practice. A course of conduct in which the act or omission in question is repeated, routine, or the regular rather than conduct in which the act or omission in question represents an isolated, sporadic, or accidental act. A pattern or practice may be established by conduct on two or more *Applications for Permanent Employment Certification,* whether filed by or on behalf of the same employer or different employers, and, in the case of an attorney or agent, by conduct across the applications of different clients.

Permanent employment. Employment in a job opportunity of indefinite duration in which an employee will ordinarily have an expectation of continued employment. To establish that a job opportunity is ''permanent,'' an employer must establish, at a minimum, that it: (1) has a bona fide need for a worker to fill a job opportunity whose services or labor are needed year-round, except for job opportunities such as members of the teaching profession and professional athletes; and (2) the employer will not require breaks or periods of inactivity, except where such periods stem from an established employer policy for leave that applies to other employees similarly employed by the employer; and (3) will not enter into a temporary staffing agreement to place the alien with one or more third-party clients.

Permanent labor certification. Certification made by the OFLC Administrator, based on the *Application for Permanent Employment Certification* and all supporting documentation, with respect to an employer seeking to file an Immigrant Petition with DHS to employ an alien under an immigrant visa, pursuant to section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A), and this part.

Place of employment. A worksite or physical location where work under the *Application for Permanent Employment Certification* is actually performed.

Prevailing wage determination (PWD). The prevailing wage for the job opportunity that is the subject of the *Application for Permanent Employment Certification.* The PWD is issued by an NPC on the Form ETA–9141, *Application for Prevailing Wage Determination,* or successor form.

Professional athlete. An individual who is employed as an athlete by (1) A team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or (2) Any minor league team that is affiliated with such an association, as defined by 8 U.S.C. 1182(a)(5)(A)(iii)(II).

Purchase. The transfer of ownership of a permanent labor certification application or certification from one person to another by voluntary act and agreement, based on a valuable consideration.

Sale. An agreement between two parties, called, respectively, the seller (or vendor) and the buyer (or purchaser) by which the seller, in consideration of the payment or promise of payment of a certain price in money terms, transfers ownership of a permanent labor certification application or certification to the buyer.

Secretary of Labor (Secretary). The chief official of the Department or the Secretary's designee.

Secretary of Homeland Security. The chief official of DHS or the Secretary of Homeland Security's designee.

Secretary of State. The chief official of the U.S. Department of State or the Secretary of State's designee.

State Workforce Agency (SWA). A State government agency that receives funds pursuant to the Wagner-Peyser Act, 29 U.S.C. 49 *et seq.,* to administer the State's public labor exchange activities.

Strike. A concerted stoppage of work by employees as a result of a labor dispute, or any concerted slowdown or other concerted interruption of operation (including stoppage by reason of the expiration of a collective bargaining agreement (CBA)).

Substantially comparable. A job or position where more than a majority (*i.e.,* 51 percent or more) of the duties performed are the same as those disclosed in the *Application for Permanent Employment Certification* and justified based on organizational charts and position descriptions, the amount and percentage of time spent performing the duties, and payroll records.

United States. The continental United States, Alaska, Hawaii, the Commonwealth of Puerto Rico, and the territories of Guam, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

U.S. Citizenship and Immigration Services (USCIS). An operational component of DHS.

U.S. worker. A worker who is:

(i) A U.S. citizen or national of the United States;

(ii) An individual who is lawfully admitted for permanent residence in the United States, is admitted as a refugee under 8 U.S.C. 1157 or is granted asylum under 8 U.S.C. 1158.

Wages. All forms of cash remuneration to a worker by an employer in payment for labor or services.

Willful. Done knowingly, deliberately, and voluntarily, or in reckless disregard of the requirements of this part or of the truth or falsity of a representation, as distinguished from an act or omission that is accidental, inadvertent, or merely negligent. A person acts willfully with respect to a requirement of this part when the person knows of the requirement or shows reckless disregard for whether the person's conduct complies with it.

Willful misrepresentation. A false representation of a material fact, made willfully, in connection with an *Application for Permanent Employment Certification,* a prevailing wage determination, or any other document, form, or communication submitted under this part. Intent to deceive is not an element of willful misrepresentation; it is sufficient that the person knew the representation was false, or made it with reckless disregard for its truth or falsity, and made it voluntarily.

§ 656.4 Persons and entities authorized to file and sign.

(a) *Persons authorized to file.* In addition to the employer, an *Application for Permanent Employment Certification* may be filed by an attorney or agent, as defined in § 656.3.

(b) *Employer's signature required.* Regardless of whether the employer is represented by an attorney or agent, the employer is required to sign the *Application for Permanent Employment Certification* and all documentation submitted to DOL.

§ 656.5 Requirements for agents and attorneys.

(a) *Representation agreement required.* An agent or attorney filing an *Application for Permanent Employment Certification* on behalf of an employer must retain an original executed agreement or other document demonstrating their authority to represent the employer and make this documentation available upon request by the CO. Documentation to prove compliance with this requirement must be retained by the agent or attorney for a period of 5 years from the date on which the certified *Application for Permanent Employment Certification* expires or from the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn.

(b) *Consideration of U.S. workers.*

(1) The alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (b)(2) of this section.

(2) The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be a U.S. worker and one who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien which do not involve labor certifications.

§ 656.6 Successors in interest.

(a) *Liability of successors in interest.* Where an employer, agent, or attorney has violated the requirements of this part, a successor in interest to that employer, agent, or attorney may be held liable for the duties and obligations of the violating employer, agent, or attorney in certain circumstances, regardless of whether such successor in interest has succeeded to all the rights and liabilities of the predecessor employer, agent, or attorney.

(b) *Definition of successors in interest.* The following factors, including those as used under Title VII of the Civil Rights Act and the Vietnam Era Veterans' Readjustment Assistance Act, may be considered in determining whether an employer, agent, or attorney is a successor in interest; however, these factors are not exhaustive, and no one factor is dispositive, but all of the circumstances will be considered as a whole:

(1) Substantial continuity of the same business operations;

(2) Use of the same facilities;

(3) Continuity of the workforce;

(4) Similarity of jobs and working conditions;

(5) Similarity of supervisory personnel;

(6) Whether the former management or owner retains a direct or indirect interest in the new enterprise;

(7) Similarity in machinery, equipment, and production methods;

(8) Similarity of products and services;

(9) The ability of the predecessor to provide relief; and

(10) For purposes of debarment, the personal involvement of the firm's ownership, management, supervisors, and others associated with the firm in the violation(s) at issue.

(c) *Effect of debarment on successors in interest.* When an employer, agent, or attorney is debarred under § 656.31(f), any successor in interest to the debarred employer, agent, or attorney is also debarred. No *Application for Permanent Employment Certification* may be filed by or on behalf of or approved for a successor in interest to a debarred employer, agent, or attorney, subject to the term limits set forth in § 656.31(f). If the CO determines that an *Application for Permanent Employment Certification* was filed by or on behalf of a successor in interest to a debarred employer, agent, or attorney during the period of debarment as set forth in § 656.31(f), the CO will deny the application pursuant to § 656.24(d) solely on the basis that the entity is a successor in interest to a debarred employer, agent, or attorney. If the OFLC Administrator determines that a permanent labor certification was issued to a successor in interest to a debarred employer, the OFLC

Administrator may revoke the certification pursuant to § 656.32. The employer, agent, or attorney may appeal its status as a successor in interest to the debarred entity, pursuant to the procedures for appeals of CO determinations at § 656.26.

§ 656.7 Transition procedures.

(a) *Processing of cases under prior regulations.* The NPC will continue to process an *Application for Permanent Employment Certification* or an *Application for Prevailing Wage Determination* submitted prior to February 16, 2027, in accordance with the requirements of this part that were in effect prior to January 19, 2027.

(b) *Processing of cases under new regulations.* The NPC will process an *Application for Permanent Employment Certification* or an *Application for Prevailing Wage Determination* submitted on or after February 16, 2027, in accordance with the requirements of this part that went into effect on January 19, 2027.

Subpart B—[Removed and Reserved]

■ 3. Remove and reserve subpart B, consisting of §§ 656.8 and 656.9.

■ 4. Revise subpart C to read as follows:

Subpart C—Labor Certification Process

Sec.

656.10 Application filing requirements.
656.11 Substitutions and modifications to applications.
656.12 Improper commerce and payment.
656.13 Assurances and obligations of employers.
656.14 Notice of filing.
656.15 [Reserved]
656.16 [Reserved]
656.17 Pre-filing recruitment requirements.
656.18 Optional pre-filing recruitmentrequirementsfor college and university teachers and professional athletes and professional sports team coaches.
656.19 Processing of an application.
656.20 Audit.
656.21 Supervised recruitment.
656.24 Labor certification determinations.
656.26 Review of denials of permanent labor certification.
656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.
656.30 Validity of labor certifications.
656.31 Applications involving fraud, willful misrepresentation, or violations of this part.
656.32 Revocation and invalidation of permanent labor certifications.

§ 656.10 Application filing requirements.

Except as otherwise permitted by statute or this subpart, an employer who desires to hire an alien for permanent employment in the United States must apply and obtain a labor certification from the Secretary by filing an *Application for Permanent Employment Certification* with the NPC designated by the OFLC Administrator. This section provides the procedures employers must follow when filing.

(a) *What to file.*

(1) An employer that desires to apply for permanent labor certification of an immigrant worker must file a complete *Application for Permanent Employment Certification,* including a valid PWD as required by § 656.40, the employer's legal name, trade name(s), and valid FEIN as well as a valid place of business (physical location) in the United States and a means by which it may be contacted by prospective U.S. applicants for employment;

(2) A copy of the NOF providing notice to employees located at the place(s) of employment, as set forth in § 656.14, must be submitted with the *Application for Permanent Employment Certification;*

(3) A copy of all records and documentation demonstrating compliance with pre-filing recruitment requirements set forth in § 656.17 or § 656.18, must be submitted with the *Application for Permanent Employment Certification,* unless the *Application for Permanent Employment Certification* is subject to supervised recruitment procedures as set forth in § 656.21; and

(4) A recruitment report meeting the requirements set forth in § 656.17(f), and copies of all resumes and/or applications for each U.S. worker who applied for the job opportunity, must be submitted with the *Application for Permanent Employment Certification,* unless the *Application for Permanent Employment Certification* is subject to supervised recruitment procedures as set forth in § 656.21.

(b) *Timeliness.* A complete *Application for Permanent Employment Certification,* including all supporting documentation and information required at the time of filing under this subpart, must be filed within 30 calendar days after the completion of the recruitment procedures set forth in § 656.17 or the optional pre-filing recruitment procedures set forth in § 656.18.

(c) *Location and method of filing.*

(1) *Electronic filing.* The employer must file the *Application for Permanent Employment Certification* and all required supporting documentation with the NPC using the electronic method(s) designated by the OFLC Administrator. The NPC will return without review any application submitted using a method other than the designated electronic method(s), unless the employer submits the application in accordance with paragraph (c)(2) or (3) of this section.

(2) *Filing by mail.* Employers that lack adequate access to electronic filing may file the application by mail. The employer must indicate that it is filing by mail due to lack of adequate access to electronic filing. The OFLC Administrator will identify the address to which such filing must be mailed by public notice(s) and by instructions on DOL's website.

(3) *Reasonable accommodation.* Employers who are unable or limited in their ability to use and/or access the electronic *Application for Permanent Employment Certification,* or any other form or documentation required under this part, as a result of a disability may request a reasonable accommodation to enable them to participate in the permanent labor certification program. An employer in need of such an accommodation may contact the NPC in writing to the address designated in a notice published in the **Federal Register**, or for individuals with hearing or speech impairments, 1–877–889–5627 (this is the TTY toll-free Federal Information Relay Service number) for assistance in using, accessing, or filing any form or documentation required under this part, including the *Application for Permanent Employment Certification.* All requests for an accommodation must include the employer's name, a detailed description of the accommodation needed, and the preferred method of contact. The NPC will respond to the request for a reasonable accommodation within 10 business days of the date of receipt.

(d) *Original signature.* The *Application for Permanent Employment Certification* must contain an electronic (scanned) copy of the original signature of the employer (and that of the employer's authorized attorney or agent if the employer is represented by an attorney or agent) or a verifiable electronic signature method, as directed by the OFLC Administrator. If submitted by mail, the *Application for Permanent Employment Certification* must bear the original signature of the employer and, if applicable, the employer's authorized attorney or agent.

(e) *Additional documentation for certain job opportunities.* An employer who desires to hire an alien for permanent employment in the United States in one of the following job opportunities must maintain, at the time of filing, the additional documentation required by this section and be prepared to submit such documentation in the

event of an audit or in response to a request from the CO:

(1) For a live-in household domestic service worker job opportunity, an employer must maintain the following documentation:

(i) A copy of the executed contract signed and dated by the employer and alien containing, at a minimum, the same material terms of employment specified on the *Application for Permanent Employment Certification* and the following information and employment guarantees:

(A) A description of the household living accommodations, including the type of residence (*e.g.,* house or apartment), number of rooms inside the residence, and number of adults and children, with ages of the children, residing in the residence;

(B) The total hours of employment per week and the expected hours of employment per day;

(C) The total amount of any money that the employer will advance to the alien, including a detailed description of each specific item and amount of advance, and the terms of repayment by the alien of any such advance;

(D) A statement that a private room on the employer's premises and board will be provided, at no cost, to the alien;

(E) A statement that the alien is free to leave the employer's premises during all non-work hours, except the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(F) A statement that the alien will not be required to give more than two weeks' notice of intent to leave the employment contracted for and the employer must give the alien at least two weeks' notice before terminating employment; and

(G) Any other agreement or material term or condition of employment not specified on the *Application for Permanent Employment Certification.*

(ii) Documentation that the alien possesses at least one year of full-time paid work experience, exclusive of any training, in the form of written statements, signed and dated from past or present employers, providing a detailed statement of the duties performed and equipment used, identifying the dates (month and year) employment started and ended, hours of work per day, number of days worked per week, place(s) where the alien was employed and the amount of wages paid per week or month.

(2) For a job opportunity with an employer that is a closely held corporation or partnership in which the alien has an ownership interest, or if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, or if the alien is one of a small number of employees, the employer must maintain the following documentation:

(i) A copy of the articles of incorporation, partnership agreement, business license or similar documents that establish the business entity;

(ii) A list of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles and positions in the business' structure, and a description of the relationships to each other and to the alien;

(iii) The financial history of the corporation/company/partnership, including the total investment in the business entity and the amount of investment of each officer, incorporator/partner and the alien; and

(iv) The name of the business' official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the business' official(s) having control or influence over hiring decisions involving the position for which permanent labor certification is sought.

(v) If the alien is one of 10 or fewer employees, the employer must document any familial relationship between the employees and the alien.

(3) For a professional athlete or professional sports team coach job opportunity that meets the definition set forth in § 656.3, the employer must maintain the following documentation:

(i) A copy of the executed written contract, signed and dated by the employer and alien, covering the entire year or period that indicates the specific payment(s) made to the alien;

(ii) An employment letter stating that the alien will work a minimum of ten (10) hours per week during the off-season period; and

(iii) For an alien being sponsored for permanent employment as a professional athlete, a copy of a letter or response, whether electronic or print, from the Players' Association or applicable trade union(s) stating that it was provided notice from the employer, as required by § 656.14(a)(1), and has no objection to the filing of the *Application for Permanent Employment Certification.*

(f) *Filing date.*

(1) The filing date for any *Application for Permanent Employment Certification* received using the electronic method(s) designated by the OFLC Administrator will be the date on which the complete application, including all applicable appendices and supporting documentation, is submitted and accepted for processing with the NPC. The filing date will be based on the time of submission in the Eastern time zone of the United States.

(2) The filing date for any *Application for Permanent Employment Certification* received in accordance with paragraph (c)(2) or (3) of this section will be the postmark date affixed to the employer's *Application for Permanent Employment Certification* submission, provided that the NPC determines the application is complete.

(g) *Completeness.* The employer must file a complete *Application for Permanent Employment Certification* that meets all the requirements of this part. If an employer submits an incomplete *Application for Permanent Employment Certification,* it will be returned without review and will not retain a filing date. If an incomplete *Application for Permanent Employment Certification* is returned unprocessed, the decision will be a final action and will not be subject to reconsideration or review under § 656.26.

(h) *Record retention requirements.* Copies of *Applications for Permanent Employment Certification* filed with DOL and all supporting documentation and records demonstrating compliance with this part must be retained by the employer for a period of 5 years from the latest of the following dates: the date on which the Immigrant Petition is approved by USCIS; the date the approved *Application for Permanent Employment Certification* expires, if the employer does not file an Immigrant Petition using the certification; or the date the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn.

§ 656.11 Substitutions and modifications to applications.

(a) Substitution or change to the identity of an alien on any *Application for Permanent Employment Certification* and on any resulting permanent labor certification is prohibited.

(b) Requests for modifications to any *Application for Permanent Employment Certification* filed with the NPC and on any resulting permanent labor certification are prohibited.

§ 656.12 Improper commerce and payment.

The following provision applies to any *Application for Permanent Employment Certification* and permanent labor certification issued under this part.

(a) *Applications for Permanent Employment Certification* and permanent labor certifications issued under this part are not articles of commerce. They may not be offered for

sale, barter or purchase by individuals or entities. Any evidence that an *Application for Permanent Employment Certification* or a permanent labor certification has been sold, bartered, or purchased will be grounds for investigation under this part and is grounds for denial under § 656.24, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

(b) An employer must not seek or receive payment of any kind for any activity related to obtaining permanent labor certification, including payment of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing an *Application for Permanent Employment Certification,* except when work to be performed by the alien in connection with the job opportunity would benefit or accrue to the person or entity making the payment, based on that person's or entity's established business relationship with the employer. An alien may pay his or her own costs in connection with a permanent labor certification, including attorneys' fees for representation of the alien, except that where the same attorney represents both the alien and the employer, such costs must be borne by the employer. For purposes of this paragraph (b), payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor.

(c) Evidence that an employer has sought or received payment from any source in connection with an *Application for Permanent Employment Certificatio*n or a permanent labor certification, except for a third party to whose benefit work to be performed in connection with the job opportunity would accrue, based on that person's or entity's established business relationship with the employer, will be grounds for investigation under this part or any appropriate Government agency's procedures, and is grounds for denial under § 656.24, revocation under § 656.32, debarment under § 656.31(f), or any combination thereof.

§ 656.13 Assurances and obligations of employers.

As part of the *Application for Permanent Employment Certification* and job offer, the employer seeking to employ an alien must declare, under penalty of perjury, that it has knowledge of and will comply with all the requirements of this part and the conditions of employment set forth in this section. The official or employee declaring compliance for the employer under this part must be the official or employee who is most familiar with the content of and recruitment for the job opportunity and is authorized to provide all information and documentation supporting the *Application for Permanent Employment Certification,* and to communicate with the Department on behalf of the employer. Each assurance in this section is a material condition of certification, and the employer's declaration of compliance with each is a representation of fact on which the Department relies. A certification is not a substitute for the evidence required by this part, and the CO will not accept a declaration as establishing any fact that the employer is required by this part to document. Failure to attest to compliance with any of the conditions listed below will result in a denial of the *Application for Permanent Employment Certification.* A false declaration, or a failure to comply with any assurance or obligation in this section, is grounds for denial under § 656.31(a), revocation under § 656.32, and debarment under § 656.31(f); will be referred as provided in § 656.31(b); and is punishable under 18 U.S.C. 1001, 1546, and 1621.

(a) *Bona fide job opportunity and non-discrimination.*

(1) The job opportunity identified in the *Application for Permanent Employment Certification* is a bona fide full-time permanent position and the terms and conditions of employment comply with applicable Federal, State, and local laws and regulations.

(2) The job opportunity has been and will continue to be open to any qualified U.S. worker, regardless of race, color, national origin, age, sex, pregnancy, religion, disability, genetic information, or citizenship status, through the date on which the Immigrant Petition is approved by USCIS or the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn, whichever is later.

(3) Rejection(s) of any U.S. worker(s) who applied or apply for the job were or will be only for lawful, job-related reasons, and those not rejected on this basis have been or will be hired. The employer has not and will not reject any qualified U.S. worker over the prospective alien based on any cost justifications, including those based on differences in any term, condition, or privileges of employment, including compensation and fringe benefits, between any qualified U.S. worker and the prospective alien. The employer has and will continue to retain records of any hire(s) and rejection(s) as required by this part.

(4) *Compliance with anti-discrimination laws.* The employer has complied, and will continue to comply, with:

(i) Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.,* which prohibits discrimination in hiring, discharge, compensation, and the terms, conditions, or privileges of employment because of race, color, religion, sex, or national origin, including discrimination against U.S. workers because of their national origin and in favor of workers of a different national origin, and which is primarily enforced by the EEOC; and

(ii) 8 U.S.C. 1324b, which prohibits discrimination in hiring, recruitment or referral for a fee, and discharge because of citizenship status against protected individuals as defined in 8 U.S.C. 1324b(a)(3) (including U.S. citizens and nationals, lawful permanent residents, refugees, and asylees), prohibits discrimination because of national origin by employers with four or more employees that are not covered by Title VII, prohibits unfair documentary practices in the employment eligibility verification process, and prohibits retaliation, and which is enforced by DOJ.

(iii) Nothing in this part limits any obligation under the laws described in paragraphs (a)(4)(i) and (ii) of this section, and compliance with this part is not a defense to liability under those laws.

(iv) The employer has retained documentation demonstrating that the wage and the terms, conditions, and privileges of employment offered to the alien do not differ from those offered to similarly situated U.S. workers employed in the same or substantially comparable positions within the area of intended employment.

(5) *No less favorable terms, conditions, and compensation for U.S. workers.* As a condition of certification under 8 U.S.C. 1182(a)(5)(A)(i)(II), and consistent with the obligations described in paragraph (a)(4) of this section, the employer has offered, and will continue to offer, to every able and qualified U.S. worker who applies for, is referred to, or is employed in the job opportunity or in a similarly situated position, terms, conditions, and privileges of employment—including hiring, job assignments, compensation, hours of work, training, fringe benefits, promotion, and demotion—that are no less favorable than those offered to the alien who is the subject of the *Application for Permanent Employment*

*Certification*This paragraph states a wage-and-working-conditions requirement of the permanent labor certification program; it does not construe, limit, or expand Title VII of the Civil Rights Act of 1964, 8 U.S.C. 1324b, or any other law.

(b) *No strike, lockout, or work stoppage.* The employer assures that this job opportunity, including all places of employment for which the employer is requesting permanent labor certification, is not vacant because the former occupant(s) is (are) on strike or being locked out in the course of a labor dispute involving a work stoppage.

(c) *Offered wage and ability to pay guarantees.* The employer has offered, and will continue to offer a wage that:

(1) Equals or exceeds the highest of the applicable Federal, State, or local minimum wage, the PWD for the occupation that is issued by the Department to the employer, as reflected on the *Application for Permanent Employment Certification.* If, after the issuance of a PWD, the Department issues a new or revised PWD that is assigned to the employer's *Application for Permanent Employment Certification,* the employer will offer a wage that equals or exceeds the highest of the new prevailing wage, the applicable Federal, State, or local minimum wage, unless notified otherwise by the Department.

(2) Does not and will not result in less favorable treatment in compensation, fringe benefits, or other terms, conditions, and privileges of employment for current or prospective U.S. workers employed in, or seeking to be employed in, similarly situated positions at the employer, as required by all applicable federal anti-discrimination laws and regulations under Title VII of the Civil Rights Act of 1964 and the Immigration and Nationality Act's Antidiscrimination Provision, 8 U.S.C. 1324b.

(3) Is not based on commissions, bonuses, or other incentives, unless the employer guarantees an offered wage earned on a weekly, bi-weekly, or monthly basis that equals or exceeds the prevailing wage.

(4) The employer has the ability to pay with existing, internally-available, non-contingent financial resources owned and controlled by the employer at the time of filing the *Application for Permanent Employment Certification* for work performed in the job opportunity identified in the *Application for Permanent Employment Certification.* The employer will be able to place the alien on the employer's payroll on or before the date of application for a visa and admission to the United States.

(d) *Good faith recruitment of U.S. workers.* The employer has conducted, and will continue to conduct, recruitment of U.S. workers, as required under this part, in good faith, in the same manner, through the same channels, and on terms no less favorable to U.S. workers as those on which it normally recruits and considers U.S. workers in the same job opportunities for which the employer does not seek labor certification to employ an alien(s). This applies to, but is not limited to, the following:

(1) The method, manner, and location of job postings (*e.g.,* online versus paper job postings; posting in an employer's centralized job web page versus specialized, PERM-specific job web pages) and the duration of any job posting;

(2) The method by which an applicant may apply (*e.g.,* online via a centralized employer website versus PERM-specific email addresses, fax, or paper applications);

(3) The description of the job opportunity, qualifications, and requirements needed to perform the work, which cannot be tailored to the prospective alien and the requirements for applying cannot be unduly restrictive so as to make it difficult for U.S. workers to be deemed qualified.

(4) Interview requirements and procedures. Employers that wish to require interviews must conduct those interviews by phone or provide an alternative method (*e.g.,* virtual meetings or conferencing, cloud calls) for the interviews to be conducted in the location where the U.S. worker(s) is/are being recruited so that the worker incurs little or no cost due to the interview. Employers cannot provide a prospective alien with more favorable treatment than U.S. workers with respect to the requirements for applying and conducting interviews for the job opportunity. The employer representative conducting the interview must be a U.S. worker and one who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien which do not involve labor certifications.

(5) Each method by which a U.S. worker may apply for the job opportunity must be operational, monitored, and capable of receiving and retaining applications throughout the period of recruitment, and the employer must retain and submit evidence of its operation as required by § 656.17(g).

(6) Recruitment for the job opportunity through any method, channel, or procedure that is less accessible or less favorable to U.S. workers than the employer's ordinary recruitment for similar job opportunities, or through an application channel that does not meet paragraph (d)(5) of this section, is presumed not to have been conducted in good faith; is an independent ground for denial under § 656.24; and will be referred under § 656.31(b) to DOJ and, where the facts indicate possible discrimination because of national origin, to the EEOC.

(e) *Layoffs and consideration of laid-off U.S. workers.* With regard to layoffs of any U.S. worker(s) in the same or similar occupation (*i.e.,* the same SOC code or a substantially comparable position) that is the subject of the *Application for Permanent Employment Certification* in the area of intended employment of the place(s) of employment, including the placement of the alien with another employer subject to paragraph (f) of this section, the employer:

(1) Must not have laid off any such U.S. worker(s) within 2 years prior to the filing of the application;

(2) If a layoff of any such U.S. worker(s) occurs after filing the application and before the date on which the Immigrant Petition is approved by USCIS, or the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn, whichever is later, the employer:

(i) Must notify the NPC, and USCIS in the case of a pending Immigrant Petition, in writing or by any other method specified by the Department in a notice published in the **Federal Register** or specified by USCIS not later than 5 business days after such layoff(s) occurs; and

(ii) Must offer the job opportunity that is the subject of the *Application for Permanent Employment Certification* to those laid-off U.S. worker(s), at no less than the offered wage and on the terms and conditions stated in the *Application for Permanent Employment Certification,* and document whether the U.S. worker(s) refused the job opportunity, was rejected for the job opportunity for lawful, job-related reasons, or was hired.

(f) *Placing contract workers with other employers engaging in layoffs prohibited.* The employer has not placed, and will not place, the alien who is the subject of the *Application for Permanent Employment Certification* with another employer (including that employer's parent, subsidiary, or affiliate) where:

(1) There are indicia of an employment relationship between the alien and that other employer,

consistent with the criteria set forth in § 655.738(d)(2) of this chapter;

(2) The other employer laid off U.S. workers in its workforce who are employed in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification,* between the date that is 2 years prior to the filing of the application and the date on which the Immigrant Petition is approved by USCIS or the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn, whichever is later.

(g) *Compliance with prohibition on improper commerce and employees paying fees.* The employer and its agents, attorneys, and/or employees have not offered, and will not seek to offer, for sale, barter or purchase to any individual or entity *Applications for Permanent Employment Certification* at any time, including applications certified by the Department, and have not sought or received, and will not seek to receive, payment of any kind from the worker(s) for any activity related to obtaining permanent labor certification, including payment of the employer's attorneys' fees, whether as an incentive or inducement to filing, or as a reimbursement for costs incurred in preparing or filing a permanent labor certification application, except when work to be performed by the alien in connection with the job opportunity would benefit or accrue to the person or entity making the payment, based on that person's or entity's established business relationship with the employer. An alien may pay his or her own costs in connection with a labor certification, including attorneys' fees for representation of the alien, except where the same attorney represents both the alien and the employer, such costs must be borne by the employer. Payment includes, but is not limited to, monetary payments; wage concessions, including deductions from wages, salary, or benefits; kickbacks, bribes, or tributes; in kind payments; and free labor.

(h) *Compliance with applicable laws.* The employer has complied and will continue to comply with applicable Federal, State and local employment-related laws and regulations, including, but not limited to, employment-related health and safety laws, Federal, State, and local anti-discrimination laws, including Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*) and 8 U.S.C. 1324b; anti-trafficking laws, including 18 U.S.C. chapter 77; and all applicable provisions of the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.* In addition, the employer and its agents and attorneys are prohibited from holding or confiscating workers' passports, visas, or other immigration documents pursuant to 18 U.S.C. 1592(a).

(i) *Compliance with record retention requirements.* The employer filing an *Application for Permanent Employment Certification* will retain all documents and records demonstrating compliance with this part for a period of 5 years from the period specified in section 656.10(h).

(j) *Cooperation with federal compliance reviews relating to activities conducted under this part.* The employer will fully cooperate with any audit, supervised recruitment, compliance review, evaluation, or inspection conducted by DOL and any other federal agency related to compliance with this part.

§ 656.14 Notice of filing.

(a) An employer who desires to hire an alien for permanent employment in the United States must post notice of the filing of the *Application for Permanent Employment Certification* and be able to document that notice was provided, as follows:

(1) If there is a bargaining representative(s) for the employer's employees in the occupational classification located at the place(s) of employment, the employer must provide written notice, electronically or by mail, by providing a copy of the *Application for Permanent Employment Certification* and maintaining documentation of where and when it was sent to the bargaining representative(s).

(2) If there is no bargaining representative(s), the employer must post notice in at least two conspicuous locations to all employees located at the place(s) of employment in which the work will be performed by the alien. Electronic posting, such as displaying the notice prominently on any internal or external website that is maintained by the employer, known and readily accessible to all employees, and customarily used by the employer for notices to employees about terms and conditions of employment, is sufficient to meet this posting requirement as long as it otherwise meets the requirements of this section. The notice must be of sufficient size, clearly visible, and unobstructed while posted and must be posted in conspicuous places where the employees of the employer would normally expect to see such employment-related notices and can readily read the posted notice on their way to or from their place of employment. The documentation requirement may be satisfied by providing a copy of the posted notice and stating where and when it was posted, and by providing copies of all the in-house media, whether electronic or print, that were used to distribute notice of the application in accordance with the procedures used for similar positions within the employer's organization.

(b) If the employer intends to employ the alien under the *Application for Permanent Employment Certification* at a third-party worksite, the employer's obligation to provide notice under paragraph (a) of this section extends to the third-party worksite, regardless of whether the place(s) of employment is/are owned or operated by the employer or by some other person or entity.

(c) In the case of a private household, notice is required under this section only if the household employs one or more U.S. workers at the time the application for labor certification is filed. The documentation requirement may be satisfied by providing a copy of the posted notice to the CO.

(d) The notice of the filing of an *Application for Permanent Employment Certification* must:

(1) State that notice is being provided in connection with the filing of an *Application for Permanent Employment Certification* by the employer to sponsor an alien for permanent employment in the job opportunity;

(2) State any person may provide information or documentary evidence bearing on the *Application for Permanent Employment Certification* to the OFLC Administrator of DOL; and

(3) Provide the physical address of the OFLC Administrator.

(e) The notice must contain the information required for advertisements by § 656.17(e) and contain the information required by paragraph (d) of this section.

(f) The notice of filing must be provided or posted within 10 business days before the *Application for Permanent Employment Certification* is filed with the NPC and continue to be available or displayed through the date on which the Immigrant Petition is approved by USCIS or the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn, whichever is later.

§ 656.15 [Reserved]

§ 656.16 [Reserved]

§ 656.17 Pre-filing recruitment requirements.

(a) *Employer obligations.* Except for *Applications for Permanent Employment Certification* involving college or university teachers or professional athletes or professional sports team coaches using the recruitment procedures set forth in § 656.18, an employer must attest to having conducted recruitment under this section prior to the filing of the *Application for Permanent Employment Certification* and comply with all advertising requirements set forth in paragraphs (b) through (e) of this section.

(b) *Required recruitment.*

(1) Place a job order with the SWA(s) serving the place(s) of employment.

(2) Where the employer maintains one or more websites for its business operations, place an advertisement for the job opportunity on the web page the employer customarily uses to recruit for job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification.* If the employer does not customarily use its website(s) for its business operations to recruit for job opportunities that are not the subject of an *Application for Permanent Employment Certification,* the employer must post the job opportunity that is the subject of the *Application for Permanent Employment Certification* on a web page on all of its business operations website(s) in a conspicuous location.

(3) Place an advertisement for the job opportunity on at least one job search website other than a website maintained by the employer or SWA(s). Where the employer customarily uses one or more job search websites to advertise the job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification,* the employer must place an advertisement for the job opportunity on all such websites using the same method(s) and location(s) that it uses for job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification.*

(4) Where the employer customarily uses one or more social media platforms to advertise job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification,* the employer must place an advertisement for the job opportunity on all such social media platforms using the same method(s) and location(s) that it uses for job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification.*

(5) During the period of time the job order placed with the SWA under paragraph (b)(1) of this section is actively circulating, place an advertisement for the job opportunity in the occupational classification through at least one job fair, on-campus recruiting event, or with a college, university, or trade school's placement office. Where the employer customarily engages in one or more job fairs or on-campus recruiting events or placement offices at different colleges, universities, or trade schools to advertise job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification,* the employer must place an advertisement for the job opportunity in the same occupational classification that is the subject of the *Application for Permanent Employment Certification* using the same method(s) and location(s) for all such job fairs, on-campus recruitment events, or placement offices that it uses for job opportunities in the same occupational classification that are not the subject of an *Application for Permanent Employment Certification.*

(c) *Length of active recruitment.* All advertisements placed in connection with the requirements set forth in paragraphs (b)(1) through (4) of this section must be active for a period of no less than 90 calendar days or the total number of days the employer has customarily advertised for the same or similar job opportunities during the most recent 12 months that were not the subject of an *Application for Permanent Employment Certification.*

(d) *Completion of active recruitment.* Each of the advertisements placed in connection with the requirements set forth in paragraphs (b)(1) through (4) of this section must be completed no more than 60 calendar days and no less than 30 calendar days before the expected filing of the *Application for Permanent Employment Certification.*

(e) *Advertising requirements.*

(1) All recruitment conducted under this subpart must contain terms and conditions of employment that are not less favorable than those offered to the alien and, at a minimum, must comply with the assurances applicable to the recruitment of U.S. workers set forth in § 656.13. In addition, employers must enable any and all information systems they use for collecting, maintaining, and tracking applicants for non-PERM related recruitment to capture all applications that U.S. workers submit for PERM-related recruitment, and enable all applicant records to remain searchable in the same manner as applicant records for non-PERM related recruitment.

(2) All advertising must contain the following information:

(i) The employer's name and contact information;

(ii) A description of the job opportunity with sufficient information to apprise U.S. workers of the services or labor to be performed, including the duties and actual minimum qualifications or requirements to perform the services or labor and the hours of work per week;

(iii) The place(s) of employment or geographic area of employment, including a statement as to whether the position offers remote work, full-time telework, or a hybrid combination of telework and on-site work, with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the service or labor;

(iv) The wage offer or, in the event that there are multiple wage offers, the range of applicable wage offers, each of which must equal or exceed the highest of the prevailing wage or the Federal, State, or local minimum wage;

(v) If applicable, a statement that overtime will be available to the worker and the wage offer(s) for working any overtime hours; and

(vi) A statement that the job is a full-time position and, if the employer has more than one job opening, indicate the total number of job openings the employer intends to fill.

(3) An employer may recruit for multiple positions simultaneously through a single advertisement, provided that, with respect to each job opportunity for which certification is sought, the multi-position advertisement:

(i) Complies with the pre-filing recruitment timing requirements in paragraph (d) of this section;

(ii) Complies with the recruitment placement and duration requirements in paragraphs (b) and (c) of this section;

(iii) Includes sufficient information to apprise U.S. workers of each job opportunity, including all information required by this paragraph (e).

(f) *Recruitment report.*

(1) *Requirements of a recruitment report.* The employer must prepare, sign, and date a written recruitment report. The recruitment report must be completed before it is submitted concurrently with the filing of the *Application for Permanent Employment*

Certification, as set forth in § 656.10, or on a date specified by the CO as required by the procedures for supervised recruitment set forth in § 656.21 and contain the following information:

(i) Identify the name of each recruitment activity, date(s) of advertisement, the uniform resource locator (URL) or other location of each advertisement, and, for each advertisement placed with a website, platform, publisher, or the SWA, the platform- or publisher-generated confirmation number, receipt, or order identifier and the posting and expiration dates it generated;

(ii) State the name and contact information of each U.S. worker, including those laid off by the employer, who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, categorized by the advertising method through which the U.S. worker(s) applied for the job opportunity; and, for each U.S. workers, specify the date(s) of application, whether the U.S. worker met the actual minimum requirements, the name and title of each employee of the employer who reviewed, screened, or interviewed the applicant, the disposition of each U.S. worker, and whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined; and

(iii) If applicable, for each U.S. worker who applied for the job opportunity but was not hired, explain the lawful job-related reason(s) for not hiring the U.S. worker. Where the employer is sponsoring a college or university teacher or an alien with exceptional ability in the sciences or the arts, explain why the alien is more qualified than each U.S. worker who applied.

(2) *Duty to update recruitment report.* The employer must continue to update the recruitment report whenever it experiences layoffs of any U.S. worker(s) in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification* in the place(s) of intended employment through the date on which the Immigrant Petition is approved by USCIS or the date of determination if the *Application for Permanent Employment Certification* or Immigrant Petition is denied or withdrawn, whichever is later. The updated report must be signed and dated by the employer and made available upon request by the CO. The recruitment report update must contain the following information:

(i) For any U.S. worker(s) laid off in the same or similar occupation that is the subject of the *Application for Permanent Employment Certification* in the place(s) of intended employment, provide a detailed explanation of the method(s) used and date(s) on which the employer notified all potentially qualified laid off U.S. workers for the job opportunity;

(ii) State the name and contact information of each U.S. worker notified and identify each U.S. worker who applied to the job opportunity up to the date of the preparation of the recruitment report, categorized by the notification method through which the U.S. worker(s) applied for the job opportunity, and specifying the disposition of each U.S. worker and whether the job opportunity was offered to the U.S. worker and whether the U.S. worker accepted or declined.

(g) *Duty to maintain recruitment documentation.* Documentation sufficient to prove compliance with the pre-filing recruitment requirements of this section must be submitted concurrently with the filing of the *Application for Permanent Employment Certification,* as set forth in 656.10. Documentation sufficient to prove compliance with post-filing notification and consideration of U.S. workers must be retained by the employer in compliance with the requirements of § 656.10(h).

(h) *Further recruitment guidance.* The OFLC Administrator may from time to time and as necessary provide further clarifying guidance regarding recruitment requirements, methods, and practices. Should it be necessary, the OFLC Administrator will publish the updated guidance on OFLC's website and/or through a notice in the **Federal Register**.

§ 656.18 Optional pre-filing recruitment requirements for college and university teachers and professional athletes and professional sports team coaches.

(a) *Recruitment.* Prior to the filing of the *Application for Permanent Employment Certification,* the employer may conduct recruitment for a job opportunity involving a college or university teacher or a professional athlete or professional sports team coach using the procedures set forth in § 656.17 or must be able to document that the alien was selected for such job opportunity using a competitive recruitment and selection process. For purposes of this section, documentation associated with conducting recruitment using a competitive recruitment and selection process must include:

(1) A written statement, signed and dated by an official who has actual hiring authority from the employer, providing a detailed description of the recruitment procedures undertaken;

(2) A final report or other documentation from the organizational or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process; and

(3) Evidence of all other recruitment sources utilized.

(4) In addition, for a job opportunity involving a college or university teacher:

(i) A copy of at least one print or electronic advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements; and

(ii) A written statement attesting to the degree(s) of the alien's educational or professional qualifications and academic achievements.

(b) *Duty to maintain recruitment documentation.* Documentation to prove compliance with the requirements of this section must be submitted concurrently with the filing of the *Application for Permanent Employment Certification,* as set forth in § 656.10 and retained by the employer in compliance with the requirements of § 656.10(h).

§ 656.19 Processing of an application.

(a) *NPC review.* The CO will assign for processing all *Applications for Permanent Employment Certification,* review such applications for compliance with the requirements set forth in this part, and make a decision to conduct an audit examination using the procedures set forth in § 656.20, order supervised recruitment using the procedures set forth in § 656.21, or issue a final determination set forth in § 656.24.

(b) *Correspondence during processing.* Any notice or request sent by the CO(s) under this subpart to an employer requiring a response will be sent electronically, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO will send any notice or request via traditional methods to assure next day delivery. The CO will use the address, including electronic mail address, provided on the *Application for Permanent Employment Certification* to send such notices or requests. The employer's response to such a notice or request must be filed electronically, except that an employer permitted to file by mail as set forth in § 656.10(c), may use traditional methods to assure next day delivery. The employer's response must be sent by the due date or the next business day if the

due date falls on a Sunday or Federal holiday.

(c) *Response dates.* OFLC will determine the date of an employer's response to any notice or request sent to the employer during application processing as follows:

(1) For any *Application for Permanent Employment Certification* received using the electronic method(s) designated by the OFLC Administrator, response date(s) will be the date on which a response to a notice or request is submitted. Response date(s) will be based on the time of submission in the Eastern time zone of the United States.

(2) For any *Application for Permanent Employment Certification* received in accordance with § 656.10(c)(2) or (3), response date(s) will be the postmark date affixed to the employer's response submission.

(d) *Job duties and requirements.*

(1) Job requirements specified in the *Application for Permanent Employment Certification,* unless adequately documented as arising from business necessity, must be those normally required for the occupation and must not exceed the SVP level assigned to the occupation as shown in the O*NET Job Zones. To establish a business necessity, an employer must demonstrate the job duties and requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform the job in a reasonable manner.

(2) A foreign language requirement is prohibited, unless such a requirement is justified by business necessity. Demonstrating business necessity for a foreign language requirement may be based upon the following:

(i) The nature of the occupation and the specific duties to be performed in the job opportunity that normally requires regular use of a foreign language; or

(ii) The need to communicate with a large majority of the employer's customers, contractors, or employees who cannot communicate effectively in English, as documented by:

(A) The employer furnishing the number and proportion of its clients, contractors, or employees who cannot communicate effectively in English, and/or detailed executed contracts or agreements outlining plans to market products or deliver services in a foreign country; and

(B) A detailed explanation of why the duties of the job opportunity normally require frequent contact and communication with clients, contractors, or employees who cannot communicate effectively in English, including why the responsibilities of the position for which permanent labor certification is sought necessitate regular contact and communication with these individuals, and why it is reasonable to believe the foreign-language-speaking clients, contractors, and employees cannot communicate effectively in English.

(3) If the job opportunity involves a combination of occupations, the employer must document that it has normally employed workers for that combination of occupations, and/or workers customarily perform the combination of occupations in the place(s) of employment, and/or the combination job opportunity is based on a business necessity. Combination occupations can be documented by position descriptions, relevant payroll records, and/or letters from other employers stating their workers regularly perform the combination of occupations in the same AIE, and/or documentation that the combination occupation arises from a business necessity.

(4)(i) If the job opportunity contains alternative requirements, those requirements must be substantially equivalent to the primary requirements of the job opportunity for which permanent labor certification is sought; and

(ii) If the alien already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the alternative requirements, the CO will deny permanent labor certification unless the *Application for Permanent Employment Certification* states that any suitable combination of education, training, or experience is acceptable.

(5) If the job opportunity involves a household domestic service worker, live-in requirements are acceptable only if the employer can demonstrate the requirement is essential to perform, in a reasonable manner, the job duties specified in the *Application for Permanent Employment Certification* and there are not cost-effective alternatives to a live-in household requirement. Mere employer assertions do not constitute acceptable documentation. For example, a live-in requirement could be supported by documenting two working parents and young children in the household, and/or the existence of erratic work schedules requiring frequent travel and a need to entertain business associates and clients on short notice. Depending upon the situation, acceptable documentation could consist of travel vouchers, written estimates of costs of alternatives such as babysitters, or a detailed listing of the frequency and length of absences of the employer from the home.

(e) *CO review of job requirements.*

(1) The job requirements, as described in the *Application for Permanent Employment Certification,* must represent only the actual minimum requirements to perform the duties in the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to the job opportunity described in the *Application for Permanent Employment Certification.*

(3) If the alien is already employed by the employer, in considering whether the job requirements represent the actual minimums, the CO will review any training and experience possessed by the alien at the time of hiring by the employer, including as a contract employee. The employer is prohibited from requiring that a U.S. worker(s) possess training and/or experience beyond what the alien possessed at the time of hire unless:

(i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which permanent labor certification is being sought, or

(ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien satisfies the actual minimum requirements for the job opportunity described in the *Application for Permanent Employment Certification,* the CO will not consider any education or training obtained by the alien at the employer's expense unless the employer offers similar training to domestic worker applicants.

§ 656.20 Audit.

(a) *Discretion.* Prior to the issuance of a final determination, the CO may, at their discretion, select an *Application for Permanent Employment Certification* for audit to determine compliance with the requirements of this part.

(b) *Audit notice.* Where an *Application for Permanent Employment Certification* is selected for audit, the CO will issue a Notice of Audit Examination to the employer and a copy, if appropriate, to the employer's agent or attorney. The notice will:

(1) Specify the documentation that must be submitted by the employer;

(2) Specify a date, no more than 30 calendar days from the date the audit notice is issued, by which the required documentation must be sent to the CO;

(3) Advise that if the required documentation has not been sent by the date specified the application will be denied.

(i) Failure to provide documentation in a timely manner constitutes a refusal to exhaust available administrative remedies; and

(ii) The administrative-judicial review procedure provided in § 656.26 is not available.

(4) Advise that failure to fully comply with the audit process will result in a denial of the *Application for Permanent Employment Certification* under § 656.24, and may result in the imposition of supervised recruitment under § 656.21 for the current and/or future filings of any *Application for Permanent Employment Certification* for up to 2 years, and/or debarment under § 656.31(f).

(c) *One-time extension request.* To request an extension, the employer must submit a request in writing to the NPC identifying the *Application for Permanent Employment Certification* and stating the reason(s) for the extension request. The CO may, in their discretion, provide one extension of up to 30 calendar days, to one response timeframe during audit.

(d) *Actions during processing.* During the course of the audit examination:

(1) The CO may issue one or more requests for supplemental information and/or documentation from the employer in order to complete the audit, and the CO will specify a timeframe of up to 30 calendar days for responding to any supplemental information request; and/or

(2) The CO may require the employer to conduct supervised recruitment under § 656.21.

(e) *Correspondence during audit.* Any notice or request sent by the CO(s) under this section to an employer requiring a response will be sent electronically, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO will send any notice or request via traditional methods to assure next day delivery. The CO will use the address, including electronic mail address, provided on the *Application for Permanent Employment Certification* to send such notices or requests. The employer's response to such notice or request must be filed electronically, except that an employer permitted to file by mail as set forth in § 656.10(c), may use traditional methods to assure next day delivery. The employer's response must be sent by the due date or the next business day if the due date falls on a Sunday or Federal holiday.

(f) *Failure to comply with audit.* If the CO determines that an employer failed to timely respond to a notice or request during audit or failed to comply with audit requirements ordered by the CO under this section, the application will be denied. Where the CO determines an employer's audit response is inadequate, the CO will deny the application. The CO may also impose the supervised recruitment procedures under § 656.21 for the employer's future applications for up to 2 years. In addition, the employer and/or its attorney or agent may be debarred consistent with § 656.31(f).

(g) *Potential referrals and information sharing.* In addition to measures in this subpart, the CO will provide the audit findings for an employer, attorney, or agent and underlying documentation to any enforcement agency with jurisdiction where the findings indicate a possible violation of law within that agency's jurisdiction, may provide such findings and documentation to any enforcement agency in any other case, and will provide such findings and documentation upon the written request of an enforcement agency, including the DOL Office of Inspector General (DOL–OIG), DHS, the Department of Justice (DOJ), including DOJ–IER, and the EEOC.

§ 656.21 Supervised recruitment.

(a) *Discretion.* The CO may, at their discretion, require supervised recruitment on any *Application for Permanent Employment Certification* pending a final determination or for all of an employer's future *Applications for Permanent Employment Certification* for up to 2 years pursuant to § 656.20(f).

(b) *Supervised recruitment notice.* Where an *Application for Permanent Employment Certification* is selected for supervised recruitment, the CO will issue a Notice of Supervised Recruitment to the employer and a copy, if appropriate, to the employer's agent or attorney. The notice will:

(1) Specify the procedures for conducting supervised recruitment, including the required method(s) and content for advertising the job opportunity to prospective U.S. applicants (*e.g.,* whether to have applicants respond directly to the NPC), timeframes for compliance with the supervised recruitment process, and state that supervised recruitment will be incorporated as bona fide conditions and terms of the *Application(s) for Permanent Employment Certification.*

(2) Advise that if the required documentation has not been sent by the date specified the application will be denied.

(i) Failure to provide documentation in a timely manner constitutes a refusal to exhaust available administrative remedies; and

(ii) The administrative-judicial review procedure provided in § 656.26 is not available.

(c) *Requirements.* The supervised recruitment process will be in addition to any recruitment required of the employer by this part and may consist of, but is not limited to, one or more of the following:

(1) Requiring the employer to submit one or more draft advertisements to the CO for review and approval prior to conducting recruitment for U.S. workers;

(2) Designating the source(s) where the employer must recruit for U.S. workers and specifying the timeframe(s) in which the employer must place the advertisement(s) in such source(s);

(3) Requiring the employer to notify the CO in writing when the advertisement(s) are placed;

(4) Extending the length of the placement of any advertisement(s) and/or job order placed with the SWA, as necessary, to effectively recruit for U.S. workers;

(5) Requiring the employer to retain proof of publication of all advertisements and provide a copy of any documentation, upon request by the CO, verifying it conducted the recruitment as directed by the CO;

(6) Requiring the employer to submit a recruitment report meeting the requirements under § 656.17(f), including any additional information requested by the CO, within 30 calendar days of the CO's request for such a report; and

(7) Requiring the employer to provide updated notice to employees, as set forth in as set forth in § 656.21, when necessary.

(d) *Supplemental information request.* During the course of supervised recruitment, the CO may issue one or more requests for supplemental information and/or documentation from the employer in order to complete supervised recruitment. The CO will specify the timeframe of up to 30 calendar days for responding to the supplemental information request.

(e) *Correspondence during supervised recruitment.* Any notice or request sent by the CO(s) under this section to an employer requiring a response will be sent electronically, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO will send any notice or request via traditional methods to assure next day delivery. The CO will use the address, including electronic

mail address, provided on the *Application for Permanent Employment Certification* to send such notices or requests. The employer's response to such a notice or request must be filed electronically, except that an employer permitted to file by mail as set forth in § 656.10(c), may use traditional methods to assure next day delivery. The employer's response must be sent by the due date or the next business day if the due date falls on a Sunday or Federal holiday.

(f) *Failure to comply with supervised recruitment.* If the CO determines that an employer has failed to comply with requirements ordered by the CO under this section, the *Application for Permanent Employment Certification* will be denied, and the employer and/or its attorney or agent may be debarred consistent with § 656.31(f).

(g) *Potential referrals and information sharing.* In addition to measures in this subpart, the CO will provide the supervised recruitment findings and underlying documentation to any enforcement agency with jurisdiction where the findings indicate a possible violation of law within that agency's jurisdiction, may provide such findings and documentation to any enforcement agency in any other case, and will provide such findings and documentation upon the written request of an enforcement agency, including the DOL–OIG, DHS, DOJ, including DOJ–IER, and the EEOC.

(h) *One-time extension request.* To request an extension, the employer must submit a request in writing to the NPC identifying the *Application for Permanent Employment Certification* and stating the reason(s) for the extension request. The CO may, in their discretion, provide one extension of up to 30 calendar days, to one response timeframe during supervised recruitment.

§ 656.24 Labor certification determinations.

(a) *Determinations.* The OFLC Administrator is the Department's National CO. The OFLC Administrator and the CO(s), by virtue of delegation from the OFLC Administrator, have the authority to certify or deny *Applications for Permanent Employment Certification.* The OFLC Administrator has sole discretion to certify, deny, or suspend processing of *Applications for Permanent Employment Certification* under 656.31(b) or for other appropriate reasons or to delegate authority to the CO to do so.

(b) *Criteria for certification.* The CO will grant certification only if:

(1) The employer has met all the requirements of this part.

(2) There are not sufficient U.S. workers to fill the job opportunity. In making a determination as to whether there are insufficient U.S. workers to fill the employer's job opportunity, the CO will count as able and available any U.S. worker referred by the SWA or any U.S. worker who applied (or on whose behalf an application is made) directly to the employer, whom the employer has not rejected for a lawful, job-related reason.

(i) The CO must consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. For the purposes of this paragraph (b)(2)(i), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on the-job training.

(ii) If the job involves an alien who is a college or university teacher or has exceptional ability in the sciences or the arts, the U.S. worker must be at least as qualified as the alien.

(3) The employment of the alien will not have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination, the CO considers such things as: labor market information; the special circumstances of the industry, organization, and/or occupation; the prevailing wage in the place(s) of intended employment; and working conditions, such as hours, that are normal to the occupation and industry.

(c) *Approved certification.* If permanent labor certification is granted, the CO will send a final determination notice and a copy of the certified *Application for Permanent Employment Certification* to the employer and a copy, if applicable, to the employer's agent or attorney using an electronic method(s) designated by the OFLC Administrator. For employers permitted to file by mail as set forth in § 656.10(c), the CO will send the final determination notice and a copy of the certified *Application for Permanent Employment Certification* using the mailing address for the employer identified on the application. The CO will send the certified *Application for Permanent Employment Certification* directly to USCIS using an electronic method(s) designated by the OFLC Administrator.

(d) *Denied certification.* If the *Application for Permanent Employment Certification* is denied, the CO will send a Notice of Denial to the employer and a copy, if appropriate, to the employer's agent or attorney using an electronic method(s) designated by the OFLC Administrator. For employers permitted to file by mail as set forth in § 656.10(c), the CO will send the Notice of Denial by means normally assuring next day delivery. The Notice of Denial will:

(1) State the reason(s) certification is denied, citing the relevant regulatory standards;

(2) Offer the employer an opportunity to request reconsideration by the CO of the denial under § 656.26(a) or request review by BALCA under § 656.26(b);

(3) State that if the employer does not request reconsideration by the CO or review by BALCA within 30 calendar days of the date of the determination, as specified in § 656.26(a) or (b), the denial is final, and the Department will not accept any request for reconsideration or review on that *Application for Permanent Employment Certification;*

(4) State that if the employer does not request reconsideration or review of the denial under § 656.26(a) or (b), a new *Application for Permanent Employment Certification* may be filed at any time; and

(5) State that the employer is prohibited from filing a new *Application for Permanent Employment Certification* in the same occupation for the same alien while a request for reconsideration or review is pending under the procedures set forth in § 656.26 or § 656.27.

§ 656.26 Review of denials of permanent labor certification.

(a) *Request for reconsideration by the CO.*

(1) The employer may request reconsideration by the CO within 30 calendar days from the date of issuance of the Notice of Denial.

(2) A request for reconsideration may include only:

(i) Documentation that the Department actually received from the employer in response to a request from the CO to the employer; or

(ii) Documentation that the employer did not have an opportunity to present previously to the CO, but that existed at the time the *Application for Permanent Employment Certification* was filed and maintained by the employer to support the *Application for Permanent Employment Certification* in compliance with the requirements of § 656.10(h).

(3) Paragraphs (a)(1) and (2) of this section notwithstanding, the CO will not grant any request for reconsideration

where the deficiency that caused denial resulted from the applicant's disregard of a system prompt or other direct instruction.

(4) The employer's request must clearly state whether it is seeking a request for review by BALCA or a request for reconsideration by the CO. If it is not clearly stated whether the employer is requesting reconsideration by the CO or requesting review by BALCA, the CO will reconsider the determination.

(5) If the employer requests reconsideration, the CO will reconsider the *Application for Permanent Employment Certification.* If the reconsideration is denied, the Notice of Reconsideration Denial will:

(i) State the reasons for the Notice of Reconsideration Denial;

(ii) Quote the request for review procedures at paragraphs (b) and (c) of this section;

(iii) Advise that failure to request review by BALCA of the Notice of Reconsideration Denial within 30 calendar days of the date of determination constitutes a failure to exhaust administrative remedies;

(iv) Advise that, if a request for review is not made within 30 calendar days of the determination, the Notice of Reconsideration Denial will become the final determination of the Secretary;

(v) Advise that if the reconsideration is denied, and a request for review is not made in accordance with the procedures at paragraph (b) of this section, a new application may be filed at any time; and

(vi) Advise that a new application in the same occupation for the same alien cannot be filed while a request for review is pending with BALCA.

(b) *Request for review by BALCA.*

(1) If a permanent labor certification is denied under § 656.24(d), if a request for reconsideration is denied under paragraph (a) of this section, if a permanent labor certification is revoked pursuant to § 656.32, or if a debarment is issued under § 656.31(f), a request for review of the denial of certification, denial on reconsideration, revocation, or debarment may be made to BALCA by the employer or debarred person or entity by making a request for such an administrative review in accordance with the procedures provided in this paragraph (b). In the case of a finding of debarment, receipt by the Department of a request for review, if made in accordance with this section, will stay the debarment until such time as the review has been completed and a decision rendered thereon.

(2) A request for review of a denial of certification, denial on reconsideration, or revocation:

(i) Must be sent within 30 calendar days of the date of the determination to the CO who denied the application, denied the request for reconsideration, or revoked the certification;

(ii) Must clearly identify the particular labor certification determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the final determination.

(3) A request for review of debarment:

(i) Must be sent to the OFLC Administrator within 30 calendar days of the date of the debarment determination;

(ii) Must clearly identify the particular debarment determination for which review is sought;

(iii) Must set forth the particular grounds for the request; and

(iv) Must include a copy of the Notice of Debarment.

(4)(i) With respect to a request for review of either a Notice of Denial or a Notice of Reconsideration Denial, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence as was actually before the CO at the time of the CO's decision, even if such evidence is in the administrative file.

(ii) With respect to a revocation or a debarment determination, BALCA proceeding may be de novo.

(c) *Denial of certification, denial on reconsideration, or revocation Appeal File.* Upon the receipt of a request for review, the CO immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The CO must send the Appeal File to BALCA, Office of Administrative Law Judges, the employer, the employer's attorney or agent (if applicable), and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. DOL (counsel), as soon as practicable.

(3) The employer may furnish or suggest directly to BALCA the addition of any documentation that is not in the Appeal File, but was actually before the CO at the time of the CO's decision. The employer must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210.

(d) *Debarment Appeal File.* Upon the receipt of a request for review of debarment, the OFLC Administrator, immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The OFLC Administrator must send the Appeal File to BALCA, Office of Administrative Law Judges, the employer, the employer's attorney or agent (if applicable), and the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. DOL (counsel), by means normally assuring next-day delivery.

(3) The debarred person or entity may furnish or suggest directly to BALCA the addition of any documentation in writing that is not in the Appeal File. The debarred person or entity must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor.

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

(a) *Panel designations.* In considering requests for review before it, BALCA may sit in panels of three members. The Chief ALJ may designate any BALCA member to submit proposed findings and recommendations to BALCA or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering the requests for review before it, BALCA must afford all parties 30 calendar days to submit or decline to submit any appropriate Statement of Position or legal brief. The CO is to be represented solely by the Solicitor of Labor or the Solicitor's designated representative.

(c) *Standard of Review.* When reviewing requests for review of denial of permanent labor certification under § 656.24(d), a denial of reconsideration under § 656.26(a), or an affirmation of a

PWD under § 656.41, BALCA must uphold the CO's decision unless shown by the employer to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

(d) *Review on the record.* BALCA must review a denial of permanent labor certification under § 656.24(d), a denial of reconsideration under § 656.26(a), a revocation of a certification under § 656.32, or an affirmation of a PWD under § 656.41 on the basis of the record upon which the CO's final determination was made, the request for review, and any Statements of Position or legal briefs submitted and, except in cases over which the Secretary has assumed jurisdiction pursuant to 29 CFR 18.95, must:

(1) Affirm the denial of the permanent labor certification, the denial of the request for reconsideration, the revocation of certification, or the affirmation of the PWD;

(2) Direct the CO to grant the certification only when the CO had an opportunity to review the merits of the application, overrule the revocation of certification, or overrule the affirmation of the PWD;

(3) Remand to the CO for further action; or

(4) Direct that a hearing on the case be held under paragraph (f) of this section.

(e) *Notifications of decisions.* BALCA must notify the employer, employer's attorney or agent (if applicable), the CO, and the Solicitor of Labor of its decision, and must return the record to the CO unless the case has been set for hearing under paragraph (f) of this section.

(f) *Hearings.*

(1) *Notification of hearing.* If the case has been set for a hearing, BALCA must notify the employer, the employer's attorney or agent (if applicable), the alien, the CO, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request.

(2) *Hearing procedure.*

(i) The ''Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges,'' at 29 CFR part 18, apply to hearings under this paragraph (f).

(ii) For the purposes of this paragraph (f)(2), references in 29 CFR part 18 to: ''administrative law judge'' mean the BALCA member or the BALCA panel duly designated under paragraph (a) of this section; ''Office of Administrative Law Judges'' means BALCA; and ''Chief Administrative Law Judge'' means the Chief ALJ in that official's function of chairing BALCA.

§ 656.30 Validity of labor certifications.

(a) *Validity period.* A permanent labor certification is only valid when filed in support of an initial Immigrant Petition with USCIS within 180 calendar days from the date on which the *Application for Permanent Employment Certification* is certified.

(b) *Scope of validity.* A permanent labor certification is valid only for the job opportunity, the alien, the place(s) of intended employment, and the employer specified on the certified *Application for Permanent Employment Certification,* including all appendices and any modifications approved by the Department. The permanent labor certification may not be transferred from one employer to another unless the employer to which it is transferred is a successor in interest to the employer to which it was issued.

§ 656.31 Applications involving fraud, willful misrepresentation, or violations of this part.

(a) *Denial.* The CO will deny any *Application for Permanent Employment Certification* under § 656.24 where the CO determines that the application contains false statements of material fact, is fraudulent, contains willful misrepresentations, or was otherwise submitted in violation of the requirements of this part.

(b) *Possible fraud or willful misrepresentation.*

(1) If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to DOJ, DHS, or other government entity, as appropriate, for investigation, and send a copy of the referral to the DOL–OIG. If the Department learns an employer, attorney, or agent is involved in possible discrimination because of national origin, the Department will also refer the matter to the EEOC; where it indicates possible discrimination because of citizenship status, or because of national origin by an employer not covered by Title VII, the Department will also refer the matter to DOJ. In these cases, or if the Department learns an employer, attorney, or agent is under investigation by DOJ, DHS, or other government entity for possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department may suspend processing of any *Application for Permanent Employment Certification* involving such employer, attorney, or agent until completion of any investigation and/or judicial proceedings. Unless the investigatory agency, in writing, requests the Department to do otherwise, the Department will provide written notification to the employer and a copy, if appropriate, to the employer's agent or attorney of the suspension in processing.

(2) A suspension pursuant to paragraph (b)(1) of this section may last initially for up to 180 calendar days. No later than 180 calendar days after the suspension began, if no criminal indictment or information has been issued, or judicial proceedings have not been concluded, the CO may resume processing any of the *Applications for Permanent Employment Certification,* or may extend the suspension in processing until completion of any investigation and/or judicial proceedings.

(c) *Criminal indictment or information.* If the Department learns that an employer, attorney, or agent is named in a criminal indictment or information in connection with the permanent labor certification program, the processing of any of the *Applications for Permanent Employment Certification* related to that employer, attorney, or agent may be suspended until the judicial process is completed. Unless the investigatory or prosecutorial agency, in writing, requests the Department to do otherwise, the Department will provide written notification to the employer and a copy, if appropriate, to the employer's agent or attorney of the suspension in processing.

(d) *No finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is acquitted of fraud or willful misrepresentation charges, or if such criminal charges are withdrawn or otherwise fail to result in a finding of fraud or willful misrepresentation, the CO will resume processing of the *Applications for Permanent Employment Certification* in accordance with the requirements of this part based on the merits of the application.

(e) *Finding of fraud or willful misrepresentation.* If an employer, attorney, or agent is found to have committed fraud or willful misrepresentation involving the permanent labor certification program, whether by a court, the Department of State or DHS, as referenced in § 656.32(c), by the OFLC Administrator under paragraph (f)(3) of this section, or through other proceedings:

(1) Any suspension of processing of pending *Applications for Permanent Employment Certification* related to that employer, attorney, or agent will terminate.

(2) The CO will decide each such *Application for Permanent Employment Certification* on its merits and may deny any such *Application for Permanent Employment Certification* under § 656.24 and paragraph (a) of this section.

(3) In the case of a pending *Application for Permanent Employment Certification* involving an attorney or agent found to have committed fraud or willful misrepresentation, the Department will notify the employer associated with that *Application for Permanent Employment Certification* of the finding and require the employer to notify the Department in writing, within 30 calendar days of the notification, whether the employer will withdraw the *Application for Permanent Employment Certification,* designate a new attorney or agent, or continue the *Application for Permanent Employment Certification* without representation. Failure of the employer to respond within 30 calendar days of the notification will result in a denial under § 656.24. If the employer elects to continue representation by the attorney or agent, DOL will suspend processing of any affected *Application for Permanent Employment Certification* while debarment proceedings are conducted under paragraph (f) of this section.

(f) *Debarment.*

(1) No later than 6 years after the date of filing of the *Application for Permanent Employment Certification* that is the basis for the finding, or, if such basis requires a pattern or practice as provided in paragraphs (f)(1)(iii) through (viii) of this section, no later than 6 years after the date of filing of the last *Application for Permanent Employment Certification* which constitutes a part of the pattern or practice, the OFLC Administrator may issue to an employer, attorney, agent, or any combination thereof a Notice of Debarment for not more than 3 years, based upon any action that was prohibited at the time the action occurred, upon determining the employer, attorney, or agent has participated in or facilitated one or more of the following:

(i) The sale, barter, or purchase of any *Application for Permanent Employment Certification,* or any other action prohibited under § 656.12;

(ii) The willful provision or willful assistance in the provision of false or inaccurate information in applying for permanent labor certification;

(iii) A pattern or practice of a failure to comply with the terms of the *Application for Permanent Employment Certification;*

(iv) A pattern or practice of failure to comply in the audit process pursuant to § 656.20;

(v) A pattern or practice of failure to comply in the supervised recruitment process pursuant to § 656.21;

(vi) Conduct resulting in a determination by a court, DHS, DOS, or the OFLC Administrator under paragraph (f)(3) of this section of fraud or willful misrepresentation involving an *Application for Permanent Employment Certification,* as referenced in paragraph (e) of this section;

(vii) A pattern or practice, by an attorney or agent, of preparing or submitting *Applications for Permanent Employment Certification* on behalf of two or more unrelated employers that contain materially the same job duties, requirements, or recruitment procedures where the CO has determined that those requirements were not the employers' actual minimum requirements or that the recruitment was not conducted in good faith; or

(viii) Failure to pay the alien or a U.S. worker hired for the job opportunity the offered wage stated in the certified *Application for Permanent Employment Certification.*

(2) The Notice of Debarment will be in writing; will state the reason for the debarment finding, including a detailed explanation of how the employer, attorney or agent has participated in or facilitated one or more of the actions listed in paragraphs (f)(1)(i) through (viii) of this section; will state the start date and term of the debarment; will state that the employer, attorney, or agent will be debarred from all foreign labor certification programs (*i.e.,* disqualified from filing any labor certification applications or labor condition applications or receiving approvals from OFLC) for the term of the debarment; and will identify appeal opportunities under § 656.26. The debarment will take effect on the start date identified in the Notice of Debarment unless a request for review is filed within the time permitted by § 656.26. DOL will notify DHS and the Department of State regarding any Notice of Debarment.

(3) *Independent Department finding.* The OFLC Administrator may determine that an employer, attorney, or agent has committed fraud or willful misrepresentation, as defined in 656.3, in connection with an *Application for Permanent Employment Certification.* Such a determination does not require, and is not contingent upon, any determination by a court, DHS, or the Department of State, and does not preclude a referral under paragraph (b) of this section. A Notice of Debarment issued on the basis of such a determination will set forth the evidence relied upon, and the employer, attorney, or agent may seek review under 656.26.

(g) *False statements.* To knowingly and willfully furnish any false information in the preparation of the *Application for Permanent Employment Certification* and any supporting documentation, or to aid, abet, or counsel another to do so is a Federal offense, punishable by fine or imprisonment up to five years, or both under 18 U.S.C. 2 and 1001. Other penalties apply as well to fraud or misuse of DOL immigration-related documents and to perjury with respect to such documents under 18 U.S.C. 1546 and 1621.

§ 656.32 Revocation and invalidation of permanent labor certifications.

(a) *Basis for DOL revocation.* The OFLC Administrator may revoke a permanent labor certification issued under this part, if the certification was not justified.

(b) *DOL procedures for revocation.*

(1) The OFLC Administrator sends to the employer and a copy, if appropriate, to the employer's agent or attorney a *Notice of Intent to Revoke* an approved permanent labor certification which contains a detailed statement of the grounds for the revocation and the time period allowed for the employer's rebuttal. The employer may submit evidence in rebuttal within 30 calendar days of receipt of the notice. The OFLC Administrator must consider all relevant evidence presented in deciding whether to revoke the permanent labor certification.

(2) If rebuttal evidence is not filed by the employer, the *Notice of Intent to Revoke* becomes the final decision of the Secretary.

(3) If the employer files rebuttal evidence and the OFLC Administrator determines the approved permanent labor certification should be revoked, the employer may file an appeal under § 656.26.

(4) The OFLC Administrator will inform the employer within 30 calendar days of receiving any rebuttal evidence whether or not the approved permanent labor certification will be revoked.

(5) If the approved permanent labor certification is revoked, the OFLC Administrator will also send a copy of the notification to DHS and DOS.

(c) *DHS or DOS invalidation of labor certifications.* Either DHS or a Consul of the DOS may invalidate a permanent labor certification approved under this part upon a determination, made in accordance with those agencies'

procedures or by a court, of fraud or willful misrepresentation of a material fact involving the permanent labor certification application. If evidence of such fraud or willful misrepresentation becomes known to the OFLC Administrator, the OFLC Administrator will notify DHS or DOS, in writing. The OFLC Administrator will also send a copy of the notification to the regional or national office, as appropriate, of the DOL–OIG.

■ 5. Revise subpart D to read as follows:

Subpart D—Determination of Prevailing Wage

Sec.

656.40 Determination of prevailing wage for labor certification purposes.
656.41 Review of prevailing wage determinations.

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application filing requirements.* Except as otherwise permitted by this part, an employer who desires to file an *Application for Permanent Employment Certification* to hire an alien for permanent employment in the United States must obtain a PWD from the NPC designated by the OFLC Administrator. This section provides the procedures employers must follow when filing.

(1) *What to file.*

(i) An employer that desires to apply for permanent labor certification of an immigrant worker must file a completed *Application for Prevailing Wage Determination,* including any relevant appendices and supporting documentation, to obtain a PWD from the NPC.

(ii) The *Application for Prevailing Wage Determination* must include the employer's legal name, trade name(s), and a valid FEIN as well as a valid place of business (physical location) in the United States.

(iii) If an employer is requesting a PWD based on a CBA covering the job opportunity, the employer must concurrently submit with its *Application for Prevailing Wage Determination* at the time of filing the following:

(A) A copy of the relevant sections of the CBA, which must include the validity dates of the agreement; the position(s) and description of the job(s) covered; the wage section, including tables and explanations; and the signature page with effective dates of the agreement;

(B) A letter on letterhead from the employer or employer's representative that states the relevant portions of the agreement with effective dates; the title of the position in the agreement appropriate to the job duties, requirements, and location; and wage value appropriate to the job duties, requirements, and location; and

(C) A letter on letterhead from the CBA authorized representative that states the relevant portions of the agreement with effective dates; the title of the position in the agreement appropriate to the job duties, requirements, and location; and wage value appropriate to the job duties, requirements, and location.

(iv) If an employer is requesting a PWD for a job opportunity for a professional athlete or professional sports team coach covered by professional sports league rules or regulations with wage provisions, the employer must concurrently submit with its *Application for Prevailing Wage Determination* at the time of filing a copy of the applicable league rules or regulations.

(v) If an employer is requesting a PWD based on an employer-provided survey under paragraph (f) of this section, the employer must concurrently submit with its *Application for Prevailing Wage Determination* at the time of filing a copy of the survey containing specific information about the survey methodology, including sample size and source, sample selection procedures, survey job descriptions, job and wage leveling chart, and list of participants surveyed, to allow a determination of whether the survey meets all the requirements of this section.

(2) *Location and method of filing.*

(i) *Electronic filing.* The employer must file the *Application for Prevailing Wage Determination,* including any relevant appendices, with the NPC using the electronic method(s) designated by the OFLC Administrator. The NPC will return without review any application submitted using a method other than the designated electronic method(s), unless the employer submits the application in accordance with paragraph (a)(2)(ii) of this section.

(ii) *Filing by mail.* Employers that lack adequate access to electronic filing may file the *Application for Prevailing Wage Determination* by mail in accordance with the procedures set forth in § 656.10(c)(2) and (3).

(b) *NPC review.*

(1) The CO will review the *Application for Prevailing Wage Determination* for compliance with all applicable program requirements and make a decision to issue a Request for Information (RFI) under paragraph (c) of this section or a PWD.

(2) Any notice or request sent by the CO(s) to an employer requiring a response will be sent electronically, unless the employer was permitted to file by mail as set forth in § 656.10(c). For employers permitted to file by mail, the CO will send any notice or request via traditional methods to assure next day delivery. The CO will use the address, including electronic mail address, provided on the *Application for Prevailing Wage Determination* to send such notices or requests. The employer's response to such a notice or request must be filed electronically, except that an employer permitted to file by mail as set forth in § 656.10(c), may use traditional methods to assure next day delivery. The employer's response must be sent by the due date or the next business day if the due date falls on a Sunday or Federal holiday.

(3) The CO will return without review any *Application for Prevailing Wage Determination* where a valid PWD has been issued for the same employer covering the same job opportunity and AIE(s) for the same wage year, including applications where the employer has requested review of a PWD under § 656.41.

(c) *Request for Information.*

(1) If the CO determines the *Application for Prevailing Wage Determination* is incomplete, contains errors or inaccuracies, or otherwise contains information that is not sufficient to issue a PWD, the CO will issue an RFI to the employer and to the employer's attorney or agent (if applicable). The CO may issue one or more additional RFIs before issuing a final decision.

(2) The RFI will:

(i) State the reason(s) the *Application for Prevailing Wage Determination* does not meet the criteria for issuing a PWD;

(ii) Offer the employer an opportunity to respond to the RFI within 7 calendar days from the date the RFI was issued by CO;

(iii) State that the CO's determination on whether to issue a PWD will be made based on a review of the employer's response and the CO will make the necessary amendments to the *Application for Prevailing Wage Determination* to issue a PWD, as applicable; and

(iv) State that if the employer does not respond to the RFI within 7 calendar days from the date the RFI was issued by the CO, the *Application for Prevailing Wage Determination* will be deemed abandoned, the CO will return the application to the employer without issuing a PWD, and the employer may file a new *Application for Prevailing Wage Determination* with the NPC.

(d) *Determinations.* Prevailing wages will be determined as follows:

(1) If the job opportunity is covered by CBA that was negotiated at arms-length between the union and the employer or by professional sports league rules or regulations with wage provisions, the wage rate set forth in the CBA agreement or professional sports league rules or regulations is considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it is considered the ''prevailing wage'' for labor certification purposes.

(2) If the job opportunity is not covered by a CBA or professional sports league rules or regulations, the prevailing wage for labor certification purposes will be the arithmetic mean, of the wages of workers similarly employed in the AIE, except as provided in paragraph (e) or (f) of this section. The wage component of the Occupational Employment and Wage Statistics Survey will be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (f) of this section.

(3) If the employer provides a survey acceptable under paragraph (f) of this section, the survey must provide an arithmetic mean of the wages of workers similarly employed in the AIE.

(4) The employer may utilize a current wage determination in the area under the Davis-Bacon Act, 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.*

(e) *Institutions of higher education and research entities.* In computing the prevailing wage for a job opportunity in an occupational classification in an AIE for an employee of an institution of higher education, or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization, the prevailing wage level takes into account the wage levels of employees only at such institutions and organizations in the AIE.

(1) The organizations listed in this paragraph (e) are defined by DHS at 8 CFR 214.2(h)(19)(iii) as follows:

(i) Institution of higher education means an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965;

(ii) Affiliated or related nonprofit entity means a nonprofit entity that is related or affiliated with an institution of higher education, if it satisfies any of the following conditions:

(A) The nonprofit entity is connected to or associated with an institution of higher education through shared ownership or control by the same board or federation;

(B) The nonprofit entity is operated by an institution of higher education;

(C) The nonprofit entity is attached to an institution of higher education as a member, branch, cooperative, or subsidiary; or

(D) The nonprofit entity has entered into a formal written affiliation agreement with an institution of higher education that establishes an active working relationship between the nonprofit entity and the institution of higher education for the purposes of research or education, and a fundamental activity of the nonprofit entity is to directly contribute to the research or education mission of the institution of higher education. A nonprofit entity may engage in more than one fundamental activity.

(iii) Nonprofit research organization or Governmental research organization. When a fundamental activity of a nonprofit organization is engaging in basic research and/or applied research, that organization is a nonprofit research organization. When a fundamental activity of a Governmental organization is the performance or promotion of basic research and/or applied research, that organization is a government research organization. A Governmental research organization may be a Federal, State, or local entity. A nonprofit research organization or governmental research organization may perform or promote more than one fundamental activity. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. Both basic research and applied research may include research and investigation in the sciences, social sciences, or humanities and may include designing, analyzing, and directing the research of others if on an ongoing basis and throughout the research cycle.

(2) Nonprofit organization or entity, for the purpose of this paragraph (e), means an organization qualified as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and which has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

(f) *Employer-provided wage information.*

(1) If the job opportunity is not covered by a CBA, or by a professional sports league's rules or regulations, the CO will consider wage information provided by the employer in making a PWD.

(2) The survey submitted to the NPC must be based upon recently collected data.

(i) A published survey must have been published within 24 months of the date of submission to the NPC, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the NPC.

(g) *Similarly employed.* For purposes of this section, similarly employed means having substantially comparable jobs in the occupational category in the AIE, except that, if a representative sample of workers in the occupational category cannot be obtained in the AIE, similarly employed means:

(1) Having jobs requiring a substantially similar level of skills within the AIE; or

(2) If there are no substantially comparable jobs in the AIE, having substantially comparable jobs with employers outside of the AIE.

(h) *Validity of the PWD.*

(1) The CO must specify the validity period of the prevailing wage, which in no event may be less than 90 calendar days or more than 365 calendar days from the determination date. A request for review under § 656.41 renders the PWD invalid until the CO issues an affirmed or modified PWD.

(2) An employer must begin the recruitment of U.S. workers required by §§ 656.17, 656.18, or 656.21 within the validity period specified on the *Application for Prevailing Wage Determination.*

(3) Where the *Application for Prevailing Wage Determination* contains multiple AIEs covering the same job opportunity, the PWD issued by the CO on such an application may be used in connection with the filing of multiple *Applications for Permanent Employment Certification* under § 656.10.

(i) *Withdrawal of an Application for Prevailing Wage Determination.* The

employer may withdraw an *Application for Prevailing Wage Determination* before the CO issues a PWD under this section by submitting a request in writing, electronically or, if permitted to file by mail, via mail, to the NPC that identifies the unique application number and states the reason(s) for the withdrawal.

§ 656.41 Review of prevailing wage determinations.

(a) *Review of NPC PWD.* Any employer desiring review of a PWD made by a CO must make a request for such review within 30 calendar days of the date from when the PWD was issued. The request for review must be sent to the director of the NPC that issued the PWD within 30 calendar days of the date of the PWD; clearly identify the PWD from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the NPC up to the date of the PWD received from the NPC.

(b) *Processing of request by NPC.* Upon the receipt of a request for review, the NPC will review the employer's request and accompanying documentation and add any material that may have been omitted by the employer, including any material the NPC sent the employer up to the date of the PWD.

(c) *Review on the record.* The director will review the PWD solely on the basis upon which the PWD was made and, upon the request for review, may either affirm or modify the PWD.

(d) *Request for review by BALCA.* Any employer desiring review of the director's determination must make a request for review by BALCA within 30 calendar days of the date of the Director's decision.

(1) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal arguments and only such evidence that was within the record upon which the director made his/her affirmation of the PWD.

(2) The request for review must be in writing and addressed to the director of the NPC making the determination. Upon receipt of a request for a review, the director will assemble an indexed appeal file in reverse chronological order, with the index on top followed by the most recent document.

(3) The director will send the Appeal File to the Office of Administrative Law Judges, BALCA. BALCA handles the appeals in accordance with §§ 656.26 and 656.27.

■ 6. Add a new subpart E to read as follows:

Subpart E—Severability

Sec.
656.50 Severability.

§ 656.50 Severability.

If any provision of this part is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, or stayed pending further agency action, the provision will be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is one of total invalidity or unenforceability, in which event the provision will be severable from this part and will not affect the remainder thereof.

Marek Laco,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2026–23370 Filed 11–16–26; 8:45 am]

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Part IV

Federal Communications Commission

47 CFR Parts 1, 2, 5, et al.
Modernizing the Commission's National Environmental Policy Act Rules; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 5, 17, 22, 27, 30, 63, 73, 74, 78, 80, 90, 97, and 101

[WT Docket No. 25–217; FCC 26–64; FR ID 374712]

Modernizing the Commission's National Environmental Policy Act Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document (*Order*), the Federal Communications Commission (''Commission'' or ''FCC'') takes action to cut through outdated and unnecessary burdens that have slowed deployment of critical communications networks. These reforms restore balance to the Commission's National Environmental Policy Act (NEPA) implementation by providing clear and predictable rules to ensure NEPA serves as a tool for informed decision-making rather than a barrier to investment, innovation, and connectivity.

DATES: These rules are effective December 17, 2026, except for instruction 2 (§ 1.61), instruction 3 (§ 1.923), instruction 4 (§ 1.929), instruction 6 (§ 1.1303), instruction 7 (§ 1.1304), instruction 8 (§ 1.1305), instruction 9 (§ 1.1306), instruction 10 (§ 1.1307), instruction 11 (§ 1.1308), instruction 12 (§ 1.1309), instruction 13 (§§ 1.1311 through 1.1313), instruction 14 (§§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320), instruction 15 (§ 1.1706), instruction 16 (§ 1.2113), instruction 17 (§ 1.6002), instruction 18 (§ 1.9010), instruction 19 (§ 1.70007), instruction 20 (§§ 1.90000 through 1.90002), instruction 22 (§ 2.1091), instruction 23 (§ 2.1093), instruction 25 (§ 5.63), instruction 27 (§ 17.4), instruction 28 (§ 17.6), instruction 30 (§ 22.143), instruction 31 (§ 22.165), instruction 32 (§ 22.503), instruction 34 (§ 27.11), instruction 35 (§ 27.803), instruction 36 (§ 27.903), instruction 37 (§ 27.1208), instruction 39 (§ 30.101), instruction 41 (§ 63.01), instruction 42 (§ 63.18), instruction 44 (§ 73.406), instruction 45 (§ 73.1010), instruction 47 (§ 74.5), instruction 48 (§ 74.25), instruction 50 (§ 78.15), instruction 51 (§ 78.109), instruction 53 (§ 80.371), instruction 55 (§ 90.129), instruction 56 (§ 90.159), instruction 57 (§ 90.169), instruction 58 (§ 90.655), instruction 59 (§ 90.683), instruction 60 (§ 90.733), instruction 61 (§ 90.1207), instruction 63 (§ 97.13), instruction 65 (§ 101.31), instruction 66 (§ 101.1009), instruction 67 (§ 101.1329), and instruction 68 (§ 101.1523), which are delayed indefinitely. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these rule sections.

FOR FURTHER INFORMATION CONTACT: Robert Krinsky, Wireless Telecommunications Bureau, Competition & Infrastructure Policy Division, (202) 418–2909, *robert.krinsky@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Modernizing the Commission's National Environmental Policy Act Rules Report and Order (*Order*), FCC 26–64, adopted on September 30, 2026, and released on October 1, 2026. The full text of this document is available at *https://docs.fcc.gov/public/attachments/FCC-26-64A1.pdf.* 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.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule changes contained in the *Order* on small entities. The FRFA is set forth section IV.

Paperwork Reduction Act

The *Order* contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Synopsis

I. Introduction

1. In this Report and Order (*Order*), the Commission takes action to cut through outdated and unnecessary burdens that have slowed deployment of critical communications networks. These reforms restore balance to the Commission's National Environmental Policy Act (NEPA) implementation by providing clear and predictable rules to ensure NEPA serves as a tool for informed decision-making rather than a barrier to investment, innovation, and connectivity.

2. These updates to the Commission's NEPA rules answer the call from all three branches of government. Congress recognized the need for reform by amending the NEPA statute to codify core definitions, exempt certain actions from review, and expedite agency action. In implementing these changes to the amended NEPA statute, President Trump directed agencies to streamline their procedures for environmental review and to ''prioritize efficiency and certainty.'' And the Supreme Court in *Seven County Infrastructure Coalition* provided what it described as a ''course correction'' to lower courts, affirming the amended NEPA's status as a ''purely procedural statute.''

3. The burdens associated with the NEPA regulatory regime have long been one of the biggest obstacles to new infrastructure builds, and the record in this proceeding confirms that NEPA-related costs and delays associated with NEPA compliance continue to deter needed infrastructure deployment, even as projects pose no or minimal risk of environmental harm. One study, for example, indicates that compliance adds ''an estimated five-month delay in deploying new technologies and service upgrades,'' that under the Commission's legacy environmental rules, ''mobile wireless providers would spend in excess of $2.2 billion on regulatory compliance over the next decade alone,'' and that the ''overall economic harm from the current policies amounts to at least $7.5 billion in welfare and economic activity loss over the next ten years.'' Conversely, the record demonstrates that reducing the excessive costs and delays associated with burdensome NEPA reviews would yield substantial consumer and public benefits, accelerating the roll-out of new technologies and expanding access to more communities faster. The Commission anticipates that reducing regulatory barriers that delay the deployment of wireless facilities, combined with efforts by Congress, the FCC, and the broader Administration to

establish a pipeline of dedicated spectrum will facilitate the continued deployment of 5G, and will help advance U.S. leadership in 6G.

4. In the *Order,* the Commission does its part to streamline its environmental review process, promote efficiency, and encourage deployment of infrastructure that results in more competition and technological innovation. The Commission adopts its proposal to codify the statutory definition of major Federal action (MFA), the prerequisite to trigger federal agencies' NEPA obligations, in the Commission's rules, and the Commission clarifies which Commission actions are MFAs. The Commission adopts reforms to streamline other aspects of its NEPA rules, including the Commission's requirements for categorical exclusions (CEs), environmental assessments (EAs), environmental impact statements (EISs), joint agency actions, and emergency situations. The Commission also makes changes to its rules to separate NEPA requirements from its National Historic Preservation Act (NHPA) rules to account for the revisions to environmental review rules in this *Order.* Throughout, the Commission clarifies the Commission's role with respect to other statutory responsibilities, as these may have intersected with its NEPA work in the past. As part of this proceeding, the Commission also issued a *Further Notice,* published in the **Federal Register** on October 19, 2026 (91 FR 66062), seeking additional comment on its NHPA and Endangered Species Act (ESA) frameworks. Taking these actions to expedite, simplify, and reduce the costs of environmental review will help clear the way for faster and more infrastructure builds across the country and deliver significant benefits to the American public

II. Background

A. NEPA and Related CEQ Regulations

5. NEPA was signed into law on January 1, 1970, and requires federal agencies to determine whether any proposed MFAs will significantly affect the quality of the human environment and, if so, to assess those environmental impacts. The statute created the Council on Environmental Quality (CEQ), which assists with NEPA implementation across the federal government. Federal agencies issue their own NEPA implementing procedures in consultation with CEQ.

6. Recent developments have significantly altered NEPA's framework. First, Congress amended NEPA in June 2023 to promulgate a statutory definition of MFA, specify relevant exclusions to that definition, and codify various aspects of the environmental review process, including CEs, EAs, and EISs. Then, in an interim final rule issued in February 2025, CEQ rescinded its longstanding interagency NEPA regulations, and affirmed the recission in a final rule in January 2026. CEQ later issued guidance and a template to assist federal agencies in structuring agency-specific NEPA rules and procedures. In April of 2026, CEQ issued guidance to assist federal agencies in establishing, revising, adopting, and applying categorical exclusions in accordance with the NEPA, replacing initial guidance on the same subject issued in 2010.

7. Finally, the Supreme Court confirmed that that an agency implementing NEPA makes ''fact-dependent, context-specific, and policy-laden choices about the depth and breadth of its inquiry'' within ''a broad zone of reasonableness'' and need not consider the environmental effects of a ''project separate from the one under NEPA review by virtue of temporal or geographic distance.''

B. The Commission's Current Environmental Rules

8. The structure and history of the Commission's current environmental rules, as set forth in greater detail in the Modernizing the Commission's National Environmental Policy Act Rules Notice of Proposed Rulemaking (*NEPA NPRM*), 90 FR 40295, published on August 19, 2025, establish procedures to comply with statutory obligations that pertain to environmental and historic resources. These rules were designed to support the Commission's compliance with NEPA, among other statutory obligations.

9. The Commission meets its NEPA obligations through its regulations, which impose enforceable duties on its licensees, applicants, and registrants, such as commercial licensees, utilities, public safety entities, and others, and relies upon those entities to make the initial evaluation of potential environmental effects. Tower owners that are neither licensees nor applicants must also follow these rules if they intend their towers to host antennas supporting Commission-licensed services.

10. The Commission's NEPA rules currently contain an overarching CE framework by which Commission actions generally ''are deemed individually and cumulatively to have no significant effect on the quality of the human environment and are categorically excluded from environmental processing.'' The regulation describes the limited instances, commonly referred to as extraordinary circumstances, under which additional environmental processing is required. This broad CE applies to both new actions as well as modifications to existing or authorized facilities and equipment. If one of the enumerated extraordinary circumstances is present, then applicants are generally required to prepare an EA. The Commission's rules also require the preparation of an EA if an interested person files a written petition alleging that a particular action, otherwise categorically excluded, will have a significant environmental effect and the Commission, through the responsible Bureau, determines that the action may have a significant environmental impact. In addition, the Commission's rules require the preparation of an EA if the responsible Bureau determines on its own motion that a particular action, otherwise categorically excluded, may have a significant environmental impact.

11. When an applicant submits an EA, the Commission reviews the EA and makes an independent finding as to whether the proposed action will or will not have a significant environmental effect requiring additional environmental processing in the form of an EIS. If the responsible Bureau or the Commission determines that the proposal will not have a significant impact, it will make a finding of no significant impact (FONSI). After the issuance of a FONSI, the application will be processed. The Commission must issue a FONSI before a proposed action for which an EA has been submitted may be implemented. The Commission's rules require the applicant to provide local public notice of the FONSI ''[p]ursuant to CEQ regulations'' after it is issued. If the responsible Bureau or the Commission determines that the proposal will have a significant environmental impact upon the quality of the human environment, it will so inform the applicant, and the applicant will have an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems. If the matter is not resolved by an application amendment, the rules provide that the Bureau will prepare a draft EIS and a Final EIS.

12. The Commission's rules related to historic preservation are located in §§ 1.1307(a)(4) and 1.1320 of the Commission's current environmental rules. Commission undertakings are addressed through the Commission's historic preservation review procedures,

which includes application of the Nationwide Programmatic Agreement for the Collocation of Wireless Antennas and the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process (collectively the NPAs). These provisions and NPAs implement section 106 of the NHPA, which requires federal agencies to consider the effects of federal undertakings on historic properties.

13. Finally, the Commission's Antenna Structure Registration (ASR) rules can be found in part 17 of the Commission's regulations. These rules contain environmental notification provisions, which must be completed by all ASR applicants unless an exception applies or a waiver is granted. The environmental notification process applies to new tower registrations and to certain modifications of registered towers that may have a significant environmental effect. Under the ASR rules, interested persons may submit a request for further environmental review within 30 days of the national notice date alleging that the proposed facility or modification may have a significant environmental effect. The responsible Bureau will issue a decision as to whether further environmental processing in the form of an EA, submitted by the applicant, is required. If an EA is required, the responsible Bureau will review the EA and, if the responsible Bureau determines there will be a significant environmental effect, give the applicant an opportunity to amend its application so as to reduce, minimize, or eliminate environmental problems and then determine whether to issue a FONSI or advise the applicant that an EIS is required.

14. On March 27, 2025, CTIA—The Wireless Association (CTIA) filed a Petition for Rulemaking for the Commission to revise its rules to provide that wireless facility deployments pursuant to a geographic area license that do not require antenna structure registration are not MFAs under NEPA. CTIA also asked the Commission to amend its NEPA rules to provide more definitive timelines and concrete standards of review.

15. In August 2025, the Commission adopted a Notice of Proposed Rulemaking (*NEPA NPRM*) seeking comment on the CTIA petition, along with a broad array of proposals discussed in greater detail below, to update its environmental review rules and procedures to ensure they comport with NEPA's amendments and accelerate infrastructure deployment. Given their historic interplay within the Commission's rules, the Commission asked for comment on the NHPA framework and what rule changes, if any, might be appropriate.

16. The Commission held a series of opportunities for federally recognized Tribal Nations and Native Hawaiian Organizations (NHOs) to consult with the Commission regarding the Commission's review of its NEPA rules. On July 15, 2025, the Commission held a nation-wide virtual Tribal consultation and listening session on the CTIA Petition. In total, there were 109 attendees representing 57 Tribal Nations and 11 Tribal entities. On July 28, 2025, Tribal consultation was conducted with the Osage Nation on the CTIA Petition. On September 8–9, 2025, the Commission conducted Tribal consultation on the *NEPA NPRM* and CTIA Petition in Reno, NV, which included separate, in-person consultation meetings with the Pit River Tribe and the Habematolel Pomo of Upper Lake. On September 11, 2025, the Commission held an FCC Tribal Workshop at the Coalition of Large Tribes Quarterly Meeting in Prior Lake, MN. The workshop addressed a variety of Commission initiatives that support the deployment of communications infrastructure and services nationwide, including on Tribal lands, and included an overview of proposed changes to the Commission's NEPA rules. Following the presentation, Commission staff provided an opportunity for COLT and other Tribes to consult and heard from the Blackfeet Nation, the Oglala Sioux Tribe, the Standing Rock Sioux Tribe, Leech Lake Band of Ojibwe, and Sisseton Wahpeton Oyate. The Commission also held virtual tribal consultations to discuss proposed changes to the NEPA rules on December 11, 2025, and January 14, 2026. During these consultations Tribes expressed concerns about maintaining their ability to review wireless facility deployments. The Commission has considered these concerns in making the determinations in this *Order* as described more fully herein.

17. In response to the *NEPA NPRM,* service providers, including AT&T, T-Mobile, and Verizon, utilities, space operators, tower builders, and related trade associations support streamlining the Commission's environmental review rules, which, in their view, impose significant costs and delays on their efforts to deploy infrastructure facilities. Advocacy organizations, like bird conservation organizations and astronomical organizations, along with Tribal governments, historic preservation offices, and attorneys general from several states, oppose changes that, in their view, would reduce federal oversight of infrastructure deployments and their adverse effects.

III. Discussion

A. Commission Actions Subject to Environmental Review

18. The Commission restructures its NEPA rules as proposed to align with recent statutory and judicial precedent. Historically, the Commission presumed, without any analysis, that certain activities constituted MFAs and then categorically excluded them unless an enumerated circumstance (as defined in its rules) required an EA. As the Commission noted in the *NEPA NPRM,* the Commission has never taken the position that every form of license or authorization demonstrates a sufficient federal nexus to qualify as a federal undertaking or MFA. Commenters contend that NEPA requires agencies to make a threshold determination about whether an action qualifies as an MFA before being subject to environmental processing. The Commission agrees. The Commission therefore revises its rules to first consider whether a proposed action constitutes an MFA. To that end, the Commission codifies the statutory definition of MFA and its exclusions. If the proposed action is an MFA, only then will the Commission's revised rules determine whether it is categorically excluded. The Commission retains its existing CE to the extent a proposed action constitutes an MFA.

19. The Commission also establishes bright-line rules that independently operate from each other and clarify when certain actions fall outside NEPA applicability altogether. First, the Commission finds that the issuance of a spectrum license does not in itself create ''substantial federal control and responsibility'' over facilities deployed in connection with that license. Next, the Commission concludes that private infrastructure builds are not MFAs to the extent Commission funding is not directed towards them. The Commission also finds that its spectrum-licensing functions for earth stations and space stations do not constitute MFAs or give rise to MFAs. The Commission independently confirms, for the reasons detailed below, that deployments in connection with geographic area spectrum licenses are not MFAs, to the extent they do not require antenna structure registration. Under the Commission's rules, only towers that require notification to the FAA due to physical obstruction, as set forth in section 17.7, must be registered with the Commission. For the reasons described herein, the rules adopted in this *Order*

support the Commission's goal of streamlining its environmental review process, promoting efficiency, and encouraging deployment of infrastructure that results in more competition and technological innovation. Though complementary, each of the separate rules serves its own distinct and specific purpose to promote that goal. It is the Commission's intent that each of these rules adopted in this *Order* shall be severable. If any of the rules are declared invalid or unenforceable for any reason, the Commission finds that the remaining portions of the regulatory framework continue to fulfill the Commission's goal of streamlining environmental review, promoting efficiency, and encouraging deployment of infrastructure that results in more competition and technological innovation, and that any remaining rules not deemed invalid or unenforceable shall remain in effect and be enforced to the fullest extent permitted by law.

20. The Commission does not alter the substance of the Commission's existing radiofrequency (RF) human-safety requirements for equipment and operations deployed in connection with spectrum licenses. The Commission also maintains the Commission's registration and compliance rules for antenna structures that require antenna structure registration. The Commission finds that these rules remain independently authorized under the Communications Act.

1. Defining Commission MFAs

21. The Commission codifies in the Commission's rules the statutory definition and exceptions for MFAs set forth in NEPA, as initially proposed. The new definition limits MFAs to those actions that ''the agency carrying out such action determines is subject to substantial federal control and responsibility.'' A number of commenters supported the Commission's proposal. As the Commission previously noted, the Commission has traditionally borrowed from relevant definitions in CEQ's regulations implementing NEPA. Given CEQ's recission of those regulations, the Commission finds that codifying the contours of NEPA's definition into the Commission's rules will provide necessary clarity. The Commission adopts these provisions nearly wholesale, with slight modifications, to make clear that they pertain to the Commission's actions.

22. The Commission also supplements its MFA definition with bright-line rules that provide upfront clarity regarding the most common deployment scenarios that the Commission and regulated entities have encountered over the years. These rules are discussed in the sections that follow. Important principles of statutory and constitutional law guide the Commission's consideration of these scenarios, and the Commission finds them necessary to recount here.

23. First, NEPA does not enlarge an agency's powers or enable an agency to take decisions that are otherwise unauthorized or unlawful. NEPA only applies to actions or outcomes over which federal agencies have preexisting statutory authority. By its express terms, NEPA's ''policies and goals'' are ''supplementary to those set forth in existing authorizations of Federal agencies.'' Agencies like the Commission, in turn, ''have only those powers given to them by Congress, and enabling legislation is generally not an open book to which the agency [may] add pages and change the plot line.'' Agencies must interpret statutes through the lens of separation of powers and ''a practical understanding of legislative intent,'' for ''Congress intends to make major policy decisions itself, not leave those decisions to agencies.'' Congress does not ''hide elephants in mouseholes'' by ''alter[ing] the fundamental details of a regulatory scheme in vague terms or ancillary provisions.'' NEPA contains no grant of regulatory authority. Nor does NEPA operate to countermand, or impliedly repeal, requirements in an agency's primary statute. Rather, as the Supreme Court recently reaffirmed, NEPA is a ''purely procedural'' requirement that does not affect the operation of or authority granted by the agency's ''governing statute and any relevant substantive environmental laws.'' NEPA is a ''procedural cross-check, not a substantive roadblock.'' In practical terms, NEPA does not mandate that an agency achieve particular environmental results, satisfy defined compliance benchmarks, or take specific mitigation activities. NEPA's processes are merely intended to constrain ''uninformed—rather than unwise—agency action.'' So long as those processes are followed, the statute is agnostic as to outcomes. And in following those processes, agencies ''are not required to analyze the effects of projects over which they do not exercise regulatory authority.'' That regulatory authority, in turn, is evaluated by virtue of an agency's primary statutory powers.

24. Nothing in the Communications Act or any other statute gives the Commission plenary authority over the construction of infrastructure deployed by its licensees. The Commission notes it has the authority to act under the public-interest and ancillary-authority provisions of the Communications Act but such authorities are bound by the Commission's primary statutory authorities. Time and again, the courts have recognized that the Communications Act does not explicitly ''grant the Commission jurisdiction over the real estate industry, an area that is normally outside the Commission's scope of authority.'' After all, it would be quite odd if the Commission had authority to regulate the particulars of the Sears Tower's construction. So too with the terrestrial impacts from space launches, a responsibility expressly assigned to another agency but not the Commission. Nor does the Commission have express authority to address environmental issues relating to thermal, optical, and other emissions that use electromagnetic spectrum outside frequencies suitable, from a technical standpoint, for radiocommunications that the Commission otherwise regulates, for example, to prevent harmful interference. Rather, the Commission's relevant authorities requiring consideration of environmental effects principally extend to spectrum-based radiation that may pose a hazard to human health, along with a limited category of antenna structures deemed a ''menace to air navigation.''

25. Second, NEPA's ''purely procedural'' requirements attach to actions undertaken by the federal government. Indeed, Congress intended NEPA as a ''responsibility of the Federal Government.'' And by its express terms, NEPA governs ''Federal'' action. Each ''agency carrying out such action'' is individually responsible for its own NEPA compliance and must ''determine'' if that action constitutes an MFA. In this regard, the relevant question before us is whether Commission action constitutes an MFA, as relevant to discharge the Commission's procedural obligations under NEPA. On the other hand, ''non-Federal action'' generally falls outside an agency's NEPA procedural responsibilities.

26. The Commission lacks express authority to construct and operate communications infrastructure facilities like towers and earth stations and does not direct where such infrastructure should be placed by others. It generally does not direct funding towards the construction of specific infrastructure facilities but instead directs it toward the provision of service and rules respecting the service offered. Consequently, these facilities tend to be

purely privately built, entirely with non-Commission funding, and the Commission regulate their radiofrequency emissions directly or indirectly by virtue of its authority to issue spectrum licenses.

27. Third, agency action is subject to NEPA only if the agency finds that it has ''*substantial* Federal control and responsibility.'' This new substantiality requirement heightens the MFA standard. Before the FRA's passage, NEPA did not define MFA and the definition of MFA in CEQ's now-rescinded regulations did not contain a substantiality requirement.

28. Here, the Commission's analysis will ''presume that Congress is knowledgeable about existing law pertinent to interpreting the legislation it enacts'' and ''when Congress enacts statutes, it is aware of relevant judicial precedent.'' With the substantiality qualifier now added to NEPA, the Commission infers congressional intent to limit NEPA's applicability to Federal actions. The Commission's review of its NEPA rules will therefore give the inclusion of ''substantial'' due weight.

29. Finally, NEPA vests in the agency considerable discretion to find that an action is not an MFA. NEPA ''does not mandate particular results, but simply prescribes the necessary process.'' If the Commission reasonably ''determines,'' as a factual matter, that its level of control and responsibility is not ''substantial,'' then that is the end of the matter. But this discretion does not flow equally in both directions. As noted above, the Commission may not treat its actions as MFAs if doing so would exceed the agency's statutory authorities.

2. Privately Funded Deployments

30. Because nearly all towers and communications infrastructure are privately built without targeted Commission funding, the Commission proposed to clarify the contours of the MFA exclusion for ''non-Federal actions'' with ''no or minimal Federal funding'' and incorporate them into its rules.

31. The Commission confirms, as proposed, that there is ''no or minimal Federal funding'' for deployments for its purposes unless Commission funding is expressly directed towards and conditioned on the construction of the particular communications facility in question. Commenters such as CTIA, UTC, and WISPA support this interpretation. The Commission likewise confirms, as proposed, that Commission funding for unspecified private deployments or operator expenses is insufficient to give rise to an MFA. The Commission rejects the contrary position, which implies that Commission funding for overall operator expenses would transform an inchoate set of infrastructure projects into Commission MFAs.

32. The Commission expects its findings as to private deployments to be outcome determinative for many infrastructure projects at issue. As the Court of Appeals for the Eleventh Circuit recently held, under NEPA's ''plain text, either the absence of federal funding *or* the absence of federal control is sufficient to take a project outside the definition of 'major federal action.' '' The Commission's conclusion applies with equal force to the wireless, satellite, and space deployments discussed below.

33. The Commission also declines, as proposed, to specify at this time what level of funding is ''minimal.'' With little experience and few relevant examples before it, the Commission finds this issue unnecessary to resolve now and best handled on a case-by-case basis when it arises. In calling for a safe harbor based on ''a dollar amount or percentage of project cost provided by federal funding,'' CCA claims that the Commission's proposed approach would ''neither simplify nor expedite permitting.'' The Commission disagrees. The Commission provides clarity for a significant number of private deployments without targeted Commission funding. To the extent that providers may receive federal funding under existing programs related to deploying service in underserved areas across the country, that funding is not tied directly to specifically placing facilities and therefore the deployment of those facilities is excluded from the MFA definition based on the plain language of the statute.

3. Wireless Deployments

34. The Commission sought extensive comment on whether wireless infrastructure deployments in connection with Commission-issued spectrum licenses give rise to an MFA. The Commission also asked commenters to address Commission rules subjecting certain licensees to minimum buildout and coverage requirements, including whether such rules, and the Commission's ability to enforce them, give the Commission substantial control and responsibility over the deployment of the facilities needed. Many parties have argued that common private infrastructure deployments are not MFAs because they lack the requisite Federal nexus.

35. The Commission first considered its general spectrum licensing activities. The Commission then examines considerations specific to geographic and site-based licenses. In addressing these issues, the Commission notes some ambiguity in how its analysis should proceed. On one hand, the relevant ''action'' might be characterized as ''Federal'' in view of the Commission's spectrum licensing functions. Under this framing, the relevant question is whether the Commission exercises ''substantial Federal control and responsibility.'' On the other, the relevant ''action'' might be characterized as ''non-Federal'' given the primary role of private companies in building their wireless facilities. Here, the relevant question is whether there is ''no or minimal [Commission] involvement where [the Commission] cannot control the outcome of the project.'' No matter how posed, the existence of ''control'' spans both framings and the Commission examines that common issue below. The Commission notes that the Eleventh Circuit recently considered this very issue—namely, how to characterize the non-Federal construction of a non-Federal building for MFA purposes, when a Federal agency would control or direct some of the building's operations after construction. Looking to substance rather than form, the court characterized the action as ''non-Federal'' because, for practical purposes, the action being challenged on environmental grounds was the ''*construction* of the facility'' not the ''federal supervision of and support for immigration enforcement at the facility.'' *Friends of the Everglades, Inc.,* 174 F.4th at 832–33. In the end, the court found that this ''non-Federal action'' was not an MFA because the challengers failed to demonstrate both federal funding and federal control with respect to that construction. *Id.* Many commenters agree that the proper object of the MFA analysis for present purposes is the construction of private communications infrastructure, not the Commission's spectrum licensing activities. While the Commission finds *Friends of the Everglades* persuasive and compelling given its reasoning and materially similar fact pattern, our MFA analysis in the instant decision considers both ''federal'' and ''non-federal'' scenarios.

36. *Spectrum Licensing Generally.* The Commission finds that spectrum authorizations issued by the Commission do not constitute MFAs or give rise to MFAs. They do not condition Commission authorization on subsequent non-Federal infrastructure deployments so as to require the Commission to consider the

environmental effects of such deployments (if any) in a NEPA review before issuing a spectrum authorization. The Commission determines that its spectrum-licensing activities are too legally, factually, and causally attenuated from wireless deployments or their effects to create the requisite level of ''control'' for an MFA.

37. First, as commenters correctly observe, a Commission spectrum license is legally unrelated to subsequent infrastructure deployment. As defined by statute, a ''license'' allows for ''the use or operation of apparatus for transmission of energy, or communications, or signals by radio.'' A spectrum license authorizes the use of frequencies and enables the provision of associated wireless services. The Commission issues spectrum licenses to prevent harmful interference among different users and to ensure the efficient use of scarce frequencies. A license does not constitute Commission approval to build wireless infrastructure. And the Communications Act does not require consideration of environmental factors in determining whether to issue a spectrum license.

38. The Commission's rules do not legally require licensees to build new communications infrastructure upon receiving a spectrum authorization. Under the Communications Act, licensees retain broad discretion regarding when and where to obtain a license, what infrastructure facilities they need to deploy service using their license, and where to locate those facilities. Buildout requirements, discussed below, do not affirmatively require the deployment of infrastructure. Indeed, they can be satisfied through preexisting towers, collocation, or deployment over other types of existing structures.

39. Nor does the Communications Act require other Commission authorizations to deploy wireless infrastructure. It specifically relieves the Commission from the requirement to issue a ''permit for construction'' for ''mobile stations'' or ''privately owned fixed microwave stations.'' Moreover, the Communications Act expressly confirms that ''[s]tate or local government[s] or instrumentalit[ies] thereof,'' not the Commission, retain ''authority'' over the ''placement, construction, and modification'' of wireless infrastructure. State and local governments are traditionally responsible for zoning and permitting decisions, which reveal a greater indicia of control than those taken by the Commission.

40. Likewise, the Commission's authority to revoke or modify licenses is too logically attenuated from infrastructure deployments to create the requisite level of control for an MFA, as some have claimed. Here too, license revocation or modification affects the ability to transmit signals over spectrum and the service being offered. It does not affect the licensee's control of infrastructure facilities. Indeed, revocation or suspension of a license does not require dismantlement of a tower. In any event, the Commission does not have unfettered discretion to revoke or modify licenses. Sections 312 and 316 of the Communications Act of 1934, as amended (the Act), provide that the Commission may take such actions only in certain circumstances and only after completing required procedural steps.

41. Because licensees retain discretion over how and where they deploy the facilities they need to provide service, the Commission does not maintain control over the outcome of such infrastructure projects and does not need to consider the effects of non-Federal infrastructure deployment before issuing a spectrum license.

42. Second, the issuance of spectrum licenses bears no necessary factual connection with subsequent infrastructure deployments. As an initial matter, the holders of spectrum licenses need not deploy their own infrastructure. And they often do not. With the growth of neutral-host tower operators, spectrum licensees typically opt against building their own facilities. Industry data, for example, shows that the majority of towers are owned or operated by independent tower companies rather than Commission licensees. According to one estimate, the three top tower companies own 100,000 of the estimated 185,000 cell towers in the country.'' Based on information from the FCC's ASR database, which reflects a subset of towers, as of June 16, 2026, the Commission estimates that approximately 80,816 antenna structures registered in ASR are owned by infrastructure companies that own 100 or more antenna structures. This total represents a little over half of the antenna structures contained in the ASR database and also includes antenna structures owned by subsidiary and holding companies associated with these companies. Other entities (such as electric utilities, state and local governments, and transportation companies, for example) also own antenna structures. The data represents antenna structures requiring ASR registration and those voluntarily registered but would not include all antenna structures owned by these companies. In contrast, the Commission estimates that about 21,857 antenna structures are owned by service providers (including smaller wireless service providers) that own 100 or more antenna structures.

43. In most cases, tower owners and operators lease space on their towers to multiple wireless service providers. Neutral-host infrastructure operators do not necessarily build their facilities in response to the issuance of a spectrum license. In fact, infrastructure operators may build facilities without having secured any tenants.

44. Communications infrastructure often serves multiple purposes beyond spectrum-based services. For example, communications infrastructure facilities support a range of services including edge computing, AI and IoT applications. In fact, the underlying structure may have been built for purposes other than for hosting Commission-licensed services. Antennas and network equipment are often located on pre-existing building rooftops, water towers, or utility poles. These pre-existing structures were built primarily for other purposes but are used to support communications infrastructure equipment.

45. Finally, the Commission's licensing activity bears an insufficient causal connection with subsequent infrastructure deployments. The Commission rejects the argument that spectrum licensing turns non-Federal infrastructure deployment into MFAs—either because deployment is foreseeable or because it would not have occurred ''but for'' the Commission's issuance of a license.

46. Even if this argument were true—which it is not, for reasons explained immediately above—it would lack any meaningful limiting principle. Courts have recognized that ''federal control and responsibility mean something more than the power to grant or withhold a permit, otherwise every project subject to federal permitting would be a major federal action'' and that ''the reach of the major federal action stops where the federal control stops and does not extend to those actions' second and third order effects.'' Likewise, ''[a] property owner who builds an office building must comply with the Americans with Disabilities Act, but his compliance with federal law does not make it a federal building'' that is subject to NEPA. Indeed, the Commission exercises far less Federal control over facilities through spectrum licensing than other agencies whose actions were found by the courts to bear a closer relationship to the environmental effects but still fell

outside NEPA. Some of these judicial decisions are especially persuasive because they predate the 2023 amendments to limit NEPA's scope, during an era when courts were much more likely to find the existence of an MFA.

47. In addition to proving overbroad, an MFA analysis centered on but-for causation would also gloss over the intervening decisions by private companies to site their infrastructure. In reality, once spectrum authorizations are issued by the Commission, licensees retain control and responsibility over their facility deployments as they would with any other business decision. The existence of Commission-mandated buildout requirements does not change this conclusion. Buildout requirements require licensees to offer spectrum-based services to the public. They are intended to ensure that licensed spectrum is used robustly. But they are not a monolithic category of requirements. They vary by radio service, including establishing a single link operating on the licensed spectrum, or serving a percentage of the population in the license area, or serving a portion of the geography of the license area, within specified timeframes typically ranging from 1 year to 10 years depending on the license type.

48. Buildout requirements are performance-based standards. They specify the desired outcome through service-related metrics, but not the method of compliance or ''the construction of particular facilities in any specific place.'' Licensees may elect to deploy antennas on new facilities or to collocate on existing towers or other infrastructure such as utility poles. They may elect to deploy on guyed towers, monopoles, small cells, or other novel structures. Indeed, meeting a buildout requirement may not require construction at all, in the case where improved technology allows a licensee to cover a greater population by, for example, changing an antenna.

49. The Commission's buildout requirements, notably, do *not* restrict the extent of wireless deployments on environmental grounds or otherwise. Indeed, geographic area licensees can and typically do continue to deploy facilities beyond those needed to satisfy the buildout requirements associated with a license, including to densify their network operations, to modify or add sites to improve coverage, and to maximize their use of licensed spectrum. That buildout requirements serve laudable objectives does not imply substantial Federal control and responsibility, as some have argued. Nor is it dispositive that buildout requirements may ''have a substantial impact on licensees' construction plans.'' Again, these arguments would sweep too broadly by disregarding the intervening break in causation—namely, spectrum licensees' independent decisions to build infrastructure in the time, place, and manner of their choosing.

50. The Commission notes that the Supreme Court has strongly disfavored the kind of causally attenuated NEPA analysis that would tie Federal action to hypothetical downstream effects. The Court recently noted that ''a mere 'but for' causal relationship is insufficient to make an agency responsible for a particular effect.'' The Court indicated that ''[s]imply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project'' and that ''NEPA calls for the agency to focus on the environmental effects of the project itself, not on the potential environmental effects of future or geographically separate projects.'' Although the Court's decision involved a different procedural posture, the Commission finds the recency and clarity of its guidance on NEPA causality persuasive here. The fact that non-Federal facilities might foreseeably be built following the issuance of the spectrum licenses does not mean that the Commission has substantial control and responsibility over the separate placement, number, and construction of those facilities. Based on the Commission's experience with both licensing activities and environmental review, the Commission believes that the connection is too attenuated to trigger NEPA's requirements.

51. For the foregoing reasons, the Commission finds that the issuance of a spectrum license does not give rise to an MFA. In addition to, and independently of, this overarching conclusion, the Commission also confirms that the issuance of several specific categories of Commission licenses on which the Commission sought comment in the *NEPA NPRM,* including geographic area, site-based, and earth station licenses, does not constitute an MFA.

52. *Geographic area licensing.* Geographic area licensing allows deployment anywhere in the authorized area. In the *Wireless Broadband Deployment Second R&O,* the Commission determined that a geographic license ''only authorizes transmissions'' and bears ''an insufficient connection to in itself cause the construction [of facilities] to constitute . . . major Federal action under NEPA.'' Consistent with that previous determination, the Commission affirms that its issuance of a geographic area license does not create substantial Federal control and responsibility over facilities deployed in connection with that license and therefore is not an MFA.

53. Many commenters support the Commission's proposed treatment of geographic area licenses. CTIA, for instance, contends that the issuance of geographic area licenses is ''remote in time and regulatory reach from deployment of individual wireless facilities.'' T-Mobile agrees that there is an insufficient nexus, explaining that ''[l]icensees may build anywhere within the geographic area the license covers; the Commission does not specify locations where [licensees] can or must build.'' Other commenters disagree. Dynamic Environmental, for example, argues that ''[t]he granting of a geographic area license not only inevitably results in the construction or modification of countless facilities, it is a required component of that license.'' Wired Broadband argues that ''it is reasonably foreseeable that licensees will build out facilities upon acquiring their spectrum licenses.''

54. Independent from the Commission's general conclusions regarding spectrum licensing and other categories of licenses as discussed below, the Commission specifically finds that geographic area licensing does not provide for Commission involvement in facilities deployment decisions. Rather, geographic area licensees make their own determinations about what facilities to deploy, when to deploy them, and where to locate facilities to serve their broad licensed service area. For example, the Commission does not require a licensee to deploy on an existing structure, a building, or new towers; what facility to use is the licensee's decision. As commenters note, these licensees provide no information to the Commission about planned facility deployments such as information about project timelines, facility locations, facility designs, or local approvals. They also do not routinely provide the Commission with this information after facilities are deployed. As discussed above, geographic area licensees also often deploy facilities well beyond those needed to satisfy the buildout requirements associated with their licenses to densify their networks and improve their coverage. Indeed, it would not be operationally or legally practicable for the Commission to

consider any effects of particular geographic-area deployments at the time of licensing. To attempt otherwise would require the Commission to speculate about the number and impact of hypothetical, future deployments before a multi-year license term has even begun. Decisions based on that speculative analysis would likely constrain providers' deployment plans in a way that would undermine the flexibility geographic-area licenses were intended to offer. Because individual, private deployment decisions cannot be foreseen with any degree of precision, their second- and third-order effects cannot be reasonably foreseeable. CTIA Reply at 7–8. As discussed herein, the Supreme Court recently confirmed that NEPA does not require agencies to consider such hypothetical downstream effects. As these factors demonstrate, geographic area licensee choices about individual deployments are informed by business objectives and operate outside the Commission's regulatory reach.

55. *Site-based licensing.* With site-based licenses, the Commission has more information about the location of facilities, but still does not control or even influence licensees' facility deployment decisions. A site-based license is a permit for operating specific radio systems, such as land mobile, point-to-point, or point-to-multipoint systems, that are fixed to a particular physical location chosen by the licensee. Whereas geographic area licenses typically confer exclusive spectrum rights, site-specific licenses tend to authorize shared rights to use spectrum within a defined area. Accordingly, for site-specific deployments, the FCC requires an individualized permit for the primary purpose of deconflicting the potential of harmful interference between different licensees.

56. In the *NEPA NPRM,* the Commission sought comment on whether this type of licensing creates substantial Federal control and responsibility over the associated facilities deployment because the Commission has discretion to authorize the construction of specific facilities at a specific location, or whether additional indicia of Federal control and responsibility were necessary to determine that site-based licensing is an MFA. Some commenters argue that the requisite Federal nexus does not exist because, similar to geographic area licensing, with site-based licenses, the Commission ''authorizes the use of spectrum, but the licensee is ultimately responsible for the actual construction at the site in compliance with the parameters of its permit without exceeding the authorized power or antenna height limits specified in the license.'' Others argue that issuance of site-based licenses should be viewed as an MFA because issuing an authorization for a specific site gives the Commission substantial control and responsibility for the project and its environmental effects. Dynamic Environmental also argues that deployment of facilities in connection with site-based licenses is an MFA because site-based licenses give the Commission discretion ''to authorize construction of specific facilities at a specific location.''

57. The Commission finds that the issuance of a site-based license does not create substantial Federal control and responsibility over the deployment of facilities in connection with that license and therefore is not an MFA. The Commission considers broadcast towers built pursuant to a Commission construction permit to constitute ''site-based licensing'' as used herein. Site-based licenses are different from geographic area licenses in that they authorize the provision of service from a transmitting facility in a specific location. As with geographic area licensing, however, it is the provider, and not the Commission, that chooses to apply for a site-based license to provide service and chooses the location of its facilities, the equipment used, and the manner in which service is provided. And as with geographic area licensing, the provider may elect to deploy antennas on new facilities or to collocate on existing towers or other infrastructure such as utility poles. Accordingly, the Commission, in issuing a site-based license, does not exercise regulatory authority over the underlying infrastructure used to host licensed services, but rather over the use of spectrum by site-based licensees. As the Supreme Court has held, ''agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority.'' While service rules that apply to site-based licenses serve primarily to prevent harmful interference and may require an applicant to give the Commission information about planned deployments, such as the geographic coordinates, height, and transmitter angles of planned facilities, the applicant retains control over the deployment of any facilities needed to operate under the license and is responsible for complying with Commission-specified spectrum coordination procedures to ensure its proposed operations will not impermissibly interfere with another licensee's operations. If the applicant cannot successfully coordinate its proposed operations, it may choose to place its facilities in a different location, adopt alternative technical parameters to address the potential interference, or deploy service using another spectrum band. Also, to the extent that the Commission requires site-based licensees to meet certain performance benchmarks, to increase the efficient and intensive use of spectrum, the licensee retains control over how to meet those performance benchmarks.

58. *Unlicensed and License-by-Rule Operations.* In the *NEPA NPRM,* the Commission asked about other actions the Commission should consider as it updates its rules to account for the new definition of MFA. In particular, the Commission asked commenters to discuss whether it would be beneficial for the Commission to clarify that certain actions do not satisfy the definition of MFA or that they meet any of its enumerated exclusions, particularly those relating to non-Federal actions. For example, the Commission noted that the Commission has always considered NEPA as inapplicable to deployment of unlicensed wireless facilities, and the Commission proposed to codify that practice into its rules.

59. In responding comments, CTIA and WISPA agreed that the Commission should clarify that NEPA does not apply to unlicensed wireless facilities while Wired Broadband argues that authorizing spectrum for unlicensed use should be viewed as an MFA. WISPA further requested that the Commission clarify that deployment of facilities authorized-by-rule pursuant to section 307(e) of the Communications Act are not MFAs. The Commission agrees that the deployment of facilities to provide unlicensed or licensed-by-rule wireless services is not an MFA under the amended NEPA. Consistent with its determinations above, the Commission finds that no MFA exists because the Commission's involvement with respect to the deployment of such facilities is too limited because the Commission lacks control over unlicensed and license-by-rule providers' facility deployment decisions and instead focuses on technical rules with respect to their use of the spectrum. The Commission amends section 1.1302 of the rules to codify this determination.

4. Satellite and Space Deployments

60. *Satellite earth stations.* The Commission also concludes, for the same reasons, that infrastructure deployments associated with earth station licenses are not subject to

Commission control and responsibility. With respect to earth stations, the *NEPA NPRM* sought comment on the same basic questions concerning the definition of MFA as for other types of spectrum licensing.

61. Several commenters support the Commission's proposed finding as to earth stations. Satellite Operators states, for example, that the Commission's involvement with respect to the earth station facilities deployment is limited because the Commission is involved only with ''authorizing use of the relevant spectrum frequencies, prevention of harmful interference among various spectrum users, certification of the relevant radiofrequency equipment, and ensuring emissions are within radiation hazard limits.'' Other commenters disagree, arguing that any ground-based facilities deployed in connection with earth station licenses should be viewed as MFAs.

62. For the same reasons the Commission describes above with respect to terrestrial geographic area and site-based licenses, the Commission finds that the construction of earth stations is not an MFA. First, the Commission's rules do not legally obligate private satellite service providers to build communications infrastructure facilities. The Commission agrees with comments that, in issuing earth station licenses, the Commission does not exercise substantial control and responsibility over the deployment of earth station facilities. Like geographic area and site-based licensees, earth station licensees retain broad discretion over their facilities deployment decisions. The earth station licensing rules serve the primary purpose of managing spectrum use and preventing harmful interference. The Commission notes that the Commission grants blanket earth station licenses when the possibility of interference is remote. They do not give the Commission control and responsibility over the facilities satellite providers choose to deploy and where they deploy them. While Commission rules that apply to earth station licenses may require an applicant to give the Commission information about planned deployments, such as the geographic coordinates, height, and transmitter angles of planned facilities, the applicant retains control over the subsequent deployment of facilities and is responsible for complying with Commission-specified coordination procedures to ensure its proposed operations will not impermissibly interfere with another licensee's operations. If the applicant cannot successfully coordinate its proposed operations, it may choose to place its facilities in a different location, adopt alternative technical parameters to address the potential interference, or deploy service using another spectrum band. Also, to the extent that the Commission requires earth station licensees to meet certain performance benchmarks, to increase the efficient and intensive use of spectrum, the licensee retains control over how to meet those performance benchmarks. Finally, because the non-Federal deployment of earth station facilities receives no Commission funding and, as outlined above, is not subject to Federal control and responsibility, it is independently disqualified as an MFA on that basis.

63. *Space-based Operations.* As proposed, the Commission finds that Commission licensed space-based operations do not constitute MFAs. As an initial matter, they are considered ''extraterritorial activities'' which are listed as excluded from NEPA's definition of MFA. The Commission also finds that spectrum authorizations for space-based operations do not create ''Federal control and responsibility'' over subsequent non-Federal space-based deployments so as to constitute MFAs or give rise to MFAs. Further, the Commission observes that certain space-based operations or activities (such as manufacturing of pharmaceutical products) will be excluded from the MFA definition to the extent they fall under NEPA's exclusion for non-Federal actions ''with no or minimal Federal funding.'' Activities and operations are broad terms meant to capture a wide range of space-based undertakings ranging from debris removal to on-orbit satellite repair to activities still to be imagined. As the current space age continues new business cases in space proliferate and are not necessarily confined to more traditional undertakings. The Commission speaks broadly of space undertakings with ''activities'' and ''operations'' here and, indeed, attempts to take into account new proliferations and innovations in policy considerations.

64. The Commission issues licenses under parts 5, 25, and 97 for satellite and space-based communications, and in the future the Commission will issue licenses under a new part 100. In the *NEPA NPRM,* the Commission sought comment on whether such licensing activities qualify as MFAs and noted that parties have alleged in certain cases that satellites in orbit can create impacts on the atmosphere from launches and reentries, impacts from satellites reflecting sunlight, and orbital debris caused by increased collisions in space.'' Commenters offered differing views. Some, like the Commercial Space Federation, argue that satellite and orbital operations are inherently extraterrestrial and therefore fall outside the scope of NEPA, which applies only to MFAs with impacts within the United States. Commenters also note that international law establishes that outer space is beyond the borders of any sovereign state, and thus actions occurring there cannot be said to occur within U.S. jurisdiction. Other commenters, such as Dark Sky International, contend that the NEPA exclusion for extraterritorial activities should not apply because certain space-related activities, such as rocket launches and satellite de-orbiting, result in environmental effects within the United States, including atmospheric impacts and light pollution.

65. The Commission finds that Commission licensed space-based operations and activities are excluded from the definition of MFA. Excluded from that definition are ''extraterritorial'' activities, defined as activities with effects located ''entirely outside the jurisdiction of the United States.'' The Commission agrees with commenters that the potential effects of Commission licensed space-based operations do not take place within U.S. territory but instead occur in outer space. The jurisdiction of the United States extends only to territories where the United States is sovereign and the United States is not legally sovereign over outer space, as other nations are free to enter and operate there, including operations the United States disapproves of.

66. The Commission's conclusion also flows from the Outer Space Treaty, which confirms that outer space is not U.S. territory: ''Outer space . . . is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.'' While Outer Space Treaty signatory nations ''retain jurisdiction and control'' over objects and persons they send into space, this does not transform space into U.S. territory and is not dispositive of whether the effects of licensing space-based transmissions occur within the territorial jurisdiction of the United States. Specifically, the Commission declines to conclude, as some commenters urge, that because the United States writ large has certain treaty rights and obligations to exercise extraterritorial jurisdiction over outer space activities, such activities can be considered as within Commission jurisdiction for purposes of NEPA. The rule implementing this decision tracks

the NEPA statute and excludes from the definition of MFA extraterritorial activities or decisions, which means Commission activities or decisions with effects located entirely outside of the jurisdiction of the United States. In this context, the Commission understands that the term jurisdiction is limited to territorial jurisdiction.

67. Certain commenters argue that NEPA regulations should apply to Commission-licensed space-based operations due to the potential for light pollution over U.S. territory. However, the Commission agrees with other commenters that ''[w]hen the Commission authorizes a space station to utilize certain radio frequency spectrum from orbit, the immediate effect of the agency's decision is on the operation of satellites in space, outside the territorial jurisdiction of the United States.'' As the Commission discussed in the context of other licensing activities, courts have found that the scope of MFAs ''stops where the federal control stops and does not extend to those actions' second and third order effects.''

68. A few commenters such as Dark Sky International contend that certain aspects of space operations, including orbital debris mitigation, result in environmental effects within the United States. These comments do not allege an actual effect within U.S. jurisdiction, but instead refer to a vague and attenuated specter of undefined, ambiguous potential effects to the atmosphere. As the D.C. Circuit recently held, a contention that a project may give rise to ''indirect domestic effects,'' in that case, through increased carbon emissions, ''does not suffice to bring the Project within NEPA's ambit.'' The Commission's orbital debris rules are primarily focused on mitigating the effects of orbital debris in space. For example, Commission rules require GSO satellites be relocated at end of mission to an orbital altitude so as practically to never re-enter the Earth's atmosphere. For NGSO space stations ending their mission in or passing through the low-Earth orbit region below 2000 km altitude, applicants must include a statement disclosing whether any portion of the spacecraft is reasonably anticipated to survive atmospheric re-entry in an uncontrolled manner. Further, if an applicant is unable to certify their NGSO spacecraft will completely demise in the atmosphere, Commission rules require the applicant to certify that the calculated casualty risk for an individual spacecraft using the NASA Debris Assessment Software or a higher fidelity assessment tool is less than 0.0001 for the total earth's surface (of which the United States comprises 1.867%). Accordingly, the Commission agrees with other commenters that there is a lack of causal connection between the Commission's orbital debris rules and activity in the jurisdiction of the United States.

69. In any event, the Commission's debris mitigation rules are based on a specific determination that orbital debris could affect the cost, reliability, continuity, and safety of satellite operations and therefore has bearing on Congress's mandate that the Commission encourage ''the larger and more effective use of radio in the public interest.'' NEPA analysis has never been required for the promulgation of the Commission's debris mitigation rules and, as with radio transmissions from space, the Commission finds no basis for requiring NEPA analysis of this exercise of the Commission's licensing function.

70. Additionally, as an independent and alternative basis for its decisions, the Commission finds that spectrum authorizations for space-based operations do not create ''Federal control and responsibility'' over subsequent non-Federal space-based deployments so as to convert them into MFAs. While the Commission, through its satellite licensing rules, assigns spectrum used in connection with space-based operations and as part of those assignments specifies some technical parameters, operational characteristics, and orbital location of the spacecraft, licensees retain broad discretion and control over other aspects related to the deployment and operations of their space systems, subject to other agencies' regulatory requirements. Many of the concerns commenters pose regarding the potential effects of space-based operations relate to the technical specifications and physical configuration of the satellite outside the control of the Commission. The private satellite operator, not the Commission, designs, controls, and executes its own plan for post mission disposal. For these reasons, similar to the Commission's geographic, site-based, and earth station licensing activities, the Commission finds that non-Federal space-based deployments and operations are not Commission MFAs.

5. Antenna Structure Registration

71. The Commission finds that regardless of whether Antenna Structure Registration (ASR) qualifies as an MFA, the Commission retains statutory authority to require review for the limited category of antenna structures that require notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction. Generally, and absent an exception, towers more than 200 feet above ground level or located near an airport require notice to the FAA and ASR registration with the FCC under FAA and FCC rules. Antenna structures that do not meet these requirements are not covered by the ASR rules and do not require registration.

72. In the *NEPA NPRM,* the Commission asked whether the ASR requirements give the Commission ''substantial Federal control and responsibility'' over antenna structure facilities. Alternatively, the Commission sought comment on whether ASR falls into the exclusion for non-Federal actions ''with no or minimal Federal involvement'' under which the Commission ''cannot control the outcome of the project.'' The Commission asked whether the Commission's reliance on the FAA determination of no hazard should affect a determination of whether the Commission has sufficient control over tower facilities that are registered through the ASR system. The Commission also sought comment on whether ASR may fall into the exclusion for ''activities or decisions that are non-discretionary and made in accordance with the agency's statutory authority.''

73. A number of commenters urge the Commission to continue to treat ASR as an MFA. AT&T, for example, states that ''ASR filings require authorizations in which the FCC has significant control and responsibility.'' PEER argues, similarly, that ''[b]ecause construction may not proceed without ASR registration, the FCC exercises sufficient control over tower construction to trigger NEPA.'' Other commenters argue that the Commission's involvement in tower registration is too limited. The Electric Utilities Coalition, for example, argues that ASR should not be considered an MFA because ASR is ''a mere registration,'' and the ''FCC relies on the FAA to determine whether construction of a tower poses a hazard to air navigation.'' It also contends that ASR should fall within the exclusion for non-Federal actions ''with no or minimal Federal involvement'' under which the Commission ''cannot control the outcome of the project,'' because ''ASR only provides FAA clearance that the tower does not present a hazard to air navigation and does not involve any Commission funding for the construction of the tower or any other control over the construction of the tower.''

74. The Commission first finds that the Commission has statutory authority

to require ASR and related compliance obligations for antenna structures that are deemed a menace to air navigation. Section 303(q) of the Communications Act gives the Commission the authority ''to require the painting and/or illumination of radio towers if and when in its judgment such towers constitute, or there is a reasonable possibility that they may constitute, a menace to air navigation.'' As part of a broader suite of aviation safety rules across different statutes, section 303(q) incorporates the judgment of the FAA Administrator and provides the Commission with discretion to exercise its judgment in determining whether the structure poses a threat to safety. The Commission has determined that registration and review of planned facility construction is necessary in order for it to fulfill its statutory responsibility to require not only painting and illumination but also to ''require the owner to dismantle and remove the tower when the Administrator of the [FAA] determines that there is a reasonable possibility that it may constitute a menace to air navigation.'' Section 303(r) of the Act provides that the Commission shall ''make such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter.''

75. Based on this authority, the Commission's ASR rules require the registration of antenna structures that require notice of proposed construction to the FAA due to physical obstruction. Following FAA criteria, the rules provide that generally, and absent an exception, towers more than 200 feet above ground level or located near an airport require notice to the FAA and ASR registration with the FCC to ensure that they do not present a hazard to air navigation and incorporate FAA requirements for agency notification. The ASR rules do not apply to antenna structures that do not meet these criteria. Antenna structure owners must submit FCC Form 854 and a valid FAA determination of ''no hazard'' before the Commission will issue the antenna registration. To serve the public interest and ensure that members of the public have the opportunity to raise concerns about potential tower registrations, the rules include an environmental review component, requiring tower owners to conduct environmental review using the Commission's NEPA procedures. Under this requirement, applicants must complete a notice process and determine whether an EA, as specified under the agency's NEPA rules, is necessary for the proposed tower. Interested persons may also submit a request for environmental processing of the proposed antenna structure registration.

76. In addition to its statutory authority to require ASR and associated compliance measures, the Commission also exercises more control over towers that must be registered in ASR due to physical obstruction. The Commission's ASR program is a direct implementation of exclusive federal sovereignty over airspace in the United States. The Commission's statutory mandate to require proper lighting and marking of communications towers furthers the nationwide regulatory framework for maintaining the safety of United States airspace.

6. Conclusion

77. The Commission amends § 1.1302 to codify in the Commission's rules the statutory definition and exceptions for MFA set forth in NEPA. The Commission also amends § 1.1302 of the rules to codify the Commission's independent determinations that deployments of facilities in connection with geographic area spectrum licenses, site-based spectrum licenses, unlicensed or licensed-by-rule wireless services, and satellite earth stations do not qualify as an MFAs to the extent the deployments do not require antenna structure registration and that actions associated with space-based operations, including the launch, deployment, and operation of space stations are not MFAs. The Commission adopts its proposal to rescind § 1.1312 from the rules to remove environmental review requirements for facilities deployed in connection with facilities for which no preconstruction authorization is required. The Commission finds that § 1.1312 is no longer necessary for compliance with NEPA requirements based on its determination that deployment of facilities in connection with geographic area licensing does not qualify as an MFA. The Commission notes, however, as described further below, that equipment and operations deployed in connection with spectrum licenses remain subject to the Commission's existing RF requirements. The Commission maintains its registration and compliance rules for antenna structures that require antenna structure registration. The Commission finds that these environmental rules remain authorized under the Communications Act.

78. The Commission finds that these updates reflect the ''best reading'' of the amended NEPA statute, the Commission's exercise of environmental responsibilities under the Communications Act and administrative law, and the Supreme Court's ''course correction'' to NEPA in *Seven County Infrastructure Coalition.* Together, these developments outline a set of principles, discussed extensively at the beginning of this section, that provide the legal basis for the actions the Commission takes in this *Order.* The Commission agrees with comments that revising the Commission's NEPA rules to bring them into compliance with the current statutory and legal framework serves the public interest, consistent with section 319(d) of the Communications Act. To the extent that section 319(d) gives the Commission policy discretion to act in the public interest, that discretion does not enable the Commission to act ultra vires.

79. The Commission disagrees with comments suggesting that its findings would be inconsistent with the Court's decision in *United Keetoowah.* In *United Keetoowah,* the Court adopted a narrow holding that focused on the Commission's application of the public interest standard under section 319(d) in the context of its decision in the *Wireless Broadband Deployment Second R&O* to remove its limited approval authority to require environmental review of small cells under § 1.1312. The Court found that the Commission failed to justify its public interest determination and remanded back to the Commission to conduct further fact finding to justify its decision. The Court did not address the Commission's separate determination that a geographic license ''only authorizes transmissions'' and bears ''an insufficient connection to in itself cause the construction [of facilities] to constitute . . . major Federal action under NEPA'' nor did it find that the costs of greater flexibility outweighed its benefits. Here, the basis for the *Order*'s findings was not addressed in *United Keetoowah.* The Commission's *Order* responds to legislative, judicial, and executive branch developments that transpired after *United Keetoowah.* Moreover, whereas the court's decision considered NEPA and NHPA issues in a conjoined setting, the Commission's *Order* addresses NEPA only. Simply put, the questions before the court in *United Keewotah* arose from a different set of substantive rules and a unique procedural posture. Recent developments to narrow the scope of actions subject to NEPA review provide an independent, extrinsic legal basis for the Commission's rule changes and supersede any discretionary policy-

based considerations to the contrary under a public interest analysis.

80. Additionally, the *United Keetoowah* decision focused on the Commission's limited approval authority in § 1.1312. At the time § 1.1312 was adopted, all Commission actions were assumed to be MFAs and the Commission retained limited approval authority to ensure that it could fully comply with Federal environmental laws. In this *Order,* the Commission updates its NEPA framework to first consider whether a particular action meets the definition of an MFA under the amended NEPA's requirements. As a result of the Commission's determination that spectrum authorizations issued by the Commission, including geographic-area licenses, do not constitute MFAs or give rise to MFAs, the rationale for § 1.1312 no longer exists. In rescinding § 1.1312, the Commission now determines that the public interest cannot be served by categorically requiring preconstruction review over deployments that are not MFAs as a matter of law.

81. Even so, the Commission finds that its revised NEPA framework will serve the public interest by bringing consumer and public benefits. Congress amended NEPA in significant ways based on its public-interest determination that NEPA had generated outsized permitting burdens relative to its procedural benefits. The Commission finds that updating its NEPA rules will further the public-interest benefits that Congress intended when it adopted the FRA. Information in the record shows that NEPA compliance adds an estimated five months of delay to the deployment of new technologies and service upgrades and that, without permitting reforms, the Commission's legacy environmental rules would result in over $2.2 billion in direct regulatory compliance costs between 2025–2035, and a total of at least $7.5 billion in welfare and economic activity loss over that same period. Additionally, as described further in Appendix D, the Commission's regulatory impact analysis for this proceeding shows that the changes the Commission adopts will increase economic welfare by reducing costs for wireless licensees. The Commission estimates the present value of the increased economic welfare created by the streamlining of the NEPA review procedures for 2026–2030 is $169.5 million at a 3% discount rate or $157.4 million at a 7% discount rate. By contrast, the potential harms raised by some commenters are less significant and unsupported. The Commission finds that the benefits of reducing the costs and delays associated with environmental review outweigh the potential harms and the Commission expects the rule changes it adopts will encourage the deployment of infrastructure that will result in greater competition and innovation. The Commission also finds that *CTIA-Wireless Ass'n* v. *FCC,* 466 F.3d 105 (D.C. Cir. 2006), does not preclude the actions the Commission takes in this *Order.* That decision was issued well prior to the amendments to NEPA in 2023 and the Supreme Court's *Seven County Infrastructure Coalition* decision in 2025. As a consequence, the CTIA case has no bearing on the post-2023 meaning of an MFA and the legal framework applicable to NEPA to which today's actions respond.

B. Streamlining the Commission's Review Procedures

1. Commission's Categorical Exclusion and Extraordinary Circumstances Rules

82. NEPA requires an agency to prepare an environmental document—either an EA or an EIS—for a proposed agency action unless the action is subject to a CE, is nondiscretionary, or when otherwise excluded by law. For over 40 years, the Commission has determined and repeatedly reaffirmed that telecommunications infrastructure deployment presents limited environmental impact. Accordingly, the Commission applies an overarching, broad CE rather than multiple CEs tailored to various agency actions. Under this broad CE, Commission MFAs are categorically excluded from further environmental processing unless one or more of the extraordinary circumstances listed in § 1.1307 are implicated. The Commission also categorically excludes certain actions that involve alterations to existing facilities, such as collocations of equipment on existing antenna structures, pole replacements, or towers constructed in an established ''antenna farm.'' In the existing rules, § 1.1307(a), (b)(1)(i)(C), and the Note to (d) provide enumerated factors, which the Commission commonly refers to as extraordinary circumstances, that the Commission has determined, when present, may have a significant environmental effect and thus require preparation of an EA. Sections 1.1307(c) and (d) provide processes for identifying extraordinary circumstances not identified by applicants or otherwise enumerated in the rules which, if present, may have a significant environmental impact and thus require preparation of an EA. The Commission sought comment on whether changes to the Commission's rules governing when an EA is required are necessary, including whether it should keep its single broad CE or adopt a set of individual CEs, whether the Commission should delete or revise the list of extraordinary circumstances in § 1.1307(a) and the note to § 1.1307(d), and whether it should delete or revise §§ 1.1307(c) and 1.1307(d).

83. *Retention of the Commission's Broad Categorical Exclusion.* Under NEPA, an EA is required when a proposed MFA ''does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown,'' unless the agency finds that the action is categorically excluded or excluded by another provision of law. For Commission actions, applicants initially determine whether an enumerated factor—or extraordinary circumstance—requiring the preparation of an EA is present. The Commission has long found that, generally, Commission actions that do not involve the factors enumerated in the Commission's rules have no significant effect on the quality of the human environment and are thus categorically excluded.

84. Consistent with the Commission's historical finding that communications infrastructure has limited environmental effects, the Commission will continue its existing approach of applying a broad CE with enumerated extraordinary circumstances which, if present, require the preparation of an EA. Industry stakeholders support this approach and praise it for providing efficiency and regulatory certainty while ensuring communications infrastructure is deployed in a responsible and sustainable manner. While some commenters suggested changes to the Commission's approach, such as adopting new, action-specific CEs or expanding the scope of the existing CE, the Commission declines to adopt these proposals because they are unnecessary and unsupported by the record. Commenters arguing for the expansion of the CE provide examples of scenarios already addressed by the Commission's existing rules. Accordingly, the record does not contain sufficient, detailed, or technical evidence supporting the Commission changing course after 40 years to require a more particularized approach with greater compliance burdens. Further, such a change is not required by the amended statute, relevant case law, or Commission policy objectives.

85. *Adoption of Another Agency's Categorical Exclusion.* To accelerate permitting, the amended NEPA statute prescribes the process by which one agency may adopt another's CE, where

appropriate. Under the statute, an agency must follow four steps when adopting another agency's CE: (i) identify the CE listed in another agency's NEPA procedures that covers a category of proposed actions or related actions; (ii) consult with the agency that established the CE to ensure that the proposed adoption of the CE to a category of actions is appropriate; (iii) identify to the public the CE that the agency plans to use for its proposed actions; and (iv) document adoption of the CE. The Commission now adopts a rule implementing this process.

86. In the *NEPA NPRM,* the Commission noted the potential for the Commission to adopt CEs from other agencies that have analyzed the potential environmental effects of communications facilities under NEPA, such as the NTIA or the Rural Utilities Service, and sought comment on whether the Commission, when applying an adopted CE, should consider the extraordinary circumstances of the agency originating an adopted CE, the Commission's own extraordinary circumstances, or both. The Commission also sought comment on whether and how to address third party petitions when applying a CE adopted from another agency.

87. While no commenters argue against the Commission's adoption of a rule allowing for the adoption of another agency's CE, some argue against the necessity or value of Commission's application of an adopted CE to a Commission MFA in some circumstances. The Commission agrees with comments that adopting another agency's CE may not make sense in many instances, for example, because of the broad nature of the Commission's own CE or because another agency's CE incorporates a requirement to determine whether an EA is required under the Commission's rules anyway. However, the Commission rejects the premise that there could never be circumstances under which it would be beneficial and appropriate for the Commission to adopt a CE from another agency. For example, it may be appropriate and beneficial to Commission licensees for the Commission to adopt another agency's CE applicable to new authorities or actions with which the Commission does not have adequate experience to make the determination required by 42 U.S.C. 4336e(1) and that are not otherwise categorically excluded under the Commission's rules. CEs across the federal government vary greatly and are subject to changes and additions over time. Accordingly, the Commission adopts this rule to account for circumstances in which it may be appropriate for the Commission, and beneficial to Commission applicants, for the Commission to adopt another agency's CE, whether now or in the future.

88. Consistent with 42 U.S.C. 4336c, the Commission will consult with the agency that established the CE the Commission wishes to adopt to ensure that the adoption is appropriate. The Commission anticipates that such a consultation would include discussion of appropriate considerations related to adoption of the CE, for example, whether the other agency's procedures include consideration of specific extraordinary circumstances that are relevant to that agency's application of its CE. The Commission and the agency should discuss whether to apply any of the Commission's own extraordinary circumstances or those of the originating agency to the adopted CE. The Commission declines to specifically follow the suggestion by Verizon and T-Mobile that the Commission follow only the extraordinary circumstances found in the original agency's rules. Instead, the Commission anticipates that the Commission and the originating agency will consult on which extraordinary circumstances should apply to the adopted CE. The Commission finds that the deference afforded to that expert agency is most appropriately given during that time and that this approach will promote a NEPA review process for Commission applicants that is tailored to a specific CE.

89. Accordingly, when the Commission documents the adoption of a CE by publishing it on the Commission's website, the Commission will specify any extraordinary circumstances that applicants must evaluate when applying the adopted CE. The Commission clarifies that the Commission's RF rules at section 1.1307(b) will continue to apply to all Commission actions, regardless of whether the Commission has adopted another agency's CE. The Commission directs the reviewing Bureau, through notice and comment, to document adoption of another agency's CE as the Commission's CE and to specify any exceptions or additions to the extraordinary circumstances under § 1.1306(b). The Commission finds that this approach is consistent with the NEPA statute's requirement that the agencies consult on whether adoption of the CE is appropriate and promotes a NEPA review process for Commission applicants that is clear and appropriately tailored to a specific CE. Once adopted, the originating agency's CE becomes a Commission CE going forward. Accordingly, the Commission, and not the agency that established the CE, would adjudicate petitions from the public under § 1.1307(c). The Commission finds that it is unlikely the agency originating the CE would be familiar with the Commission's process for resolving petitions submitted pursuant to § 1.1307(c) of its rules, and that a decision otherwise would cause unnecessary burdens and delays.

90. *Reorganizing §§ 1.1306–1.1308, 1.1311.* In order to enhance the clarity of the Commission's regulations, as well as to condense and remove unnecessary language consistent with the *Delete, Delete, Delete* initiative, the Commission revises and reorganizes §§ 1.1306–1.1308 and 1.1311. The Commission revises section 1.1306 to consolidate in a single location the Commission's rules indicating when an MFA may significantly affect the human environment. The Commission revises § 1.1307 to reflect when an EA is required as well as the information that is required in an EA. The Commission accomplishes these revisions by first moving the list of enumerated extraordinary circumstances from § 1.1307(a) to § 1.1306(b). While the Commission makes clear in § 1.1306(b)(8) that human exposure to RF emissions in excess of the limits in the rules continues to constitute an extraordinary circumstance for Commission MFAs, the Commission does not relocate § 1.1307(b) because, as discussed further herein, the Commission's RF rules apply to actions that are not otherwise Commission MFAs. The Commission also deletes §§ 1.1308 and 1.1311 and consolidates the substance of those sections into § 1.1307.

91. The Commission also makes changes to the text of former § 1.1307(a)(3), now § 1.1306(b)(3). The Commission makes non-substantive changes to correct citations to the Code of Federal Regulations that are no longer accurate. The Commission relocates the language from the former § 1.1307(a)(3) Note regarding consultation with the Fish and Wildlife Service (FWS) under the Endangered Species Act to the new § 1.1306(b)(3) Note 1. The Commission updates the resources applicants should review to ascertain the status of proposed species and habitats. The Commission also adds language to this Note to make clear the Commission's interpretation and explanation as to how this rule operates. Specifically, the Commission explain that consultation with the FWS or National Marine Fisheries Service (NMFS), as appropriate, is required for all actions, as defined by 50 CFR 402.02, and not just MFAs. The Commission discusses

applicants' continued obligations under the ESA below.

92. *Further Revisions to § 1.1306.* The Commission sought comment on whether, in the event the Commission chose to retain a broad CE, as it is doing today, it should revise what is now section 1.1306(a) to more closely track NEPA's definition of ''categorical exclusion'' as ''a category of actions that a Federal agency has determined normally does not significantly affect the quality of the human environment.'' Accordingly, the Commission modifies § 1.1306(a) to read: ''Except as provided in § 1.1307(c) of this chapter, the Commission has determined that a Commission major Federal action not covered by paragraphs (b) and (c) of this section normally does not significantly affect the quality of the human environment and is categorically excluded from further environmental processing.'' Among other changes to more closely adhere to the statutory definition, the Commission strikes the word ''cumulatively'' from the rules. These changes are supported by CTIA and WISPA.

93. The Commission rejects the contrary position of some commenters, including a coalition of state attorneys general, which argue that the Commission should evaluate cumulative effects because cumulative effects ''occur as a result of the agency's decision'' and are reasonably foreseeable, and because NEPA does not permit the wholesale discounting of a particular type of reasonably foreseeable effects just because they are cumulative. As an initial matter, this argument appears to presuppose a broad and now-outdated definition of MFA that would encompass private activities that are not directly funded or controlled by the Commission. In any event, the argument is premised on CEQ guidance from 1997 that significantly predates the 2023 amendments to NEPA. Since the 2023 amendments, the Supreme Court clarified that NEPA requires consideration of the ''project at hand,'' not the ''environmental effects of [a] separate project'' that ''breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project.'' Even if the separate project is ''factually foreseeable,'' the Court explained, an agency is not reasonably held responsible for those effects. Therefore, NEPA only requires the Commission to evaluate the impact of individual projects, not the cumulative effects of multiple projects lacking a proximate cause to the individual project, even if those effects may be foreseeable. In evaluating the impact of an individual project, applicants, and the FCC, will take into account the existing condition of the environment.

94. Former Note 1 to § 1.1306 exempts certain deployments from the extraordinary circumstances of § 1.1306(b). The Commission revises to clarify this point and moves the text of the Note to a new § 1.1306(d) because the language of the Note is regulatory and not explanatory in nature, and therefore is more appropriately treated as rule text.

95. Under former Note 3 to § 1.1306, towers constructed in areas where similar antenna towers are clustered, called antenna farms, are categorically excluded unless the addition of a tower would cause human exposure to RF emissions in excess of the Commission's health and safety guidelines cited in § 1.1307(b). As with former Note 1, the Commission revises and moves the text of former Note 3 to new § 1.1306(e). The Commission also clarifies in new § 1.1306(e) that towers over 450 feet tall continue to require the preparation of an EA, even if they are located in an antenna farm because of the potential for such a tower to affect protected migratory or other bird species.

96. WIA commented that the reference to locations where ''similar antenna towers are clustered'' is ambiguous and requested that the Commission instead exempt deployments ''when there are two or more antenna towers or supporting structures in close proximity to each other.'' Verizon requests that the Commission expand the antenna farm exception to categorically exclude projects in a ''technology served landscape,'' which Verizon defines as ''an area where the environment is already characterized by extensive infrastructure, including areas such as existing utility corridors, transportation right-of-way ('ROW'), or a cluster of two or more existing communications towers, where the marginal impact of adding new equipment is negligible.'' Verizon states this approach would mirror the approach of other federal agencies, including the United States Department of Agriculture and NTIA, that exclude burial of new telecommunications cables in previously disturbed ground. NATE suggests that the Commission ''adopt a programmatic or batch review model for repetitive deployments, such as: Multiple small cells in an urban grid [or] Fiber trunk lines along an interstate corridor.'' The Commission declines to adopt these proposals at this time, based on the current state of the record. The Commission also declines to adopt NATE's proposal that the Commission adopt programmatic or batch processing at this time. In all cases, the Commission finds it unnecessary to address these requests at this juncture, given the limited pool of Commission MFAs that will be subject to NEPA review going forward.

97. *Documenting the Evaluation of the Applicability of the Categorical Exclusion.* Commission applicants make an initial determination of whether a proposed MFA is categorically excluded under the Commission's rules by completing the Commission's NEPA Checklist. The NEPA Checklist is used to determine whether any of the extraordinary circumstances are present. Historically, the Commission has informed applicants that documentation supporting their evaluation of the NEPA Checklist may be requested by the Commission, for example, in instances where requests for further environmental processing are received, but there is no standing requirement that applicants submit documentation to support application of a CE. PEER, in response to the Commission's proposal to revise for clarity the text of § 1.1307(a)(6)—facilities to be located in floodplains—suggests that the Commission requires applicants to submit proof of their compliance with NEPA rules. CEQ's NEPA Procedures Template, intended ''to provide clarity and technical assistance'' to agencies in developing their procedures, includes recommended provisions for agencies to document the application of CEs in appropriate circumstances determined by the agency and suggests that agencies identify the form they will use, such as a checklist, to do so. The Commission therefore modifies its rules by adding § 1.1306(g) requiring applicants for ASR required by § 17.4(a) to indicate and certify that none of the Commission's list of extraordinary circumstances requiring an EA are present. The Commission finds this requirement appropriate to ensure proper consideration of whether further environmental processing is needed. The Commission will not require this certification for voluntarily-filed ASR applications. The responsible Bureau will determine the method and format of this certification.

98. In the *NEPA NPRM,* the Commission broadly sought comment on whether changes to its EA and categorical exclusion processes and its list of extraordinary circumstances are necessary to meet its obligations under the amended NEPA statute. Under the Commission's existing processes, applicants make the initial determination of whether one or more of the enumerated extraordinary

circumstances requiring an EA applies to a proposed MFA. Therefore, the Commission finds it appropriate to adopt a requirement that ASR applicants retain their NEPA checklists and supporting documentation for a period of six years from the date of grant of an ASR registration application, except that documentation showing compliance with the Commission's radiofrequency safety standards must be retained throughout the duration of operation. ASR applicants must provide this documentation to Commission staff within five business days of any request. For MFAs, the Commission meets its obligations under the ESA through the NEPA process. Although the ESA prescribes no statute of limitations, most courts hold that ''the general six-year statute of limitations for civil actions for suits against the United States applies.'' Accordingly, the Commission finds it appropriate to require applicants to retain their records for a period of six years, to ensure the Commission can access records demonstrating its compliance, through its applicants, with the ESA.

99. *Limits on Exposure to Radiofrequency Emissions.* In the *NEPA NPRM,* the Commission proposed not to make substantive changes to the Commission's radiofrequency (RF) emissions rules in this proceeding. The Commission sought comment, however, on whether, in the event certain licensing matters no longer require NEPA review, the Commission should modify any of the Commission's other rules to make clear that the RF emission limits continue to apply to licensees and regulated devices, and if so, how the Commission should do so. Given the change in scope of actions subject to NEPA, the Commission finds it appropriate to affirm the continued applicability of the Commission's RF emission limits to MFAs and non-MFAs alike and to underscore the Commission's continued authority to impose such limits. Irrespective of NEPA, the Commission has broad authority over spectrum management, including a central role in regulation of the environmental effects of RF emissions. The Commission's statutory objective, to ''promot[e] safety of life and property through the use of wire and radio communications,'' animates its exercise of its other statutory responsibilities. The Commission thus finds ample statutory authority for the rules limiting human exposure to RF from facilities operating on Commission-regulated radio spectrum and authorized equipment. The Commission received numerous comments related to this topic, most of which argued that the Commission should strengthen or broaden its RF emissions standards. Consistent with the Commission's proposal in the *NEPA NPRM,* considering substantive changes to the Commission's rules limiting human exposure to RF emissions is outside the scope of this proceeding.

100. The Commission takes its duty to protect the public from any potential harm from RF exposure seriously, and Commission-regulated equipment and operations will continue to receive necessary review to ensure compliance with its rules limiting human exposure to RF emissions. To ensure that RF-emitting equipment continues to receive review, even when associated with a deployment that does not otherwise qualify as an MFA, the Commission adds section 1.1302(d) to the rules. This section provides that ''the Commission maintains responsibility for the certification of equipment and for operations on facilities pursuant to § 1.1307(b) and § 1.1310 and administers the Commission's radiofrequency radiation exposure limits through Subpart I—Procedures Implementing the National Environmental Policy Act of 1969.'' Accordingly, facilities operating on Commission-regulated radio spectrum will continue to require preparation of an EA if their operations will result in human exposure in excess of the applicable guidelines cited in § 1.1307(b), even if they do not otherwise qualify as MFAs. This amendment to § 1.1302 responds to comments from industry asking the Commission to affirm its exclusive jurisdiction over radiofrequency emissions of wireless facilities not otherwise subject to environmental review. In addition, the Commission finds it appropriate to add a cross-reference before the current text of § 1.1307(b), which remains unchanged, to make clear that Commission applicants must continue to follow the procedures of § 1.1307(b) for both Commission MFAs and non-MFAs. The additional language does not change the substance of the Commission's RF rules or the actions to which they apply.

101. *Information or Evidence Considered in Reviewing MFAs.* The Commission sought comment on whether any changes are needed to the Commission's rules, particularly § 1.1307, to conform to the NEPA provision stating that in preparing an EA or EIS an agency ''may make use of any reliable data source,'' but is not required to undertake new scientific or technical research unless the new scientific or technical research is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable. No comments were received in response. The Commission includes new language that tracks the language of the statute in §§ 1.1307 and 1.1312, which govern the production and writing of EAs and EISs.

102. *Decoupling NEPA and the NHPA.* Historically, the Commission's rules implementing section 106 of the NHPA have been incorporated in its NEPA rules and processes for purposes of efficiency and streamlining. Given the recent changes to the amended NEPA statute that require us to amend the Commission's NEPA rules and processes, the Commission sought comment on whether to decouple NEPA and NHPA review in its rules and, if so, whether to do so by deleting § 1.1307(a)(4), and whether there are any enumerated extraordinary circumstances which, if present, require the preparation of an EA, that should be omitted. For the reasons explained below, the Commission finds that that decoupling is appropriate and some streamlining of the categories of the Commission's extraordinary circumstances is warranted.

103. The Commission received numerous comments about this issue. Some comments do not address the issue directly, but express concern that attempts to streamline NEPA review may result in weakened NHPA review. The Village of Kasaan opposes decoupling on the basis that decoupling NEPA review from NHPA review ''would have the practical effect of eliminating early Tribal notice and consultation.'' Several commenters argue that NEPA and NHPA have different requirements and should be considered separately.

104. The Commission disagrees that decoupling NEPA review and NHPA review will in any way weaken NHPA review or otherwise deprive Tribal Nations or Native Hawaiian Organization (NHOs) of notice and meaningful consultation. The Commission's decision today makes no material change to its longstanding rules implementing section 106 of the NHPA or its existing NPAs.

105. In 2020, the Commission clarified that a determination made as part of the Commission's section 106 review process, that a project will have an adverse effect on one or more historic properties does not, by itself, require an EA when the adverse effect(s) are mitigated by the execution of a memorandum of agreement consistent with the requirements of the Wireless NPA by the FCC and applicants.

Consistent with that clarification, today's decoupling of NEPA and NHPA in the Commission's rules preserves the Commission's section 106 review processes while the Commission makes changes to align the Commission's NEPA rules and processes with the amended NEPA statute. The Commission therefore finds it unnecessary to retain an extraordinary circumstance that would trigger the need to produce an EA solely for impacts to historic properties. The Commission emphasizes that the Commission decouples NHPA from its NEPA procedures for prudential reasons to preserve the status quo while the Commission considers next steps on NHPA.

106. In addition to removing § 1.1307(a)(4), the Commission also removes § 1.1307(a)(5)—facilities that may affect Indian religious sites—as an extraordinary circumstance. The Commission's process of identifying sites of religious importance to Indian Tribes has historically been coordinated through the Commission's consultation process under section 106 of NHPA. The Commission sees no reason to change this process. In decoupling NEPA from NHPA and removing this language from its NEPA regulations, the Commission anticipates the Commission and Commission applicants will continue to identify Indian religious sites through the section 106 process. NATHPO opposes removing § 1.1307(a)(5) and warns that removal would undermine the Commission's commitment to recognizing Tribal sovereignty. The Commission takes seriously its legal obligations and trust responsibility with Tribal nations and its commitment to engage in government-to-government consultation with them. As the Commission has explained here, the Commission will still satisfy its obligations through the existing section 106 process. The Commission further emphasizes that the removal of § 1.1307(a)(5) from its NEPA rules does not alter its current approach to how overlapping obligations are considered in the context of evaluation of historic preservation impacts.

107. To further implement these changes, the Commission also revises § 1.1306 by striking the words ''unless § 1.1307(a)(4) is applicable'' from § 1.1306(c)(1). The Commission added that language to § 1.1306 in 2014 to account for the potential impact of distributed antenna system (DAS) and small-cell deployments on historic properties. Prior to this change, collocations and replacement poles were categorically excluded unless the action would have an adverse effect on a historic property under former § 1.1307(a)(4). The change in the definition of MFA means that small-cell deployments are unlikely to qualify as MFAs under NEPA, and so the special exception based on impacts from small-cell deployments to historic and cultural properties in former § 1.1306(c)(1) is no longer necessary. With respect to the NHPA, Commission undertakings are addressed through the Commission's historic preservation review procedures, which includes application of the NPAs. This change to section 1.1306 will not change section 106 review of DAS and small-cell deployments under the NPAs.

108. As discussed previously in this section, the Commission is deleting § 1.1308 and folding its substance into § 1.1307. In doing so The Commission deletes the portion of the Note to section 1.1308(b) pertaining to § 1.1307(4)–(5). The Note specifies that with respect to actions specified under § 1.1307(a)(4)–(5)—actions potentially impacting or affecting historically significant districts, sites, buildings, structures or objects, or impacting Indian religious sites—applicants will consult with the Department of Interior, the State Historic Preservation Officer and the Advisory Council on Historic Preservation, or solicit the views of the Tribal Nation or NHO whose religious site(s) may be affected, whichever is applicable. In order to accomplish the decoupling of NEPA and NHPA review, the Commission strikes from the Note the requirement to consult with the State Historic Preservation Officer and the Advisory Council on Historic Preservation. As with the changes to § 1.1306, the recodified NHPA rules the Commission adopts today do not alter the scope of section 106 review. Consultation with State Historic Preservation Officers and the Advisory Council on Historic Preservation remain a requirement of the NHPA and the NPAs. The Commission is also deleting the portion of the Note to § 1.1308(b) requiring applicants to consult with the affected Tribal Nation or NHO whose religious sites(s) may be affected for the same reasons the Commission is deleting § 1.1307(a)(5). Similar to the Commission's deletion of section 1.1305(a)(4), the Commission finds this consultation will be addressed through the Commission's section 106 process, and will not be required to be addressed within an EA.

109. The Commission also finds it appropriate to remove § 1.1320 from Subpart I—Procedures Implementing the National Environmental Policy Act of 1969—and to move it to the newly created Subpart HH—Procedures for Implementing the National Historic Preservation Act of 1966. In doing so, the Commission divides the original § 1.1320 into three sections—now §§ 1.90000–1.90002—to enhance the clarity and readability of the rules. Under the new § 1.90002(b), the Commission includes the installation of aerial wire or cable over existing aerial corridors and existing underground corridors as well as construction of new submarine cable systems as categories of undertakings that are excluded from NHPA review consistent with the existing exclusions described in § 1.1306 Note 1. The Commission also strikes § 1.1320(b)(4)(v), which excludes from NHPA review collocations on buildings that would otherwise require an EA under § 1.1307(a)(4) due solely to the age of the building. The Commission finds that this provision is no longer necessary as it is covered by the Collocation NPA. Moreover, removal of this provision furthers the Commission's goal of helping to decouple the Commission's NHPA rules from NEPA.

110. In response to the Commission's proposal to cut § 1.1307(a)(4), some commenters requested that the Commission revise the terms of the NPAs, which govern the Commission's NHPA section 106 review. The Commission declines to do so today and note that such changes would require amending the agreements with the National Conference of State Historic Preservation Officers and Advisory Council on Historic Preservation (ACHP). In the event ACHP revises its rules, the Commission delegates to the Wireless Telecommunications Bureau authority to seek comment, as necessary, on updating the Commission's historic preservation rules to reflect ACHP's revisions.

111. *Updated List of Enumerated Extraordinary Circumstances.* The *NEPA NPRM* sought comment on whether to update the list of extraordinary circumstances in the Commission's rules and whether certain circumstances should be omitted. The Commission received numerous comments on this issue and makes certain updates to account for the amended NEPA statute and to provide further clarifications. First, the Commission adds the term ''extraordinary circumstances'' to the rules and clarifies that an extraordinary circumstance requires preparation of an EA for an otherwise categorically excluded action where an MFA ''may have a reasonably foreseeable significant environmental effect.'' The Commission finds that this amendment to the rules clarifies the longstanding function of the

enumerated factors in § 1.1307 as extraordinary circumstances and comports with the NEPA statute and CEQ guidance.

112. Section 1.1307(a)(3) of the Commission's existing rules provides, in part, that an EA is required for facilities that ''[m]ay affect listed threatened or endangered species or designated critical habitats.'' The Commission designates its applicants as non-federal representatives responsible for conducting informal consultation with the FWS or NMFS, as appropriate, under section 7 of the ESA. In practice, the section 7 informal consultation process can result in one of three determinations: (i) no effect; (ii) may affect, not likely to adversely affect; or (iii) may affect, likely to adversely affect. Consistent with NEPA, the Commission clarifies in this *Order* that an extraordinary circumstance requires preparation of an EA for an otherwise categorically excluded action where, in light of the extraordinary circumstance, an MFA ''may have a reasonably foreseeable significant environmental effect.'' Accordingly, the Commission finds that where informal consultation results in a ''no effect'' or a ''may affect, not likely to adversely affect'' determination for an MFA, that action does not rise to the level of an extraordinary circumstance requiring preparation of an EA. The Commission therefore modifies what was formerly § 1.1307(a)(3), now § 1.1306(b)(3), to specify that an EA is required where facilities ''may affect and are likely to adversely affect listed threatened or endangered species or designated critical habitats.'' Implementation of recommended conservation measures, such as avoidance times, could allow the determination of effects for an applicant's action to change from ''may affect, likely to adversely affect'' to ''may affect, not likely to adversely affect.'' Applicants determining that no EA is required under this amended rule must comply with such measures, retain documentation of their compliance with them, and make such documentation available to the Commission upon request, in accordance with § 1.1306(g)(2)–(3) of the amended rules.

113. The Commission sought comment on whether to modify § 1.1307(a)(6) of the Commission's rules, regarding facilities to be located in floodplains, to clarify that in order to be categorically excluded, the facilities that must be elevated include antennas and associated equipment, including electrical equipment, but not the antenna structures. The comments demonstrate broad support for this proposal. No comments oppose this change. Accordingly, the Commission modifies what was formerly § 1.1307(a)(6), now § 1.1306(b)(4), as proposed.

114. While PEER supports the proposed clarifying language on facilities that must be elevated, it also suggests that the Commission requires ''an alternatives analysis to avoid building in floodplains as required under E.O. 11988 and submission of a local permit if required.'' The Commission already requires an alternative sites analysis in all EAs. Moreover, building in a floodplain results in additional federal, state, and local compliance burdens on tower builders such that builders are unlikely to undertake a project if an alternative site is reasonably available. The Commission finds that its implementation of E.O. 11988 by requiring elevation of facilities—specifically, of antennas and associated equipment, including electrical equipment—constructed in floodplains has proven to strike an appropriate and reasonable balance between consideration of the impacts of construction in floodplains and the need for infrastructure deployment.

115. Former § 1.1307(a)(7), now § 1.1306(b)(5), of the Commission's rules requires an EA for those MFAs which ''involve significant change in surface features.'' This section provides examples of significant changes to surface features, including the use of ''wetland fill, deforestation, or water diversion,'' but does not define ''significant.'' The Commission sought comment on whether it should consider any changes to this extraordinary circumstance to provide greater clarity and some comments support the Commission taking action to do so. PEER suggests replacing the term ''deforestation'' in the list of examples with ''ground disturbance and tree, vegetation, and desert crust removal.'' Dynamic Environmental agrees the term lacks clarity, and suggests the Commission institute a working group to determine what actions qualify as significant. The Commission finds that PEER's suggested replacement language would create ambiguity and burden, causing removal of even a single tree to require preparation of an EA. Dynamic Environmental asks a number of illustrative questions that highlight the complexity of the issue, and the Commission finds that the record before us is insufficient to support specific changes to this provision in the rules at this time. The Commission may revisit this issue in a future proceeding with the benefit of more record evidence.

116. PEER comments that the Commission should remove ''wildlife preserve'' from the list of extraordinary circumstances and replace it with ''protected or preserved habitat or park land and sensitive ecosystems, whether terrestrial or marine, designated under federal, local, state, or tribal law or regulations including, for example, Wilderness and Wilderness Study Areas, marine sanctuaries, Byways, and Wild and Scenic rivers.'' The Commission declines to do so. PEER offers no rationale for its proposed change. The Commission notes that its longstanding rules, which the Commission keeps intact, include extraordinary circumstances addressing deployments in officially designated wilderness areas, wildlife preserves, wetlands, waterbodies, and facilities that may affect federally threatened or endangered species or designated critical habitats, and facilities.

117. PEER argues that ''impacts to scenic sites, and recreational lands and landscapes should also be added'' to the list of extraordinary circumstances on the basis that ''[a]esthetic impacts are one of the most common and significant environmental effects associated with infrastructure.'' Dynamic Environmental similarly recommends that because visual effects are ''very often used at the local level as a primary means of judging the potential impacts from a proposed facility, the Commission may benefit the industry by adding specific visual effects language [to the list of extraordinary circumstances] that could be used as a tool to objectify the review of potential visual effects [on non-historic resources] as opposed to relying on varied levels of subjective local review.'' The Commission declines to implement this modification. No party has supplied administrable criteria for the Commission to determine *ex ante* when visual effects constitute extraordinary circumstances, and in the absence of record evidence, the Commission declines to adopt such aesthetic criteria given the inherent subjectivity and inscrutability of the exercise.

118. Except for the Commission's decoupling of NHPA review from NEPA review, by which extraordinary circumstances currently in § 1.1307(a)(4) and (a)(5) are removed from the Commission's NEPA rules, the record does not support removing any additional enumerated extraordinary circumstances. The remaining enumerated extraordinary circumstances are necessary to meet the Commission's obligations under NEPA, the ESA, and E.O. 11990, and no commenters support removing any of

the other enumerated extraordinary circumstances formerly in § 1.1307(a), now in § 1.1306(b), but for the already discussed suggestions to clarify or expand them.

119. *Sections 1.1307(c) and (d).* Due to the broad nature of its CE, the Commission has historically included the provisions of § 1.1307(c) and (d) to capture the consideration of extraordinary circumstances not identified by applicants that are beyond the otherwise enumerated extraordinary circumstances in the Commission's rules. Section 1.1307(c) allows members of the public to raise NEPA complaints against Commission MFAs, while § 1.1307(d) allows Commission staff to initiate reviews on behalf of the Commission. The Commission now modifies § 1.1307(c) to address concerns raised by commenters and eliminates § 1.1307(d).

120. The Commission sought comment on whether, in light of the revisions in the amended NEPA statute, the Commission should retain these provisions. The Commission received numerous comments on this issue, the majority of which supported retaining them in some form. PEER objects to deleting these provisions and instead recommends the Commission shift the burden from the public onto applicants by ''convert[ing]'' these provisions to an extraordinary circumstance, requiring ''applicants, licensees, and registrants'' to prepare an EA if ''any other potentially significant environmental effect [is] identified during the initial environmental review,'' including, but not limited to, impacts to ''designated scenic, pristine, or historic areas [and] recreational trails or sites.'' WIA submitted comments suggesting that the Commission delete § 1.1307(c), claiming it is abused to derail otherwise necessary projects, and that the Commission should retain § 1.1307(d), which WIA believes is adequate to satisfy the Commission's NEPA obligations.

121. PEER's suggestion would undermine the intended purpose of these provisions to capture circumstances in which a proposed action may have a significant environmental effect not identified by applicants or enumerated in the rules. A broad extraordinary circumstance reaching ''any other potentially significant environmental effect'' is ambiguous, inconsistent with the Commission's broad CE, and could provide an opportunity for abuse. Instead, the Commission continues to apply the clear standards enumerated in the Commission's list of extraordinary circumstances, coupled with § 1.1307(c), under which the Commission can independently evaluate the merit to a claim that a proposed MFA will have a significant environmental effect. If the Commission's continued experience with application of the NEPA rules supports adjustment to this approach, including through the addition of other extraordinary circumstances, the Commission will consider such issues in a future rulemaking.

122. While the Commission agrees with WIA's comments that § 1.1307(c) petitions may, on occasion, be used abusively, the Commission disagrees that it should do away with § 1.1307(c) altogether. The agency retains an independent obligation to ensure all of its MFAs comply with the NEPA statute, and the public plays an important and helpful role in identifying MFAs that fail to comply with the Commission's rules and applicable federal laws. Other commenters have requested that the Commission modifies its rules to incorporate a heightened threshold for third party petitions. The Commission agrees the correct course of action is not to strike § 1.1307(c) but to revise it.

123. The Commission revises its rules to require that all petitions submitted pursuant to § 1.1307(c) in response to an MFA must provide specific detailed evidence demonstrating that the proposed MFA is likely to have a reasonably foreseeable significant environmental effect. The Commission finds this approach consistent with the standard articulated in the NEPA statute, and with guidance provided by CEQ in its April 9, 2026, guidance on Establishing, Revising, Adopting, and Applying Categorical Exclusions Under the National Environmental Policy Act, which states that agencies should evaluate whether there are extraordinary circumstances that indicate a normally excluded action ''is likely to have a reasonably foreseeable significant adverse effect.'' The Commission also finds this approach is supported by the requirement in § 1.1306(g) under the Commission's revised NEPA rules that applicants must certify that they have analyzed the extraordinary circumstances in § 1.1306(b) and that none are present. Because applicants must certify their application of those criteria, the Commission finds it appropriate to require petitioners to present specific evidence refuting the applicability of those criteria or otherwise identifying specific, reasonably foreseeable significant environmental effects not considered by the applicant. The Commission further amends § 1.1307(c) to clarify that, if the Bureau determines that an action is likely to have a reasonably foreseeable significant effect, the applicant may prepare an EA or otherwise modify the proposal to avoid such effects and avoid the need to prepare an EA. This is consistent with longstanding Commission practice.

124. In the Commission's experience, petitions under § 1.1307(c) sometimes include large volumes of information that distract from the Commission's consideration of such petitions and create unnecessary delays. Because of this, the Commission revises § 1.1307(c) to limit petitions to 5 pages with up to 15 pages of supplemental documents that provide evidentiary support. The Commission finds this limit appropriate and consistent with the spirit of the amended NEPA, which imposes new page limits on EAs and EISs. However, the reviewing Bureau may, in its discretion, and upon a showing of good cause in complex cases, permit a supplement to the petition and set page limits for any supplemental submissions. In the Commission's experience, most petitions do not exceed 2 pages or involve more than 5 pages of supplemental materials, so the Commission finds these new page limits reasonable, while providing a mechanism for the responsible Bureau to consider longer documents in more complex cases, where appropriate.

125. While WIA highlights the fact that Bureau staff are well equipped to determine when a proposed MFA requires additional environmental review, § 1.1307(d) of the Commission's rules has rarely been used to require preparation of EAs, and typically only in the context of the requirement in the Note to § 1.1307(d) for applicants to prepare EAs for proposed towers over 450 feet tall because they may have a significant effect on protected avian species. Given that the Commission is moving the extraordinary circumstance described in the Note to § 1.1307(d) to § 1.1306(b)(7) and § 1.1307(d) would not play a meaningful role in ensuring the Commission meets its NEPA obligations going forward. Accordingly, the Commission eliminates it from the rules. The Commission notes that the Commission, which is ultimately responsible for its NEPA compliance, retains the authority to work with or direct applicants to ensure the Commission can meet its statutory obligations.

126. *Note to Section 1.1307(d).* In the *NEPA NPRM,* the Commission sought comment on whether it should revise § 1.1307(a) to incorporate the instructions contained in the Note into § 1.1307(d). The Note codifies the main provision of a 2010 Memorandum of

Understanding between industry and conservation groups in which the parties agreed that an EA should be required for all towers over 450 tall AGL to evaluate potential significant effects to migratory birds. All comments received on this topic are supportive of this change, although both PEER and the ABC & MOS suggest additional changes.

127. PEER states ''the cut off of 450 feet may be outdated and should be reconsidered based on current science,'' but offers no evidence to suggest why 450 feet is outdated. Therefore, the Commission finds no evidence in the record to warrant reevaluating the height threshold. Nor does the Commission see a gap in regulation that would justify a further change to its rules. In addition to expressing support for continued application of the EA requirement for towers over 450 feet, ABC & MOS recommend expanding the Commission's list of extraordinary circumstances to include additional factors potentially impacting migratory birds but did not provide support beyond suggesting that ''[f]ederal land management agencies restrict the construction of tall structures within 4 miles of a Greater Sage-Grouse leks'' because the towers can serve as perches for predators. The Commission notes that the Commission's existing extraordinary circumstances include consideration of endangered and threatened species, critical habitats, and wetlands, and satisfy the Commission's obligations under the ESA. The Commission finds that the Commission's current considerations satisfy ABC & MOS's concerns and there is insufficient support for adding to the Commission's list of extraordinary circumstances.

128. The Commission also sought comment on whether to amend the lighting changes on towers over 450 feet in height that require an EA. Currently, Note to § 1.1307(d) requires an EA for the addition of lighting or adoption of a less-preferred lighting style, as defined by § 17.4(c)(1)(iii), on towers over 450 feet tall. Since 2015, the FAA's Advisory Circulars no longer recommend steady-burning red lights, which are the lights of primary concern for potential, significant environmental effects on birds, except for a small subset of towers 150 feet or less in height AGL. The Commission therefore finds it unnecessary going forward to require an EA for a change in lighting on a tower over 450 feet in height, except in the unlikely event that such a lighting change includes the addition of steady red lighting.

129. For these reasons and in light of supportive comments, the Commission removes Note 3 from existing § 1.1307(d) and incorporate its remaining provisions into § 1.1306(b)(7), and amend the lighting provision to require an EA for lighting changes to existing towers over 450 feet in height AGL only when they involve the addition of steady red lighting. The Commission finds this modification will provide more clarity regarding the extraordinary circumstances that require an EA by moving it to § 1.1306(b). The Commission also removes unnecessary and ambiguous language in the rule by deleting reference to ''less-preferred'' lighting styles.

130. Related to lighting styles, ABC & MOS encourages the Commission to create a pre-filled version of FCC Form 854 (Application for Antenna Structure Registration) to streamline and simplify the process for tower operators who wish to ''switch from steady to flashing lights, or to turn off existing steady burning lights on pre-2016 towers over 350ft.'' ABC & MOS contend that bird mortality is greatest for towers over 350 feet, and that changing away from steady burning lights can save tower operators ''as much as 70%'' in energy and tower maintenance costs. The Commission supports the goal of simplifying and streamlining the process for tower operators to seek approval to change their lighting to a more preferred lighting style. However, the Commission finds it unnecessary to make changes to implement this suggestion because the Commission notes that the ASR system already pre-fills tower information in applications to modify ASR registrations. The Commission is unable to waive the requirement to obtain FAA approval for a lighting change and an updated no-hazard determination, as required by the Commission's rules.

131. *Other Legal Obligations.* In the *NEPA NPRM,* the Commission sought comment on the Commission's legal responsibilities under other environmental protection statutes for its actions that are not MFAs under NEPA. The Commission also asked commenters to identify other legal requirements that may be affected by the Commission's decisions here and whether the Commission should address any collateral issues in a separate proceeding. While few commenters addressed this section, statutes such as the ESA, the Clean Water Act, the Outer Space Treaty, and the NHPA were mentioned. The Commission notes that it addresses the NHPA separately and requests additional comments related to NHPA in the *Further Notice* (91 FR 66062), and addresses space-based operations and the Outer Space Treaty elsewhere in the *Order.*

132. While recent amendments to NEPA have narrowed the pool of Commission actions that qualify as MFAs for which NEPA review is required, the range of actions subject to other federal environmental statutes has not narrowed. Applicants should be aware that compliance with other federal statutes, including the ESA, the MBTA, the Bald and Golden Eagle Protection Act, and the Clean Water Act, is a separate question from whether NEPA applies to a particular action.

133. Section 7(a)(2) of the ESA requires each federal agency, in consultation with the Secretary of the Interior or the Secretary of Commerce, as appropriate, to ensure that any action it authorizes, funds, or carries out, in whole or in part, is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Commission's responsibilities under the ESA apply to actions that it ''authorizes, funds, or carries out, in whole or in part,'' including, among other things, the granting of licenses, contracts, leases, easements, rights-of-way, and permits. The Commission designates its licensees, applicants, tower companies and their representatives, as non-federal representatives responsible for conducting informal consultation or preparing a biological assessment under the Commission's supervision and independent review. Under the ESA, the Commission retains responsibility for conducting formal consultation, when required. The Commission seeks comment in the accompanying *Further Notice* (91 FR 66062) on the scope of actions to which ESA applies. Pending consideration of the issues in the associated *Further Notice,* the Commission finds it appropriate to amend Note 1 to § 1.1306(b)(3), as moved from § 1.1307(a)(3), of the rules to add language clarifying that ''[t]he Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.,* requires consultation with the U.S. Fish and Wildlife Service, Department of the Interior, or with the National Marine Fisheries Service, Department of Commerce, as appropriate for actions that meet the definition of 'action' in 50 CFR 402.02, regardless of whether they meet the definition of major Federal action in 47 CFR 1.1302.'' The Commission also clarifies that collocations of antennas and associated equipment on existing buildings, antenna towers, or other man-made structures, do not trigger ESA review requirements, consistent with existing

Note 1 to § 1.1306. The Commission delegates to the relevant Bureau to provide further guidance to Commission applicants, regarding compliance with the ESA in light of the decisions the Commission adopts today.

134. The MBTA prohibits a list of described actions, and federal courts have held that the MBTA applies to federal agencies. Specifically, the MBTA prohibits the ''hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof'' identified in one of four international conservation treaties described in the MBTA. Unlike the ESA, the MBTA does not require prior consultation with the FWS, but federal agencies retain an obligation to ensure their actions do not result in violations of the MBTA. Similarly, the Bald and Golden Eagle Protection Act prohibits anyone, without a permit issued by the Secretary of the Interior, from ''taking'' any bald or golden eagle, dead or alive, in whole or in part. The Commission notes that these broadly applicable statutes protecting migratory birds and bald and golden eagles continue to apply to actions beyond the pool of Commission MFAs, and, as a result, entities building infrastructure to support the use of services authorized by the Commission should continue to ensure their projects do not violate these statutes.

135. While recent legal decisions have narrowed the scope of the Clean Water Act by redefining what are considered to be the waters of the United States, the Commission retains responsibilities under the Clean Water Act, including ensuring that certifications and permits are obtained for its MFAs, when required. The Clean Water Act may still apply to actions that are not MFAs, and applicants or project proponents will need to evaluate whether and what permits and/or certifications they will need to obtain.

2. Part 17 Environmental Notification and Other Processes for ASR Applications

136. In the *NEPA NPRM,* the Commission sought comment on whether to make changes to the environmental notification process for ASR in light of its review of the environmental rules. Accordingly, to conform with changes to the Commission's part 1 NEPA rules and in response to comments, the Commission retains and revises its environmental notification and public participation processes for ASR applications found at part 17 of the Commission's rules. The Commission retains the national public notice period and 30-day period for interested persons to request further environmental review of ASR applications, delete the local public notice requirement, require third party petitions to conform to the updated criteria of § 1.1307(c) of the Commission's rules, and maintain national public notice of EAs while reducing the period for the submission of requests for further review of ASR applications with complete EAs to 20 days.

137. In 2012, in response to the D.C. Circuit's 2008 decision in *American Bird Conservancy* v. *FCC,* the Commission adopted its environmental notification process to provide public notice of pending ASR applications and to allow the public a meaningful opportunity to request further environmental review of pending ASR applications, as provided for by § 1.1307(c) of the Commission's rules. The Commission's existing part 17 environmental notification process requires both local and national public notice of pending ASR applications, provides a 30-day period for the public to submit requests for further environmental review beginning with the publication of national notice, and incorporates a pleading cycle for requests for further environmental review that mirrors the procedures in § 1.45 of the Commission's rules. ASR applications meeting the criteria of one or more exceptions listed in § 17.4(c)(1) of the Commission's rules, are not required to be placed on environmental public notice. The exceptions listed in § 17.4(c)(1) have been deemed by the Commission to be unlikely to have significant environmental effects. Separately, ASR applicants may also seek waivers of the notice process requirement, for example, due to emergency circumstances.

138. In the *NEPA NPRM,* the Commission asked whether the Commission is legally required to retain the environmental notification process and, even if the Commission is not, whether the Commission should retain it. The Commission also asked about a scenario in which the Commission chooses to delete § 1.1307(c), which the Commission has not opted to do, and whether and how the Commission could evaluate the potential, significant effects of towers requiring registration in the Commission's ASR system on migratory birds in other ways. Finally, the Commission sought comment on whether and what changes the Commission should make to the environmental notification process, if it is retained, such as changes to the list of exceptions and whether the process should only be required for ASR applications that require EAs.

139. Overall, commenters support retaining some manner of environmental public notice for ASR applications and an opportunity for the public to comment on potential environmental effects of Commission MFAs. Many comments support amendments to the environmental notification process, but indicate an assumption that the Commission will retain the environmental notification process in some form. Some commenters argue that the environmental notification process is still legally required to comply with the 2008 D.C. Circuit decision and/or to fulfill NEPA's public participation goals and that any provision allowing for public comment would be meaningless without public notice. Some commenters argue that the Commission should strengthen its public notice provisions. Others note the importance of public participation in agency NEPA decision-making generally and particularly in the context of the Commission's NEPA process, which relies upon applicants to determine in the first instance whether their proposed projects are categorically excluded.

140. The Commission retains but revises the Commission's environmental notification process so that it provides certainty to applicants and promotes public participation in a manner that minimizes compliance burdens. The environmental notification process establishes a defined timeframe and structure for third party petitions, after which such requests may be dismissed as untimely. This process provides clarity to the industry on when it is permissible to proceed with deployment. Without a process specific to ASR, interested persons would rely instead on the Commission's part 1 rules to file informal or formal complaints, which would mean that complaints could be submitted at any time during the construction of projects. By retaining and revising the environmental notification process, the Commission preserves a meaningful opportunity for interested persons to request further review of proposed

Commission MFAs while also providing applicants some protection from the potential for uncertainty or delay.

141. While there is general support for retaining some type of public notice and period for submitting requests for further review of ASR applications, many commenters support the elimination of the local public notice requirement, by which applicants are required to provide public notice of their pending ASR applications in a newspaper local to the tower site or via the local zoning process. These commenters argue that the D.C. Circuit did not require the Commission to provide local public notice, and instead noted the petitioners' support for web-based notice. These commenters also argued that local public notice has outlived its usefulness, citing in part the decline in the number and availability of local newspapers in which local public notices can be published. WIA, the only commenter to recommend that the Commission eliminate both local and national public notice requirements for ASR applications, argues in part that community feedback is already received as part of the local zoning and planning process. In contrast, PEER opposes the elimination of local notice, arguing that its absence would undermine meaningful opportunity for the public to learn about and comment on a deployment. WISPA supports the retention of national notice but argues that the national notice period should be reduced from 30 days to 15 to 20 days in order to streamline timely deployment of services while still allowing for meaningful public participation.

142. The Commission disagrees with WIA that the Commission should eliminate national public notice because community feedback is already received as part of the local zoning and planning process. In addition to the reasons set forth above, the Commission notes that local review processes vary greatly: not all local review processes consider environmental effects, and of those that do, not all fully consider the Commission's list of extraordinary circumstances, the presence or absence of which determines in the first instance whether a proposed MFA is categorically excluded from further NEPA review. As such, the Commission cannot rely on local zoning and planning processes to detect the presence of extraordinary circumstances in the Commission's rules. Therefore, the Commission will continue to require ASR applications not subject to the exceptions in § 17.4(c)(1) to be placed on national notice for 30 days.

143. The Commission also agrees with commenters who argue that local notice has become difficult, in part due to the decreased number of local newspapers generally and the fact that some localities have no local print newspaper at all, and that its usefulness has decreased over time as more of the public obtain their news from online sources. The Commission therefore deletes the text of § 17.4(c)(3) of the Commission's rules referring to local public notice and other references to local public notice requirements in § 17.4(c), which sets forth the environmental notification process. Going forward, as indicated in revised § 17.4(c)(3), environmental public notice required by the Commission will consist only of national public notice posted on the Commission's website. With regard to the requirement for new notice for certain amendments to pending ASR applications, the Commission also reduces the burden on applicants by limiting the types of lighting changes made, whether to a pending ASR application or by an application to modify an existing ASR system registration, that require additional notice and a new period for filing requests to the addition of red steady-burning lights.

144. The Commission received a number of comments regarding the content of requests for further environmental review, now referred to as third party petitions, under § 17.4(c)(5)(ii) of the Commission's rules. While PEER takes issue with the Commission's requirement that the public is required to establish that a proposed action may have a significant environmental effect, rather than being able merely to raise a potential effect, AT&T supports a modification of § 17.4(c)(5)(ii) regarding the content of requests for further environmental processing of the Commission's rules to allow Commission staff to dismiss any request that staff determines to be speculative, general, and unsupported or otherwise fail to meet standards in the Commission's rules. The Commission notes that requests for environmental review under § 17.4(c)(5)(ii) in the environmental notification process rules, are, by definition, petitions under § 1.1307(c) and will be subject to the same requirements.

145. CTIA argues against requiring additional public notice when an EA is added to a pending application that has already been placed on public notice, whether through the ASR system or ULS, because the public has already been provided with notice of the application. In contrast, Dinah Bear argues that EAs should continue to be placed on public notice for 30 days, given that EAs are the principal vehicle for Commission decision-making and public involvement regarding environmental impacts. ABC & MOS emphasize the importance of retaining both notice and comment requirements for EAs given the strong public interest in migratory bird conservation. Crown Castle Fiber LLC (Crown Castle) agrees that EAs should be put on public notice, but argues that only those ASR applications with EAs attached should be put on public notice.

146. The Commission disagrees with CTIA that there should be no additional national public notice when an EA is attached to an already pending ASR application, *i.e.,* for which the national notice period has already begun. As noted above, an EA is a vehicle for the agency's decision-making, and, indeed, NEPA describes an EA as a public document. The Commission's ASR system will be the primary receptacle for Commission EAs, and the listing of the ASR application on the Commission's Applications on Environmental Notice web page will be the means by which the public can learn about and access these public environmental documents. The Commission's concerns about the absence of a defined public notice period for ASR applications, as described above, are heightened for ASR applications with EAs. If the notice period did not restart when an EA was uploaded, an applicant could wait until the end of the notice period, or even after its expiration, to submit its EA, which would create uncertainty about when the public's opportunity to request further review began and, importantly, ended. The Commission finds that providing temporal certainty for this process is beneficial for all parties involved. However, as discussed above, the Commission is abbreviating the notice period during which requests for further environmental review may be filed on complete EAs to 20 days, with requests related to EAs due 20 days after the EA is published on the Commission's website. This means that ASR applications initially submitted with EAs attached will have two overlapping notice periods—the 30-day national notice period and the 20-day EA request period. The Commission disagrees with Crown Castle's assertion that only ASR applications with EAs attached should require environmental notice. The purpose of the environmental notification process is different from the purpose of the public notice period for EAs, although the

timeframes may overlap if an EA is filed when the ASR application is submitted.

147. While commenters generally did not address whether any changes should be made to the list of exceptions to the public notice requirement in § 17.4(c)(1), the Commission notes that the Commission has updated the exceptions in line with the Commission's decisions here. First, notice will only be required for a lighting change that involves the addition of steady red lights which, the Commission expects, will be exceedingly rare. Second, the Commission deletes the federal agency exception to notice and replace it with the similar lead agency exception, as discussed below.

148. CTIA contends it would be appropriate to clarify in the Commission's rules that voluntary registration in the Commission's ASR system is permitted and that voluntarily registered towers do not require marking or lighting and do not require a Determination of No Hazard from the FAA. The Commission agrees and amends its rules to clarify that the Commission continues to allow the submission of ASR applications for towers and modifications that do not require ASR system registration under the Commission's rules, *i.e.,* towers with a height not over 200 feet AGL or within the glide slope of an airport, and to clarify the obligations of owners of voluntarily registered ASR structures. First, the Commission amends its rules and directs the Wireless Telecommunications Bureau to make changes to the ASR system and FCC Form 854 so that voluntary applications for ASR system registration do not require a No Hazard Determination to be submitted and granted. Second, the Commission relieves applicants for voluntary ASR system registration from the responsibilities in the Commission's part 17 rules related to lighting and marking of towers, given that lighting will not be required for these towers. However, while notice will not be required for modifications to voluntarily registered towers (unless those modifications result in the requirement of ASR system registration), the Commission will continue to require tower owners to ensure that information in the ASR system is accurate and current, including any lighting the owner of a voluntarily registered tower decides to add and all changes in height. This will help maintain the accuracy of information in the ASR system. Third, applicants submitting voluntary ASR system registration applications will not be required to complete the environmental notification process, given that the Commission's decision to maintain that process only for towers requiring ASR system registration. To provide clarity on the transition of these new ASR rules and procedures, applicants with pending ASR applications that are in the process of completing the environmental notification process when the amendments to § 17.4(c) take effect will have the choice to either complete their applications under the prior rules or to withdraw and refile their applications under the new rules. In the case of voluntary ASR applications, for example, withdrawing and refiling the application will allow the applicant to proceed without a determination of no hazard from the FAA and to skip the environmental notification process.

3. Procedures for Determining Lead and Cooperating Agency

149. *Determining Lead and Cooperating Agencies.* With respect to a proposed action, the lead agency is ultimately responsible for completing the NEPA process. NEPA defines the lead agency as the agency that proposed the action or, if there are two or more federal agencies involved in the action, the agency designated as lead agency. When more than one federal agency is involved in the environmental review or authorization of an action, the revised NEPA statute provides for the designation of a single lead federal agency upon consideration of the following five listed factors: (i) the magnitude of agency involvement; (ii) project approval or disapproval authority; (iii) expertise concerning the action's environmental effects; (iv) duration of agency involvement; and (vi) the sequence of agency involvement. The designation of a lead federal agency must be memorialized in a letter or memorandum. Additionally, participating federal agencies may appoint as joint lead agencies such state, Tribal, or local agencies as they determine appropriate, and the lead agency can designate as a cooperating agency 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.

150. In the *NEPA NPRM,* the Commission sought comment on whether and how the Commission should adopt rules implementing NEPA's lead and cooperating agency provisions and what would be sufficient as a letter or memorandum of such designation, as required by the statute. Commenters that addressed this issue are in favor of the adoption of lead agency provisions to clarify the NEPA process when multiple federal agencies are participating in the same action, but were not specific about how the Commission should do so.

151. Consistent with the NEPA statute, the Commission adopts modifications to section 1.1302, which as revised set forth the procedures for the Commission, in conjunction with the other federal agency or agencies involved in a particular action subject to NEPA, to designate a lead federal agency or joint lead agencies. The Commission agrees with commenters that a rule that encompasses the procedures set forth in NEPA for designating lead and cooperating agencies provides clarity and efficiency to the NEPA process and, accordingly, incorporates consideration of the five factors required by NEPA into the Commission's rules. To ensure compliance with the NEPA statute, the Commission requires a letter or memorandum of lead agency designation within or attached to an email on which all participating agencies, and, if applicable, the project sponsor or applicant, are copied. Also consistent with the NEPA statute, the modifications in § 1.1302, describe the role of the Commission when designated as the lead agency or as a joint lead agency. Finally, the rule requires the Commission, when it is a participating agency in a proposed action, to submit to CEQ and all other participating agencies any written request for the designation of a lead agency that it receives from any federal, state, Tribal, or local agency or person that is substantially affected by the lack of designation. The Commission notes that the lead and cooperating agency designations should be made early in the NEPA process and not after any participating agency has completed its review. The Commission believes this change will improve clarity and efficiency in addressing actions in which the Commission is among multiple agencies involved. These modifications are adopted in § 1.1302(e).

4. Federal Agency Exception

152. To reduce or eliminate duplication of effort among federal agencies in NEPA reviews, §§ 1.1311(e) and 17.4(c)(1)(vi) of the Commission's rules included what is known as the federal agency exception. Section 1.1311(e) provided that an EA need not be submitted to the Commission if another federal agency has assumed responsibility for determining whether the facilities in question will have a significant effect on the quality of the human environment and, if it will, for

invoking the EIS process. In turn, § 17.4(c)(1)(vi) provided that the environmental notification process need not be completed for an ASR application for the construction, modification, or replacement of an antenna structure sited on federal land where another federal agency assumes responsibility for determining whether the facilities in question will have a significant effect on the quality of the human environment, and if so, for invoking the EIS process. Section 17.4(c)(1)(vi) also included a rarely used provision allowing for it to be applied to any ASR structure pursuant to a written agreement between the Commission and the federal agency that assumed responsibility for environmental review. In practice, Commission staff have typically reviewed the completed NEPA documentation from another federal agency submitted by an applicant or licensee seeking to apply the federal agency exception at § 1.1311(e) or 17.4(c)(1)(vi) and determined whether the exception to the EA requirement or the environmental notification requirement, as applicable, applied. In the *NEPA NPRM,* the Commission sought comment on whether the Commission should retain the federal agency exception in part 1 and/or part 17 of the Commission's rules, whether and how they should be amended, and whether these rules, as applied in practice, comply with the NEPA statute.

153. CTIA and WIA are both in favor of the Commission retaining its federal agency exception. In its comments, CTIA said that the federal agency exception is helpful and should be retained, but opined that the exception in both the part 1 and part 17 rules should be clarified to read that ''environmental processing under the Commission's rules is not required'' if another [f]ederal agency has assumed responsibility for determining if the facility will have a significant environmental effect.'' Regarding acceptable documentation, CTIA said that applicants should retain the other agency's environmental review documentation, such as a FONSI, Record of Decision (RoD), or CE determination in their files. No other commenters argued for or against retaining the federal agency exception.

154. Given that the federal agency exception was designed to be consistent with the concept of a lead agency and the Commission is now adopting a rule requiring the designation of a lead agency consistent with the NEPA statute, the Commission finds that the best course of action is to replace the federal agency exception, as it has been applied by the Commission in the past, with a lead agency exception. Specifically, the Commission amends the Commission's federal agency exception, which was previously codified in § 1.1311(e), and now appears as the lead agency exception in § 1.1307(a)(4), to provide that an EA need not be submitted to the Commission if another federal agency has been designated as the lead agency. The Commission also amends the rule at § 17.4(c)(1)(vi) to include an exception from the environmental notice requirement in the ASR system ''[f]or construction, modification, or replacement of an antenna structure for which a Federal agency other than the Commission has been designated as the lead agency and for which environmental review has concluded.'' This amended ASR provision omits the requirement that the facility be sited on federal land, since that is just one of multiple factors that may be considered in determining whether the FCC or another agency is the lead agency for a proposal. The Commission agrees with CTIA that simplifying the text of the federal agency exception, now the lead agency exception, and applying the same standard consistently in both parts 1 and 17 of the Commission's rules makes sense and will be beneficial to the Commission's applicants. However, to help ensure the Commission meets its NEPA obligations, the lead agency exception in the Commission's part 17 rules requires that the lead agency's environmental review be complete prior to excepting the proposed construction or modification of a tower requiring ASR from the environmental notice requirement. The Commission also finds these changes, and continued application of appropriate exceptions when another agency is the lead, to be consistent with NEPA's goals of promoting timely and unified federal reviews and the ''one document'' requirement.

155. In practice, because towers requiring registration in the Commission's ASR system remain subject to NEPA, and based on the Commission's long history and expertise with respect to communications facilities and their environmental impacts, the Commission anticipates that the Commission is likely to serve as either the lead or a cooperating agency for actions involving the construction or modification of communications facilities that require ASR system registration. As a cooperating agency, the Commission will have the opportunity to submit comments, and may, for example, recommend that the lead agency consider the Commission's list of extraordinary circumstances, to the extent not already considered under the lead agency's own NEPA procedures, or recommend measures to mitigate adverse environmental effects when appropriate. In instances where another federal agency is the lead, that agency will be responsible for determining, consistent with the NEPA statute, whether a CE applies to the action or whether preparation of an environmental document is required. The Commission, therefore, finds it appropriate for the lead agency exceptions in the Commission's rules to apply both when the lead agency determines that an environmental document is required and in instances where a lead agency applies a CE to the action.

156. The ASR application will include a question about whether a federal agency other than the Commission has been designated as the lead agency for the antenna structure that is the subject of the ASR application. The Commission directs the Wireless Telecommunications Bureau to make appropriate changes to the ASR system and FCC Form 854 to implement the changes described in this section. Given that towers requiring registration in the Commission's ASR system are the Commission's MFAs, it is important for the Commission to ensure that these towers comply with NEPA before granting ASR applications. Therefore, applicants who answer yes will be prompted to upload documentation showing that the lead agency has completed its NEPA process for the tower. Upon confirmation, ASR applicants will be prompted to complete any further sections of the ASR application as applicable, including a certification that the facility will not result in human exposure in excess of the applicable guidelines cited in section 1.1307(b). For these applications, environmental notice will not be required.

5. Other Changes to NEPA Procedures

157. *Clarifying Definition of Antenna Structure Property.* In the *NEPA NPRM,* the Commission sought comment on whether to provide a universal definition of the term ''antenna structure property'' so as to remove any ambiguities within the Commission's rules that may cause confusion or delay. By way of example, the Commission explained that the Collocation NPA defines an antenna structure property as ''the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site,'' but

§ 1.1306 defines antenna site as ''the area that is within the boundaries of the leased or owned property surrounding the deployment or that is in proximity to the structure and within the boundaries of the utility easement on which the facility is to be deployed, *whichever is more restrictive.*'' Because no comments were received in response to this proposal, the Commission does not find any basis, at this juncture, to modify its rules.

158. *Removing References to Rescinded Regulations.* The Commission sought comment on removing references to rescinded CEQ regulations from the Commission's rules consistent with guidance from CEQ and the D.C. Circuit's decision in *Marin Audubon Society* that CEQ rules are not binding on other agencies and that CEQ serves as an advisory agency. No comments in opposition were received. WIA expressed that the removal of these references was necessary, and although they did not comment directly on this proposal, the U.S. Small Business Administration Office of Advocacy noted that the removal of CEQ's implementing regulations would permit the Commission to develop its ''own procedures for meeting NEPA's requirements while focusing on [its] own statutory mandates[,]'' but cautions that it is ''important when developing NEPA implementation regulations, the FCC maintains a degree of consistency with other agencies to avoid unnecessary project expenses and delays.'' Accordingly, the Commission modifies its rules to delete any reference to CEQ's regulations.

159. *Correcting Cross-References.* In this *Order,* the Commission reorganizes, amends, and deletes a number of Commission rules, many of which are referenced in other provisions of the rules. Accordingly, the Commission revises a number of cross-references to the Commission's NEPA and NHPA rules to reflect the new codifications of relevant provisions and delete cross-references to deleted rules.

C. Modernizing the Commission's EA and EIS Requirements

1. Updated EA Requirements

160. The Commission sought comment on whether, consistent with the requirements of NEPA, the Commission should make any changes to its rules requiring a project sponsor (*i.e.,* the applicant) to prepare an EA where one is required by the Commission's rules to help expedite processing and reduce costs and burdens for project sponsors, including small entities. Below the Commission addresses amendments to the Commission's rules governing the preparation of EAs.

161. *Reasonable Range of Alternatives.* In its petition, CTIA states that, under the revised NEPA, ''agencies need only consider a reasonable range of alternatives when making environmental determinations'' and argues that the Commission should amend its rules to clarify that the Commission need only consider a ''reasonable range of alternatives [ ] that are technically and economically feasible, and meet the purpose and need of the proposal.'' Dynamic Environmental indicates that it does not oppose a reasonableness standard, provided that the standard ''is not construed to suggest that mitigation of environmental impacts is not needed and would be cost-prohibitive.'' Based on these comments, the Commission finds it appropriate to amend its rules governing EAs to require in § 1.1307(a)(1)(vi) that an EA include ''[a] description of technically and economically feasible alternative sites or facilities considered.'' The Commission finds that further modification, regarding the inclusion of alternatives in EAs, to § 1.1307, where the Commission has consolidated the substance of its rules regarding EAs, is unnecessary, as nothing therein is inconsistent with the application of a reasonableness standard as described in the NEPA statute.

162. *EA Document Requirements.* As proposed in the *NEPA NPRM,* the Commission modifies its rules to require EAs to include ''a statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed agency action'' and a 75-page limit on EAs, excluding citations and appendices. This proposal is supported by CTIA, Verizon, and Dynamic Environmental. The Standing Rock Sioux Tribe and Flandreau Santee Sioux Tribe claim that a 75-page limit is insufficient, but assume that the EA will be used to address section 106 issues, which will be addressed outside of the NEPA context, consistent with decoupling the NHPA process from NEPA. The page limit is a statutory requirement.

163. CTIA argues that EAs required by the Commission's rules should only have to address the potential, significant environmental effects that triggered the EA requirement. PEER objects to this proposal, arguing in part that merely relying on the NEPA checklist with no documentation showing that full review was completed is insufficient. The Commission declines to adopt CTIA's proposal. Applicants must already evaluate the Commission's list of extraordinary circumstances and retain documentation thereof, and the Commission thinks it is neither unreasonable nor burdensome for applicants to include in their EAs information and analysis already in their possession.

164. *Public Requests for Further Review of EAs.* The Commission sought comment on whether to continue requiring EAs to be placed on public notice for 30-days during which requests for further review may be submitted prior to the issuance of a FONSI or a decision to require further environmental processing, as required for ASR applications with EAs by §§ 17.4(c)(5) and (7). The NEPA statute describes an EA as a ''public document,'' but only requires a public comment period for a notice of intent for EISs. The Commission sought comment on the meaning of ''public document'' and did not receive any comments in response. Even though the amended NEPA statute does not require public notice, the Commission finds it is in the public interest to ensure a public participation process for EAs. To balance the goals of public participation and accelerating broadband deployment, the Commission is modifying § 17.4(c)(6) to shorten the EA public notice period from 30 days to 20 days.

165. While the Commission received no comments regarding the meaning of ''public document'' in the context of whether NEPA requires public notice of EAs, the Commission did receive comments encouraging us to retain and expand the period for filing requests for further review. Several Tribal nations claim that the 30-day period is too short, would limit Tribal participation due to Tribes' limited resources, is impractical, and does not respect the government-to-government relationship between the United States and Tribal Nations. They expressed that an increase in wireless infrastructure projects would risk overwhelming their THPO offices under a 30-day notice period. The Commission declines to adopt an extended period for filing requests for further review and note that the THPO is tasked, among other things, with reviewing the impact to sacred, historical, and cultural sites under section 106 of the NHPA, which the Commission is decoupling from the NEPA review process, as described above. The NPA governs the Commission's section 106 review process, including its own comment period, and is outside the scope of this proceeding. Changes to the period for filing requests for further review of EAs will not alter the timeframe afforded to THPOs to review and respond to

applications under the section 106 process.

166. *One-Year EA Completion Deadline.* In the *NEPA NPRM,* the Commission proposed to modify section 1.1308 of the Commission's rules to require that the EA process be concluded within a one-year period, as required by the amended NEPA statute. The Commission adopts the proposed one-year deadline as § 1.1307(a)(9). In the *NEPA NPRM,* the Commission tentatively found that the scenarios discussed in the statute for determining when the EA submission process has begun are not applicable to the Commission's NEPA process, which relies on applicants to make an initial determination of whether an EA is required, and the Commission sought comment on whether the one-year period should start on the date the Commission receives an applicant's completed EA. The Commission's rules require applicants to determine whether the Commission's rules require an EA for a particular project, and the Commission generally considers whether an EA is required after it receives information about the project. Therefore, the Commission believes that using the date the Commission receives information about a proposed infrastructure deployment, specifically, when an EA is received for review by the Commission (*see* new § 1.1307(a)(9)(i)), most closely aligns with § 4336a(g)(1)(B)(i) of the statute, which uses as a benchmark, ''the date on which such agency determines that § 4336(b)(2) of this title requires the preparation of an environmental assessment with respect to such action.'' The Commission thus clarifies in its rules that the one-year period starts on the date the Commission receives an applicant's EA and ends when the Commission issues a FONSI or determines that a FONSI is not appropriate, subject to a provision that the Commission, in consultation with the applicant, may establish a new deadline that provides only as much additional time as needed for the applicant to amend its EA to submit any additional information. The industry supports this proposal. Elk Valley Rancheria also supports adoption of the one-year deadline, but argues that the Commission must ''explicitly recogniz[e] that time reasonably necessary for government-to-government consultation is integral to the schedule,'' and that ''[t]he rules should provide transparent pause/extension mechanics to ensure consultation quality rather than speed alone.'' The Commission agrees and notes that the statute provides a mechanism to establish a new deadline as necessary. Consistent with NEPA, the Commission adds a provision to its rules allowing the Commission or responsible Bureau, in consultation with the applicant, to extend the EA completion deadline by as much time as needed to complete the EA.

167. *Timeframes for Commission Actions on EAs and Third Party Petitions.* The Commission sought comment on what, if any, changes the Commission could make to its rules consistent with NEPA to ''help expedite environmental processing time and reduce costs and burdens for project sponsors, including those that are small entities.'' The Commission also sought comment on whether to codify the timeframes described in the *Wireless Broadband Deployment Second R&O* in its environmental processing rules. In the *Wireless Broadband Deployment Second R&O,* the Commission directed staff to review an EA for completeness and sufficiency within 20 days of its submission, notify the applicant of any deficiencies within 30 days of submission (within 10 days after completing review), and issue a FONSI within 60 days of an EA being deemed complete when the EA supports such a finding. The Commission asked whether doing so would create any issues with the amended NEPA's one-year deadline and whether the timeframes adequately balance the Commission's need to fulfill its NEPA obligations with the need to facilitate broadband deployment. Several commenters recommended that the Commission adopt a timeline for Commission staff to review and resolve third party petitions. After careful consideration, the Commission has decided to proceed with codifying the timelines provided in the *Wireless Broadband Deployment Second R&O,* with the exception of the requirement for staff to review the EA within 20 days of receipt, but to notify the applicant of deficiencies within 30 days. The requirement that staff complete review within 20 days is an internal business process, which confers no cognizable rights on the applicants, and thus the Commission finds no basis to codify it. Instead, the Commission requires staff to complete review *and* provides notice of deficiencies to the applicant within 30 days of receipt of the EA. As noted above, the Commission also codifies the one-year statutory deadline, which imposes certain reporting requirements on the Commission. The *Wireless Broadband Deployment Second R&O* timelines that the Commission codifies here provide applicants with a measure of predictability and help facilitate the rapid deployment of infrastructure.

168. While Dynamic Environmental encourages the Commission to adopt ''[w]ritten policy schedules of when staff must review submitted EAs, when an EA is deemed complete or, deemed incomplete and requests s for further review submitted to the sponsor, and when a FONSI must be issued following the comment period,'' it argues that codifying the *Wireless Broadband Deployment Second R&O* timelines ''may not be necessary'' and questions whether the Commission has sufficient staff to achieve these objectives. It further argues that granting applicants a right to seek judicial review if the proscribed timeframes are exceeded ''is contrary to the goal of speeding broadband deployment as this would certainly add unwelcome delays to a project.'' As the Commission noted in the *Wireless Broadband Deployment Second R&O,* 75% of EAs are processed within 60 days and, with a handful of exceptions, those that take longer are due to missing or otherwise deficient information from the applicant. From July 28, 2024 to January 28, 2025, the Commission issued 27 FONSIs, which took an average of 12 days following submission of a completed EA. For these reasons, the Commission does not anticipate that codifying this existing practice in its rules will significantly tax Commission resources. The Commission notes, however, that as outlined in the relevant rule section, these timeframes assume that the relevant Bureau has received an EA that is complete, adequate, and does not have a third party petition or petition to deny filed against it. Contrary to Dynamic Environmental's comment, codifying these timeframes does not create an automatic right of judicial review. EAs are reviewed by the Bureaus on delegated authority, and the Commission's rules establish that it is a condition precedent for seeking judicial review that any party aggrieved by an action, or in this case inaction, taken by a Bureau on delegated authority must first file an application requesting review by the Commission.

169. The Commission further amends its rules, as some commenters recommend, to adopt a timeline for Commission staff to review and resolve third party petitions. CTIA and T-Mobile propose that the Commission adopt a rule requiring Commission staff to resolve third party petitions within 90 days of the close of the pleading cycle set forth in § 17.4(c)(5)(i). In the context of third party petitions addressing ASR applications with EAs, the Commission notes that timelines for

completing EAs already apply, including NEPA's one-year deadline and the deadlines the Commission imposed upon itself in the *Wireless Broadband Deployment Second R&O.* Given that most third party petitions are resolved by staff promptly, the Commission believes the proposed time period of 90 days from the close of the pleading cycle is reasonable and amends its rules to incorporate it. In cases where there is a third party petition with no pleading cycle established, staff will complete review within 90 days of receipt of the third party petition. However, the Commission agrees with PEER that, occasionally, applicants have taken extended time periods to provide complete information staff need to make a determination. This could be for any number of reasons, including an applicant's business priorities. Applicants have, and should have, the discretion to prioritize projects and staff or contractor work as they see fit, but the Commission believes that the applicant's decisions in this regard should not impact the ability of Commission staff to meet a codified deadline. Therefore, the Commission also incorporates in the amended rule a provision that tolls the 90-day clock from the time Commission staff request information or clarification from an applicant to the time the applicant provides it to the requesting Commission staff.

2. Updated EIS Requirements

170. In the *NEPA NPRM,* the Commission sought comment on whether the Commission should revise its EIS rules to align them with the changes in the amended NEPA statute, and, if the Commission decided to require applicants to prepare an EIS when one is required, which the Commission does herein, what other changes to its EIS procedures may be needed. These revisions to the statute include: (1) a requirement that agencies prescribe procedures to allow a project sponsor to prepare an EIS under the supervision of the agency; (2) public notice of intent to prepare an EIS and request for comments on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action; (3) a 150-page limit except for complex issues, which are limited to 300 pages; and (4) a two-year deadline for completion, with the ability to extend the deadline only so long as necessary to complete the EIS, and a requirement that missed deadlines be reported to Congress. The Commission received general statements of support from the industry. The Standing Rock Sioux Tribe and Flandreau Santee Sioux Tribe object to the 150-page limit on EISs. However, the page limit is a statutory requirement. Additionally, the Commission has combined its EIS requirements in revised § 1.1312 and aligned that section with the requirements of the revised NEPA statute in the manner described below. Consistent with the Commission's *Delete, Delete, Delete* initiative, the Commission also removes §§ 1.1305 and 1.1314 through 1.1319 and consolidate the relevant language in § 1.1312, as well as removing extraneous text to streamline and clarify § 1.1312.

171. *Project Sponsor Preparation of an EIS.* The Commission modifies its rules to require the project sponsor (*i.e.,* applicant) to prepare the EIS, as permitted by the amended NEPA. No comments opposing this proposal were received.

172. *Content of an EIS.* Revised § 1.1312(c) reflects the statutory requirements and limits for EIS documents, including incorporating the statutory page limit of 150 pages, or 300 pages for a proposed action of extraordinary complexity.

173. *Public Notice and Related Requirements.* As proposed, revised § 1.1312(b)(1) incorporates the statutory requirement that ''[e]ach notice of intent to prepare an environmental impact statement . . . shall include a request for public comment on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed agency action.'' No commenter opposed this proposal.

174. *Supplements to Statements.* Revised § 1.1312 eliminates from the Commission's EIS procedures the need to prepare draft and final EISs, as draft and final versions of an EIS are not required by the NEPA statute. However, revised § 1.1312(e) permits the Bureau responsible for processing an application to coordinate with the applicant to prepare supplements to EISs where substantial changes to the proposal or new circumstances or information arise that would result in significant environmental impacts not already evaluated in the EIS.

175. *Completion.* As proposed and consistent with the amended NEPA statute, revised § 1.1312(g), establishes that the two-year completion period for an EIS starts on the date the Commission determines that an EIS is required or the date Commission publishes a Notice of intent to prepare an EIS. While the statute provides a third trigger—notification to an applicant that an application to establish a right-of-way is complete—this third trigger is not applicable to the Commission's actions and processes. The Commission also notes that its process involves extensive communication with applicants to try to eliminate or mitigate adverse environmental impacts, so the Commission expects that the date that the Commission determines an EIS is necessary and the date the Commission publishes the notice of intent to prepare an EIS are likely to be concurrent.

176. Elk Valley Rancheria, California supports the two-year deadline but requests that the Commission ''explicitly recogniz[e] that time reasonably necessary for government-to-government consultation is integral to the schedule.'' The Commission concurs that Tribal consultation as well as the possibility of unanticipated events warrant incorporating a degree of flexibility into the two-year deadline. Consistent with section 4336a(g)(2) of the revised NEPA statute, the Commission includes a provision in its rules at § 1.1312(g) to allow the responsible Bureau, in consultation with the applicant, to extend the completion deadline by only as much time as needed to complete the EIS, and delegate to the responsible Bureau the authority to extend the EIS deadline in accordance with § 1.1312(g).

D. Commission's Emergency Procedures for Environmental Review

177. Consistent with CEQ's NEPA implementation guidance and recommendations, the Commission adopts new emergency NEPA procedures to provide greater clarity and predictability for applicants and licensees, while simultaneously prioritizing efficiency and certainty.

178. Currently, the Commission's NEPA rules do not contain emergency procedures. Instead, the Commission has provided ad hoc assistance to licensees and applicants, generally by extending filing and regulatory deadlines, expediting review of Special Temporary Authority (STA) requests, prioritizing review of waiver requests, and reminding applicants and licensees of existing rule provisions that may be of assistance in emergency circumstances. When emergency circumstances do not allow sufficient time for applicants to complete the environmental notification process (when required), the responsible Bureau may waive or postpone the requirement at the applicant's request and upon an appropriate showing.

179. CEQ recommends that an agency's NEPA procedures include processes for emergency situations when there is insufficient time to follow its standard NEPA procedures and

emphasizes that agencies should not delay taking action when an emergency poses an imminent threat to life, property, or important natural, cultural, or historic resources. In those situations, CEQ recommends agencies ''take into account the probable environmental consequences of the emergency action and consider taking steps to mitigate reasonably foreseeable adverse environmental effects to the extent possible and consistent with agency authority.''

180. CEQ advises agencies first to determine whether NEPA applies and then to determine the appropriate level of NEPA review for the emergency action. Once the appropriate level of review is determined, CEQ advises that agencies ''must consider whether there is sufficient time to follow the requirements for environmental review established by the agency's NEPA procedures, or whether the situation warrants alternative arrangements for NEPA compliance.'' Agencies may pursue alternative arrangements to the EA process without first consulting with CEQ, but, if the agency determines the emergency MFA will have a reasonably foreseeable significant effect, CEQ advises agencies to consult with CEQ about alternative arrangements and provides template language agencies may include in their procedures regarding the consultation process for alternative arrangements. Finally, CEQ emphasizes that alternative arrangements do not waive the requirement to comply with NEPA, but instead establish an alternative means for NEPA compliance.

181. In the *NEPA NPRM,* the Commission sought comment on whether it should adopt NEPA procedures applicable in emergency situations and, if so, what the procedures should be. The Commission sought comment on whether it would be sufficient to adopt a rule requiring consultation with CEQ about alternative arrangements for compliance with section 4332(2)(C) of NEPA when emergency circumstances make it necessary to take action with reasonably foreseeable significant environmental effects and whether the Commission should adopt rules for additional procedures for applicants to follow in emergency situations. The Commission also sought comment on whether the Commission should delegate the authority to issue emergency guidance to the responsible Bureau on an ad hoc basis, whether the Commission should adopt criteria defining when emergency circumstances apply, whether the Commission should adopt unique criteria for EAs completed in emergency circumstances, and whether the Commission should delegate to the responsible Bureau the authority to consult with CEQ when emergency circumstances apply. Finally, the Commission sought comment on whether the Commission could reduce the time it takes applicants to complete the NEPA checklist under emergency circumstances or whether it would be appropriate and in the public interest to eliminate or shorten any period for the public to submit requests for further review in the context of emergency circumstances.

182. Commenters generally support adoption of emergency NEPA procedures. CCA urges the Commission to adopt emergency procedures that are broad enough to cover efforts to replace insecure equipment with secure alternatives, such as efforts to add secure equipment pursuant to the Secure and Trusted Communications Networks Reimbursement Program. PEER supports adopting emergency procedures that include consultation with CEQ. CTIA supports the Commission's adoption of emergency procedures and says that applicants would benefit from knowing what emergency procedures to follow in advance rather than the Commission's typical ad hoc approach, and further proposes that the Commission should adopt a rule allowing a facility owner to quickly rebuild or fortify an existing facility damaged by a disaster or emergency without undertaking a new NEPA review. CTIA suggests excluding from NEPA reviews, whether by excluding from the MFA definition or adopting a new CE, projects located within an area for which the President, a governor, or Tribal leader has declared a major disaster or emergency that will be carried out within five years of the declaration and that will replace or improve a communications facility damaged by such disaster or emergency or that mitigates any future disaster or emergency. Crown Castle requests that the Commission clarify that NEPA review is not necessary if a review was performed for the original structure or if the current regulatory scheme does not require such review. CPAC Foundation Center advocates for explicit CEs ''for rapid restoration to pre-event conditions'' with a simple post-hoc report and for clarification that ''footprint-neutral resiliency improvements'' qualify for CE treatment. Wired Broadband does not believe that emergency procedures are necessary, but in the event that such procedures are adopted, urges the Commission to ensure emergency authorizations are time-limited and expire promptly upon the cessation of the emergency to prevent abuse.

183. The Commission agrees with commenters that support its adoption of emergency NEPA procedures, which the Commission finds will provide more clarity and consistency for providers, maintain the flexibility to adapt to unique situations, and allow the Commission to meet its NEPA responsibilities. The procedures the Commission now adopts are applicable in emergency situations where it is necessary to take immediate federal action to address imminent threats to life, property, or important natural, cultural, or historic resources. Applicants availing themselves of these procedures must include with any application a certification that the application is for an action necessitated by a specified emergency. At this time, the Commission declines to enumerate specific scenarios which may or may not qualify as an emergency.

184. While Wired Broadband argues that such procedures should only remain applicable for the duration of a declared emergency, the Commission notes that emergency circumstances may exist in the absence of a formal declaration of emergency. Additionally, the duration of an emergency may be brief in comparison to required recovery time and may not provide adequate time for applicants to assess impacts and initiate the emergency procedures the Commission adopts today. For example, a tower owner may not have access to a site damaged by a natural disaster until after the emergency has ended, whether due to safety concerns or other restrictions. For this reason, the Commission finds it appropriate not to tie emergency procedures to the duration of an emergency declaration, but instead require a showing by the applicant that the proposed action is necessitated by emergency circumstances.

185. The Commission's emergency NEPA procedures follow CEQ's recommendations. Specifically, where emergency circumstances make it necessary to take a major Federal action with reasonably foreseeable significant environmental effects and for which there is no existing NEPA analysis to apply, the Commission or responsible Bureau will consult with CEQ about alternative arrangements for compliance with section 4332(2)(C) of the NEPA statute. In circumstances where the proposed emergency action is not likely to have significant environmental effects, or where the significance of the environmental effects is unknown, and to which no CE applies, the Commission

adopts a further streamlined process by which applicants may complete an EA for an action necessitated by emergency circumstances that includes only the purpose and need for the proposed action; the reasonably foreseeable effects of the proposed agency action; any mitigation measures that the applicant will implement; and the alternatives considered. The Commission finds that these shortened EA requirements will streamline the emergency NEPA process in line with its direction to prioritize efficiency and, in the case of emergencies, expediency. Though the *NEPA NPRM* sought comment on whether to eliminate or shorten any public comment period during emergency circumstances, we decline to do so in our rules given the shortened comment period for all circumstances adopted herein. *See supra* Section III.C.1 (adopting a 20-day comment period for EA publication). In the event of exigent circumstances, however, the Commission or appropriate Bureau will consider requests to shorten or waive the comment period for EAs on a case-by-case basis.

186. Lastly, the Commission declines to adopt emergency procedures specifically permitting the replacement of damaged facilities. The Commission's part 17 rules exclude certain replacement towers from the environmental notification process, and applicants should otherwise apply the new emergency procedures. Further, the Commission maintains authority to issue further emergency guidance on an ad hoc basis and delegate to the responsible Bureau the authority to issue such guidance and adopt rules as necessary for a particular emergency situation.

IV. Final Regulatory Flex Analysis

187. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Modernizing the Commission's National Environmental Policy Act Rules Notice of Proposed Rulemaking* released in August 2025 (*NEPA NPRM*). The Commission sought written public comment on the proposals in the *NEPA NPRM,* including comment on the IRFA. The comments received are discussed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, and it is summarized below.

A. Need for, and Objectives of, the Proposed Rules

188. In the *Report and Order (Order),* the Commission updates its environmental rules to align them with the requirements of the amended NEPA statute and with guidance from the White House and the Supreme Court. The NEPA regulatory regime has long been one of the biggest obstacles to new infrastructure builds. In 2023, Congress recognized the need for reform and amended the NEPA statute to eliminate unnecessary reviews and accelerate others. At the beginning of his term in 2025, President Trump took action and directed federal agencies to streamline their procedures for environmental review. The Supreme Court also addressed NEPA last year, providing guidance on the statute's requirements.

189. In the *Order,* the Commission takes action to streamline its environmental review in order to promote efficiency and encourage deployment of infrastructure that results in more competition and technological innovation. The *Order* adopts the statutory definition of Major Federal Action (MFA), as provided in the amended NEPA, and its exclusions, and clarifies how the definition of MFA will apply in the context of the Commission's rules. Then, the *Order* adopts reforms to streamline other aspects of the Commission's NEPA rules, including: revising the FCC's rules describing its categorical exclusion (CE) and extraordinary circumstances; decoupling the Commission's NEPA rules from its NHPA rules; modifying the environmental notification and public participation processes for ASR applications; adopting procedures for the Commission, in conjunction with the other federal agency or agencies involved in a particular action subject to NEPA, to designate a lead federal agency or joint lead agencies; removing and replacing the federal agency exception; removing references to rescinded NEPA regulations; and correcting cross-references to other NEPA regulations. The *Order* also adopts amendments to modernize its rules regarding environmental assessments (EAs) and environmental impact statements (EISs) and codifies procedures addressing NEPA review during emergency situations. By taking these actions, the *Order* helps expedite and simplify the Commission's environmental review processes and clears the way for more and faster infrastructure builds across the country.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

190. Comments regarding the impact of the rule on small entities were submitted by several parties. The Commission summarizes these comments here and analyzes the impact of the Commission's adopted rules in section E, *infra.*

191. The Communications Infrastructure Contractors Association (NATE) urges the Commission to redefine MFA, expand categorical exclusions, establish firm timelines for review, allow programmatic review and batch processing, and increase inter-agency staffing and coordination. It asserts that these changes would impact small businesses by ''reduc[ing] compliance costs, compress[ing] timelines, and bring[ing] certainty to project planning—while preserving environmental stewardship . . . .'' The Nebraska State Historic Preservation Office comments that National Historic Preservation Act (NHPA) compliance ''continues to be required for categories of Commission actions regardless of the MFA definition'' and that the NHPA definition of undertaking should be followed. Power & Communication Contractors Association (PCCA), an association whose members consist of a number of small businesses, urges adherence to the Fiscal Responsibility Act of 2023's (FRA's) statutory deadlines and page limits for environmental reviews, as well as the clarifications on the scope of NEPA review provided by the Supreme Court's decision in *Seven County Infrastructure Coalition* v. *Eagle County, Colorado,* and advocates for agencies focusing on assessing only the reasonable foreseeable environmental effects of proposed actions as defined by the RFA to prevent unnecessary litigation and delays.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

192. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel filed comments regarding the proposed rules in this proceeding, which the Commission summarizes and responds to below.

193. In its comments, the SBA expresses feedback it received during a roundtable with small entity stakeholders on concerns with the proposals in the *NEPA NPRM,* which consisted of ensuring coordination among federal agencies, enforcing reasonable and firm review timelines, narrowing the definition of MFA, and establishing additional categorical

exclusions. First, SBA recommends that the FCC be the lead agency on communications infrastructure projects involving multiple federal agencies, and that the FCC ensure that its NEPA regulations are as consistent as possible with those of other agencies. The SBA next recommends the FCC should adopt NEPA procedures that align closer to the goals of the FRA, specifically by not adding additional regulatory requirements or by implementing requirements in a manner that will increase the time necessary to complete an EA or EIS. SBA identified small business stakeholders' support for the adoption of the definition of MFA proposed in the *NEPA NPRM,* and recommends that the FCC should only require NEPA review for projects where the FCC has a substantial part in the construction process. Finally, SBA raises several additional categorical exclusions requested by small entity stakeholders, consisting of small cell sites, tower collocations, and fiber installations in an existing right of way that has previously undergone a NEPA review.

194. As discussed below, the Commission takes several actions consistent with SBA recommendations.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

195. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

196. The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes three broad groups of small entities that could be directly affected by its actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, ''small organizations'' are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While the Commission does not have data regarding the number of non-profits that meet that criteria, over 99 percent of nonprofits have fewer than 500 employees. Finally, ''small governmental jurisdictions'' are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments data, the Commission estimates that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

197. The rules adopted in the *Order* will apply to small entities the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. The size standards in this chart are set forth in 13 CFR 121.201, by six-digit NAICS code. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, the Commission concludes that the adopted rules will impact a substantial number of small entities. Where available, the Commission also provides additional information regarding the number of potentially affected entities in the identified industries below.

TABLE 1—2022 U.S. CENSUS BUREAU DATA BY NAICS CODE

Regulated industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	NAICS code	SBA size standard	Total firms	Total small firms	Percent small firms
Wireless Telecommunications Carriers (except Satellite).	517112	1,500 employees	1,184	1,081	91.30
Satellite Telecommunications	517410	$44 million	332	195	58.73
All Other Telecommunications	517810	$40 million	1,673	1,007	60.19

TABLE 2—TELECOMMUNICATIONS SERVICE PROVIDER DATA

2024 Universal Service Monitoring Report telecommunications service provider data (Data as of December 2023)	SBA Size standard (1,500 employees)		
Affected entity	Total number FCC Form 499A filers	Small firms	Percent small entities
Wireless Telecommunications Carriers (except Satellite)	585	498	85.13

E. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

198. The RFA directs agencies to describe the economic impact of adopted rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

199. The rule changes the Commission adopts in the *Order* will help provide certainty for all applicants, including small entities. These changes are expected to reduce the number of applications that require NEPA review and streamline the environmental

review process, prioritizing efficiency and certainty and expediting the process for all applicants seeking environmental approval of pending construction projects. While these types of changes will reduce economic impact and regulatory burden for all applicants, small entity applicants, who typically lack both the financial and staffing resources of their larger counterparts, will particularly benefit from the rule changes in the *Order.* The Commission expects that the reporting, recordkeeping, and other requirements associated with these revised rules will be the same for small and other entities.

200. First, the *Order* codifies the statutory definition of MFA as provided in the amended NEPA, and its exclusions; and clarifies how the definition of MFA will apply in the context of the Commission's rules, including several determinations as to whether certain specific deployments qualify as MFAs. The codified definition and its applicability to Commission rules are expected to reduce economic burden to small entities and other applicants alike by clarifying when certain deployments will require an environmental review, thereby eliminating costs associated with entities having to make such determinations themselves.

201. The *Order* also adopts other changes to the Commission's environmental review procedures that will reduce economic burdens on small and other entities. These include substantive revisions to the Commission's CE and extraordinary circumstances rules; the environmental notification and public participation processes for ASR applications under part 17; the procedures for determining lead and cooperating agencies for the NEPA review process and the federal agency exception; as well as the revision and elimination of vague, ambiguous, or nonfunctional terms and language. The Commission finds the adopted amendments to the NEPA review process further harmonize the Commission's NEPA regulations with the revised NEPA statute, and will reduce the economic impact and regulatory burden on all applicants by making the process clearer and simpler. In addition, the *Order* decouples the NEPA and NHPA rules to distinguish their separate requirements and to reduce confusion. Although this change separates the two reviews, it is anticipated that this will still result in a net reduction in costs for applicants. Even when NEPA and NHPA review were combined, NHPA review included its own timelines and review standards negotiated under the NPAs. Though applicants will still need to conduct section 106 NHPA review for federal undertakings, they will not need to incur the costs of NEPA review if the undertaking is not also an MFA. These changes apply to large and small businesses, and the cost savings are expected to be significant.

202. Further, the *Order* harmonizes the Commission's regulations pertaining to environmental assessments (EA) and environmental impact statements (EIS) with the requirements of the amended NEPA statute, effectively reducing delay and confusion for all applicants. These modifications include, among others, imposing page limits of EAs and EISs, making clarifications on the public notice comment requirements for both EAs and EISs, and codifying time limits for Commission review of EAs and completion of the EA and EIS processes. These changes will ensure timely NEPA review of Commission MFAs and reduce costs associated with uncertainty and construction delays, allowing applicants to anticipate the extent of NEPA review and better prepare for expected expenses.

203. Finally, the *Order* codifies emergency procedures informed by CEQ guidelines that will provide clarity on what entities may expect for environmental reviews of deployments during emergency circumstances. The emergency procedures include a shortened EA approach for qualifying actions. The Commission anticipates that these procedures will reduce the economic burden on all applicants and allow them to make necessary deployments in a timely fashion.

204. As the changes made in this *Order* do not modify the classes of entities that will be required to comply with the NEPA rules, the Commission expects the same classes of entities will be subject to these requirements as before and will require the same professional skills to complete NEPA's reporting or recordkeeping requirements.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

205. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

206. As discussed above, the *Order* provides a clearer definition of what constitutes an MFA by codifying the statutory definition of MFA and its exclusions, as well as clarifying how the adopted definition will be applied to particular categories of actions. The adopted changes will help minimize economic impacts on small entities by clarifying when NEPA review will be triggered, thereby reducing the potential for confusion. The adoption of the definition and exclusions, as well as its application to the Commission's rules, are supported by several commenters, including SBA, NATE, and other parties who represent the interests of small entities.

207. In addition, the *Order*'s numerous streamlining revisions to the NEPA review process aim to relieve significant economic burdens on small entities by providing clear and predictable rules for compliance, thereby ensuring NEPA serves as a tool for informed decision-making, rather than as a barrier to investment, innovation, and connectivity. These include revisions to the CE and extraordinary circumstances rules, decoupling NEPA and NHPA, revisions to the environmental notification and public participation processes for ASR applications, adopting procedures for determining lead and cooperating agencies and replacing the federal agency exception, as well as removing references to rescinded CEQ regulations. The Commission considered comments provided by a wide range of commenters in evaluating what revisions to make to its environmental rules.

208. As explained in the *Order,* the Commission elects to maintain its broad categorical CE, because it is cost-efficient and sufficient to meet the Commission's obligations under NEPA, and is generally supported by commenters. In reaching its conclusions in the *Order,* the Commission considered a broad range of alternative proposed revisions to its CE rules, including whether to adopt a set of individualized CEs, whether to modify its rules to allow for adopting another agency's CE, whether to revise the existing list of extraordinary circumstances, and whether to retain the catchall provisions for extraordinary circumstances. For example, several commenters including NATE and SBA suggested expanding CEs for particular individualized actions, such as collocations and small cell deployments. In the *Order,* the Commission elects to maintain its broad CE because of its recognized clarity and efficiency, and because of a lack of

support for finding that individualized CEs were superior. In the *Order,* the Commission also considers removing the provision found in § 1.1307(c) that allows members of the public to raise NEPA complaints against Commission MFAs, as suggested by WIA, but declines to do so, noting that it would remove the public's ability to identify potential significant environmental effects not identified by applicants or enumerated in the rules. The Commission also considers but declines to implement PEER's suggestion that § 1.1307(c) and § 1.1307(d) not be deleted but instead be converted to an extraordinary circumstance.

209. The Commission received comments expressing concerns that streamlining NEPA review may weaken NHPA review. In addition, one commenter opposed decoupling NEPA and NHPA review. The *Order* finds, however, that these concerns are based on an assumption that the proposal to decouple NEPA from NHPA would weaken NHPA review. In the *Order,* the Commission explains that decoupling NHPA from NEPA does not alter the Commission's section 106 obligations or reduce the rigor of its historic preservation review.

210. The modernizing updates to the requirements for EAs and EISs will reduce economic burdens on small entities by setting clear deadlines and timelines for the environmental review process, and by reducing unnecessary delay. Though the adopted page limits, time limits, and other changes were generally supported by commenters—including PCCA, NATE, and SBA—the Commission received and considered other alternatives. For example, Dynamic Environmental expressed concern with adopting timelines for EA review, arguing that the timelines were unnecessary and could require the Commission to ensure sufficient resources existed to meet them, and would grant applicants a right to seek judicial review if the proscribed timeframes were not met. The Commission finds, however, that a majority of EAs are processed within sixty (60) days and does not anticipate that meeting the codified timelines would significantly tax Commission resources. The delineated timelines will impact the economic burden on applicants—including small entities—by creating consistency and efficiency that applicants may expect when preparing for the review process.

211. The Commission considered other comments responding to proposed changes to the Commission's environmental rules pertaining to EA and EIS requirements. For example, CTIA argued that the Commission should amend § 1.1308 of its rules to clarify that a reasonableness standard applies throughout the environmental review process and that the Commission need only consider a ''reasonable range of alternatives [ ] that are technically and economically feasible, and meet the purpose and need of the proposal.'' The Commission declined to adopt that suggested change, however, as nothing in § 1.1308 is inconsistent with the application of a reasonableness standard as described in the NEPA statute.

212. Finally, the *Order* codifies emergency procedures to address NEPA review of projects requiring urgent and immediate action during emergency circumstances, providing clarity to small entities on what may be expected for an environmental impact review during such circumstances. Codifying these procedures will reduce confusion and expense for small businesses during a period when expedited action is needed. In reaching its conclusion, the Commission considered alternatives such as adopting a new CE or a new exclusion to the definition of MFA for emergency situations. However, the codified emergency procedures better serve the purpose of the NEPA statute and requirements, are more consistent with recommendations and guidance from CEQ, and do not significantly increase economic burdens on small entities.

V. Ordering Clauses

213. Accordingly, *it is ordered* that, pursuant to sections 1, 2, 4(i)–(j), 201, 214, 301, 302a, 303, 307, 309, 319, and 332 of the Communications Act of 1934, as amended 47 U.S.C. 151, 152, 154(i)–(j), 201, 214, 301, 302a, 303, 307, 309, 319, and 332, section 704(b) of the Telecommunications Act of 1996, Pub. L. 104–104, section 102 of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332, section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108, and the Endangered Species Act of 1973, as amended, 16 U.S.C. 1536, this *Report and Order is adopted.*

214. *It is further ordered* that the *Report and Order shall be effective* 30 days after publication in the **Federal Register**, including revised rule §§ 1.1301 and 1.1302 of the Commission's rules as set forth in Appendix A, 47 CFR 1.1301 and 1.1302. All other revisions to the Commission's rules set forth in Appendix A shall become effective after the Office of Management and Budget (OMB) under the Paperwork Reduction Act approves of any new, modified, or non-substantive information collections that these rules may contain and the Wireless Telecommunications Bureau publishes a notice in the **Federal Register** announcing the completion of such review and relevant effective date.

215. *It is further ordered* that the Commission's Office of the Secretary, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analyses, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy.

216. *It is further ordered* that the Office of the Managing Director, Performance Program Management, *shall send* a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Historic preservation, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Television.

47 CFR Part 2

Administrative practice and procedure, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Television, Satellites, Telecommunications.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 17

Aviation safety, Communications equipment, Reporting and recordkeeping requirements.

47 CFR Part 22

Communications, Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone.

47 CFR Part 27

Administrative practice and procedure, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Television.

47 CFR Part 30

Administrative practice and procedure, Communications common carriers, Communications equipment Reporting and recordkeeping requirements.

47 CFR Part 63

Cable Television, Communications, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 73

Television.

47 CFR Part 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Telecommunications Television.

47 CFR Part 78

Cable television, Television, Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 80

Communications equipment, Reporting and recordkeeping requirements, Telephone, Vessels.

47 CFR Part 90

Administrative practice and procedure, Common carriers, Communications, Communications common carriers, Communications equipment, Environmental impact statements, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 97

Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 101

Administrative practice and procedure, Communications, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 5, 17, 22, 27, 30, 63, 73, 74, 78, 80, 90, 97, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 1, 2, 3, 5, 9, 13; 28 U.S.C. 2461 note; 47 U.S.C. 1754; sec. 704(b), Pub. L. 104–104, 110 Stat. 56, unless otherwise noted.

Subpart A—General Rules of Practice and Procedure

■ 2. Delayed indefinitely, amend § 1.61 by:

■ a. Revising paragraph (a)(2); and

■ b. Revising the last sentence of paragraph (a)(4).

The revisions read as follows:

§ 1.61 Procedures for handling applications requiring special aeronautical study.

(a) * * *

(2) In accordance with § 1.1306(b) and § 17.4 of this chapter, the Bureau will address any environmental concerns prior to processing the registration.

* * * * *

(4) * * * The owner remains responsible for providing a copy of FCC Form 854R to all tenant licensees on the structure and for posting the registration number as required by § 17.4(g) and (h) of this chapter.

* * * * *

Subpart F—Wireless Radio Services Applications and Proceedings

■ 3. Delayed indefinitely, amend § 1.923 by revising paragraphs (d)(2) and (e)(2) to read as follows:

§ 1.923 Content of applications.

* * * * *

(d) * * *

(2) The Commission has posted notification of the proposed construction on its website pursuant to § 17.4(c)(3) of this chapter; and

* * * * *

(e) * * *

(2) For applications that propose any facilities that are not subject to the process set forth in § 17.4(c) of this chapter, the applicant is required to indicate at the time its application is filed whether or not the application requires preparation of an Environmental Assessment under § 1.1307(b). If the applicant answers affirmatively, an Environmental Assessment must be filed with the application and environmental review by the Commission must be completed prior to construction.

* * * * *

■ 4. Delayed indefinitely, amend § 1.929 by revising paragraph (a)(4) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(a) * * *

(4) Application or amendment requesting authorization for a facility that requires an Environmental Assessment as set forth in § 1.1307(b), unless the facility has been determined not to have a significant environmental effect through the process set forth in § 17.4(c) of this chapter.

* * * * *

Subpart I—Procedures Implementing the National Environmental Policy Act of 1969

■ 5. Revise and republish §§ 1.1301 and 1.1302 to read as follows:

§ 1.1301 Basis and purpose.

The provisions of this subpart implement subchapter I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4336f), and specifically describe the process by which the Commission determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review. The provisions of this subpart also impose limits on human exposure to RF pursuant to the Commission's authority under the Communications Act and the Telecommunications Act of 1996.

§ 1.1302 Scope.

The provisions of this subpart shall apply to all Commission major Federal actions as defined by 42 U.S.C. 4336e(10) and this section. To the extent that other provisions of the Commission's rules and regulations are inconsistent with the subpart, the provisions of this subpart shall govern.

(a) *Commission major Federal action.* A Commission major Federal action is an action that the Commission determines is subject to substantial Commission control and responsibility.

(b) *Exclusions.* The following are not Commission major Federal actions:

(1) A non-Federal action with no or minimal Commission funding;

(2) A non-Federal action with no or minimal Commission involvement where the Commission cannot control the outcome of the project;

(3) Funding assistance solely in the form of general revenue sharing funds which do not provide Commission compliance or enforcement responsibility over the subsequent use of such funds;

(4) Loans, loan guarantees, or other forms of financial assistance where the Commission does not exercise sufficient control and responsibility over the subsequent use of such financial assistance or the effect of the action;

(5) Bringing judicial or administration civil or criminal enforcement actions;

(6) Extraterritorial activities or decisions, which means Commission activities or decisions with effects located entirely outside of the jurisdiction of the United States; or

(7) Activities or decisions that are non-discretionary and made in accordance with the Commission's statutory authority.

(c) *Actions the Commission has determined do not constitute Commission major Federal actions.* The Commission has determined that the following non-exhaustive list of actions do not constitute major Federal actions by the Commission pursuant to paragraph (a) and paragraphs (b)(1) through (7) of this section:

(1) The deployment of non-Federal facilities in connection with geographic area spectrum licenses, to the extent the deployments do not require antenna structure registration;

(2) The deployment of non-Federal facilities in connection with site-based spectrum licenses, to the extent the deployments do not require antenna structure registration;

(3) The deployment of non-Federal facilities in connection with the provision of unlicensed or licensed-by-rule wireless services, to the extent the deployments do not require antenna structure registration;

(4) The deployment of non-Federal satellite earth stations to the extent the deployments do not require antenna structure registration; and

(5) Actions associated with space-based operations, including the launch, deployment, and operation of space stations.

(d) *Application of radiofrequency emissions exposure limits.* Notwithstanding paragraphs (a) through (c) of this section, the Commission maintains responsibility for the certification of equipment and for operations on facilities pursuant to §§ 1.1307(b) and 1.1310 and administers the Commission's radiofrequency radiation exposure limits through this subpart.

(e) *Designation of lead agency.* (1) When the Commission is one of multiple Federal agencies participating in an environmental review or authorization of a major Federal action, a lead Federal agency shall be designated by the participating agencies upon consideration of the factors set forth at 42 U.S.C. 4336a(a)(1)(A) and documented in a letter or memorandum, which may be attached to or contained within an email including representatives of each of the participating Federal agencies and, if applicable, the project sponsor or applicant.

(2) When the Commission is designated as a lead agency, it will, jointly with any State, Tribal, or local agency or agencies appointed as joint lead agencies by the participating Federal agencies, fulfill the role set forth in 42 U.S.C. 4336a(a)(2).

§ 1.1303 [Removed]

■ 6. Delayed indefinitely, remove § 1.1303.

■ 7. Delayed indefinitely, revise and republish § 1.1304 to read as follows:

§ 1.1304 Information, assistance, and waiver of electronic filing and service requirements.

All submissions relating to this subpart shall be made electronically. An interested party may submit its filing on paper to the appropriate address for the Commission Secretary and serve the filing on the other parties by mail if it includes a request to waive the electronic filing requirement that explains that the requester is unable to file electronically or that filing electronically would be unduly burdensome. Either showing will be sufficient to obtain a waiver under this section.

§ 1.1305 [Removed]

■ 8. Delayed indefinitely, remove § 1.1305.

■ 9. Delayed indefinitely, revise and republish § 1.1306 to read as follows:

§ 1.1306 Categorical exclusions and extraordinary circumstances.

(a) *General categorical exclusion.* Except as provided in § 1.1307(c), the Commission has determined that a Commission major Federal action not covered by paragraphs (b) and (c) of this section normally does not significantly affect the quality of the human environment and is categorically excluded from further environmental processing.

(b) *Categorical exclusion and extraordinary circumstances.* Specifically, any Commission major Federal action with respect to any new application, or minor or major modifications of existing or authorized facilities or equipment, will be categorically excluded, except where one of the following extraordinary circumstances apply, indicating that a normally-excluded major Federal action may have a reasonably foreseeable significant environmental effect:

(1) Facilities that are to be located in an officially designated wilderness area.

(2) Facilities that are to be located in an officially designated wildlife preserve.

(3) Facilities that:

(i) May affect and are likely to adversely affect listed threatened or endangered species or designated critical habitats; or

(ii) Are likely to jeopardize the continued existence of any proposed endangered or threatened species or likely to result in the destruction or adverse modification of proposed critical habitats, as determined by the Secretary of the Interior pursuant to the Endangered Species Act of 1973.

Note 1 to paragraph (b)(3): The lists of endangered and threatened species are contained in 50 CFR 17.11, 17.12, 223.102, 224.101. The lists of designated critical habitats are contained in 50 CFR 17.95, 17.96, 17.99, and 226.201 through 226.232. To ascertain the status of proposed species and habitats, consult the U.S. Fish and Wildlife Service's Information for Planning and Consultation (IPaC) website for terrestrial and freshwater species, and the National Oceanic and Atmospheric Administration Fisheries Species and Habitat app and/or the National Endangered Species Act Critical Habitat Mapper for marine and anadromous species. The Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.,* requires consultation with the U.S. Fish and Wildlife Service, Department of the Interior, or with the National Marine Fisheries Service, Department of Commerce, as appropriate for actions that meet the definition of ''action'' in 50 CFR 402.02, regardless of whether they meet the definition of major Federal action in § 1.1302.

(4) Facilities to be located in floodplains, if the antennas and associated equipment, including any electrical equipment, will not be placed at least one foot above the base flood elevation of the floodplain.

(5) Facilities whose construction will involve significant change in surface features (*e.g.,* wetland fill, deforestation, or water diversion). (In the case of wetlands on Federal property, *see* Executive Order 11990.)

(6) Antenna towers and/or supporting structures that are to be equipped with high intensity white lights which are to be located in residential neighborhoods, as defined by the applicable zoning law.

(7) Antenna structures that will be over 450 feet in height above ground level (AGL) and involve either:

(i) Construction of a new antenna structure;

(ii) Modification or replacement of an existing antenna structure involving a substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to this part; or

(iii) The addition of red steady lighting.

(8) Facilities that would result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in §§ 1.1307(b) and 1.1310.

(c) *Categorical exclusion for wireless facilities to be located in a right-of-way.* The construction of wireless facilities, including deployments on new or replacement poles, is categorically excluded if:

(1) The facilities will be located in a right-of-way that is designated by a Federal, State, local, or Tribal government for communications towers, above-ground utility transmission or distribution lines, or any associated structures and equipment;

(2) The right-of-way is in active use for such designated purposes; and

(3) The facilities would not:

(i) Increase the height of the tower or non-tower structure by more than 10% or 20 feet, whichever is greater, over existing support structures that are located in the right-of-way within the vicinity of the proposed construction;

(ii) Involve the installation of more than four new equipment cabinets or more than one new equipment shelter;

(iii) Add an appurtenance to the body of the structure that would protrude from the edge of the structure more than 20 feet, or more than the width of the structure at the level of the appurtenance, whichever is greater (except that the deployment may exceed this size limit if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable); or

(iv) Involve excavation outside the current site, defined as the area that is within the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

(4) Such wireless facilities are subject to paragraph (b)(8) of this section and require EAs if their construction would result in human exposure to radiofrequency radiation in excess of the applicable health and safety guidelines cited in § 1.1307(b). The extraordinary circumstances in paragraphs (b)(1) through (7) of this section do not apply.

(d) *Categorical exclusions pertaining to certain equipment.* (1) The mounting of antenna(s) and associated equipment (such as wiring, cabling, cabinets, or backup-power), on or in an existing building, or on an antenna tower or other man-made structure is categorically excluded unless it would result in human exposure to radiofrequency radiation in excess of the applicable guidelines cited in § 1.1307(b). The extraordinary circumstances in paragraphs (b)(1) through (7) of this section do not apply.

(2) The installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others is categorically excluded and is not subject to the extraordinary circumstances in paragraphs (b)(1) through (8) of this section or to § 1.1307(b).

(3) The construction of new submarine cable systems is categorically excluded and is not subject to the extraordinary circumstances in paragraphs (b)(1) through (8) of this section or to § 1.1307(b).

(e) *Categorical exclusion for construction in an antenna farm.* (1) The construction of an antenna tower or supporting structure in an established ''antenna farm'' (*i.e.,* an area in which similar antenna towers are clustered, whether or not such area has been officially designated as an antenna farm) will be categorically excluded unless:

(i) The tower will be over 450 feet tall; or

(ii) One or more of the antennas to be mounted on the tower or structure are subject to § 1.1307(b) and the additional radiofrequency radiation from the antenna(s) on the new tower or structure would cause human exposure in excess of the applicable health and safety guidelines cited in § 1.1307(b).

(2) The extraordinary circumstances in paragraphs (b)(1) through (6) of this section do not apply.

(f) *Adopting categorical exclusions from other Federal agencies.* Consistent with 42 U.S.C. 4336c, the Commission may adopt a categorical exclusion listed in another agency's NEPA procedures. Any Commission major Federal action that meets the criteria of a categorical exclusion listed in another agency's NEPA procedures and adopted by the Commission shall be categorically excluded. When adopting a categorical exclusion from another agency, the Commission shall follow the procedures set forth in 42 U.S.C. 4336c and publish the adopted categorical exclusion on its website. The Commission will continue to apply § 1.1307(b) and (c) when adopting another agency's categorical exclusion.

(g) *Documentation of categorical exclusion determinations.* The applicant will document the evaluation of the applicability of a categorical exclusion in a certification indicating that the major Federal action does not trigger any of the extraordinary circumstances in paragraphs (b)(1) through (8) of this section for any application of a categorical exclusion to any major Federal action requiring registration in the Antenna Structure Registration system under § 17.4 of this chapter.

(1) The responsible Bureau will determine the format and method for the applicant to submit this certification.

(2) The applicant must retain supporting documentation in its records showing that the major Federal action is categorically excluded pursuant to this section, for a period of 6 years from the date the ASR registration application is granted, except that documentation showing compliance with the Commission's radiofrequency safety standards must be retained throughout the duration of operation.

(3) The applicant will provide the documentation to the Commission within five business days of receiving a request from the Commission for such documentation.

Note 1 to § 1.1306: Except where paragraph (b)(7) of this section applies, the specific height of an antenna tower or supporting structure, as well as the specific diameter of a satellite earth station, in and of itself, will not be deemed sufficient to warrant environmental processing, *see* paragraphs (a) through (c) of this section.

■ 10. Delayed indefinitely, amend § 1.1307 by:

■ a. Revising the section heading and paragraph (a);

■ b. Adding introductory text to paragraph (b);

■ c. Revising the first sentence of paragraph (b)(5)(i);

■ d. Revising paragraphs (c) and (d); and

■ e. Removing paragraph (e).

The revisions read as follows:

§ 1.1307 Environmental assessments (EAs).

(a) *Environmental processing and requirements for EAs.* Applicants shall prepare EAs for actions that may have a reasonably foreseeable significant environmental effect (*see* § 1.1306(b)) and when otherwise required by paragraph (b) of this section.

(1) *Elements of EAs.* The EA shall explain the environmental consequences of the proposal and set forth sufficient analysis for the Bureau or the Commission to reach a

determination that the proposal will or will not have a significant environmental effect. To assist in making that determination, the Bureau or the Commission may request further information from the applicant, interested persons, and agencies and authorities which have jurisdiction by law or which have relevant expertise. Each EA shall contain the following information:

(i) A statement of purpose and need that briefly summarizes the underlying purpose and need for the proposed action.

(ii) A description of the facilities as well as supporting structures and appurtenances, and a description of the site as well as the surrounding area and uses. If high intensity white lighting is proposed or utilized within a residential area, the EA must also address the impact of this lighting upon the residents.

(iii) A statement as to the zoning classification of the site and communications with, or proceedings before and determinations (if any) made by, zoning, planning, environmental, or other local, State, or Federal authorities on matters relating to environmental effect. The EA shall also be accompanied with evidence of site approval, which has been obtained from local or Federal land use authorities.

(iv) A statement as to whether construction of the facilities has been a source of controversy on environmental grounds in the local community.

(v) A discussion of environmental and other considerations which led to the selection of the particular site and, if relevant, the particular facility and the nature and extent of any unavoidable adverse environmental effects.

(vi) A description of technically and economically feasible alternative sites or facilities considered.

(vii) Any other information that may be requested by the Bureau or Commission.

(viii) If endangered or threatened species or their critical habitats may be affected, the applicant's analysis must utilize the best scientific and commercial data available (*see* 50 CFR 402.14(c)).

(2) *Scope of analysis.* In preparing the EA, the focus of the analysis shall be on whether the environmental effects of the action or project at hand are significant. The document must identify where and how reasonable and manageable lines are drawn relating to the 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. EAs shall:

(i) Contain information that is factual (not argumentative or conclusory) and concise with sufficient detail to explain the environmental consequences and to enable the Commission or Bureau, after an independent review of the EA, to reach a determination of whether the proposal will have a reasonably foreseeable significant environmental impact, if any;

(ii) Specifically address any feature of the site which has special environmental significance (*e.g.,* wilderness areas, wildlife preserves, natural migration paths for birds and other wildlife);

(iii) Include details of any substantial change in the character of the land utilized (*e.g.,* deforestation, water diversion, wetland fill, or other extensive change of surface features); and

(iv) Shall discuss the effect of any continuing pattern of human intrusion (*e.g.,* necessitated by the operation and maintenance of the facilities) on wildlife areas, wildlife preserves, or other like areas, if present.

(3) *Non-duplication.* To the extent that such information is submitted in another part of the application, it need not be duplicated in the EA, but adequate cross-reference to such information shall be supplied.

(4) *Lead agency exception.* An EA need not be submitted to the Commission if another Federal agency has been designated as the lead agency for a major Federal action.

(5) *Data sources.* An EA may make use of any reliable data source; new scientific or technical research is not required unless it is essential to a reasoned choice among alternatives and the overall costs and timeframe of obtaining it are not unreasonable.

(6) *Page limit.* No EA shall exceed 75 pages, exclusive of citations and appendices.

(7) *Determination of significant environmental effect.* If the Bureau or the Commission determines, based on an independent review of the EA and any applicable mandatory consultation requirements imposed upon Federal agencies, that the proposal will have a reasonably foreseeable significant effect on the quality of the human environment, it will so inform the applicant. The applicant will then have an opportunity to amend its application in accordance with § 1.1309. If the significant environmental effect is not eliminated, the Bureau will publish a Notice of Intent (*see* § 1.1312(c)) that an Environmental Impact Statement will be prepared (*see* § 1.1312).

(8) *Findings of no significant impact.* If the Bureau or Commission determines, based on an independent review of the EA, and any mandatory consultation requirements imposed upon Federal agencies, that the proposal would not have a significant impact, it will make a Finding of No Significant Impact. The Finding of No Significant Impact shall include a statement that the EA that was submitted represents the Commission's good faith effort to fulfill NEPA's requirements within the congressional timeline, and that such efforts are now complete; that, in the Commission's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Commission's judgment, the analysis contained therein is adequate to inform and reasonably explain the Commission's final decision regarding the proposed action. Thereafter, the application will be processed without further documentation of environmental effect.

(9) *Deadlines.* Processing of EAs shall be completed within one year of the date the EA is received for review and shall be deemed completed when the Commission or Bureau issues either a Finding of No Significant Impact or informs the applicant that the proposed major Federal action will have a reasonably foreseeable significant effect on the quality of the human environment. The Commission or Bureau, in consultation with the applicant, may establish a new deadline that provides only as much additional time as needed for the applicant to amend its EA to submit any additional information.

(i) An EA shall be considered received for review by the Bureau after it has been both electronically submitted to the Bureau and placed on public notice (*see* § 17.4(d)(6) of this chapter). The EA will remain on public notice for 20 days.

(ii) Within 30 days of the EA being placed on public notice, the reviewing Bureau shall review the EA for completeness and adequacy. If the EA is found to be complete and adequate, and in the absence of a third party petition (*see* paragraph (c) of this section) or Petition to Deny, the reviewing Bureau shall issue a Finding of No Significant Impact or advise the applicant that the proposal will have a significant environmental effect, within 60 days from placement on public notice.

(iii) If, however, the EA is missing necessary information or the reviewing Bureau determines that it needs to consider additional information to make an informed determination, the reviewing Bureau will notify the applicant of the additional information needed within 30 days after the EA is

placed on notice. Where the missing information is of a nature that is likely to affect the public's ability to request further review of environmental impacts, the application will again be placed on notice after receipt of this missing information. In such cases, and absent the reviewing Bureau determining additional information is required, the Bureau will complete the review and issue a Finding of No Significant Impact, or advise the applicant that the proposal will have a significant environmental effect, within 30 days after the missing information is provided or 60 days after the initial notice, whichever is later.

(iv) In the event the Commission receives a third party petition (*see* paragraph (c) of this section) or Petition to Deny in response to the public notice, the reviewing Bureau will resolve the third party petition or Petition to Deny within 90 days of the end of the pleading cycle on such petition. The 90-day period is paused when the reviewing Bureau requests additional information from the applicant, and the time period is resumed once the applicant provides the requested information to the Bureau. The Bureau will then complete its review and issue a Finding of No Significant Impact, or advise the applicant that the proposal will have a significant environmental effect, within 30 days after completing adjudication of the request or Petition.

(b) *Requirements regarding human exposure to RF.* In addition to imposing limits on human exposure to RF for Commission major Federal actions (*see* § 1.1306(b)(8)), the Commission maintains independent legal authority to impose limits on human exposure to RF for actions that are not major Federal actions (*see* § 1.1302(d)). The procedures in this paragraph (b) apply to both major Federal actions and actions that are not major Federal actions.

* * * * *

(5) * * *

(i) In general, when the exposure limits specified in § 1.1310 are exceeded in an accessible area due to the emissions from multiple fixed RF sources, actions necessary to bring the area into compliance or preparation of an EA as specified in paragraph (a) of this section are the shared responsibility of all licensees whose RF sources produce, at the area in question, levels that exceed 5% of the applicable exposure limit proportional to power.

* * *

* * * * *

(c) *Third party petitions.* An interested person alleging that a particular major Federal action, otherwise categorically excluded, will have a significant environmental effect may petition the Bureau responsible for processing that action to require further environmental processing of the application. Except as provided for in § 1.1304, such petitions shall be submitted electronically and shall set forth in detail the reasons justifying or circumstances necessitating environmental consideration in the decision-making process. The Bureau shall review the petition and supporting materials and consider the environmental concerns that have been raised. In cases in which a pleading cycle has been established, the Bureau shall resolve the petition within 90 days of the close of the pleading cycle on such petition. In cases without a pleading cycle, the petition shall be resolved within 90 days of receipt of the petition. The 90-day period is paused when the Bureau requests additional information from the applicant and is resumed once the applicant provides the requested information to the Bureau. If the Bureau determines that the action is likely to have a reasonably foreseeable significant environmental effect, the Bureau will require the applicant to either prepare an EA, which will serve as the basis for the determination to proceed with or terminate environmental processing, or otherwise modify the proposal to avoid these effects.

(1) All such petitions must provide specific, detailed evidence demonstrating that the proposed major Federal action is likely to have a reasonably foreseeable significant environmental effect.

(2) All such petitions shall be supported by a written submission which can include photographic evidence supporting the facts alleged in the petition. The petition shall be limited to five pages in length with 15 pages of supporting evidentiary documents. The Bureau may in its discretion permit a supplement to the petition and may set page limits on the supplemental submissions.

(d) *Preemption.* No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions. For purposes of this paragraph (d):

(1) The term *personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

(2) The term *personal wireless service facilities* means facilities for the provision of personal wireless services;

(3) The term *unlicensed wireless services* means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services; and

(4) The term *direct-to-home satellite services* means the distribution or broadcasting of programming or services by satellite directly to the subscriber's premises without the use of ground receiving or distribution equipment, except at the subscriber's premises or in the uplink process to the satellite.

§ 1.1308 [Removed]

■ 11. Delayed indefinitely, remove § 1.1308.

■ 12. Delayed indefinitely, revise and republish § 1.1309 to read as follows:

§ 1.1309 Application amendments.

Applicants are permitted to amend their applications to reduce, minimize, or eliminate reasonably foreseeable significant environmental effects. Amendments shall be made electronically. As a routine matter, an applicant will be permitted to amend its application within 30 days after the Commission or the Bureau informs the applicant that the proposal will have a reasonably foreseeable significant effect on the quality of the human environment. The period of 30 days may be extended upon a showing of good cause.

■ 13. Delayed indefinitely, revise and republish §§ 1.1311 through 1.1313 to read as follows:

§ 1.1311 Objections.

(a) In the case of an application to which section 309(b) of the Communications Act applies, objections based on environmental considerations shall be filed electronically as petitions to deny. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the petition by mail, with a request for waiver under § 1.1304.

(b) Informal objections which are based on environmental considerations must be filed electronically prior to grant of the application. If the interested person is unable to file electronically or if filing electronically would be unreasonably burdensome, such person may submit the objection by mail, with a request for waiver under § 1.1304.

§ 1.1312 Environmental impact statements (EISs).

(a) *Applicant preparation of EISs.* The applicant for any proposed Commission major Federal action requiring an environmental document that the Commission determines has a reasonably foreseeable significant effect on the quality of the human environment shall prepare an Environmental Impact Statement (EIS).

(b) *Notices of intent (NOI).* 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 Bureau will publish a Notice of Intent to prepare an EIS.

(1) *Contents.* The NOI will identify the proposal, concisely describe the environmental issues and concerns presented by the subject application, and request public comment from affected or involved agencies, authorities and other interested persons on alternatives or impacts and on relevant information, studies, or analyses with respect to the proposed major Federal action.

(2) *Comments and reply comments.* Any person or agency may comment on the NOI and the environmental effect of the proposal described therein within 45 days of the publication of the NOI. A copy of those comments shall be filed electronically with the Commission, subject to the waiver provisions of § 1.1304. If a person submitting comments is especially qualified in any way to comment on the environmental impact of the facilities, a statement of his or her qualifications shall be set out in the comments. In addition, comments submitted by an agency shall identify the person(s) who prepared them. Reply comments may be filed within 15 days after the time for filing comments has expired.

(c) *Content of EISs.* (1) An EIS for a proposed Commission major Federal action shall contain:

(i) A concise description of the proposed major Federal action and the nature of the area affected, its uses, and any specific feature that has special environmental significance;

(ii) A statement briefly summarizing the underlying purpose and need for the proposed action;

(iii) A detailed statement, with support, of each element listed at 42 U.S.C. 4332(2)(C);

(iv) For any proposal that involves unresolved conflicts concerning alternative uses of available resources, include a description of the appropriate alternatives to the recommended major Federal action in the proposal; and

(v) A summary of the comments, a response to the comments, and an analysis of the proposal in terms of its environmental consequences, and any reasonable alternatives, and recommendations, if any, and shall cite the Commission's internal appeal procedures (*see* §§ 1.101 through 1.117). Copies of the comments and reply comments, or summaries thereof where the record is voluminous, shall be attached to the EIS.

(2) An EIS shall not exceed 150 pages, exclusive of citations or appendices, except in the case of a major Federal action of extraordinary complexity, for which the Bureau, in consultation with the applicant, may permit or require an EIS not to exceed 300 pages, exclusive of citations or appendices.

(d) *Limitations on challenges to the application during EIS initiation.* The publication of an NOI, including a request for comments, and the preparation of an EIS and the request for comments shall not open the application to attack on other grounds.

(e) *Supplementation of EISs.* Where substantial changes are made to the proposed action that are relevant to environmental concerns, or substantial new circumstances occur or information arises about the significance of the adverse effects that bear upon the proposed action or its effects, the Bureau responsible for processing the particular application shall coordinate with the applicant to draft supplements addressing the changes or new circumstances or information.

(f) *Consideration of environmental impact statements.* (1) If the major Federal action is designated for hearing:

(i) In rendering an initial decision, the presiding officer (other than the Commission) shall use the EIS in considering the environmental issues.

(ii) When the Commission serves as the presiding officer or upon its review of an initial decision, the Commission will consider and assess all aspects of the EIS and will render its decision, giving due consideration to the environmental and nonenvironmental issues.

(2) In all non-hearing matters, the Commission, as part of its decision-making process, will review the EIS, along with other relevant issues, to ensure that the environmental effects are specifically assessed and given comprehensive consideration.

(g) *Completion.* EISs shall be completed within two years of the date on which the Commission or relevant Bureau determines that 42 U.S.C. 4332(2)(C) requires the issuance of an environmental impact statement or the date on which the Commission issues a notice of intent to prepare the environmental impact statement, unless the Commission or Bureau, in consultation with the applicant, establishes a new deadline that provides only so much additional time as is necessary to complete the EIS. 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 Commission's good-faith effort to fulfill NEPA's requirements within the congressional timeline; that such effort is substantially complete; that, in the Commission's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the Commission's judgment, the analysis contained therein is adequate to inform and reasonably explain the Commission's final decision regarding the proposed Federal action.

§ 1.1313 Emergency procedures.

(a) These emergency procedures are applicable in emergency situations where it is necessary to take immediate Federal action to address imminent threats to life, property, or important natural, cultural, or historic resources, as determined by the Bureau responsible for processing the action. Applicants seeking to apply these procedures to a proposed major Federal action must include a description of the specific emergency circumstances and a certification that the action is necessitated by those emergency circumstances.

(b) Where emergency circumstances make it necessary to take a major Federal action with reasonably foreseeable significant environmental effects, the Commission or responsible Bureau will consult with the Council on Environmental Quality about alternative arrangements for compliance with 42 U.S.C. 4332(2)(C).

(c) Where the Commission or responsible Bureau expects that the proposed emergency major Federal action is not likely to have significant environmental effects, or if the significance of the environmental effects is unknown, applicants may prepare a shortened Environmental Assessment, consisting of:

(1) The purpose and need for the proposed action;

(2) The reasonably foreseeable effects of the proposed agency action;

(3) Any mitigation measures that the applicant will implement; and

(4) The alternatives considered.

(d) The Commission or responsible Bureau may issue further guidance as

necessary for emergency circumstances, including waiving rules for good cause pursuant to § 1.3 or alleviating any additional burden in accordance with other sections of the Commission's rules.

§§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320 [Removed]

■ 14. Delayed indefinitely, remove §§ 1.1314, 1.1315, 1.1317, 1.1319, and 1.1320.

Subpart M—Cable Operations and Licensing Systems (COALS)

■ 15. Delayed indefinitely, amend § 1.1706 by revising paragraph (d) as follows:

§ 1.1706 Content of filings.

* * * * *

(d) *Environmental concerns.* Each applicant is required to indicate at the time its application is filed whether a Commission grant of the application requires preparation of an Environmental Assessment under § 1.1307(b). If yes, an Environmental Assessment, as required by § 1.1307, must be filed with the application and environmental review by the Commission must be completed prior to construction.

* * * * *

Subpart Q—Competitive Bidding Proceedings

■ 16. Delayed indefinitely, amend § 1.2113 by revising paragraph (d)(3) to read as follows:

§ 1.2113 Construction prior to grant of application.

* * * * *

(d) * * *

(3) The applicant has indicated in the application that the proposed facility would not require preparation of an Environmental Assessment under § 1.1307(b);

* * * * *

Subpart U—State and Local Government Regulation of the Placement, Construction, and Modification of Personal Wireless Service Facilities

■ 17. Delayed indefinitely, amend § 1.6002 by:

■ a. Revising the first sentence of paragraph (b);

■ b. Revising paragraph (c);

■ c. Revising the introductory text of paragraph (g); and

■ d. Revising paragraphs (l)(1)(i) and (l)(2).

The revisions read as follows:

§ 1.6002 Definitions.

* * * * *

(b) *Antenna,* consistent with § 1.90000(a), means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the provision of personal wireless service and any commingled information services.

* * *

(c) *Antenna equipment,* consistent with § 1.90000(a), means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

* * * * *

(g) *Collocation,* consistent with § 1.90000(a) and the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, appendix B to this part, section I.B, means—

* * * * *

(l) * * *

(1) * * *

(i) Are mounted on structures fifty 50 feet or less in height including their antennas as defined in § 1.90000(a); or

* * * * *

(2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in § 1.90000(a)), is no more than three cubic feet in volume;

* * * * *

Subpart X—Spectrum Leasing

■ 18. Delayed indefinitely, amend § 1.9010 by revising the second sentence of paragraph (b)(1)(ii) to read as follows:

§ 1.9010 *De facto* control standard for spectrum leasing arrangements.

* * * * *

(b) * * *

(1) * * *

(ii) * * * These responsibilities include: Coordinating operations and modifications of the spectrum lessee's system to ensure compliance with Commission rules regarding non-interference with co-channel and adjacent channel licensees (and any authorized spectrum user); making all determinations as to whether an application is required for any individual spectrum lessee stations (*e.g.,* those that require frequency coordination, those that require international or Interdepartment Radio Advisory Committee (IRAC) coordination, those that affect radio frequency quiet zones described in § 1.924, or those that require notification to the Federal Aviation Administration under part 17 of this chapter); and, ensuring that the spectrum lessee complies with the Commission's safety guidelines relating to human exposure to radiofrequency (RF) radiation, including submission of an Environmental Assessment where required, pursuant to § 1.1307(b) and related rules of subpart I of this part.

* * *

* * * * *

Subpart FF—Cable Landing Licenses

■ 19. Delayed indefinitely, amend § 1.70007 by revising paragraph (i) to read as follows:

§ 1.70007 Routine conditions.

* * * * *

(i) The Commission reserves the right to require the licensee to file an Environmental Assessment should it determine that the landing of the cable at the specific locations and construction of necessary cable landing stations are subject to environmental review under § 1.1302 and may significantly affect the environment within the meaning of § 1.1306 implementing the National Environmental Policy Act of 1969. The cable landing license is subject to modification by the Commission under its review of any Environmental Assessment or Environmental Impact Statement that it may require pursuant to its rules. *See also* §§ 1.1306(d) and 1.1307(c).

* * * * *

■ 20. Delayed indefinitely, add subpart HH, consisting of §§ 1.90000 through 1.90002, to read as follows:

Subpart HH—Procedures Implementing the National Historic Preservation Act of 1966

Sec.

1.90000 Definitions.
1.90001 Responsibilities of applicants.
1.90002 Review of Commission undertakings that may affect historic properties.

§ 1.90000 Definitions.

(a) *Antenna* means an apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Commission authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna

and added to a tower, structure, or building as part of the original installation of the antenna. For most services, an antenna will be mounted on or in, and is distinct from, a supporting structure such as a tower, structure or building. However, in the case of AM broadcast stations, the entire tower or group of towers constitutes the antenna for that station. For purposes of this section, the term antenna does not include unintentional radiators, mobile stations, or devices authorized under part 15 of this title.

(b) *Applicant* means a Commission licensee, permittee, or registration holder, or an applicant or prospective applicant for a wireless or broadcast license, authorization or antenna structure registration, and the duly authorized agents, employees, and contractors of any such person or entity.

(c) *Collocation* means the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

(d) *Tower* means any structure built for the sole or primary purpose of supporting Commission-licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined in this section.

(e) *Undertaking* means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of the Commission, including those requiring a Commission permit, license or approval. Maintenance and servicing of towers, antennas, and associated equipment are not deemed to be undertakings subject to review under this section.

§ 1.90001 Responsibilities of applicants.

Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in appendix C to this part, sections III through X, or any other applicable program alternative.

§ 1.90002 Review of Commission undertakings that may affect historic properties.

(a) *Review of Commission undertakings.* Any Commission undertaking that has the potential to cause effects on historic properties, unless excluded from review pursuant to paragraph (b) of this section, shall be subject to review under section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. 306108, by applying—

(1) The procedures set forth in regulations of the Advisory Council on Historic Preservation, 36 CFR 800.3 through 800.13; or

(2) If applicable, a program alternative established pursuant to 36 CFR 800.14, 800.16, including but not limited to the following:

(i) The Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, as amended, appendix B to this part.

(ii) The Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission, appendix C to this part.

(iii) The Program Comment to Tailor the Federal Communications Commission's Section 106 Review for Undertakings Involving the Construction of Positive Train Control Wayside Poles and Infrastructure, 79 FR 30861 (May 29, 2014) (an Advisory Council on Historic Preservation program comment).

(b) *Exclusions.* The following categories of undertakings are excluded from review under this section:

(1) *Projects reviewed by other agencies.* Undertakings for which an agency other than the Commission is the lead Federal agency pursuant to 36 CFR 800.2(a)(2).

(2) *Projects subject to program alternatives.* Undertakings excluded from review under a program alternative established pursuant to 36 CFR 800.14, including those listed in paragraph (a)(2) of this section.

(3) *Replacement utility poles.* Construction of a replacement for an existing structure where all the following criteria are satisfied:

(i) The original structure—

(A) Is a pole that can hold utility, communications, or related transmission lines;

(B) Was not originally erected for the sole or primary purpose of supporting antennas that operate pursuant to the Commission's spectrum license or authorization; and

(C) Is not itself a historic property.

(ii) The replacement pole—

(A) Is located no more than 10 feet away from the original pole, based on the distance between the centerpoint of the replacement pole and the centerpoint of the original pole; *provided* that construction of the replacement pole in place of the original pole entails no new ground disturbance (either laterally or in depth) outside previously disturbed areas, including disturbance associated with temporary support of utility, communications, or related transmission lines. For purposes of this paragraph (b)(3)(ii)(A), ''ground disturbance'' means any activity that moves, compacts, alters, displaces, or penetrates the ground surface of previously undisturbed soils;

(B) Has a height that does not exceed the height of the original pole by more than five feet or 10 percent of the height of the original pole, whichever is greater; and

(C) Has an appearance consistent with the quality and appearance of the original pole.

(4) *Collocations on buildings and other non-tower structures.* The mounting of antennas (including associated equipment such as wiring, cabling, cabinets, or backup power) on buildings or other non-tower structures where the deployment meets the following conditions:

(i) There is an existing antenna on the building or structure;

(ii) One of the following criteria is met:

(A) *Non-visible antennas.* The new antenna is not visible from any adjacent streets or surrounding public spaces and is added in the same vicinity as a pre-existing antenna;

(B) *Visible replacement antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that:

(*1*) It is a replacement for a pre-existing antenna;

(*2*) The new antenna will be located in the same vicinity as the pre-existing antenna;

(*3*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;

(*4*) The new antenna is not more than three feet larger in height or width (including all protuberances) than the pre-existing antenna; and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces; or

(C) *Other visible antennas.* The new antenna is visible from adjacent streets or surrounding public spaces, provided that:

(*1*) It is located in the same vicinity as a pre-existing antenna;

(*2*) The new antenna will be visible only from adjacent streets and surrounding public spaces that also afford views of the pre-existing antenna;

(*3*) The pre-existing antenna was not deployed pursuant to the exclusion in this paragraph (b)(4)(ii)(C);

(*4*) The new antenna is not more than three feet larger in height or width

(including all protuberances) than the pre-existing antenna; and

(*5*) No new equipment cabinets are visible from the adjacent streets or surrounding public spaces;

(iii) The new antenna complies with all zoning conditions and historic preservation conditions applicable to existing antennas in the same vicinity that directly mitigate or prevent effects, such as camouflage or concealment requirements; and

(iv) The deployment of the new antenna involves no new ground disturbance. (Note: A non-visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it will be collocated on the same rooftop, façade or other surface. A visible new antenna is in the ''same vicinity'' as a pre-existing antenna if it is on the same rooftop, façade, or other surface and the centerpoint of the new antenna is within 10 feet of the centerpoint of the pre-existing antenna. A deployment causes no new ground disturbance when the depth and width of previous disturbance exceeds the proposed construction depth and width by at least two feet.)

(5) *Aerial corridors and existing underground corridors.* The installation of aerial wire or cable over existing aerial corridors of prior or permitted use or the underground installation of wire or cable along existing underground corridors of prior or permitted use, established by the applicant or others.

(6) *Submarine cable systems.* The construction of new submarine cable systems.

(c) *Responsibilities of applicants.* Applicants seeking Commission authorization for construction or modification of towers, collocation of antennas, or other undertakings shall take the steps mandated by, and comply with the requirements set forth in appendix C to this part, sections III through X, or any other applicable program alternative.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 21. The authority citation for part 2 is revised to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 332, and 336, unless otherwise noted.

Subpart J—Equipment Authorization Procedures

■ 22. Delayed indefinitely, amend § 2.1091 by revising paragraphs (a) and (c)(3) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the Telecommunications Act of 1996. See subpart I of part 1 of this chapter, in particular § 1.1307(b) of this chapter.

* * * * *

(c) * * *

(3) Unless otherwise specified in this chapter, any other single mobile or multiple mobile and portable RF source(s) associated with a device is exempt from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in § 1.1307(c) of this chapter.

* * * * *

■ 23. Delayed indefinitely, amend § 2.1093 by revising paragraphs (a) and (c)(3) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

(a) Requirements of this section are a consequence of Commission responsibilities under the Telecommunications Act of 1996. *See* subpart I of part 1 of this chapter, in particular § 1.1307(b) of this chapter.

* * * * *

(c) * * *

(3) Unless otherwise specified in this chapter, any other single mobile or multiple mobile and portable RF source(s) associated with a device is exempt from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in § 1.1307(c) of this chapter.

* * * * *

PART 5—EXPERIMENTAL RADIO SERVICE

■ 24. The authority citation for part 5 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 332, 336.

Subpart B—Applications and Licenses

■ 25. Delayed indefinitely, amend § 5.63 by revising paragraph (a) to read as follows:

§ 5.63 Supplemental statements required.

* * * * *

(a) If installation and/or operation of the equipment requires preparation of an Environmental Assessment under § 1.1307(b) of this chapter, an Environmental Assessment as defined in § 1.1307 of this chapter must be submitted with the application.

* * * * *

PART 17—CONSTRUCTION, MARKING, AND LIGHTING OF ANTENNA STRUCTURERS

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

Authority: 47 U.S.C. 154, 301, 303, 309.

Subpart A—General Information

■ 27. Delayed indefinitely, revise and republish § 17.4 to read as follows:

§ 17.4 Antenna structure registration.

(a) The owner of any proposed or existing antenna structure that requires notice of proposed construction to the Federal Aviation Administration (FAA) due to physical obstruction must register the structure with the Commission (*see* § 17.7 for FAA notification requirements). This includes those structures used as part of stations licensed by the Commission for the transmission of radio energy, or to be used as part of a cable television head end system. If a Federal Government antenna structure is to be used by a Commission licensee, the structure must be registered with the Commission. If the FAA exempts an antenna structure from notification, it is exempt from the requirement that it register with the Commission (*see* § 17.7(e) for exemptions to FAA notification requirements).

(1) For a proposed antenna structure or alteration of an existing antenna structure, the owner must register the structure prior to construction or alteration.

(2) For a structure that did not originally fall under the definition of ''antenna structure,'' the owner must register the structure prior to hosting a Commission licensee.

(b) Except as provided in paragraph (e) of this section, each owner of an antenna structure described in paragraph (a) of this section must electronically file FCC Form 854 with the Commission. Additionally, each owner of a proposed structure referred to in paragraph (a) of this section must submit a valid FAA determination of ''no hazard.'' In order to be considered valid by the Commission, the FAA determination of ''no hazard'' must not have expired prior to the date on which FCC Form 854 is received by the Commission. The height of the structure will be the highest point of the structure including any obstruction lighting or lightning arrester. If an antenna structure is not required to be registered under paragraph (a) of this section and it is voluntarily registered with the Commission after October 24, 2014, the registrant must note on FCC Form 854

that the registration is voluntary. Voluntarily registered antenna structures are not subject to the lighting and marking requirements contained in this part and do not require a determination of ''no hazard'' from the FAA for processing in the ASR system.

(c) Each prospective applicant must complete the environmental notification process described in this paragraph (c) except as specified in paragraph (l) of this section.

(1) *Exceptions from the environmental notification process.* Completion of the environmental notification process is not required when FCC Form 854 is submitted solely for the following purposes:

(i) For notification only, such as to report a change in ownership or contact information, or the dismantlement of an antenna structure;

(ii) For a reduction in height of an antenna structure or an increase in height that does not constitute a substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to part 1 of this chapter, provided that there is no construction or excavation more than 30 feet beyond the existing antenna structure property;

(iii) Any lighting change or modification that does not involve the addition of steady red lights;

(iv) For replacement of an existing antenna structure at the same geographic location that does not require an Environmental Assessment (EA) under §§ 1.1306(b) and 1.1307(b) through (d) of this chapter, provided the new structure will not involve red steady-burning lighting, there will be no substantial increase in size as defined in paragraphs I.E.(1) through (3) of appendix B to part 1 of this chapter, and there will be no construction or excavation more than 30 feet beyond the existing antenna structure property;

(v) For any other change that does not alter the physical structure, lighting, or geographic location of an existing structure;

(vi) For construction, modification, or replacement of an antenna structure for which a Federal agency other than the Commission has been designated as the lead agency and for which environmental review has concluded; or

(vii) For the construction or deployment of an antenna structure that will:

(A) Be in place for no more than 60 days;

(B) Requires notice of construction to the FAA;

(C) Does not require marking or lighting under FAA regulations;

(D) Will be less than 200 feet in height above ground level; and

(E) Will either involve no excavation or involve excavation only where the depth of previous disturbance exceeds the proposed construction depth (excluding footings and other anchoring mechanisms) by at least two feet. An applicant that relies on this exception must wait 30 days after removal of the antenna structure before relying on this exception to deploy another antenna structure covering substantially the same service area.

(2) *Commencement of the environmental notification process.* The prospective applicant shall commence the environmental notification process by filing information about the proposed antenna structure with the Commission. This information shall include, at a minimum, all of the information required on FCC Form 854 regarding ownership and contact information, geographic location, and height, as well as the type of structure and anticipated lighting. Prospective applicants who have determined that the proposed antenna structure is categorically excluded from further environmental processing under § 1.1306 of this chapter shall be required to certify that none of the Commission's list of extraordinary circumstances in § 1.1306(b) of this chapter are present. The Wireless Telecommunications Bureau may utilize a partially completed FCC Form 854 to collect this information.

(3) *National notice.* The Commission shall post notification of the proposed construction on its website. This posting shall include the information contained in the initial filing with the Commission or a link to such information. The posting shall remain on the Commission's website for a period of 30 days.

(4) *Requests for environmental processing.* Any request filed by an interested person pursuant to § 1.1307(c) of this chapter must be received by the Commission no later than 30 days after the proposed antenna structure goes on notice pursuant to paragraph (c)(3) of this section. The Wireless Telecommunications Bureau shall establish by public notice the process for filing requests for environmental processing and responsive pleadings consistent with the following provisions:

(i) *Service and pleading cycle.* The interested person or entity shall serve a copy of its request on the prospective ASR applicant pursuant to § 1.47 of this chapter. Oppositions may be filed no later than 10 days after the time for filing requests has expired. Replies to oppositions may be filed no later than five days after the time for filing oppositions has expired. Oppositions shall be served upon the requester, and replies shall be served upon the prospective applicant.

(ii) *Content.* An environmental request that does not meet the requirements of § 1.1307(c) of this chapter may be dismissed. The request must be submitted as a written petition filed electronically, setting forth in detail the reasons supporting requester's contentions. If the filer is unable to submit electronically, or if filing electronically would be unreasonably burdensome, the request may be submitted by mail, with a request for waiver under § 1.1304 of this chapter.

(5) *Amendments.* The prospective applicant must file an amendment to report any substantial change in the information provided to the Commission. An amendment will not require further notice if the only reported change is a reduction in the height of the proposed new or modified antenna structure; if no addition of red steady-burning lighting is proposed; or if the amendment reports only administrative changes that are not subject to the requirements specified in this paragraph (c)(5). All other changes to the physical structure or geographic location data for and the addition of red steady-burning lighting to proposed registered antenna structure require additional notice and a new period for filing requests pursuant to paragraphs (c)(3) and (4) of this section.

(6) *Environmental Assessments.* If an EA is required under § 1.1306 or § 1.1307 of this chapter, the antenna structure registration applicant shall attach the EA to its environmental submission, regardless of any requirement that the EA also be attached to an associated service-specific license or construction permit application. The contents of an EA are described in § 1.1307 of this chapter. The EA may be provided either with the initial environmental submission or as an amendment. If the EA is submitted as an amendment, the Commission shall post notification on its website for an additional 20 days and consider additional requests pursuant to paragraph (c)(4) of this section within 20 days after a completed EA is submitted.

(7) *Disposition.* The processing Bureau shall resolve all environmental issues, in accordance with the environmental regulations in §§ 1.1301 through 1.1313 of this chapter, before the tower owner, or the first tenant licensee acting on behalf of the owner, may complete the antenna structure registration application. Requests for environmental review submitted under

paragraph (c)(4) of this section shall be resolved within 90 days of the end of the pleading cycle set forth in paragraph (c)(4)(i) of this section, not including the time between a request from staff to the applicant for additional information is made and the applicant's provision of the requested information to staff. In a case where no EA is submitted, the Bureau shall notify the applicant whether an EA is required under § 1.1307(c) of this chapter. In a case where an EA is submitted, the Bureau shall either grant a Finding of No Significant Impact (FONSI) or notify the applicant that further environmental processing is required pursuant to § 1.1307 of this chapter. Upon filing the completed antenna structure registration application, the applicant shall certify that the construction will not have a significant environmental impact, unless an Environmental Impact Statement is prepared pursuant to § 1.1312 of this chapter.

(d) In accordance with § 1.1306(g) of this chapter and excepting applications for antenna structures that are not required to be registered under paragraph (a) of this section, all prospective applicants are required to support their initial determinations that a proposed new antenna structure or modification of an existing antenna structure is categorically excluded from further environmental processing under § 1.1306 of this chapter by indicating whether any extraordinary circumstances listed in § 1.1306(b) of this chapter are present.

(e) If the owner of the antenna structure cannot file FCC Form 854 because it is subject to a denial of Federal benefits under the Anti-Drug Abuse Act of 1988, 21 U.S.C. 862, the first tenant licensee authorized to locate on the structure (excluding tenants that no longer occupy the structure) must register the structure electronically using FCC Form 854, and provide a copy of the Antenna Structure Registration (FCC Form 854R) to the owner. The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with paragraph (f) of this section, and for posting the registration number as required by paragraph (g) of this section.

(f) The Commission shall issue to the registrant FCC Form 854R, Antenna Structure Registration, which assigns a unique Antenna Structure Registration Number. The antenna structure owner shall immediately provide to all tenant licensees and permittees notification that the structure has been registered, along with either a copy of Form 854R or the Antenna Structure Registration Number and a link to the FCC antenna structure website: *https://wireless.fcc.gov/antenna/*. This notification must be done electronically.

(g) Except as described in paragraph (h) of this section, the Antenna Structure Registration Number must be displayed so that it is conspicuously visible and legible from the publicly accessible area nearest the base of the antenna structure along the publicly accessible roadway or path. Where an antenna structure is surrounded by a perimeter fence, or where the point of access includes an access gate, the Antenna Structure Registration Number should be posted on the perimeter fence or access gate. Where multiple antenna structures having separate Antenna Structure Registration Numbers are located within a single fenced area, the Antenna Structure Registration Numbers must be posted both on the perimeter fence or access gate and near the base of each antenna structure. If the base of the antenna structure has more than one point of access, the Antenna Structure Registration Number must be posted so that it is visible at the publicly accessible area nearest each such point of access. Materials used to display the Antenna Structure Registration Number must be weather-resistant and of sufficient size to be easily seen where posted.

(h) The owner is not required to post the Antenna Structure Registration Number in cases where a Federal, State, or local government entity provides written notice to the owner that such a posting would detract from the appearance of a historic landmark. In this case, the owner must make the Antenna Structure Registration Number available to representatives of the Commission, the FAA, and the general public upon reasonable demand.

(i) Absent Commission specification, the painting and lighting specifications recommended by the FAA are mandatory (*see* § 17.23). However, the Commission may specify painting and/or lighting requirements for each antenna structure registration in addition to or different from those specified by the FAA.

(j) Any change or correction in the overall height of one foot or greater or coordinates of one second or greater in longitude or latitude of a registered antenna structure requires prior approval from the FAA and modification of the existing registration with the Commission.

(k) Any change in the marking and lighting that varies from the specifications described on any antenna structure registration requires prior approval from the FAA and the Commission.

(l) The owner of any proposed or existing antenna structure that does not require notice of proposed construction to the FAA due to physical obstruction may register the structure with the Commission on a voluntary basis. Voluntary registrations shall not be subject to the requirements of paragraphs (b), (c), (g), and (i) of this section, § 17.6, and subparts B and C of this part. Modifications of voluntarily registered antenna structures shall not require prior approval (*see* paragraphs (i), (j), and (k) of this section) unless those modifications result in the requirement of antenna structure registration; however, antenna structure owners shall ensure at all times that information in ASR, including structure height and lighting, is current and accurate.

■ 28. Delayed indefinitely, amend § 17.6 by revising the last sentence of paragraph (c) to read as follows:

§ 17.6 Responsibility for painting and lighting compliance.

* * * * *

(c) * * * The owner remains responsible for providing to all tenant licensees and permittees notification that the structure has been registered, consistent with § 17.4(g), and for posting the registration number as required by § 17.4(h).

PART 22—PUBLIC MOBILE SERVICES

■ 29. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

Subpart B—Licensing Requirements and Procedures

■ 30. Delayed indefinitely, amend § 22.143 by revising paragraph (d)(5) to read as follows:

§ 22.143 Construction prior to grant of application.

* * * * *

(d) * * *

(5) The applicant has indicated in the application that the proposed facility would not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter; and

* * * * *

■ 31. Delayed indefinitely, amend § 22.165 by revising paragraph (c) to read as follows:

§ 22.165 Additional transmitters for existing systems.

* * * * *

(c) *Environmental.* The additional transmitters must not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

Subpart E—Paging and Radiotelephone Service

■ 32. Delayed indefinitely, amend § 22.503 by revising paragraph (g)(1) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(g) * * *

(1) FCC grant of an application authorizing the construction of the facility requires preparation of an Environmental Assessment under § 1.1307(b) of this chapter. *See* § 1.923(e) of this chapter.

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 33. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302a, 303, 307, 309, 332, 336, 337, 1403, 1404, 1451, and 1452, unless otherwise noted.

Subpart B—Applications and Licenses

■ 34. Delayed indefinitely, amend § 27.11 by revising paragraph (a) to read as follows:

§ 27.11 Initial authorization.

(a) *Initial authorization.* An applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 27.5. Applications for individual sites are not required and will not be accepted, except where required for Environmental Assessments, in accordance with § 1.1307(b) of this chapter.

* * * * *

Subpart I—1.4 GHZ Band

■ 35. Delayed indefinitely, amend § 27.803 by revising paragraph (b)(1) to read as follows:

§ 27.803 Coordination requirements.

* * * * *

(b) * * *

(1) That requires submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart J—1670–1675 MHz Band

■ 36. Delayed indefinitely, amend § 27.903 by revising paragraph (b)(1) to read as follows:

§ 27.903 Coordination requirements.

* * * * *

(b) * * *

(1) That requires submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart M—Broadband Radio Service and Educational Broadband Service

■ 37. Delayed indefinitely, amend § 27.1208 by revising paragraph (a)(2) to read as follows:

§ 27.1208 Geographic area licensing.

(a) * * *

(2) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter; and

* * * * *

PART 30—UPPER MICROWAVE FLEXIBLE USE SERVICE

■ 38. The authority citation for part 30 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 303, 304, 307, 309, 310, 316, 332, 1302, unless otherwise noted.

Subpart B—Applications and Licenses

■ 39. Delayed indefinitely, revise § 30.101 to read as follows:

§ 30.101 Initial authorizations.

Except with respect to in the 37–37.6 GHz band, an applicant must file a single application for an initial authorization for all markets won and frequency blocks desired. Initial authorizations shall be granted in accordance with § 30.4. Applications for individual sites are not required and will not be accepted, except where required for Environmental Assessments, in accordance with § 1.1307(b) of this chapter.

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 40. The authority citation for part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

■ 41. Delayed indefinitely, amend § 63.01 by revising paragraph (b) to read as follows:

§ 63.01 Authority for all domestic common carriers.

* * * * *

(b) Domestic common carriers subject to this section shall not engage in any line construction that requires environmental review under § 1.1302 of this chapter and that may have a significant effect on the environment as defined in § 1.1306 of this chapter without prior compliance with the Commission's environmental rules.

■ 42. Delayed indefinitely, amend § 63.18 by revising paragraph (g) to read as follows:

§ 63.18 Contents of applications for international common carriers.

* * * * *

(g) Where the applicant is seeking facilities-based authority under paragraph (e)(3) of this section that requires environmental review under § 1.1302 of this chapter, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an Environmental Assessment as described in § 1.1307 of this chapter need not be filed with the application.

* * * * *

PART 73—RADIO BROADCAST STATIONS

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

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

Subpart C—Digital Audio Broadcasting

■ 44. Delayed indefinitely, amend § 73.406 by revising paragraph (b)(4) to read as follows:

§ 73.406 Notification.

* * * * *

(b) * * *

(4) A certification that the operation will not cause human exposure to levels of radio frequency radiation in excess of the limits specified in § 1.1310 of this chapter and therefore excluded from environmental processing pursuant to § 1.1307(b) of this chapter. Any station that cannot certify compliance must submit an Environmental Assessment (EA) pursuant to § 1.1307 of this chapter and may not commence IBOC operation until such EA is ruled upon by the Commission.

* * * * *

Subpart H—Rules Applicable to All Broadcast Stations

■ 45. Delayed indefinitely, amend § 73.1010 by revising paragraph (a)(6) to read as follows:

§ 73.1010 Cross reference to rules in other parts.

* * * * *

(a) * * *

(6) Subpart I, ''Procedures Implementing the National Environmental Policy Act of 1969'' (*see* §§ 1.1301 through 1.1313 of this chapter).

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 46. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 325, 336 and 554.

Subpart—General; Rules Applicable to All Services in Part 74

■ 47. Delayed indefinitely, amend § 74.5 by revising paragraph (a)(7) to read as follows:

§ 74.5 Cross reference to rules in other parts.

* * * * *

(a) * * *

(7) Subpart I, ''Procedures Implementing the National Environmental Policy Act of 1969'' (*see* §§ 1.1301 through 1.1313 of this chapter).

* * * * *

■ 48. Delayed indefinitely, amend § 74.25 by revising paragraph (a)(4) to read as follows:

§ 74.25 Temporary conditional operating authority.

* * * * *

(a) * * *

(4) The applicant has determined that the facility(ies) does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

■ 49. The authority citation for part 78 continues to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

Subpart B—Applications and Licenses

■ 50. Delayed indefinitely, amend § 78.15 by revising paragraph (c) to read as follows:

§ 78.15 Contents of applications.

* * * * *

(c) CARS applicants must follow the procedures prescribed in § 1.1307(b) of this chapter regarding the filing of Environmental Assessments.

Subpart D—Technical Regulations

■ 51. Delayed indefinitely, amend § 78.109 by revising paragraph (b)(9) to read as follows:

§ 78.109 Major and minor modifications to stations.

* * * * *

(b) * * *

(9) Any modification or amendment requiring an Environmental Assessment (as governed by §§ 1.1301 through 1.1313 of this chapter);

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 52. The authority citation for part 80 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609; 3 U.S.T. 3450, 3 U.S.T. 4726, 12 U.S.T. 2377.

Subpart H—Frequencies

■ 53. Delayed indefinitely, amend § 80.371 by:

■ a. Redesignating paragraph (e) immediately following paragraph (c)(2) as paragraph (c)(2)(i);

■ b. Adding reserved paragraphs (c)(2)(ii) and (c)(3); and

■ c. Revising paragraph (c)(4)(iv).

The revision reads as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(4) * * *

(iv) The transmitters must not require preparation of an Environment Assessment under § 1.1307(b) of this chapter.

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 54. The authority citation for part 90 continues to read as follows:

Authority: 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), 1401–1473.

Subpart G—Applications and Authorizations

■ 55. Delayed indefinitely, amend § 90.129 by revising paragraph (g) to read as follows:

§ 90.129 Supplemental information to be routinely submitted with applications.

* * * * *

(g) The Environmental Assessment required by § 1.1307 of this chapter, if applicable. If an application filed under this part proposes the use of one or more new or existing antenna structures that require registration under part 17 of this chapter, any required Environmental Assessment should be submitted pursuant to the process set forth in § 17.4(c) of this chapter rather than with the application filed under this part.

* * * * *

■ 56. Delayed indefinitely, amend § 90.159 by revising paragraph (b)(4) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) * * *

(4) The applicant has determined that the proposed facility does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter.

* * * * *

■ 57. Delayed indefinitely, amend § 90.169 by revising paragraph (d)(5) to read as follows:

§ 90.169 Construction prior to grant of application.

* * * * *

(d) * * *

(5) The applicant has indicated in the application that the proposed facility does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter; and,

* * * * *

Subpart S—Regulations Governing the Licensing and Use of Frequencies in the 806–824, 851–869, 896–901, and 935–940 MHz Bands

■ 58. Delayed indefinitely, revise § 90.655 to read as follows:

§ 90.655 Special licensing requirements for Specialized Mobile Radio systems.

End users of conventional or trunked Specialized Mobile Radio systems that have control stations that require FAA clearance, as specified in §§ 17.7 through 17.17 of this chapter, or that require preparation of an Environmental Assessment under § 1.1307(b) of this

chapter, or that are located in a ''quiet zone,'' as defined by § 1.924 of this chapter must be individually licensed for such control stations prior to construction or operation. All other end users' operations will be within the scope of the base station licensee. All end users, however, continue to be responsible to comply with part 90 of this chapter and other Federal laws.

■ 59. Delayed indefinitely, amend § 90.683 by revising paragraph (a)(6) to read as follows:

§ 90.683 EA-based SMR system operations.

(a) * * *

(6) Any additional transmitters placed in operation must comply with § 1.1307(b) of this chapter.

* * * * *

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

■ 60. Delayed indefinitely, amend § 90.733 by revising paragraph (i)(3) to read as follows:

§ 90.733 Permissible operations.

* * * * *

(i) * * *

(3) Comply with the provisions of § 1.1307(b) of this chapter.

Subpart Y—Regulations Governing Licensing and Use of Frequencies in the 4940–4990 MHz Band

■ 61. Delayed indefinitely, amend § 90.1207 by revising paragraph (b)(1)(ii) to read as follows:

§ 90.1207 Licensing.

* * * * *

(b) * * *

(1) * * *

(ii) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter; or

* * * * *

PART 97—AMATEUR RADIO SERVICE

■ 62. The authority citation for part 97 continues to read as follows:

Authority: 47 U.S.C. 151–155, 301–609, unless otherwise noted.

Subpart A—General Provisions

■ 63. Delayed indefinitely, amend § 97.13 by revising paragraph (a) to read as follows:

§ 97.13 Restrictions on station location.

(a) An amateur station must comply with §§ 1.1307(b) and 1.90002 of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 64. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

Subpart B—Applications and Licenses

■ 65. Delayed indefinitely, amend § 101.31 by revising paragraph (b)(1)(iv) to read as follows:

§ 101.31 Temporary and conditional authorizations.

* * * * *

(b) * * *

(1) * * *

(iv) The applicant has determined that the facility(ies) does not require preparation of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart L—Local Multipoint Distribution Service

■ 66. Delayed indefinitely, amend § 101.1009 by revising paragraph (a)(1)(ii) to read as follows:

§ 101.1009 System operations.

(a) * * *

(1) * * *

(ii) Submission of an Environmental Assessment is required under § 1.1307(b) of this chapter.

* * * * *

Subpart O—Multiple Address Systems

■ 67. Delayed indefinitely, amend § 101.1329 by revising paragraph (a) to read as follows:

§ 101.1329 EA Station license, location, modifications.

* * * * *

(a) Requires the submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

Subpart Q—Service and Technical Rules for the 70/80/90 GHz Bands

68. Delayed indefinitely, amend § 101.1523 by revising paragraph (c)(1) to read as follows:

§ 101.1523 Sharing and coordination among non-government licensees and between non-government and government services.

* * * * *

(c) * * *

(1) Facilities requiring the submission of an Environmental Assessment under § 1.1307(b) of this chapter;

* * * * *

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